

**THE FLORIDA BAR BUSINESS LAW SECTION**  
**CORPORATIONS, SECURITIES & FINANCIAL SERVICES**  
**COMMITTEE MEETING**

**Saturday, September 2, 2023**  
**Meeting: 9:00 AM – 11:30 AM**  
**Location: Ritz Carlton, Naples**  
**Plaza II & III**

**Virtual Option: Microsoft Teams**

[Click here to join the meeting](#)

Meeting ID: 299 727 543 921

Passcode: gGDVjz

**Or call in (audio only)**

+1 804-372-8814,,99078267# United States, Richmond

(833) 653-6626,,99078267# United States (Toll-free)

Phone Conference ID: 990 782 67#

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**Toni Tsvetanova, Chair; Valeria Angelucci, Vice-Chair; Kelly Roberts, Second Vice-Chair;**  
**Prof. Stuart Cohn, Academic Chair**

**AGENDA**

1. **Call to Order and Welcome** Toni Tsvetanova
  
2. **Self-Introduction of Members Present** Toni Tsvetanova
  
3. **Approval of Meeting Minutes (January and June Meetings)** Toni Tsvetanova
  - a. *See attached **Schedule 1** for January 2023 meeting minutes.*
  - b. *See attached **Schedule 2** for June 2023 meeting minutes.*
  
4. **Report from Series LLC Task Force** Lou Conti
  - a. The Protected Series LLC provisions which were introduced in the 2023 legislature are going to be reintroduced for 2024 by the same sponsors: Sen. Lori Berman in the Senate and Rep. Berny Jacques in the House. There have been renumbering and additional amendments and revisions to the 2023 version to better integrate the Protected Series provisions with Chapter 605 generally. Additionally, members of the Task Force have spent the past 6 months going over the amendments with the Protected Series LLC Drafting Task Force, and working with RPPTL and title insurance company lawyers, principally with the assistance of Gary Teblum, Jamie Marks, Manny Farach, Phil Schwartz, and Jim Russick of Old Republic Title, to address the title insurance company lawyers' desire for amendments to provide more certainty for real property related instruments and documents which are recorded by a protected series or the series limited liability company. The last Task Force drafting session was held on August 8,2023 (which included the title insurance company

lawyers). The Task Force plans to hold another drafting session with the title insurance folks before the Labor Day Retreat, in hopes they can have a firm proposed amendment to the legislation to present in Naples.

- b. See attached **Schedule 3** for the most recent drafts of the proposed Protected Series LLC legislation in Senate Bill 1324 format, and **Schedule 4** for the revised White Paper describing the Protected Series LLC legislation. There may be a possible proposed addition to the legislation from the title insurance teams, which will be considered further by the Task Force at a meeting yet to take place before the Labor Day Retreat.
- c. As to a new Triple Motion, one is not expected to be needed as it should be consistent with the Triple Motion previously passed (to be confirmed with leadership).

5. **Chapter 617 Task Force (FL's Not-For Profit Statute)**

Toni Tsvetanova/  
Professor Stu Cohn

- a. The task force has made good progress with completing review of the substantive memoranda of 5 out of 9 subgroups of the task force. The subgroups whose memoranda have been reviewed are in the process of drafting proposed language revisions. The task force has continued to meet on an approximately bi-weekly basis to continue reviewing the remaining subgroups' memoranda.

6. **Chapter 517 Task Force (FL's Securities Statute)**

Professor Stu Cohn/  
Willard Blair

- a. The Task Force will be bringing a triple motion during the executive council meeting at the Labor Day Retreat to support proposed legislation that updates and modernizes Chapter 517 of the Florida Statutes – The Florida Securities and Investor Protection Act. The Task Force will be seeking for the bill to be affirmatively approved before bringing a triple motion before the executive council.
- b. See attached **Schedule 5** for the proposed bill, **Schedule 6** for an explanatory white paper and **Schedule 7** for the triple motion. Any comments should be provided by **Friday, August 18th**, so that the Task Force will have time to consider prior to the Retreat. At the Retreat, the Task Force will answer any further questions that committee members have.

7. **Chapter 607 Task Force Update**

Phil Schwartz/  
Gary Teblum

- a. The Task Force will be meeting prior to the Labor Day Retreat to discuss finalization of the report on the Ratification of Defective Acts proposal and the plan for related legislation.

8. **Opinion Standards Committee Update**

Gary Teblum/  
David Peterson/

- a. The Committee is considering holding a Zoom meeting of the Opinions Standards Committee after the ABA Opinions Committee meets in September after the Labor Day Retreat.

9. **CLE's**

Valeria Angelucci

- a. Corporate Transparency Act

- b. Legal Opinions
- c. Legislative Process
- d. Others

**10. UCC Article 12 Task Force**

Robert Kain

- a. The Task Force has drafted new legislation for UCC Art 12 – FS 669 and would appreciate feedback and comments by the CSFS committee. It is yet to be confirmed whether the legislation will be introduced at the early 2023-2024 Session or during the next legislative session. The revisions to FS 679 and other portions of the UCC, in addition to New Art 12, FS 669, is a major revision.
- b. *See* attached **Schedule 8** for a copy of a White paper (Ver 20230802), **Schedule 9** for UCC Art 12 Amendments, and **Schedule 10** for Draft Fla Art 12 Bill (ver Aug4\_2023). Comments should be provided to Robert Kain, with preference for identifying such comments by LINE #.

**11. FL Uniform Disposition of Community Property Rights at Death Act**

- a. The RPPTL Section has proposed certain revisions to the Florida Uniform Disposition of Community Property Rights at Death Act. *See* attached **Schedule 11** for a white paper and proposed bill.

**12. Other Matters for Discussion/Good Order**

Toni Tsvetanova/  
Members

**13. CLE Presentation**

Sponsored by  
Kaufman Rossin

- a. Topic: “Updates from a forensic accountant & valuation perspective: the Surfside building collapse & others”

**14. Adjourn**

Toni Tsvetanova

**SCHEDULE 1**

January 2023 Minutes

**THE FLORIDA BAR BUSINESS LAW SECTION**  
**CORPORATIONS, SECURITIES & FINANCIAL SERVICES**  
**COMMITTEE MEETING**

**Thursday, January 26<sup>th</sup>, 2023**

**Meeting: 9:00 – 10:00 AM**

**Location: Renaissance Orlando at Sea World, Merritt 1**

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**Michelle Suarez, Chair; Toni Tsvetanova, Vice-Chair; Valeria Angelucci, Second Vice-Chair**

**MEETING MINUTES**

1. Michelle Suarez called the meeting to order and welcomed the attendees. The Zoom line was opened.
2. The Executive Committee addressed the CSFS committee in person.
3. Michelle Suarez invited the members present to introduce themselves.

The following members were present in-person:

Michelle Suarez, Toni Tsvetanova, Valeria Angelucci, Alan Howard, Zachariah Evangelista, Gregory Yadley, Giacomo Bossa, Philip Schwartz, Leslie Wager Hudock, Will Blair, Abby Salzer (new attendee), Andrew Schwartz, Judge LaRose, Commissioner Russell Weigel

The following members were present via Zoom:

Prof. Stuart Cohn, Stefan Rubin, Gary Teblum, Garret Leborde, Karen Olin, Robert Brighton, Lou Conti, Daniel's Iphone

4. Michelle invited a motion to approve the prior meeting minutes, which were attached as Schedule 1 of the agenda for the meeting. Giacomo Bossa made the motion, Valeria Angelucci seconded the motion, and it was unanimously approved.
5. Michelle invited Lou Conti to make a report for the LLC Task Force. Lou was not present at the time but joined the meeting subsequently. It was confirmed no additional vote was required from CSFS at the current meeting regarding the LLC Task Force white paper and proposed bill, Michelle noted that a triple motion on this topic was included in the BLS Legislative Committee Agenda to be held in the afternoon. There was a discussion whether the bill will be proposed for the 2023 or 2024 session. Lou noted that Aimee and Doug have been trying to find sponsors in the Senate and House. If we find sponsors, it could be an initiative for the 2023 session, but it will not get passed until 2024 in the earliest. Currently there is no definitive sponsorship.
6. Michelle flagged that the summary of the report provided at the EC Meeting (for Labor Day 2022) can be seen as Schedule 5 of the agenda. She pointed the committee to p.86 in particular to see what we are doing as a committee as a whole.

7. Toni Tsvetanova provided a report on Chapter 617 Task Force (FL's Not-For Profit Statute). She noted the Task Force first identified interested stakeholders from the BLS, RPPITL, Health Law and Tax sections of the FL Bar and then met in October, 2022 to discuss process. Since then, the Task Force members were divided in 9 subgroups that met regularly to review provisions of Chapter 617 against Chapter 607 and the Model Nonprofit Corporation Act and make recommendations regarding revisions to Chapter 617. In January, 2023, the Task Force reconvened meeting on a Task Force-wide basis to discuss such recommendations, and will continue to meet every 2 weeks or so until all recommendations are reviewed, at which time each subgroup will go back to proposing specific language revisions to Chapter 617.
8. Will Blair provided an update regarding Chapter 517 Task Force (FL's Securities Statute). The Task Force has divided into study groups and have reconvened meetings (approximately once a month) to address several sections of proposed revisions to the statute. The Task Force is looking to other state's securities laws (i.e., the Georgia Exemption) and the Uniform Securities Act in developing a proposed draft legislation which the Task Force hopes to have ready in time to present to this Committee, and the Executive Council, in time for the 2024 legislative session. The Task Force will continue meetings.
9. It was discussed that the Opinion Standards Committee is no longer chaired by Robert Barron, who has moved into a leadership position, so David Peterson and Gary Teblum will now co-chair the committee. They had good discussions over Martin Luther King day. There has been no seminar on opinions in many years. Now that webinars are an option, a webinar could be put together. Robert Brighton would be happy to participate and has relevant materials. A panel of 3-5 people would work well. Of the topics of particular interest, acting as local counsel, secured loan transactions, Florida specific topics of interest (doc stamps, usury, etc.) were mentioned. It should be no more than 2 hours or done in separate blocks or series, one general and another one on a topic of expressed interest. Michelle will plan to join the next Opinion Standards Committee meeting.
10. Phil Schwartz provided an update on Chapter 607 Task Force and the 2 main issues they are focused on. The first one relates to the ratification of defective corporate actions (i.e., done without proper formality), and the fact that Chapter 607 does not have such a provision. The second relates to concerns with the provisions added in 2020 for derivative vs. direct actions (607.0750) and applicable provisions in Chapter 605. Further input will be needed from litigators. The plan is to have proposals on the first issue and possibly the second issue before the meeting in June.
11. There was an announcement regarding the 39<sup>th</sup> Annual Federal Securities Institute that will be taking place after 2 Covid postponements (with last one in February, 2020). The event will be on March 2 and March 3, 2023 in Miami and will be attended by speakers from a number of top law firms, with an excellent keynote speaker of Thomas A. James, Chairman Emeritus, Raymond James Financial. Attending the event would earn 15 CLE credits and 2 ethics credits.
12. Michelle Suarez provided an update on certain CLE Projects and discussed potential other CLE Projects.

- a. Regulation D and A/A+ CLE that took place on October 19 was a success with the registration and attendance of over 60 participants. Michelle noted she is looking into financial figures generated based on such attendance.
  - b. A Legislative Process CLE would still be of great interest. Gary Teblum has the materials necessary to present this CLE. We are looking for another panelist to join him. It was discussed the CLE should be 1.5 hours. Michelle noted she will reach out to Allison Leonard.
  - c. A corporate drafting and M&A/private equity considerations/due diligence CLE was discussed as a possible idea.
  - d. A CLE around the corporate transparency act was discussed. Phil noted that a lot is going on at the time nationally. First sets of regulations were passed last year. It would be helpful to know what should be required of lawyers and clients and if any responsibilities fall on lawyers. Reporting obligations on companies also need to be clarified. It might be too early for the CLE given the lack of clarity. The RPPTL section planned an event around it but had to push it out. The international law section might also be discussing something around it in February. Gary noted that a presentation at one of the CSFS committee meetings might also be helpful.
  - e. Cybersecurity protection credits requirements – M&A related CLE, ethics, technology – consider collaboration with the Computer & Technology Law Committee.
  - f. Michelle to propose a guidebook for committee leadership – what is expected of Chairs, Vice Chairs, Second Vice Chairs, Academic Chairs, etc. What are meetings supposed to look like, timelines, etc.
13. Michelle asked if there are other matters for discussion.
- a. Zach included a Pro Bono Committee reminder about the Pro Bono Award nominations deadline.
  - b. There was a reminder by the IMF committee to ask if Fellows are present and plan to include Fellows in projects.
  - c. The CLE Committee would benefit from articles. 3 months lead time is preferred, but if anyone has anything they would like to publish, they could submit on a shorter timeline (i.e., 2 weeks before the next publication would have been fine).
  - d. The FTC proposal on non-competes was discussed. Prof. Cohn noted that the task force that Brain chairs is discussing whether to prepare a response to the FTC. A CLE could also be helpful.
  - e. On the 607 questions around direct vs. derivative actions, the Business Litigation and CSFS committees could put a joint program.
14. After there were no further matters to discuss, the meeting was called to good order and adjourned.

**SCHEDULE 2**

June 2023 Minutes



**THE FLORIDA BAR BUSINESS LAW SECTION**  
**CORPORATIONS, SECURITIES & FINANCIAL SERVICES**  
**COMMITTEE MEETING MINUTES**

**Thursday, June 22, 2023**  
**IN PERSON ONLY**  
**Meeting: 12:30 PM – 2:30 PM**  
**Location: Boca Raton Resort & Club**  
**Royal Palm Ballroom VIII**

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**Michelle Suarez, Chair; Toni Tsvetanova, Vice-Chair; Valeria Angelucci, Second Vice-Chair;  
Kelly Roberts, Academic Chair, Prof. Stuart Cohn**

**MEETING MINUTES**

1. **Call to Order and Welcome** Michelle Suarez
2. **Self-Introduction of Members Present + Fun Fact Sharing** Michelle Suarez
3. **Approval of Meeting Minutes** Michelle Suarez
  - a. The minutes were not circulated with the distribution prior to the meeting, so they will be approved subsequently.
4. **Report from Series LLC Task Force** Lou Conti
  - a. The task force’s work is nearly completed. The task force received some concerns from the RPPTL section of the Florida Bar, which are being addressed. The task force does not expect the timing of the proposed legislation to be delayed.
5. **Chapter 617 Task Force (FL’s Not-For Profit Statute)** Toni Tsvetanova/  
Professor Stu Cohn
  - a. The task force has made good progress with completing review of the substantive memoranda of 4 out of 9 subgroups of the task force. The subgroups whose memoranda have been reviewed are in the process of drafting proposed language revisions. The task force will continue to meet on an approximately bi-weekly basis to continue reviewing the remaining subgroups’ memoranda. Proposed legislation from the task force is not expected until the following calendar year in the earliest.
6. **Chapter 517 Task Force (FL’s Securities Statute)** Willard Blair/  
Professor Stu Cohn
  - a. The task force has made good progress and expects to be ready with the proposed legislation in the fall.
7. **Address by Executive Council**
  - a. Boot camp for upcoming chairs in August
  - b. Registration for Labor Day Retreat

- c. EC Retreat – early April – Scotland
- 8. **Opinion Standards Committee Update** Robert Barron
  - a. The committee will be posting an update and sending an email with developments. They will also have a zoom meeting to discuss.
- 9. **Chapter 607 Task Force Update** Phil Schwartz/Gary Teblum
  - a. The task force is making progress with the few open topics on its agenda. They expect to have 1-2 virtual sessions over the summer and a final bill ahead of the Labor Day Retreat. Some new discrete issues have arisen in the process, which a separate task force will likely tackle.
- 10. **CLE's**
  - a. **Securities Institute (March 2023)** Greg Yadley

The event had an excellent group of panelists and participants. Participation needs to increase in the future given the high quality of the event. Plans for future events include increased marketing, a hybrid approach on attendance or recording of the event and changing the title to make clear that the topics covered include a variety of non-securities topics in addition to securities topics.
  - b. **Corporate Transparency Act** Michelle Suarez

As soon as there are further developments, the committee should be looking to put up a CLE on the topic.
- 11. **UCC Article 12 Presentation** Judge Mindy Mora
  - a. Judge Mora and a few others gave background information on the UCC Article 12 upcoming presentation that was to be held later on the same day. The presentation was recorded and should be available electronically.
- 12. **Other Matters for Discussion/Good Order** Michelle Suarez/Members
  - a. Thank you to our excellent Chair, Michelle Suarez!
- 13. **Adjourn** Michelle Suarez

**SCHEDULE 3**

Proposed Protected Series LLC legislation in Senate Bill 1324 format

By Senator Berman

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1                   A bill to be entitled  
2           An act relating to limited liability companies;  
3           creating s. 605.2101, F.S.; providing a short title;  
4           creating s. 605.2102, F.S.; defining terms; creating  
5           s. 605.2103, F.S.; providing that a protected series  
6           of a series limited liability company is a person  
7           distinct from certain other entities; creating s.  
8           605.2104, F.S.; providing for powers and prohibitions  
9           for protected series of series limited liability  
10          companies; creating s. 605.2105, F.S.; providing  
11          construction; creating s. 605.2106, F.S.; specifying  
12          what the operating agreement of a series limited  
13          liability company governs; providing applicability;  
14          creating s. 605.2107, F.S.; providing prohibitions and  
15          authorizations relating to operating agreements;  
16          creating s. 605.2108, F.S.; providing applicability;  
17          creating s. 605.2201, F.S.; authorizing series limited  
18          liability companies to establish protected series;  
19          providing requirements for establishing protected  
20          series and amending protected series designations;  
21          creating s. 605.2202, F.S.; providing requirements for  
22          naming a protected series; creating s. 605.2203, F.S.;

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additions.

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23 providing specifications and requirements for the  
24 registered agent for a protected series; providing  
25 requirements relating to protected series  
26 designations; specifying that a registered agent is  
27 not required to distinguish between certain processes,  
28 notices, demands, and records unless otherwise agreed  
29 upon; creating s. 605.2204, F.S.; authorizing service  
30 of, and provision of notice and demand to, certain  
31 limited liability companies and protected series in a  
32 specified manner; providing construction; creating s.  
33 605.2205, F.S.; requiring the Department of State to  
34 issue a certificate of status under certain  
35 circumstances; providing requirements for such  
36 certificates; providing that such certificates may be  
37 relied upon as conclusive evidence of the facts stated  
38 in the certificate; creating s. 605.2206, F.S.;  
39 requiring series limited liability companies to  
40 include specified information in an annual report;  
41 specifying that failure to include such information  
42 prevents a certificate of status from being issued;  
43 creating s. 605.2301, F.S.; specifying that only  
44 certain assets may be associated assets; providing  
45 requirements for an asset to be considered an  
46 associated asset; authorizing certain records and  
47 recordkeeping to be organized in a specified manner;  
48 authorizing series limited liability companies or

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49 protected series of a company to hold an associated  
50 asset in a specified manner; providing exceptions;  
51 creating s. 605.2302, F.S.; providing requirements for  
52 becoming an associated member of a protected series;  
53 creating s. 605.2303, F.S.; requiring that protected-  
54 series transferable interests be initially owned by an  
55 associated member or a series limited liability  
56 company; providing that a company owns such interest  
57 under certain circumstances; authorizing series  
58 limited liability companies to acquire such interests  
59 through a transfer; providing applicability; creating  
60 s. 605.2304, F.S.; authorizing protected series to  
61 have more than one protected-series manager;  
62 specifying that if a protected series does not have  
63 associated members, the series limited liability  
64 company is the protected-series manager; providing  
65 applicability; specifying that a person does not owe a  
66 duty to specified entities for certain reasons;  
67 providing rights of associated members; providing  
68 applicability; specifying that an associated member of  
69 a protected series is an agent for the protected  
70 series and has a specified power; creating s.  
71 605.2305, F.S.; providing rights for certain persons  
72 relating to protected series; providing applicability;  
73 creating s. 605.2401, F.S.; providing limitations on  
74 liability for certain persons; creating s. 605.2402,

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75 F.S.; specifying that certain claims are governed by  
76 certain provisions; specifying that the failure of  
77 limited liability companies or protected series to  
78 observe certain formalities is not a ground to  
79 disregard a specified limitation; providing  
80 applicability; creating s. 605.2403, F.S.; specifying  
81 that certain provisions relating to the provision or  
82 restriction of remedies apply to judgment creditors;  
83 creating s. 605.2404, F.S.; defining the terms  
84 "enforcement date" and "incurrence date"; authorizing  
85 certain judgments to be enforced in accordance with  
86 specified provisions; authorizing courts to provide a  
87 specified prejudgment remedy; providing that a party  
88 making a certain assertion has the burden of proof in  
89 specified proceedings; providing applicability;  
90 creating s. 605.2501, F.S.; providing specifications  
91 for the dissolution of series limited liability  
92 companies; creating s. 605.2502, F.S.; providing  
93 requirements and authorizations relating to dissolved  
94 protected series; specifying that a series limited  
95 liability company has not completed winding up until  
96 each of the protected series of the company has  
97 completed winding up; creating s. 605.2503, F.S.;  
98 providing for the effect of reinstatements of series  
99 limited liability companies and revocations of  
100 voluntary dissolutions; creating s. 605.2601, F.S.;

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101 defining terms; creating s. 605.2602, F.S.; providing  
102 prohibitions for protected series relating to  
103 conversions, domestications, interest exchanges, and  
104 mergers or similar transactions; creating s. 605.2603,  
105 F.S.; prohibiting series limited liability companies  
106 from involvement in certain transactions; creating s.  
107 605.2604, F.S.; authorizing series limited liability  
108 companies to be a party to a merger under certain  
109 circumstances; creating s. 605.2605, F.S.; requiring  
110 plans of merger to meet certain requirements; creating  
111 s. 605.2606, F.S.; requiring articles of merger to  
112 meet certain requirements; creating s. 605.2607, F.S.;  
113 providing for effects of mergers of protected series;  
114 creating s. 605.2608, F.S.; providing applicability of  
115 certain provisions after a merger; creating s.  
116 605.2701, F.S.; providing for the governance of the  
117 law of the jurisdiction of formation of a foreign  
118 series limited liability company; creating s.  
119 605.2702, F.S.; providing requirements for making a  
120 specified determination relating to certain companies  
121 transacting business in this state or being subject to  
122 the personal jurisdiction of courts in this state;  
123 creating s. 605.2703, F.S.; providing applicability of  
124 laws relating to registration of foreign series  
125 limited liability companies; creating s. 605.2704,  
126 F.S.; requiring foreign series limited liability

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127 companies and foreign protected series of such foreign  
128 series limited liability companies to make specified  
129 disclosures; tolling such requirements under certain  
130 circumstances; authorizing parties to make a specified  
131 request or bring a separate proceeding if such company  
132 or series fails to make the disclosures; creating s.  
133 605.2801, F.S.; providing applicability of provisions  
134 relating to electronic signatures; creating s.  
135 605.2802, F.S.; providing construction; prohibiting  
136 domestic limited liability companies from creating or  
137 designated any protected series before a specified  
138 date; amending s. 48.062, F.S.; defining the terms  
139 "registered foreign series limited liability company"  
140 and "registered foreign protected series of a foreign  
141 series limited liability company"; specifying that  
142 certain series limited liability companies are  
143 considered a nonresident under certain circumstances;  
144 authorizing specified service on such companies;  
145 specifying that certain services on specified  
146 companies are notice to such company and each series  
147 of such company; amending s. 605.0103, F.S.;  
148 correcting a cross-reference; amending s. 605.0117,  
149 F.S.; conforming a provision to changes made by the  
150 act; amending s. 605.0211; revising requirements for  
151 certificates of status; providing effective dates. Be  
152 It Enacted by the Legislature of the State of Florida:

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153           Section 1.       Section 605.2101, Florida  
154 Statutes, is created to read:  
155           605.2101 Short title.—Sections 605.2101-605.2802  
156 may be cited as the “Uniform Protected Series  
157 Provisions.”

158           Section 2.       Section 605.2102, Florida  
159 Statutes, is created to read:  
160           605.2102 Definitions.—As used in ss. 605.2101-  
161 605.2802, the term:

162           (1) “Asset” means property:

163           (a) In which a series limited liability company  
164 or a protected series has rights; or

165           (b) As to which the series limited liability  
166 company or protected series has the power to transfer  
167 rights.

168           (2) “Associated asset” means an asset that meets  
169 the requirements of s. 605.2301.

170           (3) “Associated member” means a member that meets  
171 the requirements of s. 605.2302.

172           (4) “Foreign protected series” means an  
173 arrangement, configuration, or other structure  
174 established by a foreign limited liability company  
175 which has attributes comparable to a protected series  
176 established under this chapter, regardless of whether  
177 the law under which the foreign company is organized  
178 refers to “series” or “protected series.”

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179           (5) "Foreign series limited liability company"  
180           means a foreign limited liability company that has at  
181           least one foreign series or protected series.

182           (6) "Non-associated asset" means:

183           (a) An asset of a series limited liability  
184           company which is not an associated asset of the  
185           company; or

186           (b) An asset of a protected series of the series  
187           limited liability company which is not an associated  
188           asset of the protected series.

189           (7) "Person" has the same meaning as in s.  
190           605.0102 and includes a protected series and a foreign  
191           protected series.

192           (8) "Protected series," except in the phrase  
193           "foreign protected series," means a protected series  
194           established under s. 605.2201.

195           (9) "Protected-series manager" means a person  
196           under whose authority the powers of a protected series  
197           are exercised and under whose direction the activities  
198           and affairs of the protected series are managed under  
199           the operating agreement and this chapter.

200           (10) "Protected-series transferable interest"  
201           means a right to receive a distribution from a  
202           protected series.

203           (11) "Protected-series transferee" means a person  
204           to which all or part of a protected-series

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205 transferable interest of a protected series of a  
206 series limited liability company has been transferred,  
207 other than the series limited liability company. The  
208 term includes a person that owns a protected-series  
209 transferable interest as a result of ceasing to be an  
210 associated member of a protected series.

211 (12) "Registered foreign protected series" means  
212 a protected series of a foreign series limited  
213 liability company that has an active certificate of  
214 authority to transact business in this state pursuant  
215 to a record filed with the department.

216 (13) "Registered foreign series limited liability  
217 company" means a foreign series limited liability  
218 company that has an active certificate of authority to  
219 transact business in this state pursuant to a record  
220 filed with the department.

221 (14) "Series limited liability company," except  
222 in the phrase "foreign series limited liability  
223 company," means a limited liability company that has  
224 at least one protected series.

225 Section 3. Section 605.2103, Florida  
226 Statutes, is created to read:

227 605.2103 Nature of protected status.—A protected  
228 series of a series limited liability company is a  
229 person distinct from all of the following:

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230           (1) The series limited liability company, subject  
231 to ss. 605.2104(1), 605.2501(1), and 605.2502(4).

232           (2) Another protected series of the series  
233 limited liability company.

234           (3) A member of the series limited liability  
235 company, regardless of whether the member is an  
236 associated member of the protected series of the  
237 series limited liability company.

238           (4) A protected-series transferee of a protected  
239 series of the series limited liability company.

240           (5) A transferee of a transferable interest of  
241 the series limited liability company.

242           Section 4.       Section 605.2104, Florida  
243 Statutes, is created to read:

244           605.2104 Powers and duration of protected  
245 series.-

246           (1) A protected series of a series limited  
247 liability company has the capacity to sue and be sued  
248 in its own name.

249           (2) Except as otherwise provided in subsections  
250 (3) and (4), a protected series of a series limited  
251 liability company has the same powers and purposes as  
252 the series limited liability company.

253           (3) A protected series of a series limited  
254 liability company ceases to exist not later than when

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255 the series limited liability company completes its  
256 winding up.

257 (4) A protected series of a series limited  
258 liability company may not:

259 (a) Be a member of the series limited liability  
260 company;

261 (b) Establish a protected series; or

262 (c) Except as authorized by law of this state  
263 other than this chapter, have a purpose or power, or  
264 take an action, that the law of this state other than  
265 this chapter prohibits a limited liability company  
266 from having or taking.

267 Section 5. Section 605.2105, Florida  
268 Statutes, is created to read:

269 605.2105 Protected series governing law.—The law  
270 of this state governs all of the following:

271 (1) The internal affairs of a protected series of  
272 a series limited liability company, including:

273 (a) Relations among any associated members of the  
274 protected series;

275 (b) Relations among the protected series and:

276 1. Any associated member;

277 2. Any protected-series manager; or

278 3. Any protected-series transferee;

279 (c) Relations between any associated member and:

280 1. Any protected-series manager; or

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281                   2. Any protected-series transferee;  
282                    (d) The rights and duties of a protected-series  
283 manager;  
284                    (e) Governance decisions affecting the activities  
285 and affairs of the protected series and the conduct of  
286 those activities and affairs; and  
287                    (f) Procedures and conditions for becoming an  
288 associated member or protected-series transferee.  
289                    (2) The relations between a protected series of a  
290 series limited liability company and each of the  
291 following:  
292                      (a) The series limited liability company;  
293                      (b) Another protected series of the series  
294 limited liability company;  
295                      (c) A member of the series limited liability  
296 company which is not an associated member of the  
297 protected series of the series limited liability  
298 company;  
299                      (d) A protected-series manager that is not a  
300 protected-series manager of the protected series; and  
301                      (e) A protected-series transferee that is not a  
302 protected-series transferee of the protected series.  
303                    (3) The liability of a person for a debt,  
304 obligation, or other liability of a protected series  
305 of a series limited liability company if the debt,

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306 obligation, or liability is asserted solely by reason  
307 of the person being or acting as:

308 (a) An associated member, protected-series  
309 transferee, or protected-series manager of the  
310 protected series;

311 (b) A member of the series limited liability  
312 company which is not an associated member of the  
313 protected series;

314 (c) A protected-series manager that is not a  
315 protected-series manager of the protected series;

316 (d) A protected-series transferee that is not a  
317 protected-series transferee of the protected series;

318 (e) A manager of the series limited liability  
319 company; or

320 (f) A transferee of a transferable interest of  
321 the series limited liability company.

322 (4) The liability of a series limited liability  
323 company for a debt, obligation, or other liability of  
324 a protected series of the series limited liability  
325 company if the debt, obligation, or liability is  
326 asserted solely by reason of the series limited  
327 liability company:

328 (a) Having delivered to the department for filing  
329 under s. 605.2201(2) a protected series designation  
330 pertaining to the protected series or under s.



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331 605.2201(4) or s. 605.2202(3) a statement of  
332 designation change pertaining to the protected series;  
333 (b) Being or acting as a protected-series manager  
334 of the protected series;  
335 (c) Having the protected series be or act as a  
336 manager of the series limited liability company; or  
337 (d) Owning a protected-series transferable  
338 interest of the protected series.  
339 (5) The liability of a protected series of a  
340 series limited liability company for a debt,  
341 obligation, or other liability of the series limited  
342 liability company or of another protected series of  
343 the series limited liability company if the debt,  
344 obligation, or liability is asserted solely by reason  
345 of:  
346 (a) The protected series:  
347 1. Being a protected series of the series limited  
348 liability company or having as a protected-series  
349 manager the series limited liability company or  
350 another protected series of the series limited  
351 liability company; or  
352 2. Being or acting as a protected-series manager  
353 of another protected series of the series limited  
354 liability company or a manager of the series limited  
355 liability company; or

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356           (b) The series limited liability company owning a  
357           protected-series transferable interest of the  
358           protected series.

359           Section 6.       Section 605.2106, Florida  
360           Statutes, is created to read:

361           605.2106 Relation of operating agreement and the  
362           protected series provisions of this chapter.-

363           (1) Except as otherwise provided in this section,  
364           and subject to ss. 605.2107 and 605.2108, the  
365           operating agreement of a series limited liability  
366           company governs:

367           (a) The internal affairs of a protected series,  
368           including:

369           1. Relations among any associated members of the  
370           protected series;

371           2. Relations among the protected series and:

372           a. Any associated member of the protected series;

373           b. Any protected-series manager; or

374           c. Any protected-series transferee;

375           3. Relations between any associated member and:

376           a. Any protected-series manager; or

377           b. Any protected-series transferee;

378           4. The rights and duties of a protected-series  
379           manager;

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380           5. Governance decisions affecting the activities  
381 and affairs of the protected series and the conduct of  
382 those activities and affairs; and

383           6. Procedures and conditions for becoming an  
384 associated member or protected-series transferee.

385           (b) Relations between a protected series of the  
386 series limited liability company and each of the  
387 following:

388           1. The series limited liability company;

389           2. Another protected series of the series limited  
390 liability company;

391           3. The protected series, any of its protected-  
392 series managers, any associated member of the  
393 protected series, or any protected-series transferee  
394 of the protected series; and

395           4. A person in the person's capacity as:

396           a. A member of the series limited liability  
397 company which is not an associated member of the  
398 protected series;

399           b. A protected-series transferee or protected-  
400 series manager of another protected series; or

401           c. A transferee of the series limited liability  
402 company.

403           (2) If this chapter restricts the power of an  
404 operating agreement to affect a matter, the

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405 restriction applies to a matter under ss. 605.2101-  
406 605.2802 in accordance with s. 605.0105.

407 (3) If a law of this state other than this  
408 chapter imposes a prohibition, limitation,  
409 requirement, condition, obligation, liability, or  
410 other restriction on a limited liability company; a  
411 member, manager, or other agent of a limited liability  
412 company; or a transferee of a limited liability  
413 company, except as otherwise provided in the law of  
414 this state other than this chapter, the restriction  
415 applies in accordance with s. 605.2108.

416 (4) Except as otherwise provided in s. 605.2107,  
417 if the operating agreement of a series limited  
418 liability company does not provide for a matter  
419 described in subsection (1) in a manner authorized by  
420 ss. 605.2101-605.2802, the matter is determined in  
421 accordance with the following:

422 (a) To the extent ss. 605.2101-605.2802 address  
423 the matter, ss. 605.2101-605.2802 govern.

424 (b) To the extent ss. 605.2101-605.2802 do not  
425 address the matter, this chapter governs the matter in  
426 accordance with s. 605.2108.

427 Section 7. Section 605.2107, Florida  
428 Statutes, is created to read:

429 605.2107 Additional limitations on operating  
430 agreements.-

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- 431           (1) An operating agreement may not vary the  
432 effect of:
- 433           (a) This section;  
434           (b) Section 605.2103;  
435           (c) Section 605.2104(1);  
436           (d) Section 605.2104(2) to provide a protected  
437 series a power beyond the powers this chapter provides  
438 a limited liability company;
- 439           (e) Section 605.2104(3) or (4);  
440           (f) Section 605.2105;  
441           (g) Section 605.2106;  
442           (h) Section 605.2108;  
443           (i) Section 605.2201, except to vary the manner  
444 in which a series limited liability company approves  
445 establishing a protected series;
- 446           (j) Section 605.2202;  
447           (k) Section 605.2301;  
448           (l) Section 605.2302;  
449           (m) Section 605.2303(1) or (2);  
450           (n) Section 605.2304(3) or (6);  
451           (o) Section 605.2401, except to decrease or  
452 eliminate a limitation of liability stated in that  
453 section;
- 454           (p) Section 605.2402;  
455           (q) Section 605.2403;  
456           (r) Section 605.2404;

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457           (s) Section 605.2501(1), (4), and (5);  
458           (t) Section 605.2502, except to designate a  
459 different person to manage winding up;  
460           (u) Section 605.2503;  
461           (v) Sections 605.2601-605.2608;  
462           (w) Sections 605.2701-605.2704;  
463           (x) Sections 605.2801-605.2802, except to vary:  
464           1. The manner in which a series limited liability  
465 company may elect under s. 605.2802(1)(b) to be  
466 subject to this chapter; or  
467           2. The person that has the right to sign and  
468 deliver to the department for filing a record under s.  
469 605.2802(2)(b); or  
470           (y) A provision of this chapter pertaining to:  
471           1. A registered office or registered agents; or  
472           2. The department, including provisions relating  
473 to records authorized or required to be delivered to  
474 the department for filing under this chapter.  
475           (2) An operating agreement may not unreasonably  
476 restrict the duties and rights under s. 605.2305 but  
477 may impose reasonable restrictions on the availability  
478 and use of information obtained under s. 605.2305 and  
479 may provide appropriate remedies, including liquidated  
480 damages, for a breach of any reasonable restriction on  
481 use.

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482           Section 8.       Section 605.2108, Florida  
483 Statutes, is created to read:  
484           605.2108 Application of this chapter to specified  
485 provisions of protected series.-  
486           (1) Except as otherwise provided in subsection  
487 (2) and s. 605.2107, the following apply in applying  
488 ss. 605.2106, 605.2304(3) and (6), 605.2501(4)(a),  
489 605.2502(1), and 605.2503(2):  
490           (a) A protected series of a series limited  
491 liability company is deemed to be a limited liability  
492 company that is formed separately from the series  
493 limited liability company and is distinct from the  
494 series limited liability company and any other  
495 protected series of the series limited liability  
496 company.  
497           (b) An associated member of the protected series  
498 of a series limited liability company is deemed to be  
499 a member of the series limited liability company  
500 deemed to exist under paragraph (a).  
501           (c) A protected-series transferee of the  
502 protected series is deemed to be a transferee of the  
503 series limited liability company deemed to exist under  
504 paragraph (a).  
505           (d) A protected-series transferable interest of  
506 the protected series is deemed to be a transferable

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507 interest of the series limited liability company  
508 deemed to exist under paragraph (a).

509 (e) A protected-series manager is deemed to be a  
510 manager of the series limited liability company deemed  
511 to exist under paragraph (a).

512 (f) An asset of the protected series is deemed to  
513 be an asset of the series limited liability company  
514 deemed to exist under paragraph (a), regardless of  
515 whether the asset is an associated asset of the  
516 protected series.

517 (g) Any creditor or other obligee of the  
518 protected series is deemed to be a creditor or obligee  
519 of the series limited liability company deemed to  
520 exist under paragraph (a).

521 (2) Subsection (1) does not apply if its  
522 application would:

523 (a) Contravene s. 605.0105; or

524 (b) Authorize or require the department to:

525 1. Accept for filing a type of record that this  
526 chapter does not authorize or require a person to  
527 deliver to the department for filing; or

528 2. Make or deliver a record that this chapter  
529 does not authorize or require the department to make  
530 or deliver.

531 (3) Except to the extent otherwise specified in  
532 ss. 605.2101-605.2802, the provisions of this chapter



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533 applicable to limited liability companies in general  
534 and their managers, members, and transferees,  
535 including, but not limited to, provisions relating to  
536 formation, operation, existence, management, court  
537 proceedings, and filings with the department and other  
538 state or local government agencies, are applicable to  
539 each series limited liability company and to each  
540 protected series established pursuant to s. 605.2201.

541 Section 9. Section 605.2201, Florida  
542 Statutes, is created to read:

543 605.2201 Protected series designation;  
544 amendment.—

545 (1) With the affirmative vote or consent of all  
546 members of a limited liability company, the company  
547 may establish a protected series.

548 (2) To establish a protected series, a limited  
549 liability company shall deliver to the department for  
550 filing a protected series designation, signed by the  
551 company, stating the name of the company and the name  
552 of the protected series to be established, and any  
553 other information the department requires for filing.

554 (3) A protected series is established when the  
555 protected series designation takes effect under s.  
556 605.0207.

557 (4) To amend a protected series designation, a  
558 series limited liability company shall deliver to the

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559 department for filing a statement of designation  
560 change, signed by the company, that sets forth: (i)  
561 the name of the series limited liability company and  
562 the name of the protected series to which the  
563 designation applies, (ii) each change to the protected  
564 series designation, and (iii) a statement that the  
565 change was approved by the affirmative vote or consent  
566 of the members of the series limited liability company  
567 required to make the designated change. The change  
568 takes effect when the statement of designation change  
569 takes effect under s. 605.0207.

570 Section 10. Section 605.2202, Florida  
571 Statutes, is created to read:

572 605.2202 Protected series name.-

573 (1) Except as otherwise provided in subsection  
574 (2), the name of a protected series must comply with  
575 s. 605.0112.

576 (2) The name of a protected series of a series  
577 limited liability company must:

578 (a) Begin with the name of the series limited  
579 liability company, including any word or abbreviation  
580 required by s. 605.0112; and

581 (b) Contain the phrase "protected series" or the  
582 abbreviation "P.S." or "PS."

583 (3) If a series limited liability company changes  
584 its name, the company must deliver to the department

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585 for filing a statement of designation change for each  
586 of the company's protected series, changing the name  
587 of each protected series to comply with this section.

588 Section 11. Section 605.2203, Florida  
589 Statutes, is created to read:

590 605.2203 Registered agent.-

591 (1) The registered agent in this state for a  
592 series limited liability company is the registered  
593 agent in this state for each protected series of the  
594 company.

595 (2) Before delivering a protected series  
596 designation to the department for filing, a series  
597 limited liability company must agree with a registered  
598 agent that the agent will serve as the registered  
599 agent in this state for the company and for each  
600 protected series of the company.

601 (3) A person that signs a protected series  
602 designation delivered to the department for filing  
603 affirms as a fact that the series limited liability  
604 company on whose behalf the designation is delivered  
605 has complied with subsection (2).

606 (4) A person that ceases to be the registered  
607 agent for a series limited liability company ceases to  
608 be the registered agent for each protected series of  
609 the company.

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610           (5) A person that ceases to be the registered  
611           agent for a protected series of a series limited  
612           liability company, other than as a result of the  
613           termination of the protected series, ceases to be the  
614           registered agent of the company and any other  
615           protected series of the company.

616           (6) Except as otherwise agreed upon by a series  
617           limited liability company and its registered agent,  
618           the registered agent is not obligated to distinguish  
619           between a process, notice, demand, or other record  
620           concerning the company and a process, notice, demand,  
621           or other record concerning a protected series of the  
622           company.

623           Section 12.       Section 605.2204, Florida  
624           Statutes, is created to read:

625           605.2204 Serving process, giving notice, or  
626           making a demand relating to a series limited liability  
627           company.—

628           (1) Process against a series limited liability  
629           company may be served in the same manner as service is  
630           made on a limited liability company under s. 48.062  
631           and chapter 48 or chapter 49.

632           (2) Process against a protected series of a  
633           series limited liability company may be served in the  
634           same manner as service is made on a limited liability  
635           company under s. 48.062 and chapter 48 or chapter 49.

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636           (3) Process against a registered foreign series  
637           limited liability company may be served in the same  
638           manner as service is made on a registered foreign  
639           limited liability company under s. 48.062 and chapter  
640           48 or chapter 49.

641           (4) Process against a registered foreign  
642           protected series of a registered foreign series  
643           limited liability company may be served in the same  
644           manner as service is made on a registered foreign  
645           limited liability company under s. 48.062 and chapter  
646           48 or chapter 49.

647           (5) Any notice or demand on a series limited  
648           liability company or a protected series of a series  
649           limited liability company under this chapter may be  
650           given or made to any member of a member-managed series  
651           limited liability company or to any manager of a  
652           manager-managed series limited liability company; to  
653           the registered agent of the series limited liability  
654           company at the registered office of the series limited  
655           liability company in this state; or to any other  
656           address in this state which is in fact the principal  
657           office of the series limited liability company in this  
658           state.

659           (6) Any notice or demand on a registered foreign  
660           series limited liability company or a registered  
661           foreign protected series of a registered foreign

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662 series limited liability company under this chapter  
663 may be given or made to any member of a member-managed  
664 registered foreign series limited liability company or  
665 to any manager of a manager-managed registered foreign  
666 series limited liability company; to the registered  
667 agent of the registered foreign series limited  
668 liability company at the registered office of the  
669 registered foreign series limited liability company in  
670 this state; or to the principal office address, or any  
671 other address in this state which is in fact the  
672 principal office of the registered foreign series  
673 limited liability company in this state.

674 (7) This section does not affect the right to  
675 serve process, give notice, or make a demand in any  
676 other manner provided by law.

677 Section 13. Section 605.2205, Florida  
678 Statutes, is created to read:

679 605.2205 Certificate of status for domestic and  
680 foreign protected series.-

681 (1) The department, upon request and payment of  
682 the requisite fee, shall issue a certificate of status  
683 for a protected series of a domestic series limited  
684 liability company if the records filed in the  
685 department show that the department has accepted and  
686 filed articles of organization for the domestic series  
687 limited liability company and a protected series

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688 designation for the protected series. A certificate of  
689 status for a protected series of a domestic series  
690 limited liability company must state all of the  
691 following:

692 (a) The domestic series limited liability  
693 company's name.

694 (b) The name of the protected series.

695 (c) That the domestic series limited liability  
696 company was organized under the laws of this state and  
697 the date of organization.

698 (d) That the protected series was designated  
699 under the laws of this state and the date of  
700 designation.

701 (e) Whether all fees and penalties due to the  
702 department under this chapter or other law by the  
703 domestic series limited liability company and the  
704 protected series have been paid.

705 (f) Whether the domestic series limited liability  
706 company's most recent annual report required by s.  
707 605.0212 has been filed by the department.

708 (g) Whether the domestic series limited liability  
709 company's most recent annual report includes the name  
710 of the protected series, unless:

711 1. When the domestic series limited liability  
712 company delivered the report for filing, the protected

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713 series designation pertaining to the protected series  
714 had not yet taken effect; or

715 2. After the domestic series limited liability  
716 company delivered the report for filing, the company  
717 delivered to the department for filing a statement of  
718 designation change which changes the name of the  
719 protected series.

720 (h) Whether the department has administratively  
721 dissolved the domestic series limited liability  
722 company or received a record notifying the department  
723 that the company has been dissolved by judicial action  
724 pursuant to s. 605.0705.

725 (i) Whether the department has administratively  
726 dissolved the protected series or received a record  
727 notifying the department that the protected series has  
728 been dissolved by judicial action pursuant to s.  
729 605.2501(4) or (5).

730 (j) Whether the department has filed articles of  
731 dissolution for the domestic series limited liability  
732 company.

733 (k) Whether the department has filed a statement  
734 of dissolution, termination, or relocation for the  
735 protected series.

736 (2) The department, upon request and payment of  
737 the requisite fee, shall issue a certificate of status  
738 for a foreign protected series of a foreign series



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739 limited liability company if the records filed in the  
740 department show that the department has filed a  
741 certificate of authority for the foreign series  
742 limited liability company and a certificate of  
743 authority for the foreign protected series. A  
744 certificate of status for a foreign protected series  
745 of a foreign series limited liability company must  
746 state all of the following:

747 (a) The foreign series limited liability  
748 company's name and any current alternative name  
749 adopted under s. 605.0906(1) for use in this state.

750 (b) The name of the foreign protected series and  
751 any current alternative name adopted under s.  
752 605.0906(1) for use in this state.

753 (c) That the foreign series limited liability  
754 company is authorized to transact business in this  
755 state.

756 (d) That the foreign protected series is  
757 authorized to transact business in this state.

758 (e) Whether all fees and penalties due to the  
759 department by the foreign series limited liability  
760 company and the foreign protected series under this  
761 chapter or other law have been paid.

762 (f) Whether the foreign series limited liability  
763 company's most recent annual report required by s.  
764 605.0212 has been filed by the department.

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765 (g) Whether the foreign series limited liability  
766 company's most recent annual report includes the name  
767 of the protected series, unless:

768 1. When the foreign series limited liability  
769 company delivered the report for filing, the foreign  
770 protected series designation pertaining to the foreign  
771 protected series had not yet taken effect; or

772 2. After the foreign series limited liability  
773 company delivered the report for filing, the foreign  
774 series limited liability company delivered to the  
775 department for filing a statement of designation  
776 change which changes the name of the foreign protected  
777 series.

778 (h) Whether the department has:

779 1. Revoked the foreign series limited liability  
780 company's certificate of authority or revoked the  
781 foreign protected series certificate of authority; or

782 2. Filed a notice of withdrawal of the  
783 certificate of authority for the foreign series  
784 limited liability company or for the foreign protected  
785 series.

786 (3) Subject to any qualification stated by the  
787 department in a certificate of status, a certificate  
788 of status issued by the department may be relied on as  
789 conclusive evidence of the facts stated in the  
790 certificate of status as to the active status of the

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791 domestic or foreign series limited liability company  
792 and any protected series of the domestic or foreign  
793 limited liability company authorized to transact  
794 business in this state.

795 Section 14. Section 605.2206, Florida  
796 Statutes, is created to read:

797 605.2206 Information required in annual report;  
798 effect of failure to provide such information.-

799 (1) In the annual report required by s. 605.0212,  
800 a series limited liability company shall include the  
801 name of each protected series of the company:

802 (a) For which the series limited liability  
803 company has previously delivered to the department for  
804 filing a protected series designation; and

805 (b) Which has not dissolved and completed winding  
806 up.

807 (2) A failure by a series limited liability  
808 company to comply with subsection (1) with regard to a  
809 protected series prevents issuance of a certificate of  
810 status pertaining to the protected series, but does  
811 not otherwise affect the protected series.

812 [(3) In the annual report required by s.  
813 605.0212, a registered foreign series limited  
814 liability company shall include the name of each  
815 registered foreign protected series of the registered  
816 foreign series limited liability company:

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817 (a) For which the registered foreign series  
818 limited liability company has previously delivered to  
819 the department for filing an application for a  
820 certificate of authority to transact business in this  
821 state; and

822 (b) Which has not withdrawn its certificate of  
823 authority to transact business in this state.

824 (4) A failure by a foreign registered series  
825 limited liability company to comply with subsection  
826 (3) with regard to a registered foreign protected  
827 series prevents issuance of a certificate of status  
828 pertaining to the registered foreign protected  
829 series.] [NEED INPUT FROM DOS]

830 Section 15. Section 605.2301, Florida  
831 Statutes, is created to read:

832 605.2301 Associated asset.-

833 (1) Only an asset of a protected series may be an  
834 associated asset of the protected series. Only an  
835 asset of a series limited liability company may be an  
836 associated asset of the company.

837 (2) (a) An asset of a protected series of a  
838 series limited liability company is an associated  
839 asset of the protected series only if the protected  
840 series creates and maintains records that state the  
841 name of the protected series and describe the asset

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842 with sufficient specificity to permit a disinterested,  
843 reasonable individual to:

844 1. Identify the asset and distinguish it from any  
845 other asset of the protected series, any asset of the  
846 series limited liability company, and any asset of any  
847 other protected series of the company;

848 2. Determine when and from what person the  
849 protected series acquired the asset or how the asset  
850 otherwise became an asset of the protected series; and

851 3. If the protected series acquired the asset  
852 from the series limited liability company or another  
853 protected series of the company, determine any  
854 consideration paid, the payor, and the payee.

855 (b) A deed or other instrument granting an  
856 interest in real property to or from one or more  
857 protected series of a series limited liability  
858 company, or any other instrument otherwise affecting  
859 an interest in real property held by one or more  
860 protected series of a series limited liability  
861 company, in each case to the extent such deed or other  
862 instrument is recorded in the office for recording  
863 transfers or other matters affecting real property, is  
864 conclusive in favor of a person who gives value  
865 without knowledge of the lack of authority of the  
866 person signing and delivering the deed or other  
867 instrument, and constitutes a record that such

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868 interest in real property is an associated asset or  
869 liability, as applicable, of the protected series.

870 (3) (a) An asset of a series limited liability  
871 company is an associated asset of the company only if  
872 the company creates and maintains records that state  
873 the name of the company and describe the asset with  
874 sufficient specificity to permit a disinterested,  
875 reasonable individual to:

876 1. Identify the asset and distinguish it from any  
877 other asset of the series limited liability company  
878 and any asset of any protected series of the company;

879 2. Determine when and from what person the series  
880 limited liability company acquired the asset or how  
881 the asset otherwise became an asset of the company;  
882 and

883 3. If the series limited liability company  
884 acquired the asset from a protected series of the  
885 company, determine any consideration paid, the payor,  
886 and the payee.

887 (b) A deed or other instrument granting an  
888 interest in real property to or from a series limited  
889 liability company, or any other instrument otherwise  
890 affecting an interest in real property held by a  
891 series limited liability company, in each case to the  
892 extent such deed or other instrument is recorded in  
893 the office for recording transfers or other matters

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894 affecting real property is conclusive in favor of a  
895 person who gives value without knowledge of the lack  
896 of authority of the person signing and delivering the  
897 deed or other instrument, and constitutes a record  
898 that such interest in real property is an associated  
899 asset or liability, as applicable, of the series  
900 limited liability company.

901 (4) The records and recordkeeping required by  
902 subsections (2) and (3) may be organized by specific  
903 listing, category, type, quantity, or computational or  
904 allocational formula or procedure, including a  
905 percentage or share of any asset, or in any other  
906 reasonable manner.

907 (5) To the extent authorized by this chapter and  
908 the law of this state other than this chapter, a  
909 series limited liability company or protected series  
910 of a series limited liability company may hold an  
911 associated asset directly or indirectly, through a  
912 representative, nominee, or similar arrangement,  
913 except that:

914 (a) A protected series may not hold an associated  
915 asset in the name of the series limited liability  
916 company or another protected series of the company;  
917 and

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918           (b) The series limited liability company may not  
919 hold an associated asset in the name of a protected  
920 series of the company.

921           Section 16.     Section 605.2302, Florida  
922 Statutes, is created to read:

923           605.2302 Associated member.-

924           (1) Only a member of a series limited liability  
925 company may be an associated member of a protected  
926 series of the company.

927           (2) A member of a series limited liability  
928 company becomes an associated member of a protected  
929 series of the company if the operating agreement or a  
930 procedure established by the operating agreement  
931 states:

932           (a) That the member is an associated member of  
933 the protected series;

934           (b) The date on which the member became an  
935 associated member of the protected series; and

936           (c) Any protected-series transferable interest  
937 the associated member has in connection with becoming  
938 or being an associated member of the protected series.

939           (3) If a person that is an associated member of a  
940 protected series of a series limited liability company  
941 is dissociated from the company, the person ceases to  
942 be an associated member of the protected series.



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943           Section 17.       Section 605.2303, Florida  
944 Statutes, is created to read:

945           605.2303 Protected-series transferable interest.-

946           (1) A protected-series transferable interest of a  
947 protected series of a series limited liability company  
948 must be owned initially by an associated member of the  
949 protected series or the series limited liability  
950 company.

951           (2) If a protected series of a series limited  
952 liability company has no associated members when  
953 established, the company owns the protected-series  
954 transferable interests in the protected series.

955           (3) In addition to acquiring a protected-series  
956 transferable series interest under subsection (2), a  
957 series limited liability company may acquire a  
958 protected-series transferable interest through a  
959 transfer from another person or as provided in the  
960 operating agreement.

961           (4) Except for s. 605.2108(1)(c), a provision of  
962 this chapter which applies to a protected-series  
963 transferee of a protected series of a series limited  
964 liability company applies to the company in its  
965 capacity as an owner of a protected-series  
966 transferable interest of the protected series. A  
967 provision of the operating agreement of a series  
968 limited liability company which applies to a

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969 protected-series transferee of a protected series of  
970 the company applies to the company in its capacity as  
971 an owner of a protected-series transferable interest  
972 of the protected series.

973 Section 18. Section 605.2304, Florida  
974 Statutes, is created to read:

975 605.2304 Management.—

976 (1) A protected series may have more than one  
977 protected-series manager.

978 (2) If a protected series has no associated  
979 members, the series limited liability company is the  
980 protected-series manager.

981 (3) Section 605.2108 applies to the determination  
982 of any duties of a protected-series manager of a  
983 protected series to:

984 (a) The protected series;

985 (b) Any associated member of the protected  
986 series; and

987 (c) Any protected-series transferee of the  
988 protected series.

989 (4) Solely by reason of being or acting as a  
990 protected-series manager of a protected series, a  
991 person owes no duty to:

992 (a) The series limited liability company;

993 (b) Another protected series of the series  
994 limited liability company; or

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- 995           (c) Another person in that person's capacity as:  
996           1. A member of the series limited liability  
997           company which is not an associated member of the  
998           protected series;  
999           2. A protected-series transferee or protected-  
1000           series manager of another protected series; or  
1001           3. A transferee of the series limited liability  
1002           company.
- 1003           (5) An associated member of a protected series of  
1004           a series limited liability company has the same rights  
1005           as any other member of the company to vote on or  
1006           consent to an amendment to the company's operating  
1007           agreement or any other matter being decided by the  
1008           members, regardless of whether the amendment or matter  
1009           affects the interests of the protected series or the  
1010           associated member.
- 1011           (6) The right of a member to maintain a  
1012           derivative action to enforce a right of a limited  
1013           liability company pursuant to s. 605.0802 shall apply  
1014           to:
- 1015           (a) An associated member of a protected series,  
1016           in accordance with s. 605.2108, and  
1017           (b) A member of a series limited liability  
1018           company in accordance with s. 605.2108.
- 1019           (7) An associated member of a protected series is  
1020           an agent for the protected series with power to bind

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1021 the protected series to the same extent that a member  
1022 of a limited liability company is an agent for the  
1023 company with power to bind the company under s.  
1024 605.04074(1) (a).

1025 Section 19. Section 605.2305, Florida  
1026 Statutes, is created to read:

1027 605.2305 Right of a person who is not an  
1028 associated member of protected series to information  
1029 concerning protected series.—

1030 (1) A member of a series limited liability  
1031 company which is not an associated member of a  
1032 protected series of the company has a right to  
1033 information concerning the protected series to the  
1034 same extent, in the same manner, and under the same  
1035 conditions that a member that is not a manager of a  
1036 manager-managed limited liability company has a right  
1037 to information of the company under ss. 605.0410(1)  
1038 and 605.0410(3) (b).

1039 (2) A person who was formerly an associated  
1040 member of a protected series has a right to  
1041 information concerning the protected series to the  
1042 same extent, in the same manner, and under the same  
1043 conditions that a person dissociated as a member of a  
1044 manager-managed limited liability company has a right  
1045 to information concerning the limited liability  
1046 company under s. 605.0410(4) or other applicable law.

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1047           (3) If an associated member of a protected series  
1048           dies, the legal representative of the deceased  
1049           associated member has a right to information  
1050           concerning the protected series to the same extent, in  
1051           the same manner, and under the same conditions that  
1052           the legal representative of a deceased member of a  
1053           limited liability company has a right to information  
1054           concerning the company under s. 605.0410(9).

1055           (4) A protected-series manager of a protected  
1056           series has a right to information concerning the  
1057           protected series to the same extent, in the same  
1058           manner, and under the same conditions that a manager  
1059           of a manager-managed limited liability company has a  
1060           right to information concerning the company under s.  
1061           605.0410(3)(a).

1062           (5) The court-ordered inspection provisions of s.  
1063           605.0411 also apply to the information rights  
1064           regarding series limited liability companies and  
1065           protected series described in this section.

1066           Section 20.       Section 605.2401, Florida  
1067           Statutes, is created to read:

1068           605.2401 Limitations on liability.-

1069           (1) A person is not liable, directly or  
1070           indirectly, by way of contribution or otherwise, for a  
1071           debt, obligation, or other liability of:

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1072           (a) A protected series of a series limited  
1073 liability company solely by reason of being or acting  
1074 as:

1075           1. An associated member, protected-series  
1076 manager, or protected-series transferee of the  
1077 protected series; or

1078           2. A member, manager, or a transferee of the  
1079 company; or

1080           (b) A series limited liability company solely by  
1081 reason of being or acting as an associated member,  
1082 protected-series manager, or protected-series  
1083 transferee of a protected series of the company.

1084           (2) Subject to s. 605.2404, the following apply:

1085           (a) A debt, obligation, or other liability of a  
1086 series limited liability company is solely the debt,  
1087 obligation, or liability of the company.

1088           (b) A debt, obligation, or other liability of a  
1089 protected series is solely the debt, obligation, or  
1090 liability of the protected series.

1091           (c) A series limited liability company is not  
1092 liable, directly or indirectly, by way of contribution  
1093 or otherwise, for a debt, obligation, or other  
1094 liability of a protected series of the company solely  
1095 by reason of the protected series being a protected  
1096 series of the company, or the series limited liability  
1097 company:

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1098           1. Being or acting as a protected-series manager  
1099 of the protected series;

1100           2. Having the protected series manage the series  
1101 limited liability company; or

1102           3. Owning a protected-series transferable  
1103 interest of the protected series.

1104           (d) A protected series of a series limited  
1105 liability company is not liable, directly or  
1106 indirectly, by way of contribution or otherwise, for a  
1107 debt, obligation, or other liability of the company or  
1108 another protected series of the company, solely by  
1109 reason of:

1110           1. Being a protected series of the series limited  
1111 liability company;

1112           2. Being or acting as a manager of the series  
1113 limited liability company or a protected-series  
1114 manager of another protected series of the company; or

1115           3. Having the series limited liability company or  
1116 another protected series of the company be or act as a  
1117 protected-series manager of the protected series.

1118           Section 21.     Section 605.2402, Florida  
1119 Statutes, is created to read:

1120           605.2402 Claim seeking to disregard limitation of  
1121 liability.—

1122           (1) Except as otherwise provided in subsection  
1123 (2), a claim seeking to disregard a limitation in s.

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1124 605.2401 is governed by the principles of law and  
1125 equity, including a principle providing a right to a  
1126 creditor or holding a person liable for a debt,  
1127 obligation, or other liability of another person,  
1128 which would apply if each protected series of a series  
1129 limited liability company were a limited liability  
1130 company formed separately from the series limited  
1131 liability company and distinct from the series limited  
1132 liability company and any other protected series of  
1133 the series limited liability company.

1134 (2) The failure of a limited liability company or  
1135 a protected series to observe formalities relating to  
1136 the exercise of its powers or management of its  
1137 activities and affairs is not a ground to disregard a  
1138 limitation in s. 605.2401(1) but may be a ground to  
1139 disregard a limitation in s. 605.2401(2).

1140 (3) This section applies to a claim seeking to  
1141 disregard a limitation of liability applicable to a  
1142 foreign series limited liability company or foreign  
1143 protected series and comparable to a limitation stated  
1144 in s. 605.2401, if:

1145 (a) The claimant is a resident of this state,  
1146 transacting business in this state, or authorized to  
1147 transact business in this state; or



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1148           (b) The claim is to establish or enforce a  
1149           liability arising under law of this state other than  
1150           this chapter or from an act or omission in this state.

1151           Section 22.       Section 605.2403, Florida  
1152           Statutes, is created to read:

1153           605.2403 Remedies of judgment creditor of  
1154           associated member or protected-series transferee.—The  
1155           provisions of s. 605.0503 providing or restricting  
1156           remedies available to a judgment creditor of a member  
1157           or transferee of a limited liability company apply to  
1158           a judgment creditor of:

1159           (1) An associated member or protected-series  
1160           transferee of a protected series; and

1161           (2) A series limited liability company, to the  
1162           extent the company owns a protected-series  
1163           transferable interest of a protected series.

1164           Section 23.       Section 605.2404, Florida  
1165           Statutes, is created to read:

1166           605.2404 Enforcement of claim against non-  
1167           associated asset.—

1168           (1) For the purposes of this section, the term:

1169           (a) "Enforcement date" means 12:01 a.m. on the  
1170           date on which a claimant first serves process on a  
1171           series limited liability company or protected series  
1172           in an action seeking to enforce a claim against an

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1173 asset of the company or protected series by  
1174 attachment, levy, or the like under this section.

1175 (b) "Incurrence date" subject to s. 605.2608(2)  
1176 means the date on which a series limited liability  
1177 company or protected series incurred the liability  
1178 giving rise to a claim that a claimant seeks to  
1179 enforce under this section.

1180 (2) If a claim against a series limited liability  
1181 company or a protected series of the company has been  
1182 reduced to judgment, in addition to any other remedy  
1183 provided by law or equity, the judgment may be  
1184 enforced in accordance with the following:

1185 (a) A judgment against the series limited  
1186 liability company may be enforced against an asset of  
1187 a protected series of the company if the asset:

1188 1. Was a non-associated asset of the protected  
1189 series on the incurrence date; or

1190 2. Is a non-associated asset of the protected  
1191 series on the enforcement date.

1192 (b) A judgment against a protected series may be  
1193 enforced against an asset of the series limited  
1194 liability company if the asset:

1195 1. Was a non-associated asset of the series  
1196 limited liability company on the incurrence date; or

1197 2. Is a non-associated asset of the series  
1198 limited liability company on the enforcement date.

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1199           (c) A judgment against a protected series may be  
1200           enforced against an asset of another protected series  
1201           of the series limited liability company if the asset:  
1202                 1. Was a non-associated asset of the other  
1203                 protected series on the incurrence date; or  
1204                 2. Is a non-associated asset of the other  
1205                 protected series on the enforcement date.  
1206                 (3) In addition to any other remedy provided by  
1207                 law or equity, if a claim against a series limited  
1208                 liability company or a protected series has not been  
1209                 reduced to a judgment, and law other than this chapter  
1210                 permits a prejudgment remedy by attachment, levy, or  
1211                 the like, the court may apply subsection (2) as a  
1212                 prejudgment remedy.  
1213                 (4) In a proceeding under this section, the party  
1214                 asserting that an asset is or was an associated asset  
1215                 of a series limited liability company or a protected  
1216                 series of the series limited liability company has the  
1217                 burden of proof on the issue.  
1218                 (5) This section applies to an asset of a foreign  
1219                 series limited liability company or foreign protected  
1220                 series if:  
1221                         (a) The asset is real or tangible property  
1222                         located in this state;  
1223                         (b) The claimant is a resident of this state or  
1224                         transacting business or authorized to transact

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1225 business in this state, or the claim under this  
1226 section is to enforce a judgment, or to seek a pre-  
1227 judgment remedy, pertaining to a liability arising  
1228 from the law of this state other than this chapter or  
1229 an act or omission in this state; and

1230 (c) The asset is not identified in the records of  
1231 the foreign series limited liability company or  
1232 foreign protected series in a manner comparable to the  
1233 manner required by s. 605.2301.

1234 Section 24. Section 605.2501, Florida  
1235 Statutes, is created to read:

1236 605.2501 Events causing dissolution of protected  
1237 series.—A protected series of a series limited  
1238 liability company is dissolved, and its activities and  
1239 affairs must be wound up, upon the:

1240 (1) Dissolution of the series limited liability  
1241 company;

1242 (2) Occurrence of an event or circumstance the  
1243 operating agreement states causes dissolution of the  
1244 protected series;

1245 (3) Affirmative vote or consent of all associated  
1246 members of the protected series;

1247 (4) Entry by the court of an order dissolving the  
1248 protected series on application by an associated  
1249 member or protected-series manager of the protected  
1250 series:

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1251           (a) In accordance with s. 605.2108; and  
1252           (b) To the same extent, in the same manner, and  
1253           on the same grounds the court would enter an order  
1254           dissolving a limited liability company on application  
1255           by a member or manager of the limited liability  
1256           company pursuant to s. 605.0702;  
1257           (5) Entry by the court of an order dissolving the  
1258           protected series on application by the series limited  
1259           liability company, or a member or manager of the  
1260           series limited liability company:  
1261           (a) In accordance with s. 605.2108; and  
1262           (b) To the same extent, in the same manner, and  
1263           on the same grounds the court would enter an order  
1264           dissolving a limited liability company on application  
1265           by a member or manager of the limited liability  
1266           company pursuant to s. 605.0702;  
1267           (6) Automatic or involuntary dissolution of the  
1268           series limited liability company that established the  
1269           protected series; or  
1270           (7) The filing of a statement of administrative  
1271           dissolution of the limited liability company by the  
1272           department pursuant to s. 605.0714.  
1273           Section 25.       Section 605.2502, Florida  
1274           Statutes, is created to read:  
1275           605.2502 Winding up dissolved protected series.-

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1276 (1) Subject to subsections (2) and (3) and in  
1277 accordance with s. 605.2108:

1278 (a) A dissolved protected series shall wind up  
1279 its activities and affairs in the same manner that a  
1280 dissolved limited liability company winds up its  
1281 activities and affairs under s. 605.0709, subject to  
1282 the same requirements and conditions, and with the  
1283 same effects; and

1284 (b) Judicial supervision or another judicial  
1285 remedy is available in the winding up of the protected  
1286 series to the same extent, in the same manner, under  
1287 the same conditions, and with the same effects that  
1288 apply under s. 605.0709(5).

1289 (2) When a protected series of a series limited  
1290 liability company dissolves, the company may deliver  
1291 to the department for filing articles of protected  
1292 series dissolution stating the name of the series  
1293 limited liability company and the protected series and  
1294 that the protected series is dissolved. The filing of  
1295 the articles of dissolution by the department has the  
1296 same effect with regard to the protected series as the  
1297 filing by a limited liability company of articles of  
1298 dissolution with the department under s. 605.0707.

1299 (3) When a protected series of a series limited  
1300 liability company has completed winding up in  
1301 accordance with s. 605.0709, the company that

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1302 established the protected series may deliver to the  
1303 department for filing a statement of designation  
1304 cancellation, stating: (i) the name of the company and  
1305 the protected series, (ii) that the protected series  
1306 is terminated with the effective date of the  
1307 termination if that date is not the date of filing of  
1308 the statement of designation cancellation, and (iii)  
1309 any other information required by the department. The  
1310 filing of the statement of designation cancellation by  
1311 the department has the same effect as the filing by  
1312 the department of a statement of termination under s.  
1313 605.0709(7).

1314 (4) A series limited liability company has not  
1315 completed its winding up until each of the protected  
1316 series of the company has completed its winding up.

1317 Section 26. Section 605.2503, Florida  
1318 Statutes, is created to read:

1319 605.2503 Effect of reinstatement of series  
1320 limited liability company or revocation of voluntary  
1321 dissolution.—If a series limited liability company  
1322 that has been administratively dissolved is  
1323 reinstated, or a series limited liability company that  
1324 voluntarily dissolved revokes its articles of  
1325 dissolution before filing a statement of termination:

1326 (1) Each protected series of the series limited  
1327 liability company ceases winding up; and

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1328           (2) The provisions of s. 605.0708 apply to the  
1329           series limited liability company and apply to each  
1330           protected series of the company, in accordance with s.  
1331           605.2108.

1332           Section 27.       Section 605.2601, Florida  
1333           Statutes, is created to read:

1334           605.2601 Entity transactions involving a series  
1335           limited liability company or a protected series  
1336           restricted; definitions.—As used in ss. 605.2601–  
1337           605.2608, the term:

1338           (1) “After a merger” or “after the merger” means  
1339           when a merger under s. 605.2604 becomes effective and  
1340           afterwards.

1341           (2) “Before a merger” or “before the merger”  
1342           means before a merger under s. 605.2604 becomes  
1343           effective.

1344           (3) “Continuing protected series” means a  
1345           protected series of a surviving series limited  
1346           liability company which continues in uninterrupted  
1347           existence after a merger under s. 605.2604.

1348           (4) “Merging company” means a limited liability  
1349           company that is party to a merger under s. 605.2604.

1350           (5) “Non-surviving company” means a merging  
1351           company that does not continue in existence after a  
1352           merger under s. 605.2604.



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1353           (6) "Relocated protected series" means a  
1354           protected series of a non-surviving company which,  
1355           after a merger under s. 605.2604, continues in  
1356           uninterrupted existence as a protected series of the  
1357           surviving company.

1358           (7) "Surviving company" means a merging company  
1359           that continues in existence after a merger under s.  
1360           605.2604.

1361           Section 28.       Section 605.2602, Florida  
1362           Statutes, is created to read:

1363           605.2602 Protected series may not be party to  
1364           entity transaction.—Except as provided in ss.  
1365           605.2605(2), 605.2606(2), and 605.2607(1), a protected  
1366           series may not be a party to, be formed, organized,  
1367           established, or created in, or result from:

1368           (1) A conversion, domestication, interest  
1369           exchange, or merger under:

1370           (a) This chapter; or

1371           (b) The law of a foreign jurisdiction, however  
1372           the transaction is denominated under such law; or

1373           (2) A transaction with the same substantive  
1374           effect as a conversion, domestication, interest  
1375           exchange, or merger.

1376           Section 29.       Section 605.2603, Florida  
1377           Statutes, is created to read:

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1378                   605.2603 Restriction on entity transaction  
1379                   involving series limited liability company.—A series  
1380                   limited liability company may not be:  
1381                   (1) A party to, formed, organized, created in, or  
1382                   result from:  
1383                   (a) A conversion, domestication, or interest  
1384                   exchange, under:  
1385                   1. This chapter; or  
1386                   2. The law of a foreign jurisdiction, however the  
1387                   transaction is denominated under such law; or  
1388                   (b) A transaction with the same substantive  
1389                   effect as a conversion, domestication, or interest  
1390                   exchange.  
1391                   (2) Except as otherwise provided in s. 605.2604,  
1392                   a party to or the surviving company of:  
1393                   (a) A merger under:  
1394                   1. This chapter; or  
1395                   2. The law of a foreign jurisdiction, however a  
1396                   merger is denominated under such law; or  
1397                   (b) A transaction with the same substantive  
1398                   effect as a merger.  
1399                   Section 30.       Section 605.2604, Florida  
1400                   Statutes, is created to read:  
1401                   605.2604 Merger authorized; parties restricted.—A  
1402                   series limited liability company may be party to a

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1403 merger in accordance with ss. 605.1021-605.1026, this  
1404 section, and ss. 605.2605605.2608, only if:

1405 (1) Each other party to the merger is a limited  
1406 liability company; and

1407 (2) The surviving company is not created in the  
1408 merger.

1409 Section 31. Section 605.2605, Florida  
1410 Statutes, is created to read:

1411 605.2605 Plan of merger.—In a merger under s.  
1412 605.2604, the plan of merger must:

1413 (1) Comply with s. 605.1022 relating to the  
1414 contents of a plan of merger of a limited liability  
1415 company; and

1416 (2) State in a record:

1417 (a) For any protected series of a non-surviving  
1418 company, whether after the merger the protected series  
1419 will be a relocated protected series or be dissolved,  
1420 wound up, and terminated;

1421 (b) For any protected series of the surviving  
1422 company which exists before the merger, whether after  
1423 the merger the protected series will be a continuing  
1424 protected series or be dissolved, wound up, and  
1425 terminated;

1426 (c) For each relocated protected series or  
1427 continuing protected series:

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- 1428           1. The name of any person that becomes an  
1429           associated member or protected-series transferee of  
1430           the protected series after the merger, any  
1431           consideration to be paid by, on behalf of, or in  
1432           respect of the person, the name of the payor, and the  
1433           name of the payee;
- 1434           2. The name of any person whose rights or  
1435           obligations in the person's capacity as an associated  
1436           member or protected-series transferee will change  
1437           after the merger;
- 1438           3. Any consideration to be paid to a person who  
1439           before the merger was an associated member or  
1440           protected-series transferee of the protected series  
1441           and the name of the payor; and
- 1442           4. If after the merger the protected series will  
1443           be a relocated protected series, its new name;
- 1444           (d) For any protected series to be established by  
1445           the surviving company as a result of the merger:
- 1446           1. The name of the protected series and the  
1447           address of its principal office;
- 1448           2. Any protected-series transferable interest to  
1449           be owned by the surviving company when the protected  
1450           series is established; and
- 1451           3. The name of and any protected-series  
1452           transferable interest owned by any person that will be

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1453 an associated member of the protected series when the  
1454 protected series is established; and

1455 (e) For any person that is an associated member  
1456 of a relocated protected series and will remain a  
1457 member after the merger, any amendment to the  
1458 operating agreement of the surviving limited liability  
1459 company which:

1460 1. Is or is proposed to be in a record; and  
1461 2. Is necessary or appropriate to state the  
1462 rights and obligations of the person as a member of  
1463 the surviving limited liability company.

1464 Section 32. Section 605.2606, Florida  
1465 Statutes, is created to read:

1466 605.2606 Articles of merger.—In a merger under s.  
1467 605.2604, the articles of merger must:

1468 (1) Comply with s. 605.1025 relating to the  
1469 articles of merger; and

1470 (2) Include as an attachment the following  
1471 records, each to become effective when the merger  
1472 becomes effective:

1473 (a) For a protected series of a merging company  
1474 being terminated as a result of the merger, a  
1475 statement of designation cancellation and termination  
1476 signed by the non-surviving merging company;

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1477 (b) For a protected series of a non-surviving  
1478 company which after the merger will be a relocated  
1479 protected series:

1480 1. A statement of relocation signed by the non-  
1481 surviving company which contains the name of the  
1482 series limited liability company and the name of the  
1483 protected series before and after the merger; and

1484 2. A statement of protected series designation  
1485 signed by the surviving company; and

1486 (c) For a protected series being established by  
1487 the surviving company as a result of the merger, a  
1488 protected series designation signed by the surviving  
1489 company.

1490 Section 33. Section 605.2607, Florida  
1491 Statutes, is created to read:

1492 605.2607 Effect of merger.—When a merger of a  
1493 protected series under s. 605.2604 becomes effective,  
1494 in addition to the effects stated in s. 605.1026  
1495 stating the effect of a merger:

1496 (1) As provided in the plan of merger, each  
1497 protected series of each merging series limited  
1498 liability company which was established before the  
1499 merger:

1500 (a) Is a relocated protected series or continuing  
1501 protected series; or

1502 (b) Is dissolved, wound up, and terminated;

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- 1503           (2) Any protected series to be established as a  
1504           result of the merger is established;
- 1505           (3) Any relocated protected series or continuing  
1506           protected series is the same person without  
1507           interruption as it was before the merger;
- 1508           (4) All property of a relocated protected series  
1509           or continuing protected series continues to be vested  
1510           in the protected series without transfer, reversion,  
1511           or impairment;
- 1512           (5) All debts, obligations, and other liabilities  
1513           of a relocated protected series or continuing  
1514           protected series continue as debts, obligations, and  
1515           other liabilities of the relocated protected series or  
1516           continuing protected series;
- 1517           (6) Except as otherwise provided by law or the  
1518           plan of merger, all the rights, privileges,  
1519           immunities, powers, and purposes of a relocated  
1520           protected series or continuing protected series remain  
1521           in the protected series;
- 1522           (7) The new name of a relocated protected series  
1523           may be substituted for the former name of the  
1524           relocated protected series in any pending action or  
1525           proceeding;
- 1526           (8) If provided in the plan of merger:

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1527           (a) A person becomes an associated member or  
1528           protected-series transferee of a relocated protected  
1529           series or continuing protected series;

1530           (b) A person becomes an associated member of a  
1531           protected series established by the surviving company  
1532           as a result of the merger;

1533           (c) Any change in the rights or obligations of a  
1534           person in the person's capacity as an associated  
1535           member or protected-series transferee of a relocated  
1536           protected series or continuing protected series take  
1537           effect; and

1538           (d) Any consideration to be paid to a person that  
1539           before the merger was an associated member or  
1540           protected-series transferee of a relocated protected  
1541           series or continuing protected series is due; and

1542           (9) Any person that is an associated member of a  
1543           relocated protected series becomes a member of the  
1544           surviving company, if not already a member.

1545           Section 34.     Section 605.2608, Florida  
1546           Statutes, is created to read:  
1547           605.2608 Application of s. 605.2404 after  
1548           merger.-

1549           (1) A creditor's right that existed under s.  
1550           605.2404 immediately before a merger under s. 605.2604  
1551           may be enforced after the merger in accordance with  
1552           the following rules:

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1553           (a) A creditor's right that existed immediately  
1554 before the merger against the surviving company, a  
1555 continuing protected series, or a relocated protected  
1556 series continues without change after the merger.

1557           (b) A creditor's right that existed immediately  
1558 before the merger against a non-surviving company:

1559           1. May be asserted against an asset of the non-  
1560 surviving company which vested in the surviving  
1561 company as a result of the merger; and

1562           2. Does not otherwise change.

1563           (c) Subject to subsection (2), the following  
1564 provisions apply:

1565           1. In addition to the remedy stated in paragraph  
1566 (1), a creditor with a right under s. 605.2404 which  
1567 existed immediately before the merger against a non-  
1568 surviving company or a relocated protected series may  
1569 assert the right against:

1570           a. An asset of the surviving company, other than  
1571 an asset of the non-surviving company which vested in  
1572 the surviving company as a result of the merger;

1573           b. An asset of a continuing protected series;

1574           c. An asset of a protected series established by  
1575 the surviving company as a result of the merger;

1576           d. If the creditor's right was against an asset  
1577 of the non-surviving company, an asset of a relocated  
1578 protected series; or

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1579 e. If the creditor's right was against an asset  
1580 of a relocated protected series, an asset of another  
1581 relocated protected series.

1582 2. In addition to the remedy stated in paragraph  
1583 (b), a creditor with a right that existed immediately  
1584 before the merger against the surviving company or a  
1585 continuing protected series may assert the right  
1586 against:

1587 a. An asset of a relocated protected series; or  
1588 b. An asset of a non-surviving company which  
1589 vested in the surviving company as a result of the  
1590 merger.

1591 (2) For the purposes of paragraph (1)(c) and s.  
1592 605.2404(2)(a)1., (b)1., and (c)1., the incurrence  
1593 date is deemed be the date on which the merger becomes  
1594 effective.

1595 (3) A merger under s. 605.2604 does not affect  
1596 the manner in which s. 605.2404 applies to a liability  
1597 incurred after the merger becomes effective.

1598 Section 35. Section 605.2701, Florida  
1599 Statutes, is created to read:

1600 605.2701 Governing law; foreign series limited  
1601 liability companies and foreign protected series.—The  
1602 law of the jurisdiction of formation of a foreign  
1603 series limited liability company governs:

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1604           (1) The internal affairs of a foreign protected  
1605 series of the foreign series limited liability  
1606 company, including:

1607           (a) Relations among any associated members of the  
1608 foreign protected series;

1609           (b) Relations between the foreign protected  
1610 series and:

1611               1. Any associated member;  
1612               2. Any protected-series manager; or  
1613               3. Any protected-series transferee;

1614           (c) Relations between any associated member and:  
1615               1. Any protected-series manager; or  
1616               2. Any protected-series transferee;

1617           (d) The rights and duties of a protected-series  
1618 manager;

1619           (e) Governance decisions affecting the activities  
1620 and affairs of the foreign protected series and the  
1621 conduct of those activities and affairs; and

1622           (f) Procedures and conditions for becoming an  
1623 associated member or protected-series transferee;

1624           (2) Relations between the foreign protected  
1625 series and:

1626               (a) The foreign series limited liability company;  
1627               (b) Another foreign protected series of the  
1628 foreign series limited liability company;

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1629           (c) A member of the foreign series limited  
1630 liability company which is not an associated member of  
1631 the foreign protected series;

1632           (d) A foreign protected-series manager that is  
1633 not a protected-series manager of the foreign  
1634 protected series;

1635           (e) A foreign protected-series transferee that is  
1636 not a foreign protected-series transferee of the  
1637 foreign protected series; and

1638           (f) A transferee of a transferable interest of  
1639 the foreign series limited liability company;

1640           (3) Except as otherwise provided in ss. 605.2402  
1641 and 605.2404, the liability of a person for a debt,  
1642 obligation, or other liability of a foreign protected  
1643 series of a foreign series limited liability company  
1644 if the debt, obligation, or liability is asserted  
1645 solely by reason of the person being or acting as:

1646           (a) An associated member, protected-series  
1647 transferee, or protected-series manager of the foreign  
1648 protected series;

1649           (b) A member of the foreign series limited  
1650 liability company which is not an associated member of  
1651 the foreign protected series;

1652           (c) A protected-series manager of another foreign  
1653 protected series of the company;

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1654           (d) A protected-series transferee of another  
1655           foreign protected series of the foreign series limited  
1656           liability company;

1657           (e) A manager of the foreign series limited  
1658           liability company; or

1659           (f) A transferee of a transferable interest of  
1660           the foreign series limited liability company; and

1661           (4) Except as otherwise provided in ss. 605.2402  
1662           and 605.2404:

1663           (a) The liability of the foreign series limited  
1664           liability company for a debt, obligation, or other  
1665           liability of a foreign protected series of the foreign  
1666           series limited liability company if the debt,  
1667           obligation, or liability is asserted solely by reason  
1668           of the foreign protected series being a foreign  
1669           protected series of the foreign series limited  
1670           liability company, or the foreign protected series  
1671           limited liability company:

1672           1. Being or acting as a foreign protected-series  
1673           manager of the foreign protected series;

1674           2. Having the foreign protected series manage the  
1675           foreign series limited liability company; or

1676           3. Owning a protected-series transferable  
1677           interest of the foreign protected series; and

1678           (b) The liability of a foreign protected series  
1679           for a debt, obligation, or other liability of the

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1680 foreign series limited liability company or another  
1681 foreign protected series of the foreign series limited  
1682 liability company, if the debt, obligation, or  
1683 liability is asserted solely by reason of the foreign  
1684 protected series:

1685 1. Being a foreign protected series of the  
1686 foreign series limited liability company or having the  
1687 foreign series limited liability company or another  
1688 foreign protected series of the foreign series limited  
1689 liability company be or act as a foreign protected-  
1690 series manager of the foreign protected series; or

1691 2. Managing the foreign series limited liability  
1692 company or being or acting as a foreign protected-  
1693 series manager of another foreign protected series of  
1694 the foreign series limited liability company.

1695 Section 36. Section 605.2702, Florida  
1696 Statutes, is created to read:

1697 605.2702 No attribution of activities  
1698 constituting transacting business or for establishing  
1699 jurisdiction.—In determining whether a foreign series  
1700 limited liability company or foreign protected series  
1701 of the foreign series limited liability company is  
1702 transacting business in this state or is subject to  
1703 the personal jurisdiction of the courts of this state:

1704 (1) The activities and affairs of the foreign  
1705 series limited liability company are not attributable

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1706 to a foreign protected series of the foreign series  
1707 limited liability company solely by reason of the  
1708 foreign protected series being a foreign protected  
1709 series of the foreign series limited liability  
1710 company; and

1711 (2) The activities and affairs of a foreign  
1712 protected series are not attributable to the foreign  
1713 series limited liability company or another foreign  
1714 protected series of the foreign series limited  
1715 liability company, solely by reason of the foreign  
1716 protected series being a foreign protected series of  
1717 the foreign series limited liability company.

1718 Section 37. Section 605.2703, Florida  
1719 Statutes, is created to read:

1720 605.2703 Certificate of authority for a foreign  
1721 series limited liability company and foreign protected  
1722 series; amendment of application.-

1723 (1) Except as otherwise provided in this section  
1724 and subject to ss. 605.2402 and 605.2404, the law of  
1725 this state governing application by a foreign limited  
1726 liability company to obtain a certificate of authority  
1727 to transact business in this state as required under  
1728 s. 605.0902, including the effect of obtaining a  
1729 certificate of authority under s. 605.0903, and the  
1730 effect of failure to have a certificate of authority  
1731 as described in s. 605.0904, apply to a foreign series

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1732 limited liability company and to a foreign protected  
1733 series of a foreign series limited liability company  
1734 as if the foreign protected series was a foreign  
1735 limited liability company formed separately from the  
1736 foreign series limited liability company, and distinct  
1737 from the foreign series limited liability company and  
1738 any other foreign protected series of the foreign  
1739 series limited liability company.

1740 (2) An application by a foreign protected series  
1741 of a foreign series limited liability company for a  
1742 certificate of authority to transact business in this  
1743 state must include:

1744 (a) The name and jurisdiction of formation of the  
1745 foreign series limited liability company and the  
1746 foreign protected series seeking a certificate of  
1747 authority, and all of the other information required  
1748 under s. 605.0902, as well as any other information  
1749 required by the department; and

1750 (b) If the company has other foreign protected  
1751 series, the name, title, capacity, and street and  
1752 mailing address of at least one person who has the  
1753 authority to manage the foreign limited liability  
1754 company and who knows the name and street and mailing  
1755 address of:

1756 1. Each other foreign protected series of the  
1757 foreign series limited liability company; and

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1758           2. The foreign protected-series manager of, and  
1759           the registered agent for service of process for, each  
1760           other foreign protected series of the foreign series  
1761           limited liability company.

1762           (3) The name of a foreign protected series  
1763           applying for a certificate of authority to transact  
1764           business in this state must comply with ss. 605.2202  
1765           and 605.0112, and may do so using a fictitious name  
1766           pursuant to ss. 605.0906 and 865.09, if the fictitious  
1767           name complies with ss. 605.0906, 605.0112, and  
1768           605.2202.

1769           (4) The requirements in s. 605.0907 relating to  
1770           required information and amending of a certificate of  
1771           authority apply to the information required by  
1772           subsection (2).

1773           (5) The provisions of ss. 605.0903-605.0912 apply  
1774           to a foreign limited liability company and to a  
1775           protected series of a foreign series limited liability  
1776           company applying for, amending, or withdrawing a  
1777           certificate of authority to transact business in this  
1778           state.

1779           Section 38.       Section 605.2704, Florida  
1780           Statutes, is created to read:

1781           605.2704 Disclosure required when a foreign  
1782           series limited liability company or foreign protected  
1783           series is a party to proceeding.-

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**CODING:** Words ~~stricken~~ are deletions; words underlined are  
additions.

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1784           (1) Not later than 30 days after becoming a party  
1785 to a proceeding before a civil, administrative, or  
1786 other adjudicative tribunal of or located in this  
1787 state, or a tribunal of the United States located in  
1788 this state:

1789           (a) A foreign series limited liability company  
1790 shall disclose to each other party the name and street  
1791 and mailing address of:

1792           1. Each foreign protected series of the foreign  
1793 series limited liability company; and

1794           2. Each foreign protected-series manager of and a  
1795 registered agent for service of process for each  
1796 foreign protected series of the foreign series limited  
1797 liability company; and

1798           (b) A foreign protected series of a foreign  
1799 series limited liability company shall disclose to  
1800 each other party the name and street and mailing  
1801 address of:

1802           1. The foreign series limited liability company  
1803 and each manager of the foreign series limited  
1804 liability company and an agent for service of process  
1805 for the foreign series limited liability company; and

1806           2. Any other foreign protected series of the  
1807 foreign series limited liability company and each  
1808 foreign protected-series manager of and an agent for

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1809 service of process for the other foreign protected  
1810 series.

1811 (2) If a foreign series limited liability company  
1812 or foreign protected series challenges the personal  
1813 jurisdiction of the tribunal, the requirement that the  
1814 foreign series limited liability company or foreign  
1815 protected series make disclosure under subsection (1)  
1816 is tolled until the tribunal determines whether it has  
1817 personal jurisdiction.

1818 (3) If a foreign series limited liability company  
1819 or foreign protected series does not comply with  
1820 subsection (1), a party to the proceeding may:

1821 (a) Request the tribunal to treat the  
1822 noncompliance as a failure to comply with the  
1823 tribunal's discovery rules; or

1824 (b) Bring a separate proceeding in the court to  
1825 enforce subsection (1).

1826 Section 39. Section 605.2801, Florida  
1827 Statutes, is created to read:

1828 605.2801 Relation to Electronic Signatures in  
1829 Global and National Commerce Act.—Section 605.1102  
1830 applies to ss. 605.2101605.2802.

1831 Section 40. Section 605.2802, Florida  
1832 Statutes, is created to read:

1833 605.2802 Transitional provisions.—

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1834           (1) On and after July 1, 2024, this chapter  
1835           governs all domestic and foreign protected series  
1836           limited liability companies and all domestic and  
1837           foreign series which transact business in this state.

1838           (2) A domestic limited liability company may not  
1839           create or designate any protected series before July  
1840           1, 2024.

1841           Section 41.       Present subsection (7) of section  
1842           48.062, Florida Statutes, as amended by section 3 of  
1843           chapter 2022-190, Laws of Florida, is redesignated as  
1844           subsection (11), a new subsection (7) and subsections  
1845           (8), (9), and (10) are added to that section, and  
1846           subsections (1) and (6) of that section are amended,  
1847           to read:

1848           48.062 Service on a domestic limited liability  
1849           company or registered foreign limited liability  
1850           company.—

1851           (1) As used in this section, the term:

1852           (a) "Registered foreign limited liability  
1853           company" means a foreign limited liability company  
1854           that has an active certificate of authority to  
1855           transact business in this state pursuant to a record  
1856           filed with the Department of State.

1857           (b) "Registered foreign series limited liability  
1858           company" means a foreign series limited liability  
1859           company that has an active certificate of authority to

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1860 transact business in this state pursuant to a record  
1861 filed with the Department of State.

1862 (c) "Registered foreign protected series of a  
1863 foreign series limited liability company" means a  
1864 protected series of a foreign series limited liability  
1865 company that has an active certificate of authority to  
1866 transact business in this state pursuant to a record  
1867 filed with the Department of State.

1868 (6) A foreign limited liability company, foreign  
1869 series limited liability company, or foreign protected  
1870 series of a foreign series limited liability company  
1871 engaging in business in this state which is not  
1872 registered is considered, for purposes of service of  
1873 process, a nonresident engaging in business in this  
1874 state and may be served pursuant to s. 48.181 or by  
1875 order of the court under s. 48.102.

1876 (7) Service of a summons and complaint on a  
1877 series limited liability company is notice to each  
1878 protected series of the series limited liability  
1879 company of service of the summons and complaint and  
1880 the contents of the complaint.

1881 (8) Service of a summons and complaint on a  
1882 protected series of a series limited liability company  
1883 is notice to the series limited liability company and  
1884 any other protected series of the series limited

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1885 liability company of service of the summons and  
1886 complaint and the contents of the complaint.

1887 (9) Service of a summons and complaint on a  
1888 registered foreign series limited liability company is  
1889 notice to each registered foreign protected series of  
1890 the registered foreign series limited liability  
1891 company of service of the summons and complaint and  
1892 the contents of the complaint.

1893 (10) Service of a summons and complaint on a  
1894 registered foreign protected series of a foreign  
1895 series limited liability company is notice to the  
1896 foreign series limited liability company and to any  
1897 other registered foreign protected series of the  
1898 foreign series limited liability company of service of  
1899 the summons and complaint and the contents of the  
1900 complaint.

1901 Section 42. Effective upon becoming a law,  
1902 paragraph (b) of subsection (1) of section 605.0103,  
1903 Florida Statutes, is amended to read:

1904 605.0103 Knowledge; notice.—

1905 (1) A person knows a fact if the person:

1906 (a) Is deemed to know the fact under paragraph

1907 (4) (a) ~~(4) (b)~~, or a law other than this chapter.

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1908                   Section 43.       Subsection (3) of section  
1909                   605.0117, Florida Statutes, as amended by section 19  
1910                   of chapter 2022-190, Laws of Florida, is amended to  
1911                   read:

1912                   605.0117 Service of process, notice, or demand.—

1913                   ~~(3) A registered series of a foreign series~~  
1914                   ~~limited liability company may be served in the same~~  
1915                   ~~manner as a registered limited liability company.~~

1916                   Section 44.       Paragraphs (c) through (f) of  
1917                   subsection (1) and paragraphs (d) and (e) of  
1918                   subsection (2) of section 605.0211, Florida Statutes,  
1919                   are amended to read:

1920                   605.0211 Certificate of status.—

1921                   (1) The department, upon request and payment of  
1922                   the requisite fee, shall issue a certificate of status  
1923                   for a limited liability company if the records filed  
1924                   in the department show that the department has  
1925                   accepted and filed the company's articles of  
1926                   organization. A certificate of status must state the  
1927                   following:

1928                   (c) Whether all fees and penalties due to the  
1929                   department under this chapter have been paid.

1930                   (d) Whether ~~If~~ the company's most recent annual  
1931                   report required under s. 605.0212 has ~~not~~ been filed  
1932                   by the department.

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1933 (e) Whether ~~if~~ the department has  
1934 administratively dissolved the company or received a  
1935 record notifying the department that the company has  
1936 been dissolved by judicial action pursuant to s.  
1937 605.0705.

1938 (f) Whether ~~if~~ the department has filed articles  
1939 of dissolution for the company.

1940 (2) The department, upon request and payment of  
1941 the requisite fee, shall furnish a certificate of  
1942 status for a foreign limited liability company if the  
1943 records filed show that the department has filed a  
1944 certificate of authority. A certificate of status for  
1945 a foreign limited liability company must state the  
1946 following:

1947 (d) Whether ~~if~~ the foreign limited liability  
1948 company's most recent annual report required under s.  
1949 605.0212 has not been filed by the department.

1950 (e) Whether ~~if~~ the department has:

1951 1. Revoked the foreign limited liability  
1952 company's certificate of authority; or

1953 2. Filed a notice of withdrawal of certificate of  
1954 authority.

1955 [Section 45. Except as otherwise expressly  
1956 provided in this act and except for this section,



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1957           which shall take effect upon this act becoming a law,  
1958           this act shall take effect January 1, 2025.] [NEED  
1959           INPUT FROM DOS on Effective Date]

**SCHEDULE 4**

White Paper describing the Protected Series LLC legislation

**WHITE PAPER**

**ANALYSIS OF PROPOSED REVISIONS TO CHAPTER 605**

**ADDITION OF THE UNIFORM PROTECTED SERIES LLC PROVISIONS**

**SECTIONS 605.2101-605.2802**

*Prepared by the Protected Series LLC Task Force of  
The Business Law Section of The Florida Bar*

August 14, 2023

**I. Background**

The Business Law Section (“BLS”) of The Florida Bar formed the Protected Series LLC Task Force (the “Task Force”) in 2020 to analyze the Uniform Protected Series Act (the “UPSA”) promulgated and adopted in 2017 by the Uniform Law Commission (“ULC”), a/k/a the National Conference of Commissioners on Uniform State Laws, and to consider adopting its provisions as new provisions of Fla. Stat. Chapter 605, the Florida Revised Limited Liability Company Act (the “Florida LLC Act”).

The Task Force is comprised of members of the Business Law Section representing all committees of the BLS, as well as representatives from the Tax Section of The Florida Bar, and representatives of the Real Property Probate and Trust Law Section of The Florida Bar.

The Task Force met every month, via ZOOM videoconference, and met in person and by Zoom at all in-person meetings of the BLS from its inception in 2020 through September of 2023. Additional meetings are scheduled through the end of December of 2023, to address matters as needed to work with legislative sponsors and staff as well as the Florida Department of State Division of Corporations, on the proposed legislation.

The leadership of the Department of State Division of Corporations, in the persons of the Division Director Sean Toner and the Commercial Filings Bureau Chief Lee Yarbrough, actively participated in the Task Force drafting sessions, and we continue to work with them in connection with all Division of Corporations filings that would be required by the proposed protected series LLC provisions (hereafter, “Protected Series”) which would be additions to the Florida LLC Act if enacted into law.

The Task Force compared the UPSA with the series provisions of the Delaware LLC Act (which include “series,” “protected series” and “registered series” LLC provisions), as well as the recently revised Virginia LLC Act (which adopted the UPSA in 2021), and with the Texas Revised LLC Act which incorporated non-uniform series provisions into the Texas Revised LLC Act in 2013. The Task Force also occasionally referred to other state LLC Acts, including Illinois, which contained series provisions.

The Task Force included representatives of the Corporations, Securities and Financial Services Committee, the Business Litigation Committee, and the Bankruptcy/UCC Committee, as well as representatives of the Real Property Probate and Trust Law Section.

After extensive meetings and analysis, the Task Force proposed that new Sections 605.2101 through 605.2802 be added to the Florida LLC Act to permit the formation of Protected Series LLCs in Florida.

Of particular note are a few non-uniform deviations from the UPSA in the proposed Florida Protected Series provisions which were added based on the recommendations from representatives of The Real Property Probate and Trust Law Section of The Florida Bar and representatives several title insurance companies in Florida, to address concerns expressed regarding (i) associating a real property asset or liability with either the series LLC and/or a Protected Series, and (ii) the interplay with recorded title to real property or liens or other instruments affecting real property which are recorded in local real property recording offices around the state addressing the authority of the persons signing those records and their status as records for purposes of dealing with associates assets. These non-uniform provisions are reflected in Sections 605.2301(2)(b) and 605.2301(3)(b).

Another non-uniform change of importance was a deviation from the extrapolation provision of the UPSA (which utilized the concept of extrapolation to apply only to specified sections of the main LLC act, as reflected in Section 605.2108(1)). The Florida Task Force decided that a more general application of the extrapolation concept was advisable, so we adopted a construct whereby it is clear that the provisions of the existing Florida LLC Act would be generally applicable to any Florida protected series, except where explicitly stated otherwise in any protected series provisions of 605.2101 through 605.2802. This change is reflected in the addition of subparagraph (3) in Section 605.2108(3), which subparagraph is further discussed in the “Extrapolation” concept below in Section III C. 2 of this paper.

The Task Force believes that adding these Protected Series provisions will be beneficial for Florida businesses and citizens, as well as for lawyers and judges being asked to address matters affecting both domestic and foreign series limited liability companies that are doing business in Florida utilizing series LLCs.

## **II. Series LLCs around the Country**

There are now 21 jurisdictions which provide for the formation of some type of “series” limited liability companies. Delaware led the way when it passed series LLC legislation in 1996, which it borrowed from its own Business Trust law where “series” trusts was initially utilized. Delaware also provides for series limited partnerships. Prior to the application of series” to trusts, LLCs and limited partnerships, the series construct was most often used in the context of investment funds, mutual funds, and captive insurance companies.

Delaware's adoption of series provisions to its LLC Act in 1996, was followed by the adoption of “series” limited liability company provisions by Wisconsin in 2001, then later by Oklahoma, Illinois, Nevada, Tennessee, Iowa, Texas, Puerto Rico, District of Columbia, Kansas, Missouri, Montana, Utah, Alabama, Indiana, Arkansas, Nebraska, North Dakota, Virginia, and Ohio.

Florida currently has nothing in the Florida LLC Act that addresses series LLCs. However, series limited liability companies formed in other states are currently permitted to qualify to do business in Florida by the Florida Division of Corporations, and each such series of a foreign LLC is currently required to separately qualify to do business in Florida, as if each foreign series were a separate legal entity. Florida does not keep statistics on how many foreign series LLCs are doing business in Florida, but it is likely that the number of foreign series doing business in Florida will increase, whether or not Florida adopts series LLC legislation.

Generally, for states that do not have their own series limited liability company provisions, Delaware has become the default jurisdiction for most series limited liability companies, at least for sophisticated parties who want to take advantage of Delaware's business friendly laws, contractual freedom, and its efficient and competent Court of Chancery which provides a well-developed body of case law, much of which is further reviewed and finally decided by the Delaware Supreme Court.

Delaware was the first state to adopt series limited liability companies, and Delaware amended its LLC Act (Title 6, Chapter 18, Sections 18-215 and 18-218) to add and/or amend “protected series” and “registered series” to the previous Delaware LLC series provisions. The changes to the Delaware series provisions were made, in part, because of the work that went into the creation of UPSA, where Delaware lawyers were on the drafting committee and were observers to the UPSA drafting sessions at the ULC.

The UPSA was drafted to use “Protected Series” as the only “series” construct for a series LLC, without need of an additional “registered” series, since the Protected Series construct will satisfy UCC aspects which apply to a legal “person”, and since a Protected Series requires the public filing of a separate designation for each protected series created by the limited liability company. The proposed legislation follows this single protected series construct.

### **III. Summary of the Proposed Legislation**

#### ***A. Intent of the Proposed Legislation and Reasons for Adoption***

The intent of the proposed protected series legislation is to allow, for the first time in Florida, the creation of Florida Protected Series by a Florida limited liability company, and to add statutory rules addressing foreign series limited liability companies (formed in other states) transacting business in Florida. The proposed legislation utilizes the relatively new, but well thought out and considered, set of rules in the Uniform Protected Series Act (the “UPSA”) promulgated and adopted by the Uniform Law Commission in 2017, after a five-year period of study and drafting.

The principal reasons for adoption of the proposed Protected Series provisions are:

(1) Series LLC legislation is now found in 21 jurisdictions. All of the series limited liability companies operating in Florida currently were formed in some other state or territory; however, there are no provisions in the Florida LLC Act to provide useful guidance to Florida citizens or companies doing business with a foreign series limited liability company, or to lawyers and judges who are being asked to address them in connection with contracts, claims, or disputes.

(2) Adding Protected Series provisions to the Florida LLC Act will prove beneficial to Florida citizens and businesses, as well as to lawyers who are being asked to form and use a series LLC for doing business in Florida, and for judges who may be faced with issues associated with foreign series limited liability companies operating in Florida.

(3) The proposed legislation provides comprehensive series provisions with robust rules for greater transparency to the public, and greater clarity as to the myriad issues raised in the “Series LLC” construct; particularly given the diversity of treatment of series LLCs in the jurisdictions which currently permit formation of series in their LLC acts, all of which will make Florida a more attractive jurisdiction for anyone wanting to do business in Florida with a series limited liability company.

(4) The proposed legislation is based on the Uniform Protected Series Act, adopted by the Uniform Law Commission in 2017. The UPSA was formulated specifically to be “plugged into” the Revised Uniform Limited Liability Company Act, which Florida adopted in 2013, effective January 1, 2014. The proposed Protected Series provisions would be added to the existing Florida Revised Limited Liability Company Act, Chapter 605, with continuous numbering in new sections 605.2101 through 605.2802.

(5) The proposed legislation also amends certain other provisions of the existing LLC Act and Chapter 48 in order to clean up and further clarify the methodology for service of process and notice and demand on domestic and foreign LLCs doing business in Florida.

B. “Protected Series” as a Term of Art

Following long-standing practice with statutory trusts and investment companies, many series statutes in other jurisdictions use “series” as the term of art for the construct of a “Protected Series” described in the UPSA and the proposed Florida Protected Series provisions. “Protected Series” is being used to distinguish the proposed construct in the proposed legislation from the more ubiquitous term “series,” since the term “series” has an established and very different meaning with regard to “series of” bonds, corporate stock, mutual funds, partnership interests, *et cetera*, and to avoid the potential for confusion with series limited liability companies formed in other jurisdictions which are not based on the UPSA.

In an effort to avoid such confusion, the UPSA and in turn the proposed Florida Protected Series legislation, uses the term “Protected Series” – both to signal a different meaning than just “series,” and to call attention to the new internal, horizontal shields which are the defining characteristic of the new protected series construct. These new “Horizontal” or “Internal” liability shields are discussed in further detail below.

C. Key Aspects of the Protected Series Limited Liability Company

(1) Protected Series Existence

A Protected Series may be formed by a Florida limited liability company, by the filing of a Certificate of Designation of a Protected Series, whereupon the Florida limited liability company may then be considered a protected series limited liability company, or a series LLC, (and colloquially referred to by the Task Force occasionally as the “mothership”). Stated differently, a Florida limited liability company becomes a series limited liability company once it designates

one or more “Protected Series” in its operating agreement and files a protected series designation with the Florida Department of State.

Each Protected Series can have its own associated members, managers, assets and liabilities, and each Protected Series can conduct its own business activities, separate and apart from the series LLC and any other Protected Series which was formed by the series limited liability company.

A Protected Series created by the series limited liability company is *not* a separate and distinct legal entity; however, the statute explicitly states in proposed Section 605.2103, that each protected series is a “Person” fully empowered to conduct its own business activities in its own name, with its own assets and liabilities.

Further, a Protected Series is “*deemed*” to be treated “*as if*” it was a limited liability company subject to the overall provisions of the Florida LLC Act, as if it were a separate LLC, governed by all of Chapter 605, and all other Florida laws applicable to a limited liability company.

The use of the term “Person” in describing a Protected Series is to assure that it is deemed a “Person” within the meaning of Article 1 of the Uniform Commercial Code (“UCC”), and therefore an “*organization*” that can be a debtor under the UCC.

Section 605.2104(3) provides that a Protected Series of a series limited liability company cannot exist on its own; therefore, a Protected Series is not entirely separate and distinct from the series LLC on whose existence the Protected Series depends. There is one narrow exception to this rule, where a Protected Series may survive the dissolution of the series limited liability company as the result of a merger under Section 605.2604 in which a Protected Series may be “relocated” *from* a merging series limited liability company that does not survive the merger, *to* the series limited liability company that does survive the merger.

Section 605.2501(1) further reflects this reality by stating that the dissolution of the series limited liability company causes the dissolution of each Protected Series of the series limited liability company.

Section 605.2502(4) also reflects this reality by providing that a series limited liability company has not completed its own “winding up” until the series limited liability company has completed the winding up of each Protected Series created by the series limited liability company.

(2) “*Extrapolation*” (analogizing the provisions of the Florida Limited Liability Company Act to the new Protected Series)

Section 605.2108 provides rules for applying the provisions of the existing Florida LLC Act to the series limited liability company and to any Protected Series via an “extrapolation” by analogy approach, which is fundamental to the Protected Series construct in UPSA. With a few important exceptions, this extrapolation by analogy construct provides the mechanics for the “*deemed*” treatment of a Protected Series to be treated “*as if*” it was a limited liability company separate and apart from the “*mothership*” series LLC under which it was created, and also distinct from any other Protected Series of the series LLC. This extrapolation approach is at the core of UPSA and the proposed Florida Protected Series provisions.

In effect, this provision treats each listed item at the Protected Series level as if the item were the analogous construct at the limited liability company level. However, the intrinsic nature of the item being “*deemed up*” does not change. As Black’s explains, “deem” means “[t]o treat (something) as if ... it has qualities *that it does not have.*” Black’s Law Dictionary (10th ed. 2014) (*emphasis added*).

So, the “deeming up” of a Protected Series to be deemed as if it were a separate and distinct limited liability company; when in reality a Protected Series is statutorily described as a “Person” (rather than a legal entity), does not make the Protected Series an actual legal entity.

Extrapolation occurs under the UPSA when expressly invoked by some provision of the proposed series provisions, and, when invoked, proceeds according to the following example as described in proposed Section 605.2108(1): *Except as otherwise provided in subsection (2) and s. 605.2107 [the additional non-variable limitations on operating agreements of a series LLC]...*, the following rules apply:

- a Protected Series of a series limited liability company is deemed to be *treated as if it were* a separate hypothetical limited liability company;
- any associated member of the Protected Series is deemed to be *treated as if it were* a member of the separate hypothetical limited liability company;
- any protected-series transferee of the Protected Series is deemed to be *treated as if it were* a transferee of the separate hypothetical limited liability company;
- any protected-series transferable interest of the Protected Series is deemed to be *treated as if it were* a transferable interest of the separate hypothetical limited liability company;
- a protected-series manager of the Protected Series is deemed to be *treated as if it were* a manager of the separate hypothetical limited liability company;
- an asset of the Protected Series is deemed to be *treated as if it were* an asset of the separate hypothetical limited liability company, whether or not the asset is an associated asset of the Protected Series; and
- any creditor or other obligee of the Protected Series is deemed to be *treated as if it were* a creditor or obligee of the separate hypothetical limited liability company.

The Task Force deviated from the UPSA when it came to one aspect of extrapolation. Under the UPSA, extrapolation occurs when it is “expressly invoked” by a specific provision in UPSA. For example, UPSA invokes extrapolation in the specific references to specific provisions in Section 108(1) of UPSA.

The Task Force, by consensus, and as requested by representatives from other sections of The Florida Bar, believe that a more general rule of extrapolation should be included, whereby the default rules of the Florida LLC Act apply both to the series LLC and to the Protected Series created by the series LLC, *unless* there is a specific provision in proposed Sections 605.2101 through 605.2802 which apply different default rules or requirements on a series limited liability company or its Protected Series.

The general extrapolation to the Florida LLC Act is codified in new subsection (3) of proposed Section 605.2108(3). There is no subsection (3) in UPSA Section 108. In essence, the proposal to add subsection (3) to 605.2108 deviates from UPSA by statutorily applying the



extrapolation construct to virtually all of the default provisions of the Florida LLC Act, making it clear that those default rules apply to a series LLC as well as to a Protected Series of a series LLC. The only exceptions to this general extrapolation construct is where there are specific controlling provisions in Sections 605.2101 through 605.2802 which are required to be followed to implement, and which govern, the protected series provisions for a Florida limited liability company.

Extrapolation provides two significant advantages:

First, the extrapolation approach avoids burdening the Protected Series LLC provisions with lengthy provisions largely duplicative of provisions already in the Florida LLC Act.

Second, where appropriate, extrapolation imports to the Protected Series level the same policy choices reflected in the existing Florida LLC Act.

The following examples of extrapolation display the additional benefit of applying “parallelism” in concept and terminology between what we know in the existing Florida LLC Act, and applying parallel terms for application with a Protected Series.

<b>concept</b>	<b>defined term pertaining to a series limited liability company</b>	<b>defined term pertaining to a protected series</b>
person with both governance and economic rights	member	associated member
economic rights	transferable interest (rights to distributions from the series limited liability company)	protected-series transferable interest (rights to distributions from a protected series)
owner of solely economic rights	transferee	protected-series transferee <sup>1</sup>
owned assets	associated assets of the series limited liability company	assets of a protected series
		associated assets/ non-associated assets of a protected series <sup>2</sup>

(3) *Fundamental Aspects of Asset Association & Required Record-Keeping*

<sup>1</sup>Although a series limited liability company may own a protected-series transferable interest of a protected series of the series limited liability company, the defined term, “protected-series transferee” does not include the series limited liability company. See Section 605.2303(4), and the comment to UPSA section 303(d).

<sup>2</sup>A protected series can own an asset without the asset being associated with the protected series. The proposed Protected Series provisions label this category of property as a “non-associated asset.” However, only an “associated asset” is protected by the internal shields of a Protected Series. See proposed Sections 605.2301 and 605.2404.

The Protected Series construct has the following fundamental aspects:

- (i) an identifiable set of assets is segregated within a series limited liability company;
- (ii) a Protected Series is empowered to conduct activities in its own name;
- (iii) its assets must be identified by thorough recordkeeping that distinguishes them from assets of the series limited liability company and assets of any other Protected Series of the series limited liability company;
- (iv) its assets are obligated solely to persons asserting claims pertaining to activities related to the segregated assets;
- (v) its assets are not available to persons asserting claims arising from the activities of the series limited liability company or any other Protected Series of the series limited liability company;
- (vi) one or more members of the series limited liability company may be associated with the Protected Series, but not necessarily; if no members of the series limited liability company are associated with a Protected Series, the series limited liability company itself is deemed to be the associated member of the Protected Series;
- (vii) distributions arising from the assets and activities of a Protected Series go to either: (a) the members associated with the Protected Series, if any; or (b) if the series has no associated members, the series limited liability company.

Section 605.2301 addresses the association of assets of a Protected Series or of the series limited liability company, and the record-keeping requirements to assure proper “association” of assets among the series limited liability company and/or any of its Protected Series.

The fundamental record-keeping requirement to properly “associate” an asset with a specific Protected Series, is stated in proposed Section 605.2301(2)(a), “... ***only if the protected series creates and maintains records that state the name of the protected series and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:***

- (i) identify the asset and distinguish it from any other asset of the protected series, any asset of the series limited liability company, and any asset of any other protected series;*
- (ii) determine when and from what person the protected series acquired the asset or how the asset otherwise became an asset of the protected series; and*
- (iii) if the protected series acquired the asset from the series limited liability company or another protected series of the limited liability company, determine any consideration paid, the payor, and the payee.*

There are parallel rules for the association of an asset with the series limited liability company itself (rather than in a protected series) in proposed Section 605.2301(3)(a).

Both proposed Section 605.2301(2)(b) and proposed Section 605.2301(3)(b) include non-uniform language designed to make it clear that deeds and other instruments granting an interest in real property to, respectively, a Protected Series or a series limited liability company or affecting real property owned by, respectively, a Protected Series or a series limited liability company that is properly recorded, and is in favor of a person who gives value without knowledge of the lack of authority of the person signing and delivering the instrument, is conclusive as to such authority and also has the effect of being a record for purposes of associating the asset or liability with the respective Protected Series or series limited liability company.

Also notable is the expansive latitude given to the record-keeping requirements, whereby records may be “...organized by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any asset, or in any other reasonable manner.”

(4) New “Horizontal” or “Internal” Shields

An entity’s traditional liability shield – i.e., the “vertical” shield – protects an entity’s owners from automatic, status-based liability for the entity’s debts and thereby protects each owner’s personal assets from creditors of the entity.

Thus, the traditional *vertical* shield has two parts: a non-liability rule (no status-based liability) and a non-recourse rule (no creditor recourse against an owner's assets). This distinction is immaterial in the context of a vertical shield but is essential to understanding the proposed Protected Series provision's novel approach to the new “horizontal” or “internal” shields.

A series limited liability company contains new “internal shields” – i.e., asset and liability partitions reserving the assets of each Protected Series solely to creditors of that Protected Series. These new “horizontal” shields are conceptually and practically quite different from the traditional, “vertical” shield that protects the owners of an organization from automatic, status-based liability for the organization’s obligations.

Like the traditional “vertical shield,” a Protected Series' “horizontal shields” contain both a non-liability rule and a non-recourse rule. The UPSA as well as the proposed Florida Protected Series provisions treat these rules separately to create an important inducement to good recordkeeping.

- under the non-liability rule (proposed Section 605.2401(2)):
  - a Protected Series is not liable for the debts of the series limited liability company or any other Protected Series of the series limited liability company, and vice versa.
- under the non-recourse rule (proposed Sections 605.2301 and 605.2404):

Only an “associated asset” of a Protected Series is shielded against collection efforts of judgment creditors of the series limited liability company or of any other Protected Series of the series limited liability company, and the same is true for associated assets of the series limited

liability company; and such “association of assets” is accomplished by creating and maintaining the required records.

Thus, even when the non-liability rule is firmly in place for a Protected Series,<sup>3</sup> the non-recourse rule for each asset of the Protected Series is subject to challenge on the grounds that: (i) the relevant records are deficient; (ii) the asset is therefore non-associated; and (iii) as a result the asset is “up for grabs,” not only by a creditor of the Protected Series but also by any judgment creditor of the series limited liability company and any judgment creditor of any other Protected Series of the series limited liability company.<sup>4</sup>

(5) *Overcoming the Shields - Proposed Section 605.2402*

“Piercing the veil” is the foremost doctrine for overcoming the traditional vertical shield separating an entity from its owners. When a creditor succeeds with a piercing claim, the shield falls *in toto*. That is, all the owners' non-exempt assets are available to the judgment creditor of the entity.

The piercing doctrine (and any related theories that conflate an organization and its owners) applies to the vertical shield between a series limited liability company and its members and to the vertical shield between a Protected Series and its associated members.

Likewise, the piercing doctrine (and related theories of affiliate liability) will apply to the internal/horizontal shields – *i.e.*, in the proper circumstances, a court will disregard the internal/horizontal shields, negate the non-liability rule, and thus render the non-recourse rule moot. For a detailed discussion of this issue, see the UPSA Section 402 comment by the UPSA Drafting Committee.

(6) *Remedies of a Judgment Creditor- Sections 605.2403 and 605.2404*

The current Florida LLC Act in Section 605.0503, (as modified in response to the Florida Supreme Court *Olmstead* opinion), provides that the remedies for a judgment creditor of a multi-member Florida LLC is limited to a charging order; however, if the judgment is against the sole member of a single-member Florida LLC, the judgment creditor may seek a court order compelling distributions to satisfy the judgment, under appropriate circumstances described in the Florida LLC Act.

The proposed Protected Series provisions in Section 605.2403 will apply the same rules to a judgment creditor of: (i) the sole associated member of a single-member Protected Series, or (ii) the sole associated member of a single-member series limited liability company.

(7) *Protected Series Governing Law*

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<sup>3</sup>Like the non-liability rule of a vertical shield, the non-liability rule of a horizontal shield is subject to traditional “piercing of the veil” claims. See Section 402 of the UPSA.

<sup>4</sup>The situation is the same for assets of the series limited liability company itself.

Proposed Section 605.2105 provides that the law of Florida governs the internal affairs of a Protected Series of a series limited liability company formed in Florida. The concept of “internal affairs” presupposes an organization that is a legal person and thus applies the internal affairs doctrine to a Protected Series of a series limited liability company under the proposed provisions. See Section 605.12103 (stating that “[a] protected series ... is a person”).

Since the Protected Series is a novel construct, the following details fundamental aspects of a Protected Series’ internal affairs. Proposed Section 605.2105(1) provides the basic internal affairs rules for a Florida series limited liability company and its Protected Series. The internal affairs of a Protected Series of a series limited liability company includes:

- (a) relations among any associated members of the Protected Series;
- (b) relations among the Protected Series and any associated member, any Protected Series manager, or any Protected Series transferee;
- (c) relations between any associated member and any Protected Series manager or any Protected Series transferee;
- (d) the rights and duties of a Protected Series manager;
- (e) governance decisions of the Protected Series and the conduct of its activities and affairs; and
- (f) procedures and conditions for becoming an associated member or transferee of a Protected Series.

Proposed Section 605.2105(2) provides additional rules (that are not within traditional rules of internal affairs), to govern the relationship between a Protected Series of a series LLC and each of the following:

- (a) the series limited liability company;
- (b) another Protected Series of the series limited liability company;
- (c) a member of the series limited liability company which is not an associated member of the Protected Series;
- (d) a Protected Series manager of a different Protected Series within the same series limited liability company; and
- (e) a Protected Series transferee of a different Protected Series within the same series limited liability company.

Proposed Section 605.2105(3) provides a non-liability rule for a status-based person, solely for being or acting as an associated member, manager or transferee of a Protected Series, or solely for being or acting as a member, manager or transferee of the series limited

liability company .

Proposed Section 605.2105(4) provides a non-liability rule for the series limited liability company solely based on filings made with the Florida Department of State (e.g., filing a protected series designation of a Protected Series, or a statement of designation change), or being or acting as a Protected Series manager, or having the Protected Series being or acting as a manager of the series limited liability company, or owning any Protected Series transferable interest.

Proposed Section 605.2105(5) provides a non-liability rule for a Protected Series of a series limited liability company, where liability for a debt obligation or other liability of the series limited liability company or of another Protected Series, is being asserted solely by reason of:

(i) the Protected Series being a Protected Series of the series limited liability company, or

(ii) being or acting as a Protected Series manager of another Protected Series of the series limited liability company or a manager of the series limited liability company, or

(iii) the series limited liability company owning a Protected Series transferable interest of the Protected Series.

(8) Operating Agreements for Protected Series

Pursuant to proposed Section 605.2106, the written operating agreement of the series limited liability company governs the activities and affairs (including governance and membership) of a Protected Series formed by that series limited liability company. A Protected Series does not have an operating agreement of its own, so the operating agreement of the series limited liability company must address issues pertaining to each of the series limited liability company's Protected Series.

An operating agreement of the series limited liability company may do so in its main body, through a different exhibit or appendix for each Protected Series, through an exhibit or appendix applicable to all Protected Series, or through some combination.

The current Florida LLC Act permits oral and implied-in-fact operating agreements, defining the operating agreement as an agreement among all the members, "*whether oral, implied, in a record, or in any combination thereof.*" However, given the complexity inherent in the Protected Series construct, prudence demand a written operating agreement – and, moreover, demands one that is not subject to amendment except through a signed writing. Consequently, under the proposed Protected Series provisions, there cannot be an oral or implied operating agreement for a Florida Protected Series.

Unless prohibited or limited by the operating agreement, associated members of a Protected Series may make contracts among themselves pertaining to the Protected Series. To the extent permitted by other law (principally the law of contracts), such contracts bind the parties but have no effect on the operating agreement or the rights and duties of members of the series limited liability company who are not party to the agreement (whether or not the non-party member is an associated member of the Protected Series).

If the Florida LLC Act restricts the power of an operating agreement, such restrictions also apply to the Protected Series provisions of the operating agreement. Further, if the law of Florida other than Chapter 605 imposes a restriction, prohibition, limitation, condition, obligation, liability, or other restriction on a limited liability company, they apply to each Protected Series in accordance with proposed Section 605.2108.

Proposed Section 605.2107 provides new “non-variable” rules for the new Protected Series construct, which the operating agreement may not vary. These restrictions are to be read “*in addition to*” the non-variable rules set forth in the Florida LLC Act under current Section 605.0105(3), which are also applied by extrapolation to the Protected Series.

Occasionally, comments to the Florida LLC Act refer to a variable provision as a “*default rule*” and a mandatory provision as “*non-variable*.” These references are merely to draw attention to the default/non-variable distinction in particular contexts, and have neither the intent nor the power to affect the default/non-variable status of the many provisions of the Florida LLC Act.

#### (9) Management of Protected Series & Duties

The current Florida LLC Act applies the statutory apparent authority default rule that members of a member-managed Florida limited liability company have authority to manage the activities and affairs of the limited liability company, unless otherwise provided in an operating agreement.

Pursuant to proposed Section 605.2304(7), an associated member of a Protected Series is an agent for the Protected Series with power to bind the Protected Series to the same extent that a member of a Florida limited liability company is an agent for the limited liability company under Section 605.04074(1)(a).

Proposed Section 605.2304(1) provides that “*A protected series may have more than one protected-series manager.*” That term is defined in the Definitions section 605.2102(9): “*Protected Series Manager*” means a person under whose authority the powers of a protected series are exercised and under whose direction the activities and affairs of the protected series are managed under the operating agreement and this chapter.”

There is also an explicit default rule in Section 605.2304(2) addressing management where there are no associated members of a Protected Series – “*If a protected series has no associated members, the series limited liability company is the protected series manager.*”

Any duties (including fiduciary duties) of a Protected Series Manager are applied in Section 605.2304(3) by reference to Section 605.2108 by extrapolation to deem a Protected Series Manager to be a *deemed* manager of a *deemed* Florida limited liability company, and subject to the duties imposed on a manager of a Florida limited liability company.

Solely by reason of being or acting as a protected-series manager of a Protected Series, that person owes no duties to the series limited liability company, another Protected Series, or another person in that person's capacity as a member of the series limited liability company which is not an associated member or transferee of the Protected Series, or a transferee of the series limited liability company.

An associated member of a Protected Series has the same rights to vote on, or consent to, any action to which a member of a regular Florida limited liability company has pursuant to the Florida LLC Act or pursuant to an operating agreement.

An associated member of a series limited liability company or a Protected Series may bring a derivative action on behalf of the series limited liability company or a Protected Series, to the same extent as a member may bring a derivative action on behalf of a Florida limited liability company pursuant to existing current Section 605.0802.

(10) *Dissolution and Winding Up of Protected Series*

Section 605.2501 of the Protected Series provisions state five grounds for dissolution of a Protected Series (three of which are non-variable):

(1) On dissolution of the series limited liability company (non-variable);

(2) an event specified in the operating agreement;

(3) the affirmative vote or consent of all associated members of the Protected Series;

(4) by court order upon application by an associated member or protected-series manager of the Protected Series, applying the same grounds for dissolution of a limited liability company as stated in the Florida LLC Act (non-variable); and

(5) by court order upon application by the series limited liability company, or a member or manager of the series limited liability company pursuant to current Section 605.0702 (non-variable).

A dissolved Protected Series winds up its activities and affairs in the same manner that a dissolved limited liability company winds up its activities and affairs. Judicial supervision or another judicial remedy is available in the winding up of a Protected Series to the same extent and under the same conditions and same effects that apply in the Florida LLC Act under current Section 605.0709(5).

(11) *Entity Transactions Restricted*

The construct of a Protected Series being a “Person” rather than a “legal entity” places significant limitations on what a Protected Series may do when it comes to entity transactions; actually, it is more about what a Protected Series may “not do” in connection with entity transactions.

Pursuant to proposed Section 605.2602, a Protected Series may not: (1) be an acquiring, acquired, converting, converted, merging, or surviving entity; (2) participate in a domestication; or (3) be a party to or be formed, organized, established, or created in a transaction substantially like a merger, interest exchange, conversion, or domestication.

There are also restrictions that apply to the series limited liability company which has created



a Protected Series in proposed Section 605.2603: “*A series limited liability company may not be: (1) an acquiring, acquired, converting, converted, domesticating, or domesticated entity; or (2) except as otherwise provided in Section 605.2604, a party to or the surviving company of a merger.*”

A Protected Series may only be a party to a merger, if it is as part of a merger of the series limited liability company, but “*only if*” (1) *each party to the merger is an limited liability company; and (2) the surviving company is not created in the merger.* See proposed Section 605.2604. The rationale for the very “narrow channel” through which a Protected Series may travel in a merger is tied to the fundamental concept that the Protected Series does not exist independently of the series limited liability company, and so exists only through the series limited liability company.

#### **IV. Conclusion**

The foregoing summary addresses some of the most significant aspects of the proposed Protected Series legislation. However, there are a number of issues that were discussed by the Task Force which are reflected in the proposed legislation, but which are not addressed in this summary.

Foreign series limited liability companies are already operating in Florida, and more foreign series limited liability companies will follow. Therefore, it is incumbent on Florida to address Series limited liability companies, to provide statutory rules to permit the formation of Florida series limited liability companies, and to provide basic statutory requirements for foreign series limited liability companies operating in Florida.

The Business Law Section of The Florida Bar advocates for enactment of the amendments proposed in the draft protected series provisions of Sections 605.2101 through 605.2802.

Respectfully submitted on behalf of the Protected Series LLC Task Force by Louis T. M. Conti, Chair of the Task Force, who would like to acknowledge the valuable contributions of Gary I. Teblum in the editing of this White Paper.

**SCHEDULE 5**

Chapter 517 Proposed Bill

**Section 1. Section 517.021, Florida Statutes, is renumbered and amended to read:**

**517.021 Definitions.**—When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

(1) “Accelerator” means an organization that gives companies in the early stages of development access to workspace, mentorship, investors, or other financial or management support.

(2) “Accredited investor” shall be defined by rule of the commission in accordance with the Securities and Exchange Commission Rule 501, 17 C.F.R. s. 230.501, as amended.

(3)~~(2)~~ “Affiliate” means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an applicant or registrant.

(4) “Angel investor group” means a group of accredited investors that holds regular meetings and has defined processes and procedures for making investment decisions, either individually or among the membership of the group as a whole, and is ~~neither not~~ an associated person of, affiliated with, ~~nor~~ an agent of a dealer or investment adviser.

(5)~~(3)~~ “Associated person” means:

(a)1. With respect to a dealer, a natural person who is employed, appointed, or authorized by a dealer and who represents the dealer in effecting or attempting to effect purchases or sales of securities.

2. The term does not include the following:

a. A dealer.

b. A partner, an officer, or a director of a dealer or a person having a similar status or performing similar functions as a dealer, unless such person is specified in subparagraph 1.

c. A dealer's employee whose function is only clerical or ministerial.

d. A person whose transactions in this state are limited to those transactions described in s. 15(i)(3) of the Securities Exchange Act of 1934, as amended.

(b)1. With respect to an investment adviser, a natural person, including, but not limited to, a partner, an officer, a director, or a branch manager, or a person occupying a similar status or performing similar functions, who:

a. Is employed by or associated with, or is subject to the supervision and control of, an investment adviser registered or required to be registered under this chapter; and

b. Does any of the following:

(I) Makes any recommendation or otherwise gives investment advice regarding securities.

(II) Manages accounts or portfolios of clients.

(III) Determines which recommendations or advice regarding securities should be given.

(IV) Receives compensation to solicit, offer, or negotiate for the sale of investment advisory services.

(V) Supervises employees who perform a function under this sub-subparagraph.

2. The term does not include the following:

a. An investment adviser.

b. An employee whose function is only clerical or ministerial.

(c) With respect to a federal covered adviser, a natural person who is an investment adviser representative and who has a place of business in this state, as such terms are defined in Rule 203A-3 of the Securities and Exchange Commission adopted under the Investment Advisers Act of 1940, as amended.

~~(6)(4)~~ "Boiler room" means an enterprise in which two or more persons engage in telephone communications with members of the public using two or more telephones at one location, or at more than one location in a common scheme or enterprise in a common scheme or enterprise solicit potential investors through telephone calls, electronic mail, text messages, social media, chat rooms, or other electronic means.

~~(7)(5)~~ "Branch office" means any location in this state of a dealer or investment adviser at which one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security or any location that is held out as such. The commission may adopt by rule exceptions to this definition for dealers in order to maintain consistency with the definition of a branch office used by self-regulatory organizations authorized by the Securities and Exchange Commission, including, but not limited to, the Financial Industry Regulatory Authority. The commission may adopt by rule exceptions to this definition for investment advisers.

~~(8)~~ Business entity means any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

~~(9)(6)~~ "Commission" means the Financial Services Commission.

~~(10)(7)~~ "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person,

whether through the ownership of voting securities, by contract, or otherwise.

(11) Control person means an individual or entity that possesses the power, directly or indirectly, to direct the management or policies of a company through ownership of securities, by contract, or otherwise.

(12)(8)(a) "Dealer" includes, unless otherwise specified, a person, other than an associated person of a dealer, that engages, for all or part of the person's time, directly or indirectly, as agent or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(b) The term does not include the following:

(a) A licensed practicing attorney who renders or performs any such services in connection with the regular practice of the attorney's profession.

(b) A bank authorized to do business in this state, except nonbank subsidiaries of a bank.

(c) A trust company having trust powers that it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers.

(d) A wholesaler selling exclusively to dealers.

(e) A person buying and selling for the person's own account exclusively through a registered dealer or stock exchange.

(f) An issuer.

(g) A natural person representing an issuer in the purchase, sale, or distribution of the issuer's own securities if such person:

**Commented [1]:** Does this conflict with the definitions above for "control," "controlling," and "controlled by."? Do we need the definitions above for "control," "controlling," and "controlled by"? Do we need to go through the chapter and replace terms "control," "controlling," and "controlled by."

**Commented [2R2]:** We could limit the definition to apply to issuers only.

**Commented [3R2]:** If we do that, we will need to revise the language in 517.191 and 517.211

**Commented [4]:** I'm still concerned that this may cause confusion as it relates to Forms ADV/BD

1. Is an officer, a director, a limited liability company manager or managing member, or a bona fide employee of the issuer;

2. Has not participated in the distribution or sale of securities for any issuer for which such person was, within the preceding 12 months, an officer, a director, a limited liability company manager or managing member, or a bona fide employee;

3. Primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities; and

4. Does not receive a commission, compensation, or other consideration for the completed sale of the issuer's securities apart from the compensation received for regular duties to the issuer.

~~(13)(9)~~ "Federal covered adviser" means a person that is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940, as amended. The term does not include any person that is excluded from the definition of investment adviser under subparagraphs (14) (b)1.-8.

~~(14)(10)~~ "Federal covered security" means a security that is a covered security under s. 18(b) of the Securities Act of 1933, as amended, or rules and regulations adopted thereunder.

~~(15)(11)~~ "Guarantor" means a person that agrees in writing, or that holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. The obligation of a guarantor hereunder shall be a continuing, absolute, and unconditional guaranty of payment, without regard

to the validity, regularity, or enforceability of the underlying indebtedness.

~~(16)(12)~~ "Guaranty" means an agreement in writing in which one party either agrees, or holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. An agreement that is not specifically denominated as a guaranty shall nevertheless constitute a guaranty if the holder of the underlying indebtedness or the holder's representative or trustee has the right to sue to enforce the guarantor's obligations under the guaranty. Words of guaranty or equivalent words that otherwise do not specify guaranty of payment create a presumption that payment, rather than collection, is guaranteed by the guarantor. Any guaranty in writing is enforceable notwithstanding any statute of frauds.

(17) "Incubator" means the same as the term "accelerator," which means an organization that gives companies in the early stages of development access to workspace, mentorship, investors, or other financial or management support.

~~(18)(13)~~ "Intermediary" means a natural person residing in this state or a corporation, trust, partnership, limited liability company, association, or other legal entity registered with the Secretary of State to do business in this state, which facilitates through its website the offer or sale of securities of an issuer with a principal place of business in this state.

~~(19)(14)~~ (a) "Investment adviser" means a person, other than an associated person of an investment adviser or a federal covered adviser, that receives compensation, directly or



indirectly, and engages for all or part of the person's time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities.

(b) The term does not include the following:

1. A dealer or an associated person of a dealer whose performance of services in paragraph (a) is solely incidental to the conduct of the dealer's or associated person's business as a dealer and who does not receive special compensation for those services.

2. A licensed practicing attorney or certified public accountant whose performance of such services is solely incidental to the practice of the attorney's or accountant's profession.

3. A bank authorized to do business in this state.

4. A bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state.

5. A trust company having trust powers, as defined in s. 658.12, which it is authorized to exercise in this state, which trust company renders or performs investment advisory services in a fiduciary capacity incidental to the exercise of its trust powers.

6. A person that renders investment advice exclusively to insurance or investment companies.

7.a. A person that ~~does not hold itself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state~~ has fewer than six clients during the preceding 12 months who are residents of this state.

b. For the purpose of subparagraph 7., "client" has the same meaning as the term "client" defined by Securities and Exchange Commission Rule 275.222-2 [17 C.F.R. s. 275.222-2], as amended. Also, for purposes of this subparagraph, "client" does not mean other investment advisers, federal covered advisers, or dealers (registered or notice filed in this state unless exempt), banks, savings and loan associations, trust companies, insurance companies, investment companies, pension and profit-sharing trusts (other than self-employed individual retirement plans), or governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control.

~~8. A person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940, as amended. Those clients listed in subparagraph 6. may not be included when determining the number of clients of an investment adviser for purposes of s. 222(d) of the Investment Advisers Act of 1940, as amended.~~

~~9. A federal covered adviser.~~

9. The United States, a state, or any political subdivision of a state, or any agency, authority, or instrumentality of any one or more of the foregoing, or any business entity that is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his or her official duty.

(20)(15) "Issuer" means a person that proposes to issue, has issued, or shall hereafter issue any security. A person that acts as a promoter for and on behalf of a corporation, trust, partnership, limited liability company, association, or other legal entity of any kind to be formed shall be deemed an issuer.

(21)(16) "Offer to sell," "offer for sale," or "offer" means an attempt or offer to dispose of, or solicitation of an

offer to buy, a security or interest in a security, or an investment or interest in an investment, for value.

(22)~~(17)~~ "Office" means the Office of Financial Regulation of the commission.

(23)~~(18)~~ "Predecessor" means a person whose major portion of assets has been acquired directly or indirectly by an issuer.

(24)~~(19)~~ "Principal" means an executive officer of a corporation, partner of a partnership, sole proprietor of a sole proprietorship, trustee of a trust, or any other person with similar supervisory functions with respect to any organization, whether incorporated or unincorporated.

(25)~~(20)~~ "Promoter" includes the following:

(a) A person that, acting alone or in conjunction with one or more other persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer.

(b) A person that, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person that receives such securities or proceeds either solely as underwriting commissions or solely in connection with property shall not be deemed a promoter if such person does not otherwise take part in founding and organizing the enterprise.

(26)~~(21)~~ "Qualified institutional buyer" means a qualified institutional buyer, as defined in Securities and Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a), under the Securities Act of 1933, as amended, or any foreign buyer that satisfies the minimum financial requirements set forth in such rule.

~~(27)~~~~(22)~~ "Sale" or "sell" means a contract of sale or disposition of an investment, security, or interest in a security, for value. With respect to a security or interest in a security, the term does not include preliminary negotiations or agreements between an issuer or any person on whose behalf an offering is to be made and any underwriter or among underwriters who are or are to be in privity of contract with an issuer. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security or another issuer, is considered to include an offer of the other security.

~~(28)~~~~(23)~~ "Security" includes any of the following:

- (a) A note.
- (b) A stock.
- (c) A treasury stock.
- (d) A bond.
- (e) A debenture.
- (f) An evidence of indebtedness.
- (g) A certificate of deposit.
- (h) A certificate of deposit for a security.
- (i) A certificate of interest or participation.
- (j) A whiskey warehouse receipt or other commodity warehouse receipt.
- (k) A certificate of interest in a profit-sharing agreement or the right to participate therein.

(l) A certificate of interest in an oil, gas, petroleum, mineral, or mining title or lease or the right to participate therein.

(m) A collateral trust certificate.

(n) A reorganization certificate.

(o) A preorganization subscription.

(p) A transferable share.

(q) An investment contract.

(r) A beneficial interest in title to property, profits, or earnings.

(s) An interest in or under a profit-sharing or participation agreement or scheme.

(t) An option contract that entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time.

(u) Any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, or certificate.

(v) A receipt for a security, or for subscription to a security, or a right to subscribe to or purchase any security.

(w) A viatical settlement investment.

(29)~~(24)~~ "Underwriter" means a person that has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except that a person is presumed not to be an underwriter with respect to any security which it has owned beneficially for at least 1 year; and, further, a dealer is not considered an underwriter with respect to any securities which do not represent part of an

unsold allotment to or subscription by the dealer as a participant in the distribution of such securities by the issuer or an affiliate of the issuer; and, further, in the case of securities acquired on the conversion of another security without payment of additional consideration, the length of time such securities have been beneficially owned by a person includes the period during which the convertible security was beneficially owned and the period during which the security acquired on conversion has been beneficially owned.

~~(30)~~~~(25)~~ "Viatical settlement investment" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of a legal or equitable interest in a viaticated policy as defined in chapter 626.

**Section 2. Section 517.051, Florida Statutes, is amended and renumbered to read:**

**517.051 Exempt securities.**—The exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the office prior to claiming such exemption. Any person who claims entitlement to any of these exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following securities:

(1) (a) A security issued or guaranteed by the United States or any territory or insular possession of the United States, by the District of Columbia, or by any state of the United States or by any political subdivision or agency or other instrumentality thereof;

(b) ~~provided that~~ No person shall directly or indirectly offer or sell securities, other than general obligation bonds, under this subsection if the issuer or guarantor is in default

or has been in default any time after December 31, 1975, as to principal or interest:

~~(i)(a)~~ With respect to an obligation issued by the issuer or successor of the issuer; or

~~(ii)(b)~~ With respect to an obligation guaranteed by the guarantor or successor of the guarantor, except by an offering circular containing a full and fair disclosure as prescribed by rule of the commission.

(c) The provisions of subsection 1(ab) shall not apply to any obligations or securities that are industrial or commercial development bonds as defined in Rule 131 of the Securities Act of 1933, as amended, unless payments are made or unconditionally guaranteed by a person whose securities are exempt from registration under Section 18(b)(1) of the Securities Act of 1933, as amended.

(2) A security issued or guaranteed by any foreign government with which the United States is maintaining diplomatic relations at the time of the sale or offer of sale of the security, or by any state, province, or political subdivision thereof having the power of taxation or assessment, which security is recognized at the time it is offered for sale in this state as a valid obligation by such foreign government or by such state, province, or political subdivision thereof issuing the security.

~~(3) A security issued or guaranteed by:~~

~~(a) A national bank, a federally chartered savings and loan association, or a federally chartered savings bank, or the initial subscription for equity securities in such national bank, federally chartered savings and loan association, or federally chartered savings bank;~~

~~(b) Any federal land bank, joint-stock land bank, or national farm loan association under the provisions of the Federal Farm Loan Act of July 17, 1916;~~

~~(c) An international bank of which the United States is a member, or~~

~~(d) A corporation created and acting as an instrumentality of the government of the United States.~~

(3) A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(a) an international banking institution.

(b) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a); or

(c) any other regulated depository institution.

(4) A security issued or guaranteed, as to principal, interest, or dividend, by a ~~corporation~~ business entity owning or operating a railroad, other common carrier, or any other public service utility; provided that such ~~corporation~~ business entity is subject to regulation or supervision whether as to its rates and charges or as to the issue of its own securities by a public commission, board, or officer of the government of the United States, of any state, territory, or insular possession of the United States, of any municipality located therein, of the District of Columbia, or of the Dominion of Canada or of any province thereof; also equipment securities based on chattel mortgages, leases, or agreements for conditional sale of cars,



motive power, or other rolling stock mortgaged, leased, or sold to or furnished for the use of or upon such railroad or other public service utility corporation or where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state or of the Dominion of Canada to secure the payment of such equipment securities; and also bonds, notes, or other evidences of indebtedness issued by a holding corporation and secured by collateral consisting of any securities hereinabove described; provided, further, that the collateral securities equal in fair value at least 125 percent of the par value of the bonds, notes, or other evidences of indebtedness so secured.

(5) A security issued or guaranteed by any of the following which are subject to the examination, supervision, or control of this state or of the Federal Deposit Insurance Corporation or the National Credit Union Association:

- (a) A bank,
- (b) A trust company,
- (c) A savings institution,
- (d) A building or savings and loan association,
- (e) An international development bank, or
- (f) A credit union;

or the initial subscription for equity securities of any institution listed in paragraphs (a)-(f), provided such institution is subject to the examination, supervision, or control of this state.

(6) A security, other than common stock, providing for a fixed return, which security has been outstanding in the hands of the public for a period of not less than 5 years, and upon which security no default in payment of principal or failure to pay the fixed return has occurred for an immediately preceding period of 5 years.

(7) (a) Securities of nonprofit agricultural cooperatives organized under the laws of this state when the securities are sold or offered for sale to persons principally engaged in agricultural production or selling agricultural products.

(b) A member's or owner's interest in a business entity which represents ownership, or entitles the holder of the interest to possession and occupancy, of a specific residential unit in property owned by such business entity and organized and operated on a cooperative basis, solely for residential purposes.

(c) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a not for profit membership entity operated either as a cooperative under the cooperative laws of a State or in accordance with the cooperative provisions of Subchapter T, the United States Internal Revenue Code, as amended, but not a member's or owner's interest, retention certificate, or like security sold or transferred to a person other than (i) a bona fide member of the not for profit membership entity or (ii) a person who becomes a bona fide member of the not for profit membership entity at the time of or in connection with the sale or transfer.

~~(8) A note, draft, bill of exchange, or banker's acceptance having a unit amount of \$25,000 or more which arises out of a current transaction, or the proceeds of which have been or are to be used for current transactions, and which has a maturity period at the time of issuance not exceeding 9 months exclusive of days of grace, or any renewal thereof which has a maturity period likewise limited. This subsection applies only to prime quality negotiable commercial paper of a type not ordinarily purchased by the general public; that is, paper issued to facilitate well-recognized types of current operational business~~

~~requirements and of a type eligible for discounting by Federal Reserve banks.~~

~~(9)~~ A security issued by a ~~corporation~~ business entity organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, no part of the net earnings of which ~~corporation~~ inures to the benefit of any private stockholder or individual, or any security of a fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940, as amended; provided that no person shall directly or indirectly offer or sell securities under this subsection except by an offering circular containing full and fair disclosure, as prescribed by the rules of the commission, of all material information, including, but not limited to, a description of the securities offered and terms of the offering, a description of the nature of the issuer's business, a statement of the purpose of the offering and the intended application by the issuer of the proceeds thereof, and financial statements of the issuer prepared in conformance with United States generally accepted accounting principles. Section 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No. 104-62, shall not preempt any provision of this chapter.

~~(9)~~~~(10)~~ Any insurance or endowment policy or annuity contract or optional annuity contract or self-insurance agreement issued by a corporation, insurance company, reciprocal insurer, or risk retention group subject to the supervision of the insurance regulator or bank regulator, or any agency or officer performing like functions, of any state or territory of the United States or the District of Columbia.

**Section 3. Section 517.061, Florida Statutes, is amended and renumbered to read:**

**517.061 Exempt transactions.**— Except as otherwise provided in s. ~~517.0611~~ for a transaction listed in subsection (11) ~~(21)~~, ~~t~~The exemption for each transaction listed below is self-executing and does not require any filing with the office before claiming the exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. ~~517.301, 517.311, and 517.312~~:

(1) (a) ~~At~~ Any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy, or at any sale by an Assignee—assignee as defined in s. 727.103(2) with respect to an Assignment—assignment as defined in s. 727.103(4), or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

(b) Except for a security exchanged in a case under title 11 of the United States Code, a security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any state or territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval.

~~(2)(10)~~ The issuance of notes or bonds in connection with the acquisition of real property or renewals thereof, if such notes or bonds are issued to the sellers of, and are secured by all or part of, the real property so acquired.

~~(3)(4)~~ ~~The distribution by a corporation, trust, or partnership, actively engaged in the business authorized by its charter or other organizational articles or agreement, of securities to its stockholders or other equity security holders, partners, or beneficiaries as a stock dividend or other distribution out of earnings or surplus.~~ A transaction involving a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock.

~~(4)(6)~~ ~~Any transaction involving the distribution of the securities of an issuer exclusively among its own security holders, including any person who at the time of the transaction is a holder of any convertible security, any nontransferable warrant, or any transferable warrant which is exercisable within not more than 90 days of issuance, when no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such additional securities.~~ A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration is not paid or

given, directly or indirectly, for soliciting a security holder in this State.

(5) The issuance of securities to such equity security holders or other creditors of a ~~corporation, trust, or partnership~~ business entity in the process of a reorganization of such ~~corporation or partnership~~ business entity, made in good faith and not for the purpose of avoiding the provisions of this chapter, either in exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security holders or creditors.

~~(6)(9) The offer or sale of securities from one corporation to another corporation, or to security holders thereof, pursuant to a vote or consent of such security holders as may be provided by the articles of incorporation and the applicable corporate statutes in connection with mergers, share exchanges, consolidations, or sale of corporate assets. A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties.~~

~~(7)(22) The offer or sale of securities, solely in connection with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance with s. 517.12(21).~~

~~(8)(15) The offer or sale of securities under a bona fide employer-sponsored stock option, stock purchase, pension, profit-sharing, savings, or other benefit plan when offered only to employees of the sponsoring organization or to employees of its controlled subsidiaries~~ employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit

plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(a) directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(b) family members who acquire such securities from those persons through gifts or domestic relations orders;

(c) former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(d) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations.

~~(9)-(7) The offer or sale of securities to a bank, trust company, savings institution, insurance company, dealer, investment company as defined by the Investment Company Act of 1940, as amended, pension or profit-sharing trust, or qualified institutional buyer as defined by rule of the commission in accordance with Securities and Exchange Commission Rule 144A (17 C.F.R. s. 230.144(A)(a)), whether any of such entities is acting in its individual or fiduciary capacity; ~~provided that such offer or sale of securities is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.~~~~

~~(10)-(11)~~(a) The offer or sale, by or on behalf of an issuer, of its own securities, which offer or sale is part of an

offering made in accordance with all of the following conditions:

1. There are no more than 35 purchasers, or the issuer reasonably believes that there are no more than 35 purchasers, of the securities of the issuer in this state during an offering made in reliance upon this subsection or, if such offering continues for a period in excess of 12 months, in any consecutive 12-month period.

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Before the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information, which shall include written notification of a purchaser's right to void the sale pursuant to subparagraph (a)4.

4. Any sale made pursuant to this exemption is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by notifying the issuer that the purchaser expressly voids the purchase by sending an email to the issuer's email address set forth in the disclosure document provided to purchasers or purchaser's representatives or by hand delivery, courier service or other method by which written proof of delivery to the issuer of the purchaser's election to rescind the purchase is evidenced. No person defined as a "dealer" in this chapter is paid a commission or compensation for the sale of the issuer's securities unless such person is registered as a dealer under this chapter.

~~5. When sales are made to five or more persons in this state, any sale in this state made pursuant to this subsection~~



~~is voidable by the purchaser in such sale either within 3 days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to such purchaser, whichever occurs later.~~

(b) The following purchasers are excluded from the calculation of the number of purchasers under subparagraph (a)1.:

1. ~~Any~~ relative or spouse, or relative of such spouse, of a purchaser who has the same principal residence as such purchaser.

2. ~~Any~~ trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any ~~corporation~~ business entity specified in subparagraph 3. collectively have more than 50 percent of the beneficial interest (excluding contingent interest).

3. ~~Any corporation or other organization of~~ business entity ~~in~~ which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any trust or estate specified in subparagraph 2. collectively are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. ~~Any purchaser who makes a bona fide investment of \$100,000 or more, provided such purchaser or the purchaser's representative receives, or has access to, the information required to be disclosed by subparagraph (a)3.~~

~~5. Any accredited investor, as defined by rule of the commission in accordance with Securities and Exchange Commission Regulation 230.501 (17 C.F.R. s. 230.501).~~

5. A business entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited

investor, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser.

6. A non-contributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

~~(c)1. For purposes of determining which offers and sales of securities constitute part of the same offering under this subsection and are therefore deemed to be integrated with one another:~~

~~a. Offers or sales of securities occurring more than 6 months before an offer or sale of securities made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.~~

~~b. Offers or sales of securities occurring at any time after 6 months from an offer or sale made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.~~

~~2. Offers or sales which do not satisfy the conditions of any of the provisions of subparagraph 1. may or may not be part of the same offering, depending on the particular facts and circumstances in each case. The commission may adopt a rule or rules indicating what factors should be considered in determining whether offers and sales not qualifying for the provisions of subparagraph 1. are part of the same offering for purposes of this subsection.~~

~~(d) Offers or sales of securities made pursuant to, and in compliance with, any other subsection of this section or any subsection of s. 517.051 shall not be considered part of an offering pursuant to this subsection, regardless of when such offers and sales are made.~~

(11) The offer or sale of a security by an issuer in a transaction that meets the requirements of this section.

(a) Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors.

(b) The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(c) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under this chapter ~~sections~~ or pursuant to an exemption available under this chapter, the Securities Act of 1933, as amended, or the rules and regulation adopted thereunder.

(d) (1) A general announcement of the proposed offering may be made by any means.

(2) The general announcement shall include only the following information, unless additional information is specifically permitted by the ~~Commission~~commission:

(a) The name, address and telephone number of the issuer of the securities;

(b) The name, a brief description and price (if known) of any security to be issued;

(c) A brief description of the business.

(d) The type, number and aggregate amount of securities being offered;

(e) The name, address and telephone number of the person to contact for additional information; and

(f) A statement that: (i) sales will only be made to accredited investors; (ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and (iii) the securities have not been registered with or approved by any state securities agency or the Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(g) The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (e), if such information:

(1) is delivered through an electronic database that is restricted to persons who have been pre-qualified as accredited investors; or

(2) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(h) No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(i) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

(j) The issuer shall file with the office a notice of

transaction, a consent to service of process, and a copy of the general announcement, within 15 days after the first sale in this state. The commission may establish by rule procedures for filing documents by electronic means.

~~(12)(3)~~—The isolated sale or offer for sale of securities when made by or on behalf of a bona fide owner of such securities ~~vender~~ not the issuer or underwriter of the securities, who, ~~being the bona fide owner of such securities,~~ disposes of such securities for the owner's ~~her or his own property for her or his own~~ account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter. For purposes of this subsection, isolated offers or sales include, but are not limited to, an isolated offer or sale made by or on behalf of a ~~vender of~~ bona fide owner of such securities, ~~but~~ not the issuer or underwriter of such securities if:

(a) The offer or sale of securities is in a transaction satisfying all of the requirements of subparagraphs ~~(10)(11)~~(a)1., 2., and 3. and paragraph ~~(10)(11)~~(b); or

(b) The offer or sale of securities is in a transaction exempt under s. 4(a)(1) of the Securities Act of 1933, as amended, or under Securities and Exchange Commission rules or regulations.

~~For purposes of this subsection, any person, including, without limitation, a promoter or affiliate of an issuer, shall not be deemed an underwriter, an issuer, or a person acting for the direct or indirect benefit of the issuer or an underwriter with respect to any securities of the issuer which she or he has owned beneficially for at least 1 year.~~

~~(13)(2)~~ By or for the account of a pledgeholder, a secured party as defined in s. 679.1021(1)(ttt), or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

~~(14)(13)~~ (a) An unsolicited purchase or sale of securities on order of, and as the agent for, another by a dealer registered pursuant to the provisions of s. 517.12; provided that this exemption applies solely and exclusively to such registered dealers and does not authorize or permit the purchase or sale of securities on order of, and as agent for, another by any person other than a dealer so registered; and provided, further, that such purchase or sale is not directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violation or evading any provision of this chapter.

(b) A nonissuer transaction with a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others.

~~(15)(16)~~ The sale by or through a registered dealer of any securities option if at the time of the sale of the option the conditions of paragraphs (a) or (b) are met:

(a) The performance of the terms of the option is guaranteed by any dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the commission; or

(b) 1. Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by the office; and

~~2. (e)~~ The option is not sold by or for the benefit of the issuer of the underlying security; and

~~3. (d)~~ The underlying security may be purchased or sold on a recognized securities exchange or is quoted on the National Association of Securities Dealers Automated Quotation System; and

~~(c) Such sale is not directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provisions of this chapter registered under the Securities Exchange Act of 1934, as amended.~~

~~(16)(17)~~ (a) The offer or sale of securities, as agent or principal, by a dealer registered pursuant to s. 517.12, when such securities are offered or sold at a price reasonably related to the current market price of such securities, provided such securities are:

1. Securities of an issuer for which reports are required to be filed by s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended;

2. Securities of a company registered under the Investment Company Act of 1940, as amended;

3. Securities of an insurance company, as that term is defined in s. 2(a)(17) of the Investment Company Act of 1940, as amended;

4. Securities, other than any security that is a federal covered security pursuant to s. 18(b)(1) of the Securities Act of 1933, as amended, and is not subject to any registration or filing requirements under this act chapter, which appear in any list of securities dealt in on any stock exchange registered

~~pursuant to the Securities Exchange Act of 1934, as amended, and~~  
which securities have been listed or approved for listing upon  
notice of issuance by a securities exchange registered pursuant  
to the Securities Exchange Act of 1934, as amended~~such~~  
~~exchange~~, and also all securities senior to any securities so  
listed or approved for listing upon notice of issuance, or  
represented by subscription rights which have been so listed or  
approved for listing upon notice of issuance, or evidences of  
indebtedness guaranteed by an issuer with a class of securities  
~~companies any stock of which is so~~ listed or approved for  
listing upon notice of issuance by such securities exchange,  
such securities to be exempt only so long as such listings or  
approvals remain in effect. The exemption provided for herein  
does not apply when the securities are suspended from listing  
approval for listing or trading.

(b) The exemption provided in this subsection does not  
apply if the sale is made for the direct or indirect benefit of  
an issuer or ~~controlling persons~~ a control person of such issuer  
or if such securities constitute the whole or part of an unsold  
allotment to, or subscription or participation by, a dealer as  
an underwriter of such securities.

(c) This exemption ~~shall not be~~ is not available for any  
securities which have been denied registration pursuant to s.  
517.111. Additionally, the office may deny this exemption with  
reference to any particular security, other than a federal  
covered security, by order published in such manner as the  
office finds proper.

~~(17)(20)~~ Any nonissuer transaction by a ~~registered~~  
~~associated person of a~~ registered dealer, and any resale  
transaction by a sponsor of a unit investment trust registered  
under the Investment Company Act of 1940, as amended, in a  
security of a class that has been outstanding in the hands of



the public for at least 90 days; provided, at the time of the transaction the following conditions in subparagraphs (a), (b) and (c) and either subparagraph (d) or (e) are met:

(a) The issuer of the security is actually engaged in business and is not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, any unidentified person;

(b) The security is sold at a price reasonably related to the current market price of the security;

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the ~~broker-dealer~~ as an underwriter of the security;

(d) The security is listed in a nationally recognized securities manual designated by rule of the commission or order of the office or a document filed with and is publicly viewable through the Securities and Exchange Commission's that is publicly available through the commission's electronic data gathering and retrieval system and which contains:

1. A description of the business and operations of the issuer;

2. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

3. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income statement, a pro forma income statement, ~~and.~~

(e) 1. The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, as amended ~~or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless: .~~

2. The security is offered, purchased or sold through an alternative trading system registered under Securities and Exchange Commission Regulation ATS, 17 C.F.R. 242.301, as amended.

3.1. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, as amended.

~~4.2.~~ The issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or

~~5.3.~~ The issuer of the security has total assets of at least \$2 million based on an audited balance sheet as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

(18) The offer or sale of any security effected by or through a person in compliance with s. 517.12(16).

(19) ÷ A nonissuer transaction in an outstanding security by or through a dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this ~~paragraph-subsection~~ or

by ~~commission rule adopted or order issued under this chapter~~; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this ~~paragraph subsection~~ or by ~~commission rule adopted or order issued under this chapter~~, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this ~~paragraph subsection~~, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with ~~the state administrative procedure ss. 120.569 and 120.57aet~~, the ~~administrator office~~, by rule ~~adopted or order issued under this chapter~~, may revoke the designation of a securities exchange under this ~~paragraph subsection~~, if the ~~administrator Office~~ finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

(20) ~~(19)~~ Other transactions defined by rules as transactions exempted from the registration provisions of s. 517.07, which rules the commission may adopt from time to time, but only after a finding by the office that the application of the provisions of s. 517.07 to a particular transaction is not necessary in the public interest and for the protection of investors because of the small dollar amount of securities involved or the limited character of the offering. In conjunction with its adoption of such rules, the commission may also provide in such rules that persons selling or offering for sale ~~the exempted securities~~ in a transaction exempted by rule adopted pursuant to this section are exempt from the

registration requirements of s. 517.12. No rule so adopted may have the effect of narrowing or limiting any exemption provided for by statute in the other subsections of this section.

~~(8) The sale of securities from one corporation to another corporation provided that:~~

- ~~(a) The sale price of the securities is \$50,000 or more; and~~
- ~~(b) The buyer and seller corporations each have assets of \$500,000 or more.~~

~~(12) The sale of securities by a bank or trust company organized or incorporated under the laws of the United States or this state at a profit to such bank or trust company of not more than 2 percent of the total sale price of such securities; provided that there is no solicitation of this business by such bank or trust company where such bank or trust company acts as agent in the purchase or sale of such securities.~~

~~(14) The offer or sale of shares of a corporation which represent ownership, or entitle the holders of the shares to possession and occupancy, of specific apartment units in property owned by such corporation and organized and operated on a cooperative basis, solely for residential purposes.~~

~~(21) The offer or sale of a security by an issuer conducted in accordance with s. 517.0611.~~

**Section 4. Section 517.0611, Florida Statutes, is amended to read:**

**517.0611 Florida ~~Intrastate~~ intrastate crowdfunding exemption.-**

(1) This section may be cited as the "Florida Intrastate Crowdfunding Exemption."

(2) The registration provisions of s. 517.07 do not apply to securities transactions under this exemption, however such transactions are subject to the provisions of s. 517.301.

~~Notwithstanding any other provision on this chapter, An offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section. The exemption provided in this section may not be used in conjunction with any other exemption under s. 517.051 or s. 517.061.~~

(3) ~~The offer or sale of securities under this section must be conducted in accordance with the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), as amended, and United States Securities and Exchange Commission Rule 147, 17 C.F.R. s. 230.147, as amended, or Securities and Exchange Commission Rule 147A, as amended, 17 C.F.R. s. 230.147A, as amended, or Securities and Exchange Commission Rule 147A, 17 C.F.R. s. 230.147A, as amended~~ adopted pursuant to the Securities Act of 1933.

(4) An issuer must:

(a) ~~Be a for-profit business entity formed under the laws of the state, be registered with the Secretary of State, that maintains its principal place of business in the state and derives its revenues primarily from operations in this state.~~

(b) ~~Conduct transactions for the an offering in excess of \$2,500,000 through a dealer registered with the office or an intermediary registered under s. 517.12(2019). For offerings under \$2,500,000 the issuer may, but is not required to, use such a dealer or intermediary.~~

(c) ~~Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, as amended, 15 U.S.C. s. 80a-3, or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78, as amended.~~

(d) Not be ~~a company~~ an organization with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity.

(e) Not be subject to a disqualification established by the commission or office or a disqualification described in s. 517.1611 or ~~United States~~ Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), as amended. ~~7 adopted pursuant to the Securities Act of 1933~~. Each director, officer, manager, managing member, general partner or person occupying a similar status or performing a similar function, or person holding more than 20 percent of the ~~shares~~ equity interest of the issuer, is subject to this requirement.

(f) ~~Execute an escrow agreement with~~ Cause all funds received from investors to be deposited in an account in a federally insured financial institution authorized to do business in the this state for the deposit of investor funds and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than the target offering amount and maintain all such funds in the account until such time as either the target offering amount has been reached, the offering has been terminated, or the offering has expired. If the target amount has not been reached within the period specified by the issuer in the disclosure document provided to investors or the offering is terminated or expires, the issuer must within 10 business days refund the funds to all investors.

(g) ~~Allow investors to cancel a commitment to invest within 3 business days before the offering deadline, as stated in the disclosure statement, and issue refunds to all investors if the target offering amount is not reached by the offering deadline.~~

Use all funds in accordance with the use of proceeds represented to prospective investors.

(5) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of \$200. The filing fee shall be deposited into the Regulatory Trust Fund of the office. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. A notice is effective upon receipt, by the office, of the completed form, filing fee, and an irrevocable written consent to service of civil process, similar to that provided for in s. 517.101. The notice may be terminated by filing with the office a notice of termination. The notice and offering expire 12 months after filing the notice with the office and are not eligible for renewal. The notice must:

(a) Be filed with the office at least 10 days before the issuer commences an offering of securities or the offering is displayed on a website of an intermediary in reliance upon the exemption provided by this section.

(b) Indicate that the issuer is conducting an offering in reliance upon the exemption provided by this section.

(c) Contain the name and contact information, including an email address, of the issuer.

(d) Identify any predecessors, owners, officers, directors, ~~and control persons~~ general partners, managers, managing members, or any person occupying a similar status or performing a similar function of the issuer, including that person's title, ~~his or her~~ status as a partner, trustee, sole proprietor or a similar role, and ~~his or her~~ ownership percentage.

(e) Identify the federally insured financial institution, ~~authorized to do business in this state, into~~ which investor funds will be deposited. ~~In accordance with the escrow agreement.~~

~~(f) Require an attestation under oath that the issuer, its predecessors, affiliated issuers, directors, officers, and control persons, or any other person occupying a similar status or performing a similar function, are not currently and have not been within the past 10 years the subject of regulatory or criminal actions involving fraud or deceit.~~

~~(g) Include documentation verifying that the issuer is organized under the laws of the state and authorized to do business in the state.~~

~~(f)(h)~~ If applicable, include the intermediary's email and website address where the issuer's securities will be offered.

~~(g)(i)~~ Include State the target offering amount and the date, not to exceed 360 days, by which the target amount must be reached in order for the offering not to be terminated.

(6) The issuer must amend the notice form within ~~30~~ 10 business days after any material information contained in the notice becomes inaccurate for any reason. The commission may require, by rule, an issuer who has filed a notice under this section to file amendments with the office.

(7) The issuer may engage in general advertising and general solicitation of the offer to prospective investors. Any oral or written statements made in advertising or solicitation of the offer are subject to the enforcement provisions of this chapter in the event of any material misstatement or non-disclosure of material information. Any general advertising or other general announcement must state that the offering is limited and open only to residents of the state of Florida.



~~(7)~~ (8) The issuer must provide ~~to investors and the dealer or intermediary, along with a copy to the office at the time that the notice is filed, and make available to potential investors through the dealer or intermediary,~~ a a disclosure statement to (i) the dealer or intermediary, if applicable, (ii) the office at the time that the notice is filed, and (iii) to each prospective investor at least 3 days prior to the investor's commitment to purchase or payment of any consideration. The disclosure statement containing must contain material information about the issuer and the offering, including:

(a) The name, legal status, physical address, email address, and website address of the issuer.

(b) The names of the directors, officers, managers, managing members, general partners and any person occupying a similar status or performing a similar function, and the name and ownership level of each person holding more than 20 percent of the ~~shares of the issuer~~ issuer's equity interests.

(c) A description of the current business ~~of the issuer~~ and the anticipated business plan of the issuer.

(d) A description of the stated purpose and intended use of the proceeds of the offering.

(e) The target offering amount, and the deadline to reach the target offering amount. ~~, and regular updates regarding the progress of the issuer in meeting the target offering amount.~~

(f) The price to the public of the securities. ~~or the method for determining the price. However, before the sale, each investor must receive in writing the final price and all required disclosures and have an opportunity to rescind the commitment to purchase the securities.~~

(g) A description of the ownership and capital structure of the issuer, including:

1. The terms of the securities being offered and each class of security of the issuer, including how those terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by rights of any other class of security of the issuer.

2. A description of how the exercise of the rights held by the principal ~~shareholders~~ equity holders of the issuer could negatively impact the purchasers of the securities being offered.

~~3. The name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer.~~

~~4. How the securities being offered are being valued, and examples of methods of how such securities may be valued by the issuer in the future, including during subsequent corporate actions.~~

~~5. The risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate action, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties.~~

(h) A statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitation on resale contained in SEC Rule 147 or 147A.

(i) Any issuer plans, formal or informal, to offer additional securities in the future.

(j) The risks to purchasers of the securities relating to minority ownership in the issuer.

~~(h)~~(k) A description of the financial condition of the issuer.

1. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have ~~target~~ offering amounts of ~~\$100,000~~ \$500,000 or less, ~~the description must include the most recent income tax return filed by the issuer, if any, and a financial statement that must be certified by the principal executive officer of the issuer as true and complete in all material respects.~~ financial statements of the issuer may but are not required to be included.

2. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have ~~target~~ offering amounts of more than ~~\$100,000~~ \$500,000, but not more than ~~\$500,000~~ \$2,500,000, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the ~~office~~ commission by rule for such purpose.

3. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have ~~target~~ offering amounts of more than ~~\$500,000~~ \$2,500,000, the description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, and other requirements as the commission may establish by rule.

~~(i)~~ (1) The following statements in boldface, conspicuous type on the front page of the disclosure statement:

(1) Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this ~~prospectus-disclosure statement~~

is truthful or complete. Any representation to the contrary is a criminal offense.

(2) These securities are offered under, and will be sold in reliance upon, an exemption from the registration requirements of federal and Florida securities laws. ~~Consequently,~~ Neither the federal government nor any agency of the State of Florida has reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these securities involves a speculative risk, and investors should be able to bear the loss of their entire investment.

~~(8) The issuer shall provide to the office a copy of the escrow agreement with a financial institution authorized to conduct business in this state. All investor funds must be deposited in the escrow account. The escrow agreement must require that all offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan, and that all investors will receive a full return of their investment commitment if that target offering amount is not raised by the date stated in the disclosure statement.~~

(9) The sum of all cash and other consideration received for sales of a security under this section may not exceed ~~\$1~~ \$5 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the

first offer or sale made in reliance upon this exemption. Offers or sales to a person owning 20 percent or more of the outstanding ~~shares~~ equity interests of any class or classes of securities or to an officer, director, manager, managing member, general partner, or trustee, or a person occupying a similar status, do not count toward this limitation.

(10) Unless the investor is an accredited investor, as defined by Rule 501 of Regulation D, adopted pursuant to the Securities Act of 1933, the aggregate amount sold by an issuer to an investor ~~in transactions exempt from registration requirements under this subsection~~ in a 12-month period may not exceed ~~+~~ \$10,000.

(a) ~~The greater of \$2,000 or 5 percent of the annual income or net worth of such investor, if the annual income or the net worth of the investor is less than \$100,000.~~

(b) ~~Ten percent of the annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of \$100,000, if either the annual income or net worth of the investor is equal to or exceeds \$100,000.~~

(11) ~~The issuer shall file with the office and provide to investors free of charge an annual report of the results of operations and financial statements of the issuer within 45 days after the end of its fiscal year, until no securities under this offering are outstanding. The annual reports must meet the following requirements:~~

(a) ~~Include an analysis by management of the issuer of the business operations and the financial condition of the issuer, and disclose the compensation received by each director, executive officer, and person having an ownership interest of 20 percent or more of the issuer, including cash compensation earned since the previous report and on an annual basis, and any bonuses, stock options, other rights to receive securities of~~

~~the issuer, or any affiliate of the issuer, or other compensation received.~~

~~(b) Disclose any material change to information contained in the disclosure statements which was not disclosed in a previous report.~~

~~(12)(a)~~ (11) A notice-filing under this section shall be summarily suspended by the office:

(a) if the payment for the filing is dishonored by the financial institution upon which the funds are drawn. For purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn; or

~~(b) A notice filing under this section shall be summarily suspended by the office~~ if the issuer made a material false statement in the issuer's notice-filing. The summary suspension shall remain in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice-filing, the office shall enter a final order revoking the notice-filing, issue a fine as prescribed by s. ~~517.221(3)~~ 517.191(9), and issue permanent bars under s. ~~517.221(4)~~ 517.191(10) to the issuer and all owners, officers, directors, general partners and control persons, or any person occupying a similar status or performing a similar function of the issuer, including title, status as a partner, trustee, sole proprietor, or similar role, and ownership percentage.

~~(13)~~(12) If issuer employs the services of an intermediary,  
An the intermediary must:

(a) Take measures, as established by commission rule, to reduce the risk of fraud with respect to ~~transactions, including verifying that the issuer is in compliance with the requirements of this section and, if necessary, denying an issuer access to its platform if the intermediary believes it is unable to adequately assess the risk of fraud of the issuer or its potential offering.~~ the offering and transactions thereunder.

(b) Provide ~~basic~~ information on its website regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The ~~basic~~ information must include but is not necessarily limited to:

1. A description of the ~~escrow agreement that the issuer has executed~~ financial institution into which investor funds will be deposited and the conditions for ~~release of such funds to the issuer in accordance with the agreement and subsection (4)~~ the use of such funds by the issuer.

2. A description of whether financial information provided by the issuer has been audited by an independent certified public accountant, as defined in s. 473.302.

~~(c) Obtain a zip code or residence address from each potential investor who seeks to view information regarding specific investment opportunities, in order to confirm that the potential investor is a resident of the state.~~

~~(d) Obtain and verify a valid Florida driver license number or Florida identification card number from each investor before purchase of a security to confirm that the investor is a resident of the state. The commission may adopt rules authorizing additional forms of identification and prescribing~~

~~the process for verifying any identification presented by the investor.~~

~~(e) Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements of subsection (10).~~

~~(f) Direct the release of investor funds in escrow in accordance with subsection (4).~~

~~(g) Direct investors to transmit funds directly to the financial institution designated in the escrow agreement to hold the funds for the benefit of the investor.~~

(c) Obtain from each prospective investor a zip code or residence address, a copy of a driver's license, and, if requested by the issuer or intermediary, any other indicia of residency in order for the issuer or intermediary to reasonably believe that the potential investor is a resident of the state. The commission may adopt rules authorizing additional forms of identification and prescribing the process for verifying any identification presented by the prospective investor.

(d) Obtain information sufficient for the issuer to reasonably believe that a particular prospective investor is an accredited investor.

~~(h)(e) Provide a monthly update for each offering, after the first full month after the date of the offering. The update must be accessible on the intermediary's website and must display the date and amount of each sale of securities, and each cancellation of commitment to invest, in the previous calendar month.~~

~~(i) Require each investor to certify in writing, including as part of such certification his or her signature and his or her initials next to each paragraph of the certification, as follows:~~

~~I understand and acknowledge that:~~



~~I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.~~

~~This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and no regulatory authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.~~

~~The securities I am acquiring in this offering are illiquid and are subject to possible dilution. There is no ready market for the sale of the securities. It may be difficult or impossible for me to sell or otherwise dispose of the securities, and I may be required to hold the securities indefinitely.~~

~~I may be subject to tax on my share of the taxable income and losses of the issuer, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the issuer.~~

~~By entering into this transaction with the issuer, I am affirmatively representing myself as being a Florida resident at the time this contract is formed, and if this representation is subsequently shown to be false, the contract is void.~~

~~If I resell any of the securities I am acquiring in this offering to a person that is not a Florida resident within 9 months after the closing of the offering, my contract with the issuer for the purchase of these securities is void.~~

~~(j) Require each investor to answer questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers, and an understanding of the risk of illiquidity.~~

~~(k)(f) Take reasonable steps to protect personal information collected from investors, as required by s. 501.171.~~

~~(1)(g)~~ Prohibit its directors and officers, managing members, general partners, employees, and agents from having any financial interest in the issuer using its services.

~~(m)~~ Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; comply with the anti-money laundering requirements of 31 C.F.R. chapter X applicable to registered brokers; and comply with the privacy requirements of 17 C.F.R. part 248 relating to brokers.

~~(14)~~ (13) An intermediary not registered as a dealer under s. 517.12(5) may not:

(a) Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not credible or that represents a potential for fraud may not be construed as an offer of investment advice or recommendation.

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

(c) Compensate employees, agents, or other persons for the solicitation of, or based on the sale of, securities offered or displayed on its website.

(d) Hold, manage, possess, or otherwise handle investor funds or securities.

(e) Compensate promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any ~~potential~~ prospective investor.

(f) Engage in any other activities set forth by commission rule.

(14) If a dealer or intermediary is not employed by the issuer for an offering under this exemption, the issuer shall undertake each of the obligations set forth in subsections (12)(c), (d), (e), and (f).

~~(15) All funds received from investors must be directed to the financial institution designated in the escrow agreement to hold the funds and must be used in accordance with representations made to investors by the intermediary. If an investor cancels a commitment to invest, the intermediary must direct the financial institution designated to hold the funds to promptly refund the funds of the investor.~~

(15) Any sale, made pursuant to this exemption, is voidable by the purchaser, within 3 days after the first tender of consideration is made by such purchaser to the issuer, by notifying the issuer that the purchaser expressly voids the purchase by sending an email to the issuer's email address set forth in the disclosure document provided to purchasers or purchaser's representatives or by certified mail or overnight delivery service with proof of delivery to the mailing address set forth in such disclosure document.

**Section 5. Section 517.0612, Florida Statutes, is created to read:**

**517.0612: Florida ~~Invest-invest Local-local~~**

**Exemptionexemption.-**

(1) This section may be cited as the "Florida Invest Local Exemption."

(2) The offer or sale of a security by the issuer is exempt from registration under s. 517.07 if conducted in accordance with ~~each~~-all of the following requirements:

(a) The issuer shall be a for-profit business entity registered with the Florida Department of State with its principal place of business in this state. The issuer cannot be, either before or as a result of the offering:

~~(i)~~1. An investment company as defined in the Investment Company Act of 1940, as amended;

~~(ii)~~2. Subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended;

~~(iii)~~3. Be an organization with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity, or

~~(iv)~~4. Be subject to a disqualification pursuant to s. 517.0620616.

(b) The transaction shall meet the requirements of the federal exemption for intrastate offerings in either Section 3(a)(11) of the Securities Act of 1933, Securities and Exchange Commission Rule 147, or Securities and Exchange Commission Rule 147A, as such provisions may be amended.

(c) The sum of all cash and other consideration received for all sales of the security in reliance upon this exemption shall not exceed \$500,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption.

(d) The issuer shall not accept more than \$10,000 from any single purchaser unless: (1) the issuer reasonably believes that the purchaser is an accredited investor; (2) the purchaser is an officer, director, partner, or trustee or an individual occupying a similar status or performing similar functions of the issuer, or (3) the purchaser is an owner of 10% or more of the issuer's outstanding equity. For purposes of this section, (i) any relative, spouse, child or family relative who has the same primary residence of the purchaser shall collectively be treated as a single purchaser, or (ii) any business entity of

which the purchaser and any person related to the purchaser under subsection (i) collectively owns more than 50% of the equity interest shall collectively be treated as a single purchaser.

(e) The issuer may engage in general advertising and general solicitation of the offering. Any general advertising or other general announcement must state that the offer is limited and open only to residents of the state of Florida. Written or oral statements made in the advertising or solicitation of the offer are subject to the enforcement provisions of this chapter.

(f) A purchaser shall receive, at least 3 business days prior to any binding commitment to purchase or consideration paid, a disclosure document which sets forth material information of the issuer, including but not limited to the following:

~~(i)~~1. Issuer's name, form of entity and contact information.

~~2.(ii)~~ The name and contact information of each director, officer or other manager of the issuer.

~~(iii)~~3. A description of the issuer's business.

~~(iv)~~4. A description of the security being offered.

~~(v)~~5. The total amount of the offering.

~~(vi)~~6.) The intended use of proceeds from the sale of the securities.

~~(vii)~~7. The target amount of the offering.

~~(viii)~~8. A statement that if the target amount is not obtained in cash or the value of other tangible consideration received within a date that is no more than 180 days after the commencement of the offering, the offering will be terminated, and any funds or other consideration received from purchasers shall be promptly returned.

~~(ix)~~9. A statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitation on resale contained in SEC Rules 147 or 147A.

~~(x)~~10. The names and addresses of all persons who will be involved in the offer and sale of securities on behalf of the issuer

11.~~(xi)~~ the The bank or other depository institution into which investor funds will be deposited.

12.~~(xii)~~ A statement in boldface type that "Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this ~~prospectus-disclosure document~~ is truthful or complete. Any representation to the contrary is a criminal offense."

(g) All funds received from investors shall be deposited into a bank or depository institution authorized to do business in this state. The issuer cannot withdraw any amount of the offering proceeds unless and until the target amount has been received.

(h) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, no less than 5 business days before the offering commences, along with the disclosure document described in subsection (f). -Issuer must, within 3 business days, file an amended notice if there are any material changes to the information previously submitted.

(3) An individual, entity, or entity employee who acts as an agent for the issuer in the offer or sale of securities under this exemption and is not registered as a dealer under this chapter shall not:

(a) receive compensation based upon the solicitation of purchases, sales, or offers to purchase the securities, or  
(b) take custody of investor funds or securities.

(4) Any sale made pursuant to this exemption is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by notifying the issuer that the purchaser expressly voids the purchase by sending an email to the issuer's email address set forth in the disclosure document provided to purchasers or purchaser's representatives or by hand delivery, courier service or other method by which written proof of delivery to the issuer of the purchaser's election to rescind the purchase is evidenced.

**Section 6. Section 517.0613, Florida Statutes, is created to read:**

**517.0613 Failure to comply with a securities registration exemption.--**

(a) Failure to comply with any exemption from securities registration does not preclude the issuer from claiming the availability of any other applicable state or federal exemption.

(b) Sections 517.061, 517.0611 and 517.0612 are not available to any issuer for any transaction or chain of transactions that, although in technical compliance with the applicable provisions, is part of a plan or scheme to evade the registration provisions of section 517.07. In such cases, registration under section 517.07 is required.

**Section 7. Section 517.0614, Florida Statutes, is created to read:**

**517.0614 Integration of offerings.--**

(a1) If the safe harbors in paragraph (b) of this section do not apply, in determining whether two or more offerings are to be treated as one for the purpose of registration or qualifying for an exemption from registration under this chapter, offers and sales will not be integrated if, based on the particular facts and circumstances, the issuer can establish that each offering either complies with the registration requirements of this chapter, or that an exemption from registration is available for the particular offering, provided that, any transaction or series of transactions that, although in technical compliance with this chapter, is part of a plan or scheme to evade the registration requirements of this chapter will not have the effect of avoiding integration. In making this determination:

(1a) For an exempt offering prohibiting general solicitation, the issuer must have a reasonable belief, based on the facts and circumstances, with respect to each purchaser in the exempt offering prohibiting general solicitation, that the issuer or any person acting on the issuer's behalf either:

~~(i)~~1. Did not solicit such purchaser through the use of general solicitation; or

2.~~(ii)~~ Established a substantive relationship with such purchaser prior to the commencement of the exempt offering prohibiting general solicitation; provided that, a purchaser previously solicited through the use of general solicitation shall not be deemed to have been solicited through the use of general solicitation in the current offering if during the 45 calendar days following such previous general solicitation:

~~(a)a. no~~—No offer or sale of the same or similar class of securities shall have been made by or on behalf of the issuer, including to such purchaser, and



~~(b)~~b. ~~the~~The issuer or any person acting on the issuer's behalf shall not have solicited such purchaser through the use of general solicitation for any other security; and

~~(2b)~~ For two or more concurrent exempt offerings permitting general solicitation, in addition to satisfying the requirements of the particular exemption relied on, general solicitation offering materials for one offering that includes information about the material terms of a concurrent offering under another exemption may constitute an offer of securities in such other offering, and therefore the offer must comply with all the requirements for, and restrictions on, offers under the exemption being relied on for such other offering, including any legend requirements and communications restrictions.

~~(b2)~~ No integration analysis under ~~paragraph (a)~~subsection (1) of this section is required, if any of the following non-exclusive safe harbors apply:

~~(1a)~~ Any offering commenced more than 30 calendar days before the commencement of any other offering, or more than 30 calendar days after the termination or completion of any other offering, will not be integrated with such other offering, provided that for an exempt offering for which general solicitation is not permitted that follows by 30 calendar days or more an offering that allows general solicitation, the provisions of (a)(1) shall apply.

~~(2b)~~ Offers and sales made in compliance with any of the provisions of s. 517.051 or 517.061, except 517.061(9), (10) and (11) and 517.0611 and 517.0612, will not be subject to integration with other offerings.

**Section 8. Section 517.0615, Florida Statutes, is created to read:**

**517.0615 Demo day presentations and testing the waters safe harbors.--**

(a1) A communication will not be deemed to constitute general solicitation or general advertising if made in connection with a seminar or meeting in which more than one issuer participates that is sponsored by a college, university, or other institution of higher education, ~~State-state~~ or local government or instrumentality thereof, a nonprofit chamber of commerce or other nonprofit organization, or angel investor group, incubator, or accelerator, provided that:

(1a) No advertising for the seminar or meeting references a specific offering of securities by the issuer;

(2b) The sponsor of the seminar or meeting does not:

1.~~(i)~~ Make investment recommendations or provide investment advice to attendees of the event;

~~(ii)~~2. Engage in any investment negotiations between the issuer and investors attending the event;

~~(iii)~~3. Charge attendees of the event any fees, other than reasonable administrative fees;

~~(iv)~~4. Receive any compensation for making introductions between event attendees and issuers or for investment negotiations between such parties; and

~~(v)~~5. Receive any compensation with respect to the event that would require registration of the sponsor as a broker or a dealer under this chapter or under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), as amended, or an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), as amended. The sponsorship or participation in such a seminar or meeting does not by itself require registration under this chapter.

(3c) The type of information regarding an offering of securities by the issuer that is communicated or distributed by

or on behalf of the issuer in connection with the event is limited to a notification that the issuer is in the process of offering or planning to offer securities, the type and amount of securities being offered, the intended use of proceeds of the offering, and the unsubscribed amount in an offering; and

(4d) If the event allows attendees to participate virtually, rather than in person, online participation in the event is limited to:

~~(i)~~1. Individuals who are members of, or otherwise associated with the sponsor organization;

~~(ii)~~2. Individuals that the sponsor reasonably believes are accredited investors; or

3.~~(iii)~~—Individuals who have been invited to the event by the sponsor based on industry or investment-related experience reasonably selected by the sponsor in good faith and disclosed in the public communications about the event.

~~(b)2~~ Before any offers or sales are made in connection with any offering, a communication by an issuer or any person authorized to act on behalf of an issuer will not be deemed to constitute general solicitation or general advertising if the communication is solely for the purpose of determining whether there is any interest in a contemplated securities offering. Written or oral statements made in the course of such communication are subject to the enforcement provisions of this chapter. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person is permitted—.

~~(1a)~~ The communications must:

~~(i)~~1. State that no money or other consideration is being solicited, and if sent in response, will not be accepted;

~~(ii)~~2. State that no offer to buy the securities can be accepted and no part of the purchase price can be received, and

~~(iii)~~3. State that a person's indication of interest involves no obligation or commitment of any kind.

~~(2b)~~ Any written communication under this rule may include a means by which a person may indicate to the issuer that such person is interested in a potential offering. This issuer may require the name, address, telephone number, and/or email address in any response form included pursuant to this paragraph  
~~(e)~~.

~~(3c)~~ Communications in accordance with this section will not be subject to ~~Fl. Stat. s. 501 ff.s. 501.059~~ regarding telephone solicitations.

**Section 9. Section 517.0616, Florida Statutes, is created to read:**

**517.0616 Disqualification-**

No registration exemption under s. 517.061(9), (10) and (11), s. 517.0611 or 517.0612 is available to an issuer that would be disqualified under Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), as amended, at the time the issuer makes an offer for the sale of a security.

**Section 10. Section 517.081, Florida Statutes, is amended to read:**

**517.081 Registration procedure.-**

(1) All securities required by this chapter to be registered before being sold in this state and not entitled to registration by notification shall be registered in the manner provided by this section.

(2) The office shall receive and act upon applications to have securities registered, ~~and the commission may prescribe forms on which it may require such applications to be submitted.~~ Applications shall be duly signed by the applicant, sworn to by

any person having knowledge of the facts, and filed with the office. ~~The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section.~~ An application may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within the state.

(3) The office may require the applicant to submit to the office the following information concerning the issuer and such other relevant information as the office may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(a) The names and addresses of:

1. All the directors, trustees, and officers, if the issuer is a corporation, association, or trust.
2. All the managers or managing members, if the issuer is a limited liability company.
3. All the partners, if the issuer is a partnership.
4. The issuer, if the issuer is a sole proprietorship or natural person.

(b) The location of the issuer's principal business office and of its principal office in this state, if any.

(c) The general character of the business actually to be transacted by the issuer and the purposes of the proposed issue.

(d) A statement of the capitalization of the issuer.

(e) A balance sheet showing the amount and general character of its assets and liabilities on a day not more than 90 days prior to the date of filing such balance sheet or such longer period of time, not exceeding 6 months, as the office may permit at the written request of the issuer on a showing of good cause therefor.

(f) A detailed statement of the plan upon which the issuer proposes to transact business.

(g) ~~1.~~ A specimen copy of the securities certificate, if applicable, and a copy of any circular, prospectus, advertisement, or other description of such securities.

~~2. The commission shall adopt a form for a simplified offering circular to register, under this section, securities that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:~~

~~a. An issuer seeking to register securities for resale by persons other than the issuer.~~

~~b. An issuer that subject to any of the disqualifications described in 17 C.F.R. s. 230.262, adopted pursuant to the Securities Act of 1933, as amended, or that has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this subparagraph, an issuer includes an issuer's director, officer, general partner, manager or managing member, trustee, or equity owner who owns at least 10 percent of the ownership interests of the issuer, promoter, or selling agent of the securities to be offered or any officer, director, partner, or manager or managing member of such selling agent.~~

~~c. An issuer that is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified company or companies.~~

~~d. An issuer of offerings in which the specific business or properties cannot be described.~~

~~e. Any issuer the office determines is ineligible because the form does not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.~~

~~f. Any issuer that has failed to provide the office the reports required for a previous offering registered pursuant to this subparagraph.~~

~~As a condition precedent to qualifying for use of the simplified offering circular, an issuer shall agree to provide the office with an annual financial report containing a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year, prepared in accordance with United States generally accepted accounting principles and accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited. Annual financial reports must be filed with the office within 90 days after the close of the issuer's fiscal year for each of the first 5 years following the effective date of the registration.~~

~~(h) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.~~

~~(i) A statement of the issuer's cash sources and application during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.~~

~~(j) A statement showing the maximum price at which such security is proposed to be sold, together with the maximum amount of commission, including expenses, or other form of remuneration to be paid in cash or otherwise, directly or~~

indirectly, for or in connection with the sale or offering for sale of such securities.

(k) A copy of the opinion or opinions of counsel concerning the legality of the issue or other matters which the office may determine to be relevant to the issue.

(l) A detailed statement showing the items of cash, property, services, patents, good will, and any other consideration in payment for which such securities have been or are to be issued.

(m) The amount of securities to be set aside and disposed of and a statement of all securities issued from time to time for promotional purposes.

(n) If the issuer is a corporation, there shall be filed with the application a copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file in the office. If the issuer is a limited liability company, there shall be filed with the application a copy of the articles of organization with all the amendments and a copy of the company's operating agreement as may be amended, if not already on file with the office. If the issuer is a trustee, there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the office.

(4) All of the statements, exhibits, and documents of every kind required under this section, except properly certified public documents, shall be verified by the oath of the applicant



or of the issuer in such manner and form as may be required by the commission.

(5) (a) The commission may prescribe forms on which it may require applications for the registration of securities to be submitted to the office.

(b) The commission may by rule establish requirements and standards for the filing, content, and circulation of a preliminary, final, or amended prospectus and other sales literature and may by rule establish criteria relating to the issuance of equity securities, debt securities, insurance company securities, real estate investment trusts, and other traditional and nontraditional investments including, but not limited to, oil and gas investments. The criteria may include such elements as the promoter's equity investment ratio, the financial condition of the issuer, the voting rights of shareholders, the grant of options or warrants to underwriters and others, loans and other affiliated transaction, the use or refund of proceeds of the offering, and such other relevant criteria as the commission in its judgment may deem necessary.

(c) The commission may by rule fix the maximum discounts, commissions, expenses, remuneration, and other compensation to be paid in cash or otherwise, not to exceed 20 percent, directly or indirectly, for or in connection with the sale or offering for sale of such securities in this state.

(d) The commission shall adopt a form for a simplified offering circular to register, under this section, securities that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:

1. An issuer that is subject to any of the disqualifications described in 17 C.F.R. s. 230.262, adopted pursuant to the Securities Act of 1933, as amended, or that has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this subparagraph, an issuer includes an issuer's director, officer, general partner, manager or managing member, trustee, or equity owner who owns at least 10 percent of the ownership interests of the issuer, promoter, or selling agent of the securities to be offered or any officer, director, partner, or manager or managing member of such selling agent.

2. An issuer that is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified company or companies.

3. An issuer of offerings in which the specific business or properties cannot be described.

4. An issuer the office determines is ineligible because the form does not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

(e) The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section.

(6) An issuer filing an application under this section shall, at the time of filing, pay the office a nonreturnable fee of \$1,000 per application for each offering that exceeds the amount provided in s. 3(b) of the Securities Act of 1933, as amended, or \$200 per application for each offering that does not

exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

(7) (a) The office shall record the registration of a security in the register of securities if, ~~If upon examination of any application the office shall find that the sale of the security referred to therein would not be fraudulent and would not work or tend to work a fraud upon the purchaser, that the terms of the sale of such securities would be fair, just, and equitable, and that the enterprise or business of the issuer is not based upon unsound business principles, it shall record the registration of such security in the register of securities; and thereupon such security so registered may be sold by any registered dealer, subject, however, to the further order of the office. In order to determine if an offering is fair, just, and equitable, the commission may by rule establish requirements and standards for the filing, content, and circulation of any preliminary, final, or amended prospectus and other sales literature and may by rule establish [merit qualification][disclosure] criteria relating to the issuance of equity securities, debt securities, insurance company securities, real estate investment trusts, and other traditional and nontraditional investments, including, but not limited to, oil and gas investments. The criteria may include such elements as the promoter's equity investment ratio, the financial condition of the issuer, the voting rights of shareholders, the grant of options or warrants to underwriters and others, loans and other affiliated transaction, the use or refund of proceeds of the offering, and such other relevant criteria as the office in its judgment may deem necessary to such determination.~~ finds that:

1. ~~the~~ The application is complete;

2. ~~the~~The fee in subsection (6) has been paid;

3. ~~the~~The sale of the security would not be fraudulent and would not work or tend to work a fraud upon the purchaser;

4. ~~the~~The terms of the sale of such securities would be fair, just, and equitable; and

5. ~~the~~The enterprise or business of the issuer is not based upon unsound business principles.

(b) Upon registration, such security may be sold by the issuer or any registered dealer, subject, however, to the further order of the office.

(8) The office shall deem an application to register securities filed with the office abandoned if the issuer or any person acting on behalf of the issuer has failed to timely complete an application specified by commission rule.

**Section 11. Section 517.101, Florida Statutes, is amended to read:**

**517.101 Consent to service.—**

(1) Upon any initial application for registration under s. 517.081 or s. 517.082, or upon request of the office, the issuer shall file with such application the irrevocable written consent of the issuer that in suits, proceedings, and actions growing out of the violation of any provision of this chapter, the service on the office of a notice, process, or pleading therein, authorized by the laws of this state, shall be as valid and binding as if due service had been made on the issuer.

(2) Any such action shall be brought either in the county of the plaintiff's residence or in the county in which the office has its official headquarters. The written consent shall be authenticated by the seal of said issuer, if it has a seal, and by the acknowledged signature of a ~~member~~ of the ~~copartnership or company~~, or by the acknowledged signature of

~~any officer of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees, or managers of the corporation or association, authorizing the officers to execute the same~~ director, manager, general partner, trustee or officer of the issuer, and shall be accompanied by a duly certified copy of the resolution of the board of directors, managers or trustees of the issuer, or of the general partner, authorizing the signor to execute the consent. In case any process or pleadings mentioned in this chapter are served upon the office, it shall be by duplicate copies, one of which shall be filed in the office and another immediately forwarded by the office by registered mail to the principal office of the issuer against which said process or pleadings are directed.

**Section 12. Section 517.131, Florida Statutes, is amended to read:**

**517.131 Securities Guaranty Fund**

(1) (a) The Chief Financial Officer shall establish a Securities Guaranty Fund- to provide monetary relief to victims of securities violations under this chapter who are entitled to monetary damages or restitution and are unable to recover the full amount of such monetary damages or restitution from the wrongdoer. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12~~(10)~~(9) and ~~(11)~~(10) for dealers and investment advisers or s. 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12~~(10)~~(9) and ~~(11)~~(10) for associated persons shall be part

of the regular ~~license~~ registration fee and shall be transferred to or deposited in the Securities Guaranty Fund.

(b) If the ~~fund~~ Securities Guaranty Fund at any time exceeds \$1.5 million, transfer of assessment fees to ~~this~~the Securities Guaranty Fund shall be discontinued at the end of that ~~license~~ registration year, and transfer of such assessment fees shall not be resumed unless the Securities Guaranty Fund is reduced below \$1 million by disbursement made in accordance with s. 517.141.

(2) ~~The Securities Guaranty Fund shall be disbursed as provided in s. 517.141 to a person who is adjudged by a court of competent jurisdiction to have suffered monetary damages as a result of any of the following acts committed by a dealer, investment adviser, or associated person who was licensed under this chapter at the time the act was committed: For purposes of this section and s. 517.141, "final judgment" shall include an arbitration award confirmed by a court of competent jurisdiction.~~

~~(a) A violation of s. 517.07.~~

~~(b) A violation of s. 517.301.~~

(3) Any person is eligible ~~to seek recovery~~ for payment from the Securities Guaranty Fund if such person:

(a) 1. ~~holds~~ Holds an unsatisfied final judgment in which a wrongdoer was found to have violated ss. 517.07 or 517.301;

2. ~~has~~ Has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court or arbitrator; and

3. ~~is~~ Is a natural person who was a resident of Florida or is a business entity that was domiciled in Florida at the time of the violation of any section referred to in subparagraph

(a)1.; or

(b) Is a receiver, appointed pursuant to s. 517.191(2) by a court of competent jurisdiction for a wrongdoer ordered to pay restitution pursuant to s. 517.191(3) as a result of a violation of ss. 517.07 or 517.301, that has requested payment from the Securities Guaranty Fund on behalf of a person eligible for payment under paragraph (3)(a) of this section.

~~(a) Such person has received final judgment in a court of competent jurisdiction in any action wherein the cause of action was based on a violation of those sections referred to in subsection (2).~~

~~(b) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and by her or his search the person has discovered no property or assets; or she or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount thereby realized was insufficient to satisfy the judgment. To verify compliance with such condition, the office may require such person to have a writ of execution be issued upon such judgment, may require a showing that no personal or real property of the judgment debtor liable to be levied upon in complete satisfaction of the judgment can be found, or may require an affidavit from the claimant setting forth the reasonable searches and inquiries undertaken and the result of those searches and inquiries.~~

~~(c) Such person has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court.~~

~~(d) The act for which recovery is sought occurred on or after January 1, 1979.~~

~~(c) The office waives compliance with the requirements of paragraph (a) or paragraph (b). The office may waive such compliance if the dealer, investment adviser, or associated person which is the subject of the claim filed with the office is the subject of any proceeding in which a receiver has been appointed by a court of competent jurisdiction. If the office waives such compliance, the office may, upon petition by the debtor or the court-appointed trustee, examiner, or receiver, distribute funds from the Securities Guaranty Fund up to the amount allowed under s. 517.141. Any waiver granted pursuant to this section shall be considered a judgment for purposes of complying with the requirements of this section and of s. 517.141.~~

~~(4) Any person who files an action that may result in the disbursement of funds from the Securities Guaranty Fund pursuant to the provisions of s. 517.141 shall give written notice by certified mail to the office as soon as practicable after such action has been filed. The failure to give such notice shall not bar a payment from the Securities Guaranty Fund if all of the conditions specified in subsection (3) are satisfied. Notwithstanding subsection (2)(3), a person is not eligible for payment from the Securities Guaranty Fund if such person:~~

~~(a) participated-Participated or assisted in a violation of this chapter; or~~

~~(b) attempted-Attempted to commit or committed a violation of this chapter; or~~

~~(c) profited-Profited from a violation of this chapter.~~

~~(5) The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 specifying the procedures for complying with subsections (2), (3), and (4), including rules for the form of submission and guidelines for the sufficiency and content of submissions of notices and claims. An eligible person or a~~



receiver, on behalf of an eligible person or persons, seeking payment from the Securities Guaranty Fund must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule procedures for filing documents by electronic means provided such procedures provide the office with the information and data required by this section. The application shall be filed with the office within one year of the date of that final judgment or of the date that restitution order has been ripe for execution-, or any appellate decision thereon and shall contain such info ~~or~~ as the office may require concerning such matters as:

(a) The eligible person's full name, address, and contact information;

(b) The receiver's full name, address, and contact information, if any;

(c) The person ordered to pay restitution;

(d) The eligible person's form and place of organization, if the eligible person is a business entity; and a copy of its articles of incorporation, its articles of organization with amendments, trust agreement, or its partnership agreement.

(e) Any final judgment and a copy thereof;

(f) Any restitution ordered pursuant to s. 517.191(3), and a copy thereof

(g) An affidavit stating that the eligible person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the final judgment, and by the eligible person's search the eligible person has discovered no property or assets; or the eligible person has available property and assets executed on all of the wrongdoer and the final judgment remains unsatisfied-;

(h) An affidavit from the receiver stating the amount of restitution owed to the eligible person(s) on whose behalf the claim is filed, the amount, if any, of any money, property, or assets paid to the eligible person(s) on whose behalf the claim is filed by the person over whom the receiver is appointed, and the amount of any unsatisfied portion of any eligible person's order of restitution.

(i) The eligible person's residence or domicile at the time of the violation of ss. 517.07 or 517.301 which resulted in eligible person's monetary damages or order of restitution;

(j) The amount of any unsatisfied portion of the eligible person's final judgment;

(k) Whether an appeal or motion to vacate an arbitration award has been filed.

(6) If the office finds that a person is eligible for payment from the Securities Guaranty Fund and has complied with the provisions of this section and rules promulgated thereunder, it shall approve such person for payment from the Securities Guaranty Fund. Each eligible person or receiver, within 90 days of the ~~Office's-office's~~ receipt of a complete application, shall be given written notice, personally or by mail, that the office intends to approve or deny the application for payment from the Securities Guaranty Fund, or has approved or denied, the application for payment from the Securities Guaranty Fund.

(7) Upon receipt by the eligible person or receiver of notice of the ~~Office's-office's~~ decision that the eligible person's or receiver's application for payment from the Securities Guaranty Fund is approved and prior to any disbursement, the eligible person shall assign all right, title, and interest in the final judgment or order of restitution to the extent of such payment, to the office on a form prescribed by commission rule.

(8) The office shall deem an application for payment from the Securities Guaranty Fund abandoned if the eligible person or receiver, or any person acting on behalf of the eligible person or receiver, fails to timely complete the application as prescribed by commission rule. The time period to complete an application shall be tolled during the pendency of an appeal or motion to vacate an arbitration award.

**Section 13. Section 517.141, Florida Statutes, is amended to read:**

**517.141 Payment from the fund.**

~~(1) Any person who meets all of the conditions prescribed in s. 517.131 may apply to~~ For purposes of this section, a "claimant" is an eligible person under s. 517.131 who is approved by the office for payment to be made to such person from the Securities Guaranty Fund, in the amount equal to the unsatisfied portion of such person's judgment or \$10,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages, excluding postjudgment interest, costs, and attorney's fees.

(2) A claimant is entitled to disbursement in the amount equal to the lesser of the unsatisfied portion of the claimant's final judgment or order of restitution but only to the extent the final judgment reflects actual or compensatory damages, excluding post judgement interest, costs and attorney's fees; or either (a) \$15,000; or (b) \$25,000 if the claimant is a specified adult as defined in s. 517.34(1)(b), or the specified adult is a beneficial owner or beneficiary of a claimant.

~~(2)(3)~~ (3) Regardless of the number of claims or claimants involved, payments for claims shall be limited in the aggregate to \$100,000 \$250,000 against any one dealer, investment adviser,

~~or associated person. If the total claims filed by a receiver on behalf of claimants exceeds the aggregate limit of \$100,000 \$250,000, the office shall prorate the payment to each claimant based upon the ratio that the person's each claimant's individual claim bears to the total claims filed.~~

~~(3) No payment shall be made on any claim against any one dealer, investment adviser, or associated person before the expiration of 2 years from the date any claimant is found by the office to be eligible for recovery pursuant to this section. If during this 2-year period more than one claim is filed against the same dealer, investment adviser, or associated person, or if the office receives notice pursuant to s. 517.131(4) that an action against the same dealer, investment adviser, or associated person is pending, all such claims and notices of pending claims received during this period against the same dealer, investment adviser, or associated person may be handled by the office as provided in this section. Two years after the first claimant against that same dealer, investment adviser, or associated person applies for payment pursuant to this section.~~

~~(a) The office shall determine those persons eligible for payment or for potential payment in the event of a pending action. All such persons may be entitled to receive their pro rata shares of the fund as provided in this section.~~

~~(b) Those persons who meet all the conditions prescribed in s. 517.131 and who have applied for payment pursuant to this section will be entitled to receive their pro rata shares of the total disbursement.~~

~~(c) Those persons who have filed notice with the office of a pending claim pursuant to s. 517.131(4) but who are not yet eligible for payment from the fund will be entitled to receive their pro rata shares of the total disbursement once they have complied with subsection (1). However, in the event that the~~

~~amounts they are eligible to receive pursuant to subsection (1) are less than their pro rata shares as determined under this section, any excess shall be distributed pro rata to those persons entitled to disbursement under this subsection whose pro rata shares of the total disbursement were less than the amounts of their claims.~~

(4) If, at any time, the money in the Securities Guaranty Fund is insufficient to satisfy any valid claim or portion of a valid claim approved by the office, the office shall satisfy such unpaid claim or portion of such valid claim as soon as a sufficient amount of money has been deposited in or transferred to the Securities Guaranty Fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by final order of the office, which order is not subject to an appeal or other pending proceeding.

(5) All payments and disbursements made from the Securities Guaranty Fund shall be made by the Chief Financial Officer upon authorization by the office, or designee. The office shall submit such authorization within 30 days of the approval of an eligible person for payment from the Securities Guaranty Fund.

~~(4)~~(6) Individual claims filed by persons owning the same joint account, or claims stemming arising from any other type of account maintained by a particular licensee on which more than one name appears, shall be treated as the claims of one eligible claimant with respect to payment from the Securities Guaranty Fund. If a claimant who has obtained a final judgment or order of restitution which qualifies for disbursement under s. 517.131 has maintained more than one account with the dealer, investment adviser, or associated person who is the subject of the claims, for purposes of disbursement of the Securities Guaranty Fund, all such accounts, whether joint or individual, shall be

considered as one account and shall entitle such claimant to only one distribution from the fund ~~not to exceed the lesser of \$10,000 or the unsatisfied portion of such claimant's judgment as provided in subsection (1).~~ To the extent that a claimant obtains more than one final judgment or order of restitution against a ~~dealer, investment adviser, or one or more associated persons~~ arising out of the same transactions, occurrences, or conduct or out of ~~the dealer's investment adviser's, or associated~~ such person's handling of the claimant's account, such final judgments or orders of restitution shall be consolidated for purposes of this section and shall entitle the claimant to only one disbursement from the fund ~~not to exceed the lesser of \$10,000 or the unsatisfied portion of such claimant's judgment as provided in subsection (1).~~

~~(5)(7)~~ (7) If the final judgment or final order of restitution that gave rise to the claim is overturned in any appeal or in any collateral proceeding, the claimant shall reimburse the Securities Guaranty Fund all amounts paid from the Securities Guaranty Fund to the claimant on the claim. If the claimant satisfies the final judgment or order of restitution, specified in s. 517131(3)(a), the claimant shall reimburse the Securities Guaranty Fund all amounts paid from the Securities Guaranty Fund to the claimant on the claim. Such reimbursement shall be paid to the ~~office~~ Department of Financial Services within 60 days after the final resolution of the appellate or collateral proceedings or the satisfaction of the final judgment or order of restitution, with the 60-day period commencing on the date the final order or decision is entered in such proceedings.

~~(6)(8)~~ (8) If a claimant receives payments in excess of that which is permitted under this chapter, the claimant shall reimburse the Securities Guaranty Fund such excess within 60 days after the claimant receives such excess payment or after

the payment is determined to be in excess of that permitted by law, whichever is later.

(9) A claimant who knowingly and willfully files or causes to be filed an application under s. 517.131 or documents supporting the application any of which contain false, incomplete, or misleading information in any material aspect shall forfeit all payments from the Securities Guaranty Fund and such act shall be a violation of s. 517.301(c-).

~~(7)~~(10) The office Department of Financial Services may institute legal proceedings to enforce compliance with this section and with s. 517.131 to recover moneys owed to the Securities Guaranty Fund, and shall be entitled to recover interest, costs, and attorney's fees in any action brought pursuant to this section in which the office Department of Financial Services prevails.

~~(8) If at any time the money in the Securities Guaranty Fund is insufficient to satisfy any valid claim or portion of a valid claim approved by the office, the office shall satisfy such unpaid claim or portion of such valid claim as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by final order of the office, which order is not subject to an appeal or other pending proceeding.~~

~~(9) Upon receipt by the claimant of the payment from the Securities Guaranty Fund, the claimant shall assign any additional right, title, and interest in the judgment, to the extent of such payment, to the office. If the provisions of s. 517.131(3)(e) apply, the claimant must assign to the office any right, title, and interest in the debt to the extent of any payment by the office from the Securities Guaranty Fund.~~

~~(10) All payments and disbursements made from the Securities Guaranty Fund shall be made by the Chief Financial Officer upon authorization signed by the director of the office, or such agent as she or he may designate.~~

~~(11) The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 specifying procedures for complying with this section, including rules for the form of submission and guidelines for the sufficiency and content of submissions of notices and claims.~~

**Section 14. Section 517.191, Florida Statutes, is amended to read:**

**517.191 Enforcement by the Office-office Injunction to restrain violations; civil penalties; enforcement by Attorney General.-**

(1) When it appears to the office, either upon complaint or otherwise, that a person has engaged or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may investigate; and whenever it shall believe from evidence satisfactory to it that any such person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may, in addition to any other remedies, bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter to enjoin such person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter. In any such court



proceedings, the office may apply for, and on due showing be entitled to have issued, the court's subpoena requiring forthwith the appearance of any defendant and her or his employees, associated persons, or agents and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify or give evidence concerning the acts or conduct or things complained of in such application for injunction. In such action, the equity courts shall have jurisdiction of the subject matter, and a judgment may be entered awarding such injunction as may be proper.

(2) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in any such court proceedings, the court shall have the power and jurisdiction, upon application of the office, to impound and to appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon her or him by the court. In any such action, the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the said property, assets, and business or, in its discretion, may with the consent of the presiding judge of the circuit require that all such suits be assigned to the circuit court judge appointing the said receiver or administrator.

(3) In addition to, or in lieu of, any other remedies provided by this chapter, the office may apply to the court hearing this matter for an order directing the defendant to make

restitution of those sums shown by the office to have been obtained in violation of any of the provisions of this chapter. The office has standing to request such restitution on behalf of victims in cases brought by the office under this chapter, regardless of the appointment of an administrator or receiver under subsection (2) or an injunction under subsection (1). Further, such restitution shall, at the option of the court, be payable to the administrator or receiver appointed pursuant to this section or directly to the persons whose assets were obtained in violation of this chapter.

(4) In addition to any other remedies provided by this chapter, the office may apply to the court hearing the matter for, and the court shall have jurisdiction to impose, a civil penalty against any person found to have violated any provision of this chapter, any rule or order adopted by the commission or office, or any written agreement entered into with the office in an amount not to exceed:

(a) ~~the~~The greater of \$20,000 ~~\$10,000~~ for a natural person or \$25,000 for a business entity ~~any other person~~, or the gross amount of any pecuniary loss to investors or pecuniary gain to a natural person or business entity ~~such defendant~~ for each such violation, other than a violation of s. 517.301, plus;

(b) ~~the~~The greater of \$50,000 for a natural person or \$250,000 for a business entity ~~any other person~~, or the gross amount of any pecuniary loss to investors or pecuniary gain to a natural person or business entity ~~such defendant~~ for each violation of s. 517.301; or

(c) ~~if~~If a specified adult as such term is defined in s. 517.34(1)(b) is the victim of a violation of this chapter, then up to twice the amount of the civil penalty that would otherwise be imposed under this subsection. All civil penalties collected pursuant to this subsection shall be deposited into the Anti-

Fraud Trust Fund. The office may recover any costs and attorney fees related to the office's investigation or enforcement of this section. Notwithstanding any other law, moneys recovered by the office for costs and attorney fees collected pursuant to this subsection must be deposited into the Anti-Fraud Trust Fund.

(5) For purposes of any action brought by the office under this section, a control person of a controlled person found to have violated any provision of this chapter or any rule adopted under any provision of this chapter is jointly and severally liable with, and to the same extent as, such controlled person in any action brought by the office under this section unless the control person can establish by a preponderance of the evidence that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action.

(6) For purposes of any action brought by the office under this section, a person who knowingly or recklessly provides substantial assistance to another person in violation of a provision of this chapter or of any rule adopted under any provision of this chapter is deemed to violate the provision or the rule to the same extent as the person to whom such assistance is provided.

(7) The office may issue and serve upon a person a cease and desist order whenever the office has reason to believe that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order promulgated by the commission or office, or any written agreement entered into with the office.

(8) Whenever the office finds that conduct described in subsection (6) presents an immediate danger to the public requiring an immediate final order, it may issue an emergency

cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent named therein and remains effective for 90 days. If the office begins nonemergency cease and desist proceedings under subsection (6), the emergency cease and desist order remains effective until conclusion of the proceedings under ss. 120.569 and 120.57.

(9) The office may impose and collect an administrative fine against any person found to have violated any provision of this chapter, any rule or order promulgated by the commission or office, or any written agreement entered into with the office in an amount not to exceed the penalties set forth in subsection (4). All fines collected hereunder shall be deposited as received in the Anti- Fraud Trust Fund.

(10) The office may bar, permanently or for a specific time period, any person found to have violated any provision of this chapter, any rule or order adopted by the commission or office, or any written agreement entered into with the office from submitting an application or notification for a license or registration with the office.

(11) ~~(5)~~ In addition to all other means provided by law for enforcing any of the provisions of this chapter, when the Attorney General, upon complaint or otherwise, has reason to believe that a person has engaged or is engaged in any act or practice constituting a violation of s. 517.275~~7~~ or s. 517.301~~7~~ s. ~~517.311~~, or s. ~~517.312~~, or any rule or order issued under such sections, the Attorney General may investigate and bring an action to enforce these provisions as provided in ss. 517.171, 517.201, and 517.2015 after receiving written approval from the office. Such an action may be brought against such person and any other person in any way participating in such act or

practice or engaging in such act or practice or doing any act in furtherance of such act or practice, to obtain injunctive relief, restitution, civil penalties, and any remedies provided for in this section. The Attorney General may recover any costs and attorney fees related to the Attorney General's investigation or enforcement of this section. Notwithstanding any other provision of law, moneys recovered by the Attorney General for costs, attorney fees, and civil penalties for a violation of s. 517.275, or s. 517.301, ~~s. 517.311, or s. 517.312~~, or any rule or order issued pursuant to such sections, shall be deposited in the Legal Affairs Revolving Trust Fund. The Legal Affairs Revolving Trust Fund may be used to investigate and enforce this section.

(12) ~~(6)~~ This section does not limit the authority of the office to bring an administrative action against any person that is the subject of a civil action brought pursuant to this section or limit the authority of the office to engage in investigations or enforcement actions with the Attorney General. However, a person may not be subject to both a civil penalty under subsection (4) and an administrative fine under subsection (8) ~~s. 517.221(3)~~ as the result of the same facts.

(13) ~~(7)~~ Notwithstanding s. 95.11(4)(e), an enforcement action brought under this section based on a violation of any provision of this chapter or any rule or order issued under this chapter shall be brought within 6 years after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than 8 years after the date such violation occurred.

(14) Nothing in this chapter limits any statutory right of the state to punish any person for a violation of a law.

(15) When not in conflict with the Constitution or laws of the United States, the courts of this state have the same

jurisdiction over civil suits instituted in connection with the sale or offer of sale of securities under any laws of the United States as the courts of this state may have under similar cases instituted under the laws of the state.

**Section 15. Section 517.211, Florida Statutes, is amended to read:**

**517.211 Private Remedies available in cases of unlawful sale.--**

(1) Every sale made in violation of either s. 517.07 or s. 517.12(1), ~~(4), (5), (9), (11), (13), (16), or (18)~~ (3), (4), (8), (10), (12), (15), or (17) may be rescinded at the election of the purchaser, except a sale made in violation of the provisions of s. 517.1202(3) relating to a renewal of a branch office notification shall not be subject to this section, and a sale made in violation of the provisions of ~~s. 517.12(13)~~ s. 517.12(12) relating to filing a change of address amendment shall not be subject to this section. Each person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days of receipt, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount

equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

(2) Any person purchasing or selling a security in violation of s. 517.301, and every director, officer, partner, or agent of or for the purchaser or seller, if the director, officer, partner, or agent has personally participated or aided in making the sale or purchase, is jointly and severally liable to the person selling the security to or purchasing the security from such person in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.

(3) For purposes of any action brought under this section, a control person of a controlled person found to have violated any provision specified in subsection (1) is jointly and severally liable with, and to the same extent as, such controlled person in any action brought under this section unless the control person can establish by a preponderance of the evidence that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action.

~~(3)~~(4) In an action for rescission:

(a) A purchaser may recover the consideration paid for the security or investment, plus interest thereon at the legal rate from the date of purchase, less the amount of any income received by the purchaser on the security or investment upon tender of the security or investment.

(b) A seller may recover the security upon tender of the consideration paid for the security, plus interest at the legal rate from the date of purchase, less the amount of any income received by the defendant on the security.

~~(4)~~(5) In an action for damages brought by a purchaser of a security or investment, the plaintiff shall recover an amount equal to the difference between:

(a) The consideration paid for the security or investment, plus interest thereon at the legal rate from the date of purchase; and

(b) The value of the security or investment at the time it was disposed of by the plaintiff, plus the amount of any income received on the security or investment by the plaintiff.

~~(5)~~(6) In an action for damages brought by a seller of a security, the plaintiff shall recover an amount equal to the difference between:

(a) The value of the security at the time of the complaint, plus the amount of any income received by the defendant on the security; and

(b) The consideration received for the security, plus interest at the legal rate from the date of sale.

~~(6)~~(7) In any action brought under this section, including an appeal, the court shall award reasonable attorneys' fees to the prevailing party unless the court finds that the award of such fees would be unjust.

(8) Nothing in this chapter limits any statutory or common-law right of a person to bring an action in a court for an act involved in the sale of securities or investments.

(9) The same civil remedies provided by laws of the United States for the purchasers or sellers of securities, under any such laws, in interstate commerce extend also to purchasers or sellers of securities under this chapter.



**Section 16. Section 517.241, Florida Statutes, is repealed.**

**Section 17. Section 517.301, Florida Statutes, is amended to read:**

**517.301 Fraudulent transactions; falsification or concealment of facts.--**

(1) It is unlawful and a violation of the provisions of this chapter for a person:

(a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment or security, including any security exempted under the provisions of s. 517.051 and including any security sold in a transaction exempted under the provisions of s. 517.061, s. 517.0611, or s. 57.0612, directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;
2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
3. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

(b) By use of any means, to ~~To~~ publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, communication, or broadcast which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or from an agent or employee of an issuer, underwriter,

or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount of the consideration.

(c) In any matter within the jurisdiction of the office, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

(2) It is unlawful for a person in issuing or selling a security within the state, including a security exempted under the provisions of s. 517.051 and including a transaction exempted under the provisions of s. 517.061, s. 517.0611, or s. 517.0612, to misrepresent that such security, or company has been guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(3) It is unlawful for a person registered or required to be registered, or subject to the notice requirements, under any section of this chapter, including such persons and issuers within the purview of ss. 517.051, 517.061, 517.0611, or 517.0612, to misrepresent that such person has been sponsored, recommended, or approved, or that her or his abilities or qualifications have in any respect been passed upon, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(4) It is unlawful and a violation of this chapter for a person in connection with the offer or sale of an investment to obtain money or property by means of:

(a) A misrepresentation that the investment offered or sold is guaranteed, sponsored, recommended, or approved by the state

or an agency or officer of the state or by the United States or an agency or officer of the United States; or

(b) A misrepresentation that such person is sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(5) (a) No provision of subsection (2) or subsection (3) shall be construed to prohibit a statement that a person or security is registered or has made a notice filing under this chapter if such statement is required by the provisions of this chapter or rules promulgated thereunder, if such statement is true in fact, and if the effect of such statement is not misrepresented.

(b) A statement that a person is registered made in connection with the offer or sale of a security under the provisions of this chapter shall include the following disclaimer: "Registration does not imply that such person has been sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States."

1. If the statement of registration is made in writing, the disclaimer shall immediately follow such statement and shall be in the same size and style of print as the statement of registration.

2. If the statement of registration is made orally, the disclaimer shall be made or broadcast with the same force and effect as the statement of registration.

(6) It is unlawful and a violation of this chapter for a person to directly or indirectly manage, supervise, control, or own, either alone or in association with others, a boiler room in this state which sells or offers for sale a security or

investment in violation of subsections (1), (2), (3), (4) or (5).

(7)(2) For purposes of ~~ss. 517.311 and 517.312~~ and this section, the term "investment" means ~~any~~ commitment of money or property principally induced by a representation that an economic benefit may be derived from such commitment, except that the term does not include a commitment of money or property for:

(a) The purchase of a business opportunity as defined in s. 559.80(1)(a), business enterprise, or real property through a person licensed under chapter 475 or registered under former chapter 498; or

(b) The purchase of tangible personal property through a person not engaged in ~~telephone-solicitation~~ by telephone, electronic mail, text messages, social media, chat rooms, or other electronic means, where ~~said property is offered and sold in accordance with the following conditions: there~~  
~~1. There~~ are no specific representations or guarantees made by the offeror or seller as to the economic benefit to be derived from the purchase.~~.~~

~~2. The tangible property is delivered to the purchaser within 30 days after sale, except that such 30-day period may be extended by the office if market conditions so warrant; and~~

~~3. The seller has offered the purchaser a full refund policy in writing, exercisable by the purchaser within 10 days of the date of delivery of such tangible personal property, except that the amount of such refund may not exceed the bid price in effect at the time the property is returned to the seller. If the applicable sellers' market is closed at the time the property is returned to the seller for a refund, the amount of such refund shall be based on the bid price for such property at the next opening of such market.~~

Section 18. Section 517.311, Florida Statutes, is repealed.

Section 19. Section 517.312, Florida Statutes, is repealed.

**SCHEDULE 6**

Chapter 517 White Paper

**REPORT OF THE CHAPTER 517 TASK FORCE OF THE BUSINESS  
LAW SECTION OF THE FLORIDA BAR  
RECOMMENDATIONS AND ANALYSIS OF PROPOSED AMENDMENTS  
TO THE FLORIDA SECURITIES AND INVESTOR PROTECTION ACT  
SEPTEMBER 2023**

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**Background**

The Executive Council of the Business Law Section of The Florida Bar appointed a Task Force in September 2022, to consider amendments to Ch. 517 of the Florida Statutes, The Florida Securities and Investor Protection Act. Will Blair was appointed Chair of the Task Force and Stuart Cohn was appointed Academic Chair. Roland Chase was subsequently appointed Vice Chair. The Task Force divided into subgroups examining various portions of Ch. 517. We have worked in close cooperation with the Office of Financial Regulation (the “OFR”) and its staff. During our deliberations, the OFR, with our cooperation, presented to the 2023 legislative session proposed amendments to Ch. 517 that were limited to administrative and clarification aspects of Ch. 517, as the OFR and legislative staff was aware that our Task Force was working on more substantive changes to the statute. The OFR bill was enacted, and we are now presenting our recommendations for substantive amendments to the statute.

The impetus for our reform recommendations is to improve the ability of small and developing businesses in Florida to raise capital, while at the same time both assuring and improving investor protection and enforcement measures to guard against abuse. Florida’s securities statute has not been materially amended for many years. As a result, a number of salutary measures taken both federally and by many states regarding small business financing have not been incorporated into Florida’s law. One measure that was adopted in Florida –a crowdfunding exemption – was so restrictive in its terms and requirements that it has never been used by Florida businesses to raise capital. OFR, which includes the Division of Securities, fully supports our reform effort and has worked closely with us in preparing our recommendations.



## **Summary of Principal Recommendations**

The Task Force recommendations contain both substantive amendments to the current statute as well as numerous non-substantive wording or numbering changes that we believe necessary for clarification, context, or appropriate placement purposes. The principal substantive recommendations are:

**Registration Exemptions:** Several significant proposals are made regarding exemptions from registration. Currently small businesses in Florida that seek to raise capital can only rely on two exemptions under Florida law (in addition to those available under preempting federal law): (1) a limited offering exemption in 517.061(11) and (2) the crowdfunding exemption in 517.0611, which has never been used. Our proposals retain the limited offering exemption, with some modification, and significantly amend the crowdfunding exemption. In addition, we are recommending adoption of an accredited investor exemption that has been adopted by a majority of states and a micro-offering exemption that is modeled after a successful exemption developed in Georgia.

**Marketing Capacities:** We are proposing to allow greater access to potential investors through so-called “demo-day” presentations and pre-offering testing the waters. Both proposals are based on current federal rules and format and include substantial investor protection requirements.

**Control Person Liability:** Sections 517.191 and 517.211 have been amended to add control person liability provisions. Control person liability has long been present in the federal securities statutes and is also in the Uniform Securities Act. There is a defense for control persons who are able to show that they were not responsible for the controlled person’s act that resulted in a securities law violation. Creating such additional liability is an investor protection measure and is

consistent with securities laws in other states. The definition of “control person” taken from SEC Rule 405 has been added to the definitions section, s. 517.021.

**Aiding and Abetting:** The statute currently provides for civil liability against aiders and abettors of a securities law violation. The proposal expands this liability to actions brought by the State of Florida.

**Registration Procedures:** A proposed amendment eliminates the requirement for 5 years of annual reports and audited financial statements applicable to simplified offerings that use the Small Company Offering Registration (“SCOR”). The statutory requirement is inconsistent with federal standards and exceeds the requirements imposed in Florida on other state registered offerings. The Task Force discussed several potential material changes, including revisions to the merit review standards, but concluded that further study and data was necessary before any such proposals could be made.

**Investment Adviser Registration:** Currently investment advisers are required to be registered in Florida if they have more than 15 Florida clients. After reviewing the standards in other states and federally, we are proposing reducing the number required for registration to 6 or more. This is an investor protection measure as it will require registration by persons who act as investment advisers to multiple clients.

**Penalties:** The maximum civil and administrative penalties that can be assessed in an action by the Attorney General under s. 517.191 has been increased from \$10,000 to \$20,000. This is consistent with penalty provisions in other states.

**Vulnerable Adults:** To protect the senior citizen population in Florida, and consistent with the Vulnerable Adults legislation in Ch. 517.34(1)(b), fines assessed in civil and administrative

actions by the Attorney General under s. 517.191 for securities violations targeting seniors and vulnerable adults, as defined by statute, may be doubled.

**Security Guarantee Fund:** To facilitate an investor's recovery from the fund, we propose to eliminate the onerous requirement in s. 517.131 that the investor who has received a final judgment that is unsatisfied must make searches and inquiries to ascertain the assets of the judgment debtor, including a writ of execution if the office so requires. The office has the authority in the current statute to waive this requirement, but we believe it appropriate to eliminate this provision.

**Clarification Proposals:** Many of our proposals involve a re-writing of the current statute in a manner that we believe clarifies the provisions and places them in a more appropriate context. For example, the order of registration exemptions in s. 517.061 has been changed to what we believe is a more appropriate subject-matter based order and the anti-fraud provisions in current ss. 517.301, 517.311 and 517.312 have been consolidated into a single s. 517.301. Such clarifying or context-oriented revisions are throughout the proposals, but except where noted, the revisions make no material change to the substance of the existing statute.

### **Proposed Amendments**

In this Report, the Task Force's proposed revisions to the statutory text are shown with additions (only) appearing **in red**, with the following exceptions: Crowdfunding (s. 517.0611), Securities Guaranty Fund (s. 517.131), Payment from Fund (s. 517.141) and Enforcement by the Office (s. 517.191). For these exceptions, the Report includes both a clean and redlined version of the proposed statutory revisions, with redlines showing both additions and deletions.

## **Definitions: S. 517.021**

*The following new definitions are proposed. The Accelerator, Incubator and Angel Investor Group definitions relate to the new demo-day provision in Ch. 517.0615. The Accredited Investor definition has been amended to fix a glitch in the current statute. The Boiler Room definition was amended to reflect the broader spectrum of communication means available today. A Business Entity definition has been added to expand the list of entities subject to the chapter. A Control Person definition has been added because of the proposed addition of control person liability. The Investment Adviser definition was amended to reduce the number of investment clients from 15 to 6 for registration purposes. A definition of Clients was added to the Investment Adviser provision for clarification purposes, as more fully described in the discussion of s. 517.12 below.*

**Accelerator** means an organization that gives companies in the early stages of development access to workspace, mentorship, investors or other financial or management support.

**Accredited investor** shall be defined by rule of the commission in accordance with the Securities and Exchange Commission Rule 501, 17 C.F.R. s. 230.501, **as amended**.

**Angel investor group** means a group of accredited investors that holds regular meetings and has defined processes and procedures for making investment decisions, either individually or among the membership of the group as a whole, and is neither associated nor affiliated with a dealer or an investment adviser nor an agent or associated person thereof.

**Boiler room** means an enterprise in which two or more persons in a common scheme or enterprise solicit potential investors through telephone calls, electronic mail, text messages, social media, chat rooms, or other electronic means.

**Business entity** means any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

**Control person** means an individual or entity that possesses the power, directly or indirectly, to direct the management or policies of a company through ownership of securities, by contract or otherwise.

**Incubator** means the same as the term accelerator and means an organization that gives companies in the early stages of development access to workspace, mentorship, investors or other financial or management support.

**Investment adviser** means a person, other than an associated person of an investment adviser or a federal covered adviser, that receives compensation, directly or indirectly, and engages for all or part of the person's time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities.

(b) The term does not include the following:

1. A dealer or associated person of a dealer whose performance of services in paragraph (a) is solely incidental to the conduct of the dealer's or associated person's business as a dealer and who does not receive special compensation for those services.
2. A licensed practicing attorney or certified public accountant whose performance of such services is solely incidental to the practice of the attorney's or accountant's profession.
3. A bank authorized to do business in this state.
4. A bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state.
5. A trust company having trust powers, as defined in s. 658.12, which it is authorized to exercise in this state, which trust company renders or performs investment advisory services in a fiduciary capacity incidental to the exercise of its trust powers.
6. A person that renders investment advice exclusively to insurance or investment companies.
- 7.a. A person that has fewer than six clients during the preceding 12 months who are residents of this state.
- b. For the purpose of subparagraph 7., "client" has the same meaning as the term "client" defined by Securities and Exchange Commission Rule 275.222-2 [17 C.F.R. s. 275.222-2], as amended. Also, for purposes of this subparagraph, "client" does not mean other investment advisers, federal covered advisers, or dealers (registered or notice filed in this state unless exempt), banks, savings and loan associations, trust companies, insurance companies, investment companies, pension and profit-sharing trusts (other than self-employed individual retirement plans), or

governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control.

8. A federal covered adviser.

9. The United States, a state, or any political subdivision of a state, or any agency, authority, or instrumentality of any one or more of the foregoing, or any business entity that is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his or her official duty.

#### **Registration Exemptions: S. 517.051, 517.061, 517.0611 and 517.0612**

Registration exemptions are divided between exemptions based on the nature of the securities (s. 517.051) and exemptions based on the form of the offering and sale (s. 517.061, 0611, and 0612). There are no limitations on the offer, sale or resale of securities that are exempt under s. 517.051 other than the statutory requirements pertaining to the various exemptions. The exemptions in 517.061, 0611, and 0612 are transactional, meaning that any security obtained under a particular exemption cannot be freely re-traded except through a subsequent transaction that is registered or is also exempt from registration.

The Task Force examined each registration exemption in Ch. 517 in light of its purpose, clarity and effect, comparing each exemption to its counterpart, if any, in the Uniform Securities Act of 2002 (“USA” or “Uniform Securities Act”) and federal statutes and rules. In addition, we have added additional exemptions that we believe are appropriate to facilitate small business

financing, consistent with investor protection goals. We have also reordered the exemptions in s. 517.061 to provide a more rational ordering.

## **SECURITIES EXEMPTIONS UNDER S. 517.501**

### **517.051(1): U.S., State and Local Government Securities**

*This provision has been retained except to exclude certain industrial revenue bonds and commercial development bonds. The exclusion is based on the increased risk to investors under such bonds, which depend upon revenue streams for their support, unless the bonds are guaranteed by a publicly traded entity described in s. 18(b)(1) of the Securities Act of 1933, as amended. To accommodate this exclusion, we propose revising the section into subsections.*

**517.051(1):** (a) A security issued or guaranteed by the United States or any territory or insular possession of the United States, by the District of Columbia, or by any state of the United States or by any political subdivision or agency or other instrumentality thereof;

(b) No person shall directly or indirectly offer or sell securities, other than general obligation bonds, under this section if the issuer or guarantor is in default or has been in default any time after December 31, 1975, as to principal or interest:

(i) With respect to an obligation issued by the issuer or successor of the issuer, or

(ii) With respect to an obligation guaranteed by the guarantor or successor of the guarantor,

except by an offering circular containing a full and fair disclosure as prescribed by rule of the commission.



(c) The provisions of subsection 1(a) shall not apply to any obligations or securities that are industrial or commercial development bonds as defined in 17 C.F.R. 230.131, as amended, unless payments are made or unconditionally guaranteed by a person whose securities are exempt from registration under Section 18(b)(1) of the Securities Act of 1933.

**517.051(3): National Banks**

*The Task Force concluded that the analogous provision in the USA, s. 201(3)(B), is more clearly drafted than the current statute, including by virtue of a general reference to depository institutions. The only change we propose to the USA provision is adding the word “regulated” prior to “depository” in subsection (c).*

517.051(3): a security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) an international banking institution;

(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a); or

(C) any other regulated depository institution.

#### **517.051(4): Railroads and Public Utilities**

*This is a complex provision relating to railroads and public utilities. The consensus was to retain the provision as is. We made no amendments other than to change the reference to corporations to “business entity” and to add “other common carriers” as in s. 201(5) of the Uniform Securities Act.*

**517.051(4):** A security issued or guaranteed, as to principal, interest, or dividend, by a **business entity** owning or operating a railroad, **other common carrier**, or any other public service utility; provided that such business entity is subject to regulation or supervision whether as to its rates and charges or as to the issue of its own securities by a public commission, board, or officer of the government of the United States, of any state, territory, or insular possession of the United States, of any municipality located therein, of the District of Columbia, or of the Dominion of Canada or of any province thereof; also equipment securities based on chattel mortgages, leases, or agreements for conditional sale of cars, motive power, or other rolling stock mortgaged, leased, or sold to or furnished for the use of or upon such railroad or other public service utility corporation or where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state or of the Dominion of Canada to secure the payment of such equipment securities; and also bonds, notes, or other evidences of indebtedness issued by a holding corporation and secured by collateral consisting of any securities hereinabove described; provided, further, that the collateral securities equal in fair value at least 125 percent of the par value of the bonds, notes, or other evidences of indebtedness so secured.

#### **517.051(7): Cooperatives**

*Florida currently has a registration exemption for only two types of cooperatives ---- agricultural and residential cooperatives. The Uniform Securities Act of 2002 has a broad exemption covering all forms of cooperatives. The Task Force concluded that there was no major policy reason not to expand the exemption to all not-for-profit cooperatives, per the USA provision, organized under State law or qualified to be treated as a cooperative under the Internal Revenue Code. We propose to retain the existing exemptions for agricultural and residential cooperatives and add a subsection (c) for all other cooperatives.*

*The residential cooperative exemption is currently a transaction exemption in 517.061. We are proposing certain modifications as shown and moving that exemption to the 517.051 securities exemptions, which is consistent with the Uniform Securities Act, and we believe more consistent with the exemption's purpose. As a result, both the initial issuance and any resale of a residential cooperative unit are exempt from registration.*

**517.051(7)** (a) Securities of nonprofit agricultural cooperatives organized under the laws of this state when the securities are sold or offered for sale to persons principally engaged in agricultural production or selling agricultural products.

**(b)** A member's or owner's interest in a business entity which represents ownership, or entitles the holder of the interest to possession and occupancy, of a specific residential unit in property owned by such business entity and organized and operated on a cooperative basis, solely for residential purposes.

**(c)** A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a not-for-profit membership entity operated either as a

cooperative under the cooperative laws of a State or in accordance with the cooperative provisions of Subchapter T of the United States Internal Revenue Code, as amended, but not a member's or owner's interest, retention certificate, or like security sold or transferred to a person other than (i) a bona fide member of the not-for-profit membership entity or (ii) a person who becomes a bona fide member of the not-for-profit membership entity at the time of or in connection with the sale or transfer.

**517.051(8): Minimum \$25,000 9-month note: DELETED**

*The Task Force proposes deletion of this exemption. It has been the subject of abusive efforts to evade registration requirements through the issuance of short-term note to nonaccredited investors. There is no analogy in the Uniform Securities Act. If such notes cannot be sold under federal exemptions that preempt state registration, they should be subject to state registration.*

**517.051(8): Not-for-profit entities [former #9]**

*The only change is numbering, changing corporation to business entity, and adding "as amended" where appropriate.*

**517.051(8):** A security issued by a **business entity** organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or any security of a fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940, **as amended**; provided that no person shall directly or indirectly offer or sell securities under this subsection except by an offering circular containing full and fair disclosure, as prescribed by the rules of the commission, of all material information, including, but not limited to, a description of the

securities offered and terms of the offering, a description of the nature of the issuer's business, a statement of the purpose of the offering and the intended application by the issuer of the proceeds thereof, and financial statements of the issuer prepared in conformance with United States generally accepted accounting principles. Section 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No. 104-62, shall not preempt any provision of this chapter.

### **EXEMPTIONS UNDER 517.061**

*WE PROPOSE TO CHANGE THE ORDER OF EXEMPTIONS IN 517.061 TO CREATE A MORE COHERENT STRUCTURE OF EXEMPTIONS. WE HAVE INCLUDED HEADINGS FOR EACH SECTION FOR CONVENIENCE PURPOSES ALTHOUGH WE ARE AWARE THAT SUCH HEADINGS WILL NOT BE UTILIZED IN THE STATUTE. THE NUMBER OF THE PROVISION IN THE CURRENT STATUTE IS NOTED.*

### **ISSUER NON-CAPITAL RAISING TRANSACTIONS**

#### **517.061(1) JUDICIAL AND OTHER REGULATED SALES [CURRENT S. 517.061(1)]**

*In subsection (1)(a) we propose adding an exemption for sales effected through assignments for the benefit of creditors.*

*Subsection (1)(b) is broadly based on the Uniform Securities Act s. 202(9). It involves an exchange in which securities are involved and the fairness of the transaction has been passed upon by an authorized agency or court. We adopted the language of the federal analog, s. 3(a)(10) of the Securities Act of 1933, as amended, which was determined to be a better drafted*

*provision than that of the USA. This exemption is added as 517.061(1)(b) inasmuch as 517.061(1)(a) similarly relates to judicial approval of a securities transaction.*

**517.061(1)(a):** Any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy, or at any sale by an Assignee as defined in s. 727.103(2) with respect to an Assignment as defined in s. 727.103(4), or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

(b) Except for a security exchanged in a case under title 11 of the United States Code, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any state or territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval.

**517.061(3): DIVIDENDS AND DISTRIBUTIONS [CURRENT S. 517.061(4)]**

*The Uniform Securities Act provision is substantially similar to the current statute but more complete as to the range of dividend transactions. We therefore propose substituting the current provision with the USA analog.*

517.061(3): A transaction involving a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity

holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock.

**517.061(4): TRANSFERS EXCLUSIVELY TO ISSUER’S OWN SECURITY HOLDERS**

**[CURRENT S. 517.061(6)]**

*We were unable to discern a justifiable reason for the current provision’s limit of the exemption to transferable warrants exercisable within not more than 90 days of issuance, nor why Florida’s provision (unlike the USA) differentiates between nontransferable and transferable warrants. Experienced securities attorneys were contacted in an attempt to understand if there was any compelling reason for Florida’s distinction between transferrable and nontransferable warrants. No reason was advanced. As a result, the consensus was to adopt the USA provision that makes no distinction among warrants.*

**517.061(4):** A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration is not paid or given, directly or indirectly, for soliciting a security holder in this State.

**517.061(5): REORGANIZATIONS [CURRENT S. 517.061(5)]**

*No change except to change “corporation” to “business entity.”*

**517.061(5):** The issuance of securities to such equity security holders or other creditors of a **business entity** in the process of a reorganization of such **business** entity, made in good faith and not for the purpose of avoiding the provisions of this chapter, either in exchange for the

securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security holders or creditors.

**517.061(6) MERGERS, SHARE EXCHANGES [CURRENT S. 517.061(9)]**

*The consensus was to adopt the substantially similar but better drafted Uniform Securities Act provision.*

**517.061(6):** A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties.

**S. 517.061(8): STOCK OPTION AND OTHER PLANS [CURRENT S. 517.061(15)]**

*This provision deals with securities offered under stock option or purchase plans. The consensus was that Uniform Securities Act s. 202.21 is a more complete and preferred provision, as it covers more variables that may exist among option plans.*

**517.061(8):** The offer or sale of securities under a bona fide employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, including offers or sales of such securities to:

(A) directors, general partners, managers, trustees, if the issuer is a business trust, officers, consultants, and advisors;



(B) family members who acquire such securities from persons listed in subsection (A) through gifts or domestic relations orders;

(C) former employees, directors, general partners, managers, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations.

#### ISSUER CAPITAL-RAISING TRANSACTIONS

##### **517.061(9): SALE TO BANKS, INSURANCE COMPANIES [CURRENT S. 517.061(7)]**

*No material change is proposed. The final clause of the current statute that prohibits a “scheme to evade” the securities laws has been deleted as we have proposed a general provision to that effect in 517.0613. The term “qualified institutional buyer” is defined in s. 517.021.*

**517.061(9):** The offer or sale of securities to a bank, trust company, savings institution, insurance company, dealer, investment company as defined by the Investment Company Act of 1940, **as amended**, pension or profit-sharing trust, or qualified institutional buyer, whether any of such entities is acting in its individual or fiduciary capacity.

##### **517.061(10) LIMITED OFFERING EXEMPTION [CURRENT S. 517.061(11)]**

*This is the primary registration exemption for capital-raising purposes. It was modeled after the SEC Rule 505 exemption which no longer exists. The exemption is principally used by issuers that limit their offers and sales to Florida residents.*

*The material proposed changes to this exemption are:*

1. *The disclosure document is required to include information regarding a purchaser's right of voidability.*
2. *The compensation provision limited to dealers has been deleted as the statute already precludes compensation to non-dealers.*
3. *The 3-day voidability provision has been altered to limit it to three days from the date of purchase.*
4. *Certain additional purchasers have been added in subsections (b)(5) and (6) to the list of excluded purchasers for purposes of the 35 purchaser limit. The added provisions have been taken from the analogous SEC Rule 501 exclusions for counting purchasers.*
5. *The integration provisions relating to this exemption have been deleted. The consensus was that Ch. 517 should have a stand-alone integration provision, rather than one that is a subsection only of this exemption. The consensus was to adopt an integration provision that would apply to all Ch. 517 transactions. As a result, the integration provisions in s. 517.061(11)(c) and (d) are eliminated. The new integration provision is in proposed 517.0614.*

**517.061(10)** (a) The offer or sale, by or on behalf of an issuer, of its own securities, which offer or sale is part of an offering made in accordance with all of the following conditions:

1. There are no more than 35 purchasers, or the issuer reasonably believes that there are no more than 35 purchasers, of the securities of the issuer in this state during an offering made in reliance upon this subsection or, if such offering continues for a period in excess of 12 months, in any consecutive 12-month period.

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Before the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information, **which shall include written notification of a purchaser's right to void the sale pursuant to subsection 10(a)4.**

4. **Any sale made pursuant to this exemption is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by sending an email to the issuer's email address set forth in the disclosure document provided to the purchaser or purchaser's representatives or by hand delivery, courier service or other method by which written proof of delivery to the issuer of the purchaser's election to rescind the purchase is evidenced.**

(b) The following purchasers are excluded from the calculation of the number of purchasers under subparagraph (a)1.:

1. A relative, spouse, or relative of the spouse of a purchaser who has the same primary residence as the purchaser.

2. A trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any **business entity** specified in subparagraph 3. collectively have more than 50 percent of the beneficial interest (excluding contingent interest).

3. A **business entity in** which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any trust or estate specified in subparagraph 2. collectively are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. Any accredited investor.

(c) For purposes of the number of purchasers under subparagraph (a)1.:

1. A business entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser.

2. A non-contributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

#### **517.061(11) ACCREDITED INVESTOR EXEMPTION**

*The Task Force believes that this is a needed and important exemption for small businesses that cannot meet the requirements of SEC Rule 506 for private offerings. This exemption, which follows the North American Securities Administrators Association (“NASAA”) model, has been adopted by a majority of states. This exemption will also exempt offers and sales from registration under federal securities law if the offers and sales comply with the federal intrastate exemption. The exemption includes express limitations on resale by purchasers.*

*Notice filing for this exemption is, we believe, appropriate and is included in our proposal as it allows the administrator to monitor compliance with the exemption provisions.*

*The only change from the NAASA model we propose making is to eliminate the limit of 25 words for describing the business, as the limit was considered to be too short for adequate disclosure.*

**517.061(11):** The offer or sale of a security by an issuer in a transaction that meets the requirements of this section.

- (a) Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors.
- (b) The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
- (c) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under this chapter or pursuant to an exemption available under this chapter, the Securities Act of 1933, as amended, or the rules and regulation adopted thereunder.
- (d) (1) A general announcement of the proposed offering may be made by any means.
- (2) The general announcement shall include only the following information, unless additional information is specifically permitted by the Commission:
- (a) The name, address and telephone number of the issuer of the securities;
  - (b) The name, a brief description and price (if known) of any security to be issued;
  - (c) A brief description of the business;
  - (d) The type, number and aggregate amount of securities being offered;
  - (e) The name, address and telephone number of the person to contact for additional information; and
  - (f) A statement that: (i) sales will only be made to accredited investors; (ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and (iii) the securities have not been registered with or approved by any

state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(f) The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (e), if such information:

(1) is delivered through an electronic database that is restricted to persons who have been pre-qualified as accredited investors; or

(2) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(g) No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(h) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

(i) The issuer shall file with the Department a notice of transaction, a consent to service of process, and a copy of the general announcement, within 15 days after the first sale in this state. The commission may establish by rule procedures for filing documents by electronic means.

## NONISSUER TRANSACTIONS

### **517.061(12) NONISSUER ISOLATED SALES [CURRENT S. 517.061(3)]**

*The final paragraph of current s. 517.061(3) regarding a one-year ownership of the securities raises a concern that despite the exemption allowed in subsection (b) for transactions exempt*

*under Section 4(a)(1) of the Securities Act of 1933, as amended, which should invoke the protections of Rule 144 thereunder, a court might possibly interpret the last paragraph as requiring at least a one-year holding period under Florida law in order to not be considered an underwriter. After discussion, it was agreed to add to the end of (b) “or under Securities and Exchange Commission rules and regulations” and to delete the provision’s final paragraph.*

*The conditions set forth in subsection (a) relate to the limited offering exemption, which has now been renumbered as 517.061(10). The requirement that the sale be by a bona fide owner of the securities has been added.*

**517.061(12):** The isolated sale or offer for sale of securities when made by or on behalf of a **bona fide owner of such securities** not the issuer or underwriter of the securities, who disposes of **such securities for the owner’s** own account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter. For purposes of this subsection, isolated offers or sales include, but are not limited to, an isolated offer or sale made by or on behalf of a **bona fide owner of such** securities, **but** not the issuer or underwriter of **such** securities if:

(a) The offer or sale of securities is in a transaction satisfying all of the requirements of subparagraphs (10)(a)1., 2., and 3. and paragraph (10)(b); or

(b) The offer or sale of securities is in a transaction exempt under s. 4(a)(1) of the Securities Act of 1933, as amended, **or under Securities and Exchange Commission rules or regulations.**

**517.061(13) NONISSUER TRANSACTIONS BY SECURED PARTIES [CURRENT S.**

**517.061(2)]**

*The only proposed change is the addition of sales by certain secured parties.*

**517.061(13):** By or for the account of a pledgeholder, **a secured party as defined in s. 679.1021(1)(ttt)**, or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

**DEALER TRANSACTIONS S. 517.061(14): UNSOLICITED DEALER TRANSACTIONS**

**[CURRENT S. 517.061(13)]**

*We propose adding to this exemption transactions through certain federal registered investment advisers, taken from the Uniform Securities Act.*

**517.061(14): (a)** An unsolicited purchase or sale of securities on order of, and as the agent for, another by a dealer registered pursuant to the provisions of s. 517.12; provided that this exemption applies solely and exclusively to such registered dealers and does not authorize or permit the purchase or sale of securities on order of, and as agent for, another by any person other than a dealer so registered; and provided, further, that such purchase or sale is not directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violation or evading any provision of this chapter.

**(b)** **A nonissuer transaction with a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others.**



**S. 517.061(15): OPTION SALES BY DEALERS [CURRENT S. 517.061(16)]**

*This provision relates to the sale of a securities option through a registered dealer. The consensus was to make no change except for clarifying language. We propose to eliminate Subsection (e) of the current statute regarding a “scheme to violate or evade” because of the overall new 517.0613 applying that notion to all exemptions.*

**S. 517.061(15):** The sale by or through a registered dealer of any securities option if at the time of the sale of the option **all of the following conditions are met:**

(a) The performance of the terms of the option is guaranteed by any dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the commission;

or

(b) Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by the office; and

(c) The option is not sold by or for the benefit of the issuer of the underlying security; and

(d) The underlying security may be purchased or sold on a recognized securities exchange **registered under the Securities Exchange Act of 1934, as amended.**

**S. 517.061(16): NONISSUER SECONDARY SALES [CURRENT S. 517.061(17)]**

*This exemption was amended to preclude its use by control persons, which is consistent with SEC Rule 144. Otherwise, no change is proposed except for clarifying language.*

**517.061(16):** (a) The offer or sale of securities, as agent or principal, by a dealer registered pursuant to s. 517.12, when such securities are offered or sold at a price reasonably related to the current market price of such securities, provided such securities are:

1. Securities of an issuer for which reports are required to be filed by s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended;
2. Securities of a company registered under the Investment Company Act of 1940, as amended;
3. Securities of an insurance company, as that term is defined in s. 2(a)(17) of the Investment Company Act of 1940, as amended; or
4. Securities, other than any security that is a federal covered security pursuant to s. 18(b)(1) of the Securities Act of 1933, **as amended**, and is not subject to any registration or filing requirements under this **chapter**, which securities have been listed or approved for listing upon notice of issuance by a **securities exchange registered pursuant to the Securities Exchange Act of 1934, as amended**, and also all securities senior to any securities so listed or approved for listing upon notice of issuance, or represented by subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by an **issuer with a class of securities** listed or approved for listing upon notice of issuance **by such securities exchange**, such securities to be exempt only so long as such listings or approvals remain in effect. The exemption provided for herein does not apply when the securities are suspended from listing approval for listing or trading.

(b) The exemption provided in this subsection does not apply if the sale is made for the direct or indirect benefit of an issuer or **a control person** of such issuer or if such securities constitute the whole or part of an unsold allotment to, or subscription or participation by, a dealer as an underwriter of such securities.

(c) This exemption **is** not available for any securities which have been denied registration pursuant to s. 517.111. Additionally, the office may deny this exemption with reference to any particular security, other than a federal covered security, by order published in such manner as the office finds proper.

**S. 517.061(17): NONISSUER TRANSACTIONS OF SECURITIES OUTSTANDING AT LEAST 90 DAYS [CURRENT S. 517.061(20)]**

*The current statute mistakenly requires all five conditions for this exemption, which is not appropriate given the nature of the five conditions. We propose retaining the mandatory conditions of (a)-(c), along with either one of (d) and (e). The other material change proposed is the addition in subsection (e)(2) of securities that are traded through an SEC-registered alternative trading system, which requires registered brokers to have substantial information about the issuer in its files. Minor clarifying language has also been added.*

**S. 517.061(17):** Any nonissuer transaction by a registered dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, **as amended**, in a security of a class that has been outstanding in the hands of the public for at least 90 days; provided, at the time of the transaction **the following conditions in subparagraphs (a), (b) and (c) and either subparagraph (d) or (e) are met:**

(a) The issuer of the security is actually engaged in business and is not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, **an** unidentified person;

(b) The security is sold at a price reasonably related to the current market price of the security;

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the dealer as an underwriter of the security;

(d) **The security is listed in** a nationally recognized securities manual designated by rule of the commission or a document filed with **and is publicly viewable** through the Securities and Exchange Commission electronic data gathering and retrieval system **and which** contains:

1. A description of the business and operations of the issuer;
2. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;
3. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and
4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income statement, a pro forma income statement.

(e) 1. The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, **as amended**.

2. **The security is offered, purchased or sold through an alternative trading system registered under Securities and Exchange Commission Regulation ATS, 17 C.F.R. 242.301, as amended.**

3. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, **as amended**.

4. The issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or
5. The issuer of the security has total assets of at least \$2 million based on an audited balance sheet as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

#### **517.061(19) TRADING IN FOREIGN SECURITIES [NEW EXEMPTION]**

*The consensus was to propose adopting this new exemption from USA s. 202(23) which relates to the buying or selling of securities of foreign companies through foreign brokers. The Florida administrator has the authority to determine the permissible foreign jurisdictions and to revoke an exemption for a particular jurisdiction following an administrative hearing. Canada and the Toronto Stock Exchange are specifically named exemptions within this provision.*

**517.061(19):** A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange.

After an administrative hearing in compliance with the state administrative procedure act, the administrator, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

**S. 517.061(20): RULE-MADE EXEMPTIONS [CURRENT S. 517.061(19)]**

*No change is proposed to this provision other than clarifying language.*

**517.061(20):** Other transactions defined by rules as transactions exempted from the registration provisions of s. 517.07, which rules the commission may adopt from time to time, but only after a finding by the office that the application of the provisions of s. 517.07 to a particular transaction is not necessary in the public interest and for the protection of investors because of the small dollar amount of securities involved or the limited character of the offering. In conjunction with its adoption of such rules, the commission may also provide in such rules that persons selling or offering for sale securities **in a transaction exempted by rule adopted pursuant to this section** are exempt from the registration requirements of s. 517.12. No rule so adopted may have the effect of narrowing or limiting any exemption provided for by statute.

**517.0611 CROWDFUNDING**

*The crowdfunding exemption in current 517.0611 is so laden with technical and burdensome requirements that to date it has not been used by a single Florida business. In order to facilitate the ability of small Florida businesses to obtain capital, this exemption needs to be amended in several major respects. Some background:*

- 1. The federal crowdfunding exemption was adopted in 2015. It is set forth in ss. 4(a)(6) and 4A of the Securities Act of 1933, as amended, and SEC Rules 227.100-503. The exemption is replete with substantial and significant technical requirements. The*

*exemption has been utilized but the numbers are not substantial and by far most companies rely on Regulation D Rule 506(b) and 506(c) exemptions if they can.*

2. *To assist small companies, many states have adopted their own intrastate crowdfunding exemption. The state exemptions generally modify the requirements imposed by the federal crowdfunding exemption. For example, among the states that, in contrast to the federal exemption, do not require an intermediary to administer the exemption are Arizona, Colorado, Delaware, Georgia, Illinois, Massachusetts, Michigan, Oregon, Virginia and Washington (based on a survey conducted two years ago).*
3. *Florida adopted a crowdfunding exemption in 2015 that mirrors the federal exemption. It is set forth in s. 517.0611. It contains no significant modification from the federal exemption.*
4. *We have been advised by OFR that to date there has not been a single offering under Florida's crowdfunding provision.*

*Following analysis of this exemption, and analogous exemptions in other states, the following proposed changes to the crowdfunding exemption are:*

1. ***Expand companies eligible to use the exemption*** by eliminating the requirement that the company be incorporated in Florida. Therefore, a Florida-based corporation or LLC formed in another state, such as Delaware, can raise capital under this exemption provided that Florida is the company's principal place of business as determined by objective criteria set forth in SEC Rule 147A. This change is consistent with SEC Rule 147A.
2. ***Increase in amount a company can raise*** under the exemption within a 12-month period from \$1 million to \$5 million. The SEC recently amended its crowdfunding exemption to allow for a \$5 million maximum amount. In today's economy, limiting a company to raising \$1 million in a 12-month period may be too restrictive for many businesses.
3. ***A flat \$10,000 maximum that a non-accredited investor can invest*** in crowdfunding offerings in a 12-month period. This proposal avoids the confusion and potential liability based on the formula-based limitations in the current statute. For accredited investors, there is no investment limitation in the current statute or our proposal.
4. ***Modification of the requirement that the offering be administered by a dealer or an intermediary.*** The requirement that the issuer employ a third-party dealer or registered

*intermediary to administer the offering has been retained only for offerings in excess of \$2.5 million. The requirement in the current statute applies to all offerings and is regarded by the Task Force as the greatest impediment to the use of the crowdfunding exemption, as it is costly to the issuer and hinders the ability of the issuer to market its offering effectively and directly. Moreover, issuers seeking relatively low amounts of capital may not be able to find an intermediary willing to take on the responsibilities and risks for such a small offering. As noted, a number of states have entirely eliminated this requirement from their crowdfunding exemptions. We considered a total elimination of the requirement but decided that for offerings in excess of \$2.5 million the issuer can afford the time and expense to engage a dealer or intermediary. For all other offerings the issuer may choose whether to use an intermediary.*

*If the issuer chooses not to use an intermediary, the issuer is obligated to perform the duties that would otherwise be performed by an intermediary, including assuring that the investors are advised of the risks of the offering, are qualified, and that the disclosure materials are given to all potential investors.*

*Section 517.12 of the current statute contains provisions for the registration of intermediaries. Those have been retained.*

5. ***Elimination of the mandatory third-party escrow of funds.*** *The current statute requires that the issuer set a minimum target amount and that all proceeds from the sale of securities be deposited with a third-party escrow agent until the target amount has been reached. While seemingly unobtrusive, in practice the escrow requirement is a major impediment for smaller companies. Task Force members confirmed that banks and other institutions are not willing to serve as escrow agents for small companies for reasons of administrative costs and potential liabilities. The proposal eliminates the mandatory third-party escrow requirement but requires the issuer to deposit the proceeds in a federally insured bank authorized to do business in Florida. The funds will remain on deposit until the target amount has been reached. If the target amount is not reached within a pre-determined, disclosed time period, the issuer is obligated to return all funds to the investors.*
6. ***Limited general solicitation and advertising.*** *The current statute has no provision that permits the issuer to solicit potential investors and use general advertising, other than*



*through an intermediary. The proposal allows the issuer to engage in solicitation and advertising of the offering, which we believe is necessary for small companies to be able to attract potential investors. Any statements made in the solicitation process are subject to the anti-fraud enforcement provisions of the statute.*

8. ***Elimination of the required annual reports to investors.*** *The proposal eliminates this requirement. No other exemption from registration has this requirement, and both the corporation and limited liability company statutes allow for inspection of financial statements and other records by shareholders or members.*
9. ***Three-day voidability provision:*** *This provision, contained in Florida’s current limited offering exemption in Ch. 517.061(11), is proposed to be added to the crowdfunding statute, as modified by the Task Force. It allows an investor to rescind the transaction within 3 days after purchase.*
10. ***Financial statement disclosures.*** *The proposed bill retains the substantial disclosure obligations of issuers to prospective investors. Because of the change in maximum offering amounts, the financial disclosure obligations have been revised for differing offering amounts and clarified as to the required types of financial statements.*

*It was determined that given the length and complexity of this exemption, it should continue to have a separate section rather than be part of 517.061.*

**[The following is a clean copy of the proposed Crowdfunding exemption.]**

**517.0611:** (1) This section may be cited as the “Florida Intrastate Crowdfunding Exemption.”

(2) An offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section.

(3) The offer or sale of securities must be conducted in accordance with the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), as amended, Securities and Exchange Commission Rule 147, 17 C.F.R. s. 230.147, as amended, or Securities and Exchange Commission Rule 147A, as amended, 17 C.F.R. s. 230.147A.

(4) An issuer must:

(a) Be a for-profit business entity that maintains its principal place of business and derives its revenues primarily from operations in this state.

(b) Conduct transactions for an offering in excess of \$2,500,000 through a dealer registered with the office or an intermediary registered under s. 517.12. For offerings under \$2,500,000 the issuer may, but is not required to, use such a dealer or intermediary.

(c) Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, as amended, [15 U.S.C. s. 80a-3](#), or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended, [15 U.S.C. s. 78m](#) or [s. 78o\(d\)](#).

(d) Not be an organization with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity.

(e) Not be subject to a disqualification established by the commission or office or a disqualification described in s. 517.1616 or Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), as amended. Each director, officer, manager, managing member, general partner or person occupying a similar status or performing a similar function, or person holding more than 20 percent of the equity interest of the issuer, is subject to this requirement.

(f) Cause all funds received from investors to be deposited in an account in a federally insured financial institution authorized to do business in this state and maintain all such funds in the account until such time as either the target offering amount has been reached, the offering has been terminated, or the offering has expired. If the target amount has not been reached within the

period specified by the issuer in the disclosure document provided to investors or the offering is terminated or expires, the issuer must within 10 business days refund the funds to all investors.

(g) Use all funds in accordance with the use of proceeds represented to prospective investors.

(5) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of \$200. The filing fee shall be deposited into the Regulatory Trust Fund of the office. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. A notice is effective upon receipt, by the office, of the completed form, filing fee, and an irrevocable written consent to service of civil process, similar to that provided for in s. 517.101. The notice may be terminated by filing with the office a notice of termination. The notice and offering expire 12 months after filing the notice with the office and are not eligible for renewal. The notice must:

(a) Be filed with the office at least 10 days before the issuer commences an offering of securities or the offering is displayed on a website of an intermediary in reliance upon the exemption provided by this section.

(b) Indicate that the issuer is conducting an offering in reliance upon the exemption provided by this section.

(c) Contain the name and contact information, including an email address, of the issuer.

(d) Identify any predecessors, owners, officers, directors, general partners, managers, managing members, or any person occupying a similar status or performing a similar function of the issuer, including that person's title, status as a partner, trustee, sole proprietor or a similar role, and ownership percentage.

(e) Identify the federally insured financial institution into which investor funds will be deposited.

(f) If applicable, include the intermediary's email and website address where the issuer's securities will be offered.

(g) State the target offering amount and the date not to exceed 360 days, by which the target amount must be reached in order for the offering not to be terminated.

(6) The issuer must amend the notice form within 10 business days after any material information contained in the notice becomes inaccurate for any reason. The commission may require, by rule, an issuer who has filed a notice under this section to file amendments with the office.

(7) The issuer may engage in general advertising and general solicitation of the offer to prospective investors. Any oral or written statements made in advertising or solicitation of the offer are subject to the enforcement provisions of this chapter in the event of any material misstatement or non-disclosure of material information. Any general advertising or other general announcement must state that the offering is limited and open only to residents of the state of Florida.

(8) The issuer must provide a disclosure statement to (i) the dealer or intermediary, if applicable, (ii) the office at the time that the notice is filed, and (iii) to each prospective investor at least 3 days prior to the investor's commitment to purchase or payment of any consideration. The disclosure statement must contain material information about the issuer and the offering, including:

(a) The name, legal status, physical address, email and website address of the issuer.

(b) The names of the directors, officers, managers, managing members, general partners and any person occupying a similar status or performing a similar function, and the name and ownership level of each person holding more than 20 percent of issuer's equity interests.

(c) A description of the current business and anticipated business plan of the issuer.

(d) A description of the stated purpose and intended use of the proceeds of the offering.

(e) The target offering amount and the deadline to reach the target offering amount.

(f) The price to the public of the securities.

(g) A description of the ownership and capital structure of the issuer, including:

1. The terms of the securities being offered and each class of security of the issuer, including how those terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by rights of any other class of security of the issuer.

2. A description of how the exercise of the rights held by the principal equity holder of the issuer could negatively impact the purchasers of the securities being offered.

(h) A statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitation on resale contained in SEC Rule 147 or 147A.

(i) Any issuer plans, formal or informal, to offer additional securities in the future.

(j) The risks to purchasers of the securities relating to minority ownership in the issuer.

(k) A description of the financial condition of the issuer.

1. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have offering amounts of \$500,000 or less, financial statements of the issuer may be but are not required to be included.

2. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have offering amounts of more than \$500,000, but not more than \$2,500,000, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the commission by rule for such purpose.

3. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have offering amounts of more than \$2,500,000, the description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, and other requirements as the commission may establish by rule.

(k) The following statements in boldface, conspicuous type on the front page of the disclosure statement:

(1) Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(2) These securities are offered under, and will be sold in reliance upon, an exemption from the registration requirements of federal and Florida securities laws. Neither the federal government nor any agency of the State of Florida has reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these

securities involves a speculative risk, and investors should be able to bear the loss of their entire investment.

(9) The sum of all cash and other consideration received for sales of a security under this section may not exceed \$5 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Offers or sales to a person owning 20 percent or more of the outstanding equity interests of any class or classes of securities or to an officer, director, manager, managing member, general partner, or trustee, or a person occupying a similar status, do not count toward this limitation.

(10) Unless the investor is an accredited investor, the aggregate amount sold by an issuer to an investor in a 12-month period may not exceed \$10,000.

(11) A notice-filing under this section shall be summarily suspended by the office:

(a) if the payment for the filing is dishonored by the financial institution upon which the funds are drawn. For purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn; or;

(b) A notice filing under this section shall be summarily suspended by the office if the issuer made a material false statement in the issuer's notice-filing. The summary suspension shall remain in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice-filing, the office shall enter a final order revoking the notice-filing, issue a fine

as prescribed by s. 517.221(3), and issue permanent bars under s. 517.221(4) to the issuer and all owners, officers, directors, general partners and control persons, or any person occupying a similar status or performing a similar function of the issuer, including title, status as a partner, trustee, sole proprietor, or similar role, and ownership percentage.

(12) If issuer employs the services of an intermediary, the intermediary must:

(a) Take measures, as established by commission rule, to reduce the risk of fraud with respect to the offering and transactions thereunder.

(b) Provide information on its website regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The information must include but is not necessarily limited to:

1. A description of the financial institution into which investor funds will be deposited and the conditions for the use of such funds by the issuer.

2. A description of whether financial information provided by the issuer has been audited by an independent certified public accountant, as defined in s. 473.302.

(c) Obtain from each prospective investor a zip code or residence address, a copy of a driver's license, and, if requested by the issuer or intermediary, any other indicia of residency in order for the issuer or intermediary to reasonably believe that the potential investor is a resident of the state. The commission may adopt rules authorizing additional forms of identification and prescribing the process for verifying any identification presented by the prospective investor.

(d) Obtain information sufficient for the issuer to reasonably believe that a particular prospective investor is an accredited investor.

(e) Provide a monthly update for each offering, after the first full month after the date of the offering. The update must be accessible on the intermediary's website and must display the date



and amount of each sale of securities, and each cancellation of commitment to invest, in the previous calendar month.

(f) Take reasonable steps to protect personal information collected from investors, as required by s. 501.171.

(g) Prohibit its directors and officers, managing members, general partners, employees and agents from having any financial interest in the issuer using its services.

(13) An intermediary not registered as a dealer under s. 517.12(6) may not:

(a) Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not credible or that represents a potential for fraud may not be construed as an offer of investment advice or recommendation.

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

(c) Compensate employees, agents, or other persons for the solicitation of, or based on the sale of, securities offered or displayed on its website.

(d) Hold, manage, possess, or otherwise handle investor funds or securities.

(e) Compensate promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any prospective investor.

(f) Engage in any other activities set forth by commission rule.

(14) If a dealer or intermediary is not employed by the issuer for an offering under this exemption, the issuer shall undertake each of the obligations set forth in subsections (12)(c), (d), (e), and (f).

(15) Any sale made pursuant to this exemption is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by sending an email to the issuer's email address set forth in the disclosure document provided to purchasers or

purchaser's representatives or by hand delivery, courier service or other method by which written proof of delivery to the issuer of the purchaser's election to rescind the purchase is evidenced.

#### 517.0611

**[The following is a marked copy of the proposed Crowdfunding exemption, reflecting the current statute marked with proposed changes]**

(1) This section may be cited as the "Florida Intrastate Crowdfunding Exemption."

-2) Notwithstanding any other provision of this chapter, an offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section.

-3) The offer or sale of securities under this section must be conducted in accordance with the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), ~~and United States as amended,~~ Securities and Exchange Commission Rule 147, 17 C.F.R. s. 230.147, ~~adopted pursuant to the~~ as amended, or Securities Act of 1933 and Exchange Commission Rule 147A, as amended, 17 C.F.R. s. 230.147A

-4) An issuer must:

(a) Be a for-profit business entity ~~formed under the laws of the state of Florida,~~ be registered with the Secretary of State, or that maintains its principal place of business ~~in the this state,~~ and in either case derives its revenues primarily from operations in ~~the this~~ state.

(b) Conduct transactions for ~~the an~~ offering in excess of \$2,500,000 through a dealer registered with the office or an intermediary registered under s. 517.12. For offerings under \$2,500,000 the issuer may, but is not required to, use a dealer or intermediary.

(c) Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, as amended, 15 U.S.C. s. 80a-3, or subject to the

reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. s. 78m or s. 78o(d).

~~(d) Not be a company~~ an organization with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity.

~~(e) Not~~ be subject to a disqualification established by the commission or office or a disqualification described in s. 517.1611 or ~~United States~~ Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), ~~adopted pursuant to the Securities Act of 1933~~ as amended. Each director, officer, manager, managing member, general partner or person occupying a similar status or performing a similar function, or person holding more than 20 percent of the ~~shares equity interest~~ of the issuer, is subject to this requirement.

~~(f) Execute an escrow agreement with a federally insured financial institution authorized to do business in the state for the deposit of investor funds, and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than the target offering amount.~~

~~(f) Cause all funds received from investors to be deposited in an account in a federally insured financial institution authorized to do business in this state and maintain all such funds in the account until such time as either the target offering amount has been reached, the offering has been terminated, or the offering has expired. If the target amount has not been reached within the period specified by the issuer in the disclosure document provided to investors or the offering is terminated or expires, the issuer must within ten business days refund the funds to all investors.~~

~~(g) — Allow investors to cancel a commitment to invest within 3 business days before the offering deadline, as stated in the disclosure statement, and issue refunds to all investors if the target offering amount is not reached by the offering deadline.~~

(g) Use all funds in accordance with the use of proceeds represented to prospective investors.

~~(5) The~~ issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of \$200. The filing fee shall be deposited into the Regulatory Trust Fund of the office. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. A notice is effective upon receipt, by the office, of the completed form, filing fee, and an irrevocable written consent to service of civil process, similar to that provided for in [s. 517.101](#). The notice may be terminated by filing with the office a notice of termination. The notice and offering expire 12 months after filing the notice with the office and are not eligible for renewal. The notice must:

(a) Be filed with the office at least 10 days before the issuer commences an offering of securities or the offering is displayed on a website of an intermediary in reliance upon the exemption provided by this section.

(b) Indicate that the issuer is conducting an offering in reliance upon the exemption provided by this section.

(c) Contain the name and contact information, **including an email address**, of the issuer.

(d) Identify any predecessors, owners, officers, directors, **general partners, managing members,** and control persons or any person occupying a similar status or performing a similar function of

the issuer, including that person's title, ~~his or her~~ status as a partner, trustee, sole proprietor or in a similar role, and ~~his or her~~ ownership percentage.

~~(e) Identify the federally insured financial institution authorized to do business in the state,~~  
~~in into which investor funds will be deposited, in accordance with the escrow agreement.~~

~~(f) Require an attestation under oath that the issuer, its predecessors, affiliated issuers,~~  
~~directors, officers, and control persons, or any other person occupying a similar status or~~  
~~performing a similar function, are not currently and have not been within the past 10 years the~~  
~~subject of regulatory or criminal actions involving fraud or deceit.~~

~~(g) Include documentation verifying that the issuer is organized under the laws of the state and~~  
~~authorized to do business in the state.~~

~~(f) If applicable, **include** the intermediary's **email and** website address where the issuer's~~  
~~securities will be offered.~~

~~(g) State the target offering amount and the date, not to exceed 360 days from the start of the~~  
~~offering, by which the target amount must be reached in order for the offering not to be~~  
~~terminated.~~

~~(6) The issuer must amend the notice form within **10 business** days after any information~~  
~~contained in the notice becomes inaccurate for any reason. The commission may require, by rule,~~  
~~an issuer who has filed a notice under this section to file amendments with the office.~~

~~(7) The issuer may engage in general advertising and general solicitation of the offer to~~  
~~prospective investors. Any oral or written statements made in advertising or solicitation of the~~  
~~offer are subject to the enforcement provisions of this chapter in the event of **any material**~~  
~~misstatement or non-disclosure of material information. **Any general advertising or other general**~~  
~~**announcement must state that the offering is limited and open only to residents of the state of**~~

Florida. Written or oral statements made in the advertising or solicitation of the offer are subject to the enforcement provisions of sections 517.301, 517.311 and 517.312 of this chapter.

~~(8) The issuer must provide to investors and a disclosure statement to (i) the dealer or intermediary, along with a copy to if applicable, (ii) the office at the time that the notice is filed, and make available to potential investors through the dealer or intermediary, a (iii) to each prospective investor at least 3 days prior to the investor's commitment to purchase or payment of any consideration. The disclosure statement containing must contain~~ material information about the issuer and the offering, including:

~~(a) The~~ name, legal status, physical address, **email** and website address of the issuer.

~~(b) The~~ names of the directors, officers, ~~managers, managing members,~~ **general partners** and any person occupying a similar status or performing a similar function, and the name ~~and ownership level~~ of each person holding more than 20 percent of ~~the shares of the issuer issuer's equity interests.~~

~~(c) A~~ description of the business of the issuer and the anticipated business plan of the issuer.

~~(d) A~~ description of the stated purpose and intended use of the proceeds of the offering.

~~(e) The~~ target offering amount, ~~and~~ the deadline to reach the target offering amount, ~~and regular updates regarding the progress of the issuer in meeting the target offering amount.~~

~~(f) The~~ price to the public of the securities ~~or the method for determining the price. However, before the sale, each investor must receive in writing the final price and all required disclosures and have an opportunity to rescind the commitment to purchase the securities.~~

~~(g) A~~ description of the ownership and capital structure of the issuer, including:

~~-1. The~~ **terms** of the securities being offered and each class of security of the issuer, including how those terms may be modified, and a summary of the differences between such securities,

including how the rights of the securities being offered may be materially limited, diluted, or qualified by rights of any other class of security of the issuer.

~~-2.A description of how the exercise of the rights held by the principal shareholders equity holder of the issuer could negatively impact the purchasers of the securities being offered.~~

~~3.— The name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer.~~

(h) A description of the limitations imposed upon a purchaser's resale of the securities.

(i) Any issuer plans, formal or informal, to offer additional securities in the future.

~~4.— How the securities being offered are being valued, and examples of methods of how such securities may be valued by the issuer in the future, including during subsequent corporate actions.~~

(j) The risks to purchasers of the securities relating to minority ownership in the issuer,~~the risks associated with corporate action, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties.~~

(k) A description of the financial condition of the issuer.

1. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of \$500,000 or less, financial statements of the issuer may but are not required to be included.

2. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of more than \$500,000, but not more than \$2,500,000, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, using professional standards and

procedures for such review or standards and procedures established by the office, by rule, for such purpose.

**3. For** offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of more than **\$2,500,000**, the description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, and other requirements as the commission may establish by rule.

(k) **The** following **statements** in boldface, conspicuous type on the front page of the disclosure statement:

**(1) Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

(2) These securities are offered under, and will be sold in reliance upon, an exemption from the registration requirements of federal and Florida securities laws. Consequently, neither the Federal Government nor the State of Florida has reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these securities involves a speculative risk, and investors should be able to bear the loss of their entire investment.

~~(8) — The issuer shall provide to the office a copy of the escrow agreement with a financial institution authorized to conduct business in this state. All investor funds must be deposited in~~



~~the escrow account. The escrow agreement must require that all offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan, and that all investors will receive a full return of their investment commitment if that target offering amount is not raised by the date stated in the disclosure statement.~~

(9) The sum of all cash and other consideration received for sales of a security under this section may not exceed \$1.5 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Offers or sales to a person owning 20 percent or more of the outstanding shares equity interests of any class or classes of securities or to an officer, director, manager, managing member, general partner, or trustee, or a person occupying a similar status, do not count toward this limitation.

(10) Unless the investor is an accredited investor ~~as defined by Rule 501 of Regulation D, adopted pursuant to the Securities Act of 1933~~, the aggregate amount sold by an issuer to an investor in transactions exempt from registration requirements under this subsection in a 12-month period may not exceed: \$10,000.

~~(a) — The greater of \$2,000 or 5 percent of the annual income or net worth of such investor, if the annual income or the net worth of the investor is less than \$100,000.~~

~~(b) — Ten percent of the annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of \$100,000, if either the annual income or net worth of the investor is equal to or exceeds \$100,000.~~

~~(11) — The issuer shall file with the office and provide to investors free of charge an annual report of the results of operations and financial statements of the issuer within 45 days after the~~

~~end of its fiscal year, until no securities under this offering are outstanding. The annual reports must meet the following requirements:~~

~~(a) Include an analysis by management of the issuer of the business operations and the financial condition of the issuer, and disclose the compensation received by each director, executive officer, and person having an ownership interest of 20 percent or more of the issuer, including cash compensation earned since the previous report and on an annual basis, and any bonuses, stock options, other rights to receive securities of the issuer, or any affiliate of the issuer, or other compensation received.~~

~~(b) Disclose any material change to information contained in the disclosure statements which was not disclosed in a previous report.~~

(11) A notice-filing under this section shall be summarily suspended by the office:

(a) if the payment for the filing is dishonored by the financial institution upon which the funds are drawn. For purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn.; or

(b) A notice-filing under this section shall be summarily suspended by the office if the issuer made a material false statement in the issuer's notice-filing. The summary suspension shall remain in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice-filing, the office shall enter a final order revoking the notice-filing, issue a fine as prescribed by s. 517.221(3), and issue permanent bars under s. 517.221(4) to the issuer and all

owners, officers, directors, general partners and control persons, or any person occupying a similar status or performing a similar function of the issuer, including title; status as a partner, trustee, sole proprietor, or similar role; and ownership percentage.

~~(12)(a) — A notice filing under this section shall be summarily suspended by the office if the payment for the filing is dishonored by the financial institution upon which the funds are drawn. For purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn.~~

~~(b) — A notice filing under this section shall be summarily suspended by the office if the issuer made a material false statement in the issuer's notice filing. The summary suspension shall remain in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement made in the issuer's notice filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice filing, the office shall enter a final order revoking the notice filing, issue a fine as prescribed by s. 517.221(3), and issue permanent bars under s. 517.221(4) to the issuer and all owners, officers, directors, and control persons, or any person occupying a similar status or performing a similar function of the issuer, including title; status as a partner, trustee, sole proprietor, or similar role; and ownership percentage.~~

(12) If issuer employs the services of an intermediary, the intermediary must:

(a) Take measures, **as established by commission rule**, to reduce the risk of fraud with respect to transactions. including verifying that the issuer is in compliance with the requirements of this section and, if necessary, denying an issuer access to its platform if the intermediary believes it is unable to adequately assess the risk of fraud of the issuer or its potential offering. [colored portion deleted}

(b) Provide basic information on its website regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment.

The basic information must include:

~~1.— A description of the escrow agreement that the issuer has executed and the conditions for release of such funds to the issuer in accordance with the agreement and subsection (4).~~

1. A description of the financial institution into which investor funds will be deposited and the conditions for the use of such funds by the issuer.

2. A description of whether financial information provided by the issuer has been audited by an independent certified public accountant, as defined in s. 473.302.

(c) Obtain from each prospective investor a zip code or residence address, a copy of a driver's license, and, if requested by the issuer or intermediary, any other indicia of residency in order for the issuer or intermediary to reasonably believe that the potential investor is a resident of the state. The commission may adopt rules authorizing additional forms of identification and prescribing the process for verifying any identification presented by the prospective investor.

~~(e)— Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements of subsection (10).~~

(d) Obtain information sufficient for the issuer to reasonably believe that a particular prospective investor is an accredited investor.

~~(f) Direct the release of investor funds in escrow in accordance with subsection (4).~~

~~(g) Direct investors to transmit funds directly to the financial institution designated in the escrow agreement to hold the funds for the benefit of the investor.~~

(e) Provide a monthly update for each offering, after the first full month after the date of the offering. The update must be accessible on the intermediary's website and must display the date and amount of each sale of securities, and each cancellation of commitment to invest, in the previous calendar month.

~~(j) Require each investor to answer questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers, and an understanding of the risk of illiquidity.~~

(f) Take reasonable steps to protect personal information collected from investors, as required by s. 501.171.

(g) Prohibit its directors and officers, managers, managing members, general partners, employees and agents [control person?] from having any financial interest in the issuer using its services.

~~(m) Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; comply with the anti-money laundering requirements of 31 C.F.R. chapter X applicable to registered brokers; and comply with the privacy requirements of 17 C.F.R. part 248 relating to brokers.~~

(13) An intermediary not registered as a dealer under s. 517.12(6) may not:

(a) Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not credible or that represents a potential for fraud may not be construed as an offer of investment advice or recommendation.

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

(c) Compensate employees, agents, or other persons for the solicitation of, or based on the sale of, securities offered or displayed on its website.

(d) Hold, manage, possess, or otherwise handle investor funds or securities.

(e) Compensate promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any ~~potential~~ prospective investor.

(f) Engage in any other activities set forth by commission rule.

~~(15) — All funds received from investors must be directed to the financial institution designated in the escrow agreement to hold the funds and must be used in accordance with representations made to investors by the intermediary. If an investor cancels a commitment to invest, the intermediary must direct the financial institution designated to hold the funds to promptly refund the funds of the investor.~~

~~(14) If a dealer or intermediary is not employed by the issuer for an offering under this exemption, the issuer shall undertake each of the obligations set forth in subsections (12)(c), (d), (e), and (f).~~

~~(15) Any sale made pursuant to this exemption is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by sending an email to the issuer's email address set forth in the disclosure document provided to purchasers or purchaser's representatives or by hand delivery, courier service or other method by which written proof of delivery to the issuer of the purchaser's election to rescind the purchase is evidenced.~~

## **517.0612 THE FLORIDA INVEST LOCAL EXEMPTION [NEW EXEMPTION]**

*The Task Force proposes a “micro-offering” exemption. The exemption is limited in the maximum amount that can be raised but is considered an important fund-raising tool for small and start-up businesses that are not able to meet the more substantial requirements of crowdfunding or other exemptions. However, the exemption includes substantial investor protection provisions, including a disclosure document, target amount requirement, depositing of funds until the target has been reached, and a 3-day voidability right. The initial model for the exemption is the Georgia “Invest Georgia” exemption, which has been successful in generating small business financing. However, the Georgia maximum of \$5 million was considered too high and does not contain certain investor protection provisions that we have proposed. The following additional points are noted:*

- 1. The proposed amount of \$500,000 is 1/10<sup>th</sup> of the proposed crowdfunding maximum. In today’s economy, \$500,000 is not a large sum for start-ups and young companies, especially since the exemption aggregates sales within the past 12 months. The proposal does not include any automatic adjustment based on cost-of-living or other economic factors. The Task Force concluded that, given the new nature of this exemption, any subsequent adjustment to the monetary limit should be made by statutory amendment or through rule-making authority if available.*
- 2. No nonaccredited investor can invest more than \$10,000. This is the same limit that applies to the crowdfunding exemption.*

3. *The general advertising and solicitation provision subjects those disclosures to the anti-fraud statutory provisions.*
4. *There is a fixed time frame of 180 days in which to raise the target amount.*
5. *A minimum target amount must be established, but because of the wide variety of potential offerings, and the mandated disclosure of the use of proceeds, there is no required minimum amount or percentage.*
6. *The concept of “single purchaser” is defined to protect against abuse of the maximum individual investment.*
7. *A disclosure document with specifically enumerated disclosure items is required.*
8. *The disclosure document must be filed with the commission at the time of the notice.*
9. *The disclosure document must state that it has not been reviewed or approved by any federal or state agency.*
10. *No filing fee is required.*

*Because of the length and complexity of this exemption, it was determined to set it in a separate section following the crowdfunding exemption.*

**517.0612:** (1) This section may be cited as the “Florida Invest Local Exemption.”

(2) The offer or sale of a security by the issuer is exempt from registration under s. 517.07 if conducted in accordance with each of the following requirements:

(a) The issuer shall be a for-profit business entity registered with the Florida Department of State with its principal place of business in this state. The issuer cannot be, either before or as a result of the offering:

(i) An investment company as defined in the Investment Company Act of 1940, as amended;



(ii) Subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended;

(iii) An organization with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity, or

(iv) Subject to a disqualification pursuant to s. 517.0616.

(b) The transaction shall meet the requirements of the federal exemption for intrastate offerings in any of Section 3(a)(11) of the Securities Act of 1933, Rule 147 thereunder, or Rule 147A thereunder, as such provisions may be amended.

(c) The sum of all cash and other consideration received for all sales of the security in reliance upon this exemption shall not exceed \$500,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption.

(d) The issuer shall not accept more than \$10,000 from any single purchaser unless the issuer (1) reasonably believes that the purchaser is an accredited investor, (2) the purchaser is an officer, director, partner, or trustee of an individual occupying a similar status or performing similar functions of the issuer, or (3) the purchaser is an owner of 10% or more of the issuer's outstanding equity. For purposes of this section, (i) any relative, spouse, child or family relative who has the same primary residence of the purchaser shall collectively be treated as a single purchaser or (ii) any business entity of which the purchaser and any person related to the

purchaser under subsection (i) collectively owns more than 50% of the equity interest shall collectively be treated as a single purchaser.

(e) The issuer may engage in general advertising and general solicitation of the offering. Any general advertising or other general announcement must state that the offer is limited and open only to residents of the state of Florida. Written or oral statements made in the advertising or solicitation of the offer are subject to the enforcement provisions of this chapter.

(f) A purchaser shall receive, at least 3 business days prior to any binding commitment to purchase or consideration paid, a disclosure document which sets forth material information of the issuer, including but not limited to the following:

(i) Issuer's name, form of entity and contact information.

(ii) The name and contact information of each director, officer or other manager of the issuer.

(iii) A description of the issuer's business.

(iv) A description of the security being offered.

(v) The total amount of the offering.

(vi) The intended use of proceeds from the sale of the securities.

(vii) The target amount of the offering.

(viii) A statement that if the target amount is not obtained in cash or the value of other tangible consideration received within a date that is no more than 180 days after the commencement of

the offering, the offering will be terminated, and any funds or other consideration received from purchasers shall be promptly returned.

(x) A statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitation on resale contained in SEC Rule 147 or 147A.

(xi) The names and addresses of all persons who will be involved in the offer and sale of securities on behalf of the issuer.

(xii) The bank or other depository institution into which investor funds will be deposited.

(xiii) A statement in boldface type that “Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.”

(g) All funds received from investors shall be deposited into a bank or depository institution authorized to do business in this state. The issuer cannot withdraw any amount of the offering proceeds unless and until the target amount has been received.

(h) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, no less than 5 business days before the offering commences, along with the disclosure document described in subsection (f). The issuer must, within 3 business days, file an amended notice if there are any material changes to the information previously submitted.

(3) An individual, entity, or entity employee who acts as an agent for the issuer in the offer or sale of securities under this exemption and is not registered as a dealer or intermediary under this chapter shall not:

(a) receive compensation based upon the solicitation of purchases, sales, or offers to purchase the securities, or

(b) take custody of investor funds or securities.

(4) Any sale, made pursuant to this exemption, is voidable by the purchaser, within 3 days after the first tender of consideration is made by such purchaser to the issuer, by notifying the issuer that the purchaser expressly voids the purchase by sending an email to the issuer's email address set forth in the disclosure document provided to purchasers or purchaser's representatives or by certified mail or overnight delivery service with proof of delivery to the mailing address set forth in such disclosure document.

#### **517.0613 Failure to Comply**

*We propose to add this provision, which is analogous to a similar statement in SEC Rule 500 in Regulation D, to make it clear that an issuer who attempts but fails to comply with a particular exemption is not precluded from asserting that another exemption is nevertheless available. The "scheme to evade" provision has been added in subsection (b) to cover the unusual situation in*

*which an issuer technically complies with the statute but is using the statute in an abusive manner not consistent with its purpose.*

**517.0613:** (a) Failure to comply with any exemption from registration does not preclude the issuer from claiming the availability of any other applicable state or federal exemption.

(b) Sections 517.061, 517.0611 and 517.0612 are not available to any issuer for any transaction or chain of transactions that, although in technical compliance with the applicable provisions, is part of a plan or scheme to evade the registration provisions of section 517.07. In such cases, registration under section 517.07 is required.

#### **517.0614 Integration Provision**

*Because of the addition of several new registration exemptions, it is necessary to create an integration provision with respect to such offers and sales. The proposed provision follows SEC Rule 152, which is the SEC's integration provision, modified to create a 45-day safe harbor for offers that prohibit general solicitation. Integration only applies to those offers and sales that involve issuers raising capital, as set forth in subsection (b)(2).*

**517.0614:** (a) If the safe harbors in paragraph (b) of this section do not apply, in determining whether two or more offerings are to be treated as one for the purpose of registration or qualifying for an exemption from registration under this chapter, offers and sales will not be integrated if, based on the particular facts and circumstances, the issuer can establish that each offering either complies with the registration requirements of this chapter, or that an exemption from registration is available for the particular offering, provided that, any transaction or series of transactions that, although in technical compliance with this chapter, is part of a plan or

scheme to evade the registration requirements of this chapter will not have the effect of avoiding integration. In making this determination:

(1) For an exempt offering prohibiting general solicitation, the issuer must have a reasonable belief, based on the facts and circumstances, with respect to each purchaser in the exempt offering prohibiting general solicitation, that the issuer or any person acting on the issuer's behalf either:

(i) Did not solicit such purchaser through the use of general solicitation; or

(ii) Established a substantive relationship with such purchaser prior to the commencement of the exempt offering prohibiting general solicitation; provided that, a purchaser previously solicited through the use of general solicitation shall not be deemed to have been solicited through the use of general solicitation in the current offering if during the 45 calendar days following such previous general solicitation:

(a) no offer or sale of the same or similar class of securities shall have been made by or on behalf of the issuer, including to such purchaser, and

(b) the issuer or any person acting on the issuer's behalf shall not have solicited such purchaser through the use of general solicitation for any other security.

(2) For two or more concurrent exempt offerings permitting general solicitation, in addition to satisfying the requirements of the particular exemption relied on, general solicitation offering materials for one offering that includes information about the material terms of a concurrent offering under another exemption may constitute an offer of securities in such other offering, and

therefore the offer must comply with all the requirements for, and restrictions on, offers under the exemption being relied on for such other offering, including any legend requirements and communications restrictions.

(b) No integration analysis under paragraph (a) of this section is required, if any of the following non-exclusive safe harbors apply:

(1) Any offering commenced more than 30 calendar days before the commencement of any other offering, or more than 30 calendar days after the termination or completion of any other offering, will not be integrated with such other offering, provided that for an exempt offering for which general solicitation is not permitted that follows by 30 calendar days or more an offering that allows general solicitation, the provisions of (a)(1) shall apply.

(2) Offers and sales made in compliance with any of the provisions of s. 517.051 or 517.061, except 517.061(9),(10) and (11) and 517.0611 and 517.0612, will not be subject to integration with other offerings:

#### **517.0615 Demo Day Presentations and Testing the Waters**

*The Task Force proposes two new provisions that allow issuers to engage in solicitation of potential investors under specific limited conditions. Subsection (a) adopts SEC Rule 148 that provides for issuer presentation at a specified form of “demo-day” meeting sponsored by one of the specified organizations. Subsection (b), which generally follows a provision analogous to federal Regulation A, allows an issuer to “test the waters” in advance of making any offering in order to determine whether the time, energy and expense of a possible offering would be worthwhile. Both of these proposals allow a potential issuer to evaluate the viability of the*

*offering and therefore possibly avoid unnecessary time and expense. All communications under these proposals are subject to the antifraud provisions of Ch. 517.*

**517.0615 (a)** A communication will not be deemed to constitute general solicitation or general advertising if made in connection with a seminar or meeting in which more than one issuer participates that is sponsored by a college, university, or other institution of higher education, State or local government or instrumentality thereof, a nonprofit Chamber of Commerce or other nonprofit organization, or angel investor group, incubator, or accelerator, provided that:

**(1)** No advertising for the seminar or meeting references a specific offering of securities by the issuer;

**(2)** The sponsor of the seminar or meeting does not:

**(i)** Make investment recommendations or provide investment advice to attendees of the event;

**(ii)** Engage in any investment negotiations between the issuer and investors attending the event;

**(iii)** Charge attendees of the event any fees, other than reasonable administrative fees;

**(iv)** Receive any compensation for making introductions between event attendees and issuers or for investment negotiations between such parties; and

**(v)** Receive any compensation with respect to the event that would require registration of the sponsor as a broker or a dealer under this chapter or under Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*). The sponsorship or participation in such a seminar or meeting does not by itself require registration under this chapter.

**(3)** The type of information regarding an offering of securities by the issuer that is communicated or distributed by or on behalf of the issuer in connection with the event is limited to a notification that the issuer is in the process of offering or planning to offer securities, the type and amount of securities being offered, the intended use of proceeds of the offering, and the unsubscribed amount in an offering; and



**(4)** If the event allows attendees to participate virtually, rather than in person, online participation in the event is limited to:

**(i)** Individuals who are members of, or otherwise associated with the sponsor organization;

**(ii)** Individuals that the sponsor reasonably believes are accredited investors; or

**(iii)** Individuals who have been invited to the event by the sponsor based on industry or investment-related experience reasonably selected by the sponsor in good faith and disclosed in the public communications about the event.

**(b)** Before any offers or sales are made in connection with any offering, a communication by an issuer or any person authorized to act on behalf of an issuer will not be deemed to constitute general solicitation or general advertising if the communication is solely for the purpose of determining whether there is any interest in a contemplated securities offering. Written or oral statements made in the course of such communication are subject to the enforcement provisions of this chapter. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person is permitted.

**(1)** The communications must:

**(i)** State that no money or other consideration is being solicited, and if sent in response, will not be accepted;

**(ii)** State that no offer to buy the securities can be accepted and no part of the purchase price can be received, and

**(iii)** State that a person's indication of interest involves no obligation or commitment of any kind.

**(2)** Any written communication under this rule may include a means by which a person may indicate to the issuer that such person is interested in a potential offering. This issuer may require the name, address, telephone number, and/or email address in any response form included pursuant to this paragraph (c).

**(3)** Communications in accordance with this section will not be subject to Fl. Stat. s. 501 ff. regarding telephone solicitations.

### **517.0616 Disqualification**

*This proposed “worthy issuer” provision is analogous to federal exemption provisions.*

**517.0616:** No registration exemption under s. 517.061(9), (10) and (11), s. 517.0611 or 517.0612 is available to an issuer that would be disqualified under Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), as amended, at the time the issuer makes an offer for the sale of a security.

### **517.081 Registration Procedures and Requirements**

*The Task Force reviewed the registration requirements applicable to securities offerings. In the two-tier securities regulatory system, federal law preempts state securities offering registration requirements for certain categories of federal securities offerings. The Task Force examined whether chapter 517’s registration requirements are consistent with federal law. In addition, we examined Florida’s registration provisions for purposes of modernization, clarity, and efficiency. The subgroup compared our registration provisions to the Uniform Securities Act and to a number of state blue sky laws.*

*We also examined several fundamental regulatory questions, i.e. (a) whether Florida should change its registration review standard from merit to disclosure review, or some combination thereof, (b) whether Florida should join other states in a coordinated multi-state merit review process for filed registration statements, and (c) whether Florida should impose a notice filing requirement upon certain offerings that are exempt from registration under federal law and preempt state law registration. We concluded that each of these issues requires more data from other states as to standards and outcomes, as well as issues of administrative burdens and*

*potential costs. We anticipate further study of these issues to determine whether future legislative proposals would be appropriate.*

*With regard to registration procedures, we recommend a consolidation of the subsections in s. 517.081 that refer to rulemaking authority, placing them in one subsection. Section 517.081 currently has three locations where rulemaking authority is provided. Our proposal consolidates these authorities in subsection (5), where they will enable easier reading of the statute. In doing so, we propose amending current subsection (7) by separating the commission's rulemaking authority from the authority of the office to grant a registration application.*

*The current rulemaking provision allows for the adoption of simplified offering circulars. The simplified offering circular is synonymous with a SCOR offering. The Office of Financial Regulation's SCOR form has been based on the Regulation A Form 1-A registration form. Regulation A does not require audited financial statements for Tier I offerings, which is the tier applicable to SCOR offerings. Currently s. 517.081(3)(g)2.f. requires the issuer to prepare an annual report as a predicate to being able to use the simplified offering circular, to submit annual reports to the office for a five-year period after registration and to include audited financial statements if the issuer has more than 100 shareholders. Such requirements are inconsistent with securities registration under chapter 517, which does not require an annual report or audited financial statements and does not contemplate renewal of such registration. Accordingly, we have proposed elimination of the 5-year annual report and audited financials requirement. Other financial reporting requirements are retained.*

*We have also proposed elimination of the prohibition against a person using the simplified registration form for the resale of securities. This will allow non-control persons to resell*

*securities through a Florida-based registration process, provided such sales are also in accordance with Rule 144 under the Securities Act of 1933, as amended. Control persons are not eligible to resell securities using the simplified registration process as there is no Florida securities exemption available to control person resales.*

### **517.081 Registration Procedures**

(1) All securities required by this chapter to be registered before being sold in this state and not entitled to registration by notification shall be registered in the manner provided by this section.

(2) The office shall receive and act upon applications to have securities registered. Applications shall be duly signed by the applicant, sworn to by any person having knowledge of the facts, and filed with the office. An application may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within the state.

(3) The office may require the applicant to submit to the office the following information concerning the issuer and such other relevant information as the office may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(a) The names and addresses of:

1. All the directors, trustees, and officers, if the issuer is a corporation, association, or trust.
2. All the managers or managing members, if the issuer is a limited liability company.
3. All the partners, if the issuer is a partnership.

4. The issuer, if the issuer is a sole proprietorship or natural person.

(b) The location of the issuer's principal business office and of its principal office in this state, if any.

(c) The general character of the business actually to be transacted by the issuer and the purposes of the proposed issue.

(d) A statement of the capitalization of the issuer.

(e) A balance sheet showing the amount and general character of its assets and liabilities on a day not more than 90 days prior to the date of filing such balance sheet or such longer period of time, not exceeding 6 months, as the office may permit at the written request of the issuer on a showing of good cause therefor.

(f) A detailed statement of the plan upon which the issuer proposes to transact business.

(g) A specimen copy of the securities certificate, if applicable, and a copy of any circular, prospectus, advertisement, or other description of such securities.

(h) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.

(i) A statement of the issuer's cash sources and application during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.

(j) A statement showing the maximum price at which such security is proposed to be sold, together with the maximum amount of commission, including expenses, or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.

(k) A copy of the opinion or opinions of counsel concerning the legality of the issue or other matters which the office may determine to be relevant to the issue.

(l) A detailed statement showing the items of cash, property, services, patents, good will, and any other consideration in payment for which such securities have been or are to be issued.

(m) The amount of securities to be set aside and disposed of and a statement of all securities issued from time to time for promotional purposes.

(n) If the issuer is a corporation, there shall be filed with the application a copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file in the office. If the issuer is a limited liability company, there shall be filed with the application a copy of the articles of organization with all the amendments and a copy of the company's operating agreement as may be amended, if not already on file with the office. If the issuer is a trustee, there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the office.

(4) All of the statements, exhibits, and documents of every kind required under this section, except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in such manner and form as may be required by the commission.

(5) (a) The commission may prescribe forms on which it may require applications for the registration of securities to be submitted to the office.

(b) The commission may by rule establish requirements and standards for the filing, content, and circulation of a preliminary, final, or amended prospectus and other sales literature and may by rule establish criteria relating to the issuance of equity securities, debt securities, insurance company securities, real estate investment trusts, and other traditional and nontraditional investments including, but not limited to, oil and gas investments. The criteria may include such elements as the promoter's equity investment ratio, the financial condition of the issuer, the voting rights of shareholders, the grant of options or warrants to underwriters and others, loans and other affiliated transaction, the use or refund of proceeds of the offering, and such other relevant criteria as the commission in its judgment may deem necessary.

(c) The commission may by rule fix the maximum discounts, commissions, expenses, remuneration, and other compensation to be paid in cash or otherwise, not to exceed 20 percent, directly or indirectly, for or in connection with the sale or offering for sale of such securities in this state.

(d) The commission shall adopt a form for a simplified offering circular to register, under this section, securities that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities

Act of 1933, as amended. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:

1. An issuer that is subject to any of the disqualifications described in 17 C.F.R. s. 230.262, adopted pursuant to the Securities Act of 1933, as amended, or that has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this subparagraph, an issuer includes an issuer's director, officer, general partner, manager or managing member, trustee, or equity owner who owns at least 10 percent of the ownership interests of the issuer, promoter, or selling agent of the securities to be offered or any officer, director, partner, or manager or managing member of such selling agent.

2. An issuer that is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified company or companies.

3. An issuer of offerings in which the specific business or properties cannot be described.

4. An issuer the office determines is ineligible because the form does not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

(e) The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section.

(6) An issuer filing an application under this section shall, at the time of filing, pay the office a nonreturnable fee of \$1,000 per application for each offering that equals or exceeds the amount



provided in s. 3(b) of the Securities Act of 1933, as amended, or \$200 per application for each offering that does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

(7)(a) The Office shall record the registration a security in the register of securities if, upon examination of any application the office finds that:

1. the application is complete;
2. the fee in subsection (6) has been paid;
3. the sale of the security would not be fraudulent and would not work or tend to work a fraud upon the purchaser;
4. the terms of the sale of such securities would be fair, just, and equitable; and
5. the enterprise or business of the issuer is not based upon unsound business principles.

(b) Upon registration, such security may be sold by the issuer or any registered dealer, subject, however, to the further order of the office.

(8) The office shall deem an application to register securities filed with the office abandoned if the issuer or any person acting on behalf of the issuer has failed to timely complete an application specified by commission rule.

### **517.101 Consent to service**

*Section 517.101 is revised solely to modernize language and improve its readability.*

**517.101** Consent to service.—

(1) Upon any initial application for registration under s. 517.081 or s. 517.082, or upon request of the office, the issuer shall file with such application the irrevocable written consent of the issuer that in suits, proceedings, and actions growing out of the violation of any provision of this chapter, the service on the office of a notice, process, or pleading therein, authorized by the laws of this state, shall be as valid and binding as if due service had been made on the issuer.

(2) Any such action shall be brought either in the county of the plaintiff's residence or in the county in which the office has its official headquarters. The written consent shall be authenticated by the seal of said issuer, if it has a seal, and by the acknowledged signature of a director, manager, general partner, trustee, or officer of the issuer, and shall be accompanied by a duly certified copy of the resolution of the board of directors, managers or trustees of the issuer, or of the general partner, authorizing the signor to execute the consent. In case any process or pleadings mentioned in this chapter are served upon the office, it shall be by duplicate copies, one of which shall be filed in the office and another immediately forwarded by the office by registered mail to the principal office of the issuer against which said process or pleadings are directed.

#### **517.12: Discussion Regarding Investment Adviser Registration Requirement and Possible Registration Requirement for Finders**

*With regard to Section 517.12, the Task Force examined two principal issues:*

*(1) Should the investment adviser definition in 517.021(14) be changed to (a) reduce the threshold number of clients an adviser may have before registration under 517.12 is*

*required, and (b) exempt government entities and their employees from the definition, and*

*(2) Should the dealer definition in 517.021 be amended to include a new license tier of a dealer commonly known as a “finder”?*

*The “finder” question is both controversial and tied into an ongoing study of this issue by the Securities and Exchange Commission. It was determined that further study of the possibility of registering “finders” is necessary. Consequently, no recommendation is being made regarding the possible registration of finders.*

*Thus, our proposal addresses only the investment adviser issue.*

*The definition of an “investment adviser” is contained in s. 517.021(14)(a). Florida currently requires investment adviser registration for advisers who do not hold themselves out to the general public as investment advisers and who have no more than 15 clients in Florida in the past 12 months. Certain exclusions from the definition are contained in s. 517.021(14)(b). We compared the definition and the exceptions to comparable text in the Uniform Securities Act and the Investment Advisers Act of 1940, as amended, and to the investment adviser definitions from other states. We also gathered data from all states on the threshold number of clients an adviser may have before triggering a requirement to register as an adviser.*

*Section 222(d) of the Investment Advisers Act of 1940, as amended, sets the de minimis federal registration exemption for investment advisers who do not have a place of business in a state and who have not had six or more clients who are residents of that state in the past 12 months.*

*Florida is one of three states (including California and North Carolina) that have a “15 or less”*

*exemption. Five states (Georgia, New Jersey, New York, Pennsylvania and Tennessee) have a “no more than 6” exemption, and all other states require registration if an adviser has a place of business in their state regardless of how many clients the adviser has.*

*We are proposing to adopt the “no more than 6” client threshold and maintain the requirement that the clients be counted only if they are “in this state.” Reducing the threshold number of clients from 15 to 6 will increase the number of advisers that are required to register, which we believe is appropriate for investor protection purposes. By pairing the threshold with the federal de minimis standard, we believe that a longstanding compliance dilemma for out of state advisers, in particular, will be resolved.*

*A definition of “client” is also created for clarification purposes, borrowed directly from SEC Rule s. 275.222-2. An exception to the definition of “client,” modeled after California Corporations Code s. 25202 and North Carolina General Statutes s. 78C-16, is included to avoid counting certain institutional clients as clients when counting the number of clients before investment adviser registration is required. Current subparagraph 517.021(14)(b)(8) is proposed to be stricken as its substantive content is encompassed by the rewrite to subparagraph 7.*

*In addition, the proposal includes an exception from registration for government entities and their employees. This concept is derived from section 202(b) of the Investment Advisers Act of 1940, as amended, and should be enacted to exclude these same entities and persons from regulation by the state.*

***[Add Section 517.12, as proposed to be amended?]***

## **Enforcement and Remedy Provisions**

### **S. 517.131 and 141: The Securities Guaranty Fund**

*There has been an historic lack of claimants seeking recovery from the fund due to its narrow eligibility provisions and lengthy required waiting period before recovery could be attained. Approximately one or two individuals make claims from the fund each year. The consensus was to reorganize Sections 131 and 141 to clearly set forth requirements for eligibility to recover under the Securities Guaranty Fund as well as the process for making claims, approving claims, and payment of claims. Additionally, the eligibility requirements are proposed to be modified to specify that a person must have been a Florida resident or domiciled in Florida at the time of violation and to broaden the categories of recovery to not only unpaid judgments, but also court confirmed arbitration awards and restitution awards under section 517.191(3) where such award of monetary damages or restitution resulted from a violation of section 517.301 or 517.07 and where such award of monetary damages or restitution is unsatisfied by any person, regardless of whether they were registered under chapter 517 at the time of the violation (currently limited to registered persons). Persons who participate, assist, attempt to commit or commit, or profit from a violation of chapter 517 are ineligible for payment from the fund.*

*Based on discussions about the process for filing claims for payment from the fund, the consensus was that a person seeking payment from the fund would file an application with the Office and the Office would determine whether the person was eligible and the amount of any payment to be made. Provisions were added to give the Office authority to adopt an application form by rule and to require that the Office make its determination of whether a person is eligible and whether payment should be made within 90 days of receiving a complete application. The*

*Office must submit authorization to disburse payment from the fund within 30 days of the approval of an eligible person for payment from the fund. The amount of recovery an eligible person may receive is proposed to be increased from the lesser of \$10,000 or the amount of the unpaid judgment to the lesser of \$15,000 (\$25,000 for specified elderly or incapacitated adults) or the amount of the unpaid judgment, arbitration award, or order of restitution.*

*The two year waiting period currently in section 517.141(3) has also been amended. The current statute requires that an applicant file a claim with the office and then wait a minimum of two years before a payment determination can be made. This makes the current process too lengthy. This eliminates the mandatory waiting period and instead requires that an eligible person file an application with the Office for payment from the fund within one year from the date of the final judgment, arbitration award, or restitution order, including any appeal.*

*Finally, a provision has been added that requires a claimant who knowingly and willfully files or causes to be filed an application under section 517.131 or documents supporting the application, any of which contain false, incomplete, or misleading information, to forfeit all payments from the fund and deem such act a violation of section 517.301.*

### **517.131 Securities Guaranty Fund (clean version)**

(1)(a) The Chief Financial Officer shall establish a Securities Guaranty Fund to provide monetary relief to victims of securities violations under this chapter who are entitled to monetary damages or restitution and are unable to recover the full amount of such monetary damages or restitution from the wrongdoer. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) for dealers and investment advisers or s. 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues

received as assessment fees pursuant to s. 517.12(9) and (10) for associated persons shall be part of the regular registration fee and shall be transferred to or deposited in the Securities Guaranty Fund.

(b) If the Securities Guaranty Fund's available balance at any time exceeds \$1.5 million, transfer of assessment fees to this Securities Guaranty Fund shall be discontinued at the end of that registration year, and transfer of such assessment fees shall not be resumed unless the Securities Guaranty Fund is reduced below \$1 million by disbursement made in accordance with s. 517.141.

(2) For purposes of this section and s. 517.141, "final judgment" shall include an arbitration award confirmed by a court of competent jurisdiction.

(3) A person is eligible for payment from the Securities Guaranty Fund if such person:

(a) 1. Holds an unsatisfied final judgment in which a wrongdoer was found to have violated ss. 517.07 or 517.301;

2. Has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court or arbitrator; and

3. Is a natural person who was a resident of Florida or is a business entity that was domiciled in Florida at the time of the violation of any section referred to in subparagraph (a)1.; or

(b) Is a receiver, appointed pursuant to s. 517.191(2) by a court of competent jurisdiction for a wrongdoer ordered to pay restitution pursuant to s. 517.191(3) as a result of a violation of ss. 517.07 or 517.301, that has requested payment from the Securities Guaranty Fund on behalf of a person eligible for payment under paragraph (3)(a) of this section.

(4) Notwithstanding subsection (3), a person is not eligible for payment from the Securities Guaranty Fund if such person:

- (a) Participated or assisted in a violation of this chapter; or
- (b) Attempted to commit or committed a violation of this chapter; or
- (c) Profited from a violation of this chapter.

(5) An eligible person or a receiver, on behalf of an eligible person or persons, seeking payment from the Securities Guaranty Fund must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule procedures for filing documents by electronic means provided such procedures provide the office with the information and data required by this section. The application shall be filed with the office within one year of the date of the final judgment or restitution order, or any appellate decision thereon and shall contain such information as the commission or office may require concerning such matters as:

- (a) The eligible person's full name, address, and contact information;
- (b) The receiver's full name, address, and contact information, if any;
- (c) The person ordered to pay restitution;
- (d) The eligible person's form and place of organization, if the eligible person is a business entity; and a copy of its articles of incorporation, its articles of organization with amendments, trust agreement, or its partnership agreement.
- (e) Any final judgment and a copy thereof;
- (f) Any restitution ordered pursuant to s. 517.191(3), and a copy thereof;



(g) An affidavit stating that the eligible person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the final judgment, and by the eligible person's search the eligible person has discovered no property or assets; or the eligible person has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the final judgment but the amount thereby realized was insufficient to satisfy the final judgment;

(h) An affidavit from the receiver stating the amount of restitution owed to the eligible person(s) on whose behalf the claim is filed, the amount, if any, of any money, property, or assets paid to the eligible person(s) on whose behalf the claim is filed by the person over whom the receiver is appointed, and the amount of any unsatisfied portion of any eligible person's order of restitution.

(i) The eligible person's residence or domicile at the time of the violation of ss. 517.07 or 517.301 which resulted in eligible person's monetary damages or order of restitution;

(j) The amount of any unsatisfied portion of the eligible person's final judgment;

(k) Whether an appeal or motion to vacate an arbitration award has been filed.

(6) If the office finds that a person is eligible for payment from the Securities Guaranty Fund and has complied with the provisions of this section and rules promulgated thereunder, it shall approve such person for payment from the Securities Guaranty Fund. Each eligible person or receiver within 90 days of the Office's receipt of a complete application shall be given written notice, personally or by mail, that the office intends to approve or deny, or has approved or denied, the application for payment from the Securities Guaranty Fund.

(7) Upon receipt by the eligible person or receiver of notice of the Office's decision that the eligible person's or receiver's application for payment from the Securities Guaranty Fund is approved and prior to any disbursement, the eligible person shall assign all right, title, and interest in the final judgment or order of restitution to the extent of such payment, to the office on a form prescribed by commission rule.

(8) The office shall deem an application for payment from the Securities Guaranty Fund abandoned if the eligible person or receiver, or any person acting on behalf of the eligible person or receiver, fails to timely complete the application as prescribed by commission rule. The time period to complete an application shall be tolled during the pendency of an appeal or motion to vacate an arbitration award.

**517.141 Payment from the fund (clean version)**

(1) For purposes of this section, a "claimant" is an eligible person under s. 517.131 who is approved by the office for payment from the Securities Guaranty Fund.

(2) A claimant is entitled to disbursement in the amount equal to the lesser of the unsatisfied portion of the claimant's final judgment or order of restitution but only to the extent the final judgment reflects actual or compensatory damages, excluding postjudgment interest, costs, and attorney's fees; or either

(a) \$15,000; or

(b) \$25,000 if the claimant is a specified adult as defined in s. 517.34(1)(b), or the specified adult is a beneficial owner or beneficiary of a claimant.

(3) Regardless of the number of claims or claimants involved, payments for claims shall be limited in the aggregate to \$250,000 against any one person. If the total claim filed by a receiver

on behalf of claimants exceeds the aggregate limit of \$250,000, the office shall prorate the payment to each claimant based upon the ratio that each claimant's individual claim bears to the total claim filed.

(4) If, at any time, the money in the Securities Guaranty Fund is insufficient to satisfy any valid claim or portion of a valid claim approved by the office, the office shall satisfy such unpaid claim or portion of such valid claim as soon as a sufficient amount of money has been deposited in or transferred to the Securities Guaranty Fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by final order of the office, which order is not subject to an appeal or other pending proceeding.

(5) All payments and disbursements made from the Securities Guaranty Fund shall be made by the Chief Financial Officer upon authorization by the office, or designee. The office shall submit such authorization within 30 days of the approval of an eligible person for payment from the Securities Guaranty Fund.

(6) Individual claims filed by persons owning the same joint account, or claims arising from any other type of account on which more than one name appears, shall be treated as the claims of one eligible claimant with respect to payment from the Securities Guaranty Fund. If a claimant who has obtained a final judgment or order of restitution which qualifies for disbursement under s. 517.131 has maintained more than one account with the person who is the subject of the claims, for purposes of disbursement of the Securities Guaranty Fund, all such accounts, whether joint or individual, shall be considered as one account and shall entitle such claimant to only one distribution from the fund. To the extent that a claimant obtains more than one final judgment or order of restitution against a person arising out of the same transactions, occurrences, or conduct or out of such person's handling of the claimant's account, such final judgments or orders of

restitution shall be consolidated for purposes of this section and shall entitle the claimant to only one disbursement from the fund.

(7) If the final judgment or final order of restitution that gave rise to the claim is overturned in any appeal or in any collateral proceeding, the claimant shall reimburse the Securities Guaranty Fund all amounts paid from the Securities Guaranty Fund to the claimant on the claim. If the claimant satisfies the final judgment or order of restitution, the claimant shall reimburse the Securities Guaranty Fund all amounts paid from the Securities Guaranty Fund to the claimant on the claim. Such reimbursement shall be paid to the office within 60 days after the final resolution of the appellate or collateral proceedings or the satisfaction of the final judgment or order of restitution, with the 60-day period commencing on the date the final order or decision is entered in such proceedings.

(8) If a claimant receives payments in excess of that which is permitted under this chapter, the claimant shall reimburse the Securities Guaranty Fund such excess within 60 days after the claimant receives such excess payment or after the payment is determined to be in excess of that permitted by law, whichever is later.

(9) A claimant who knowingly and willfully files or causes to be filed an application under s. 517.131 or documents supporting the application any of which contain false, incomplete, or misleading information in any material aspect shall forfeit all payments from the Securities Guaranty Fund and such act shall be a violation of s. 517.301(c).

(10) The office may institute legal proceedings to enforce compliance with this section and with s. 517.131 to recover moneys owed to the Securities Guaranty Fund, and shall be entitled to

recover interest, costs, and attorney's fees in any action brought pursuant to this section in which the office prevails.

Red-lined versions of Proposed Sections 527.131 and 517.141

**517.131 — Securities Guaranty Fund.—**

(1)(a) The Chief Financial Officer shall establish a Securities Guaranty Fund. to provide monetary relief to victims of securities violations under this chapter who are entitled to monetary damages or restitution and are unable to recover the full amount of such monetary damages or restitution from the wrongdoer. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. ~~517.12(10) and (11)~~ 517.12(9) and (10) for dealers and investment advisers or s. ~~517.1201~~ 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. ~~517.12(10) and (11)~~ 517.12(9) and (10) for associated persons shall be part of the regular licenseregistration fee and shall be transferred to or deposited in the Securities Guaranty Fund.

(b) If the ~~fund~~ Securities Guaranty Fund's available balance at any time exceeds \$1.5 million, transfer of assessment fees to this ~~fund~~ Securities Guaranty Fund shall be discontinued at the end of that licenseregistration year, and transfer of such assessment fees shall not be resumed unless the ~~fund~~ Securities Guaranty Fund is reduced below \$1 million by disbursement made in accordance with s. ~~517.141~~ 517.141.

~~(2) The Securities Guaranty Fund shall be disbursed as provided in s. 517.141 to a person who is adjudged by a court of competent jurisdiction to have suffered monetary damages as a result of any of the following acts committed by a dealer, investment adviser, or associated person who was licensed under this chapter at the time the act was committed:~~

~~(a) (2) For purposes of this section and s. 517.141, "final judgment" shall include an arbitration award confirmed by a court of competent jurisdiction.~~

~~(3) A violation of s. 517.07.~~

~~(b) A violation of s. 517.301.~~

~~(3) Any person is eligible to seek recovery for payment from the Securities Guaranty Fund if such person:~~

~~(a) ) Such person has received final judgment in a~~ 1. Holds an unsatisfied final judgment in which a wrongdoer was found to have violated ss. 517.07 or 517.30;

2. Has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court or arbitrator; and

3. Is a natural person who was a resident of Florida or is a business entity that was domiciled in Florida at the time of the violation of any section referred to in subparagraph (a)1.; or

(b) Is a receiver, appointed pursuant to s. 517.191(2) by a court of competent jurisdiction for a wrongdoer ordered to pay restitution pursuant to s. 517.191(3) as a result of a violation of ss. 517.07 or 517.301, that has requested payment from the Securities Guaranty Fund on behalf of a person eligible for payment under paragraph (3)(a) of this section, in any action wherein the cause of action was based on a violation of those sections referred to in

(4) Notwithstanding subsection (23)-, a person is not eligible for payment from the Securities Guaranty Fund if such person:

(b) Such(a) Participated or assisted in a violation of this chapter;

or (b) Attempted to commit or committed a violation of this

chapter; or (c) Profited from a violation of this chapter.

(5) An eligible person or a receiver, on behalf of an eligible person or persons, seeking payment from the Securities Guaranty Fund must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule procedures for filing documents by electronic means provided such procedures provide the office with the information and data required by this section. The application shall be filed with the office within one year of the date of the final judgment or restitution order, or any appellate decision thereon and shall contain such information as the commission or office may require concerning such matters as:

(a) The eligible person's full name, address, and contact

information; (b) The receiver's full name, address, and contact

information, if any; (c) The person ordered to pay restitution;

(d) The eligible person's form and place of organization, if the eligible person is a business entity; and a copy of its articles of incorporation, its articles of organization with amendments, trust agreement, or its partnership agreement.

(e) Any final judgment and a copy thereof;

(f) Any restitution ordered pursuant to s. 517.191(3), and a copy thereof;

(g) An affidavit stating that the eligible person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the final judgment, and by ~~her or his~~the eligible person's search the eligible person has discovered no property or assets; or ~~she or he~~the eligible person has

discovered property and assets and has taken all necessary action and proceedings for the application thereof to the final judgment, but the amount thereby realized was insufficient to satisfy the final judgment. ~~To verify compliance with such condition, the office may require such person to have a writ of execution be issued upon such judgment, may require a showing that no personal or real property of the judgment debtor liable to be levied upon in complete satisfaction of the judgment can be found, or may require an affidavit from the claimant setting forth the reasonable searches and inquiries undertaken and the result of those searches and inquiries;~~

~~(e) Such person has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court.~~

~~(d) The act for which recovery is sought occurred on or after January 1, 1979.~~

~~(e) The office waives compliance with the requirements of paragraph (a) or paragraph (b). The office may waive such compliance if the dealer, investment adviser, or associated person which is the subject of the claim filed with the office is the subject of any proceeding in which a receiver has been appointed by a court of competent jurisdiction. If the office waives such compliance, the office may, upon petition by the debtor or the court-appointed trustee, examiner, or receiver, distribute funds from the Securities Guaranty Fund up to the amount allowed under s. 517.141. Any waiver granted pursuant to this section shall be considered a judgment for purposes of complying with the requirements of this section and of s. 517.141.~~

~~(4) Any person who files an action that may result in the disbursement of funds~~(h) An affidavit from the receiver stating the amount of restitution owed to the eligible person(s) on whose behalf the claim is filed, the amount, if any, of any money, property, or assets paid to the eligible person(s) on whose behalf the claim is filed by the person over whom the receiver is appointed, and the amount of any unsatisfied portion of any eligible person's order of restitution.

(i) The eligible person's residence or domicile at the time of the violation of ss. 517.07 or 517.301 which resulted in eligible person's monetary damages or order of restitution;

(j) The amount of any unsatisfied portion of the eligible person’s final judgment; (k) Whether an appeal or motion to vacate an arbitration award has been filed.

(6) If the office finds that a person is eligible for payment from the Securities Guaranty Fund and has complied with the provisions of this section and rules promulgated thereunder, it shall approve such person for payment from the Securities Guaranty Fund pursuant to the provisions of s. 517.141 shall give. Each eligible person or receiver within 90 days of the Office’s receipt of a complete application shall be given written notice, personally or by certified mail to, that the office as soon as practicable after such action intends to approve or deny, or has been filed. The failure to give such approved or denied, the application for payment from the Securities Guaranty Fund.

(7) Upon receipt by the eligible person or receiver of notice shall not bar a of the Office’s decision that the eligible person’s or receiver’s application for payment from the Securities Guaranty Fund if all of the conditions specified in subsection (3) are satisfied is approved and prior to any disbursement, the eligible person shall assign all right, title, and interest in the final judgment or order of restitution to the extent of such payment, to the office on a form prescribed by commission rule.

(5) The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 specifying the procedures for complying with subsections (2), (3), and (4), including rules for the form of submission and guidelines for the sufficiency and content of submissions of notices and claims.

(8) The office shall deem an application for payment from the Securities Guaranty Fund abandoned if the eligible person or receiver, or any person acting on behalf of the eligible person or receiver, fails to timely complete the application as prescribed by commission rule. The time period to complete an application shall be tolled during the pendency of an appeal or motion to vacate an arbitration award.

**517.141 Payment from the fund.—**

(1) For purposes of this section, a “claimant” is an eligible person under s. 517.141 Payment from the fund.—

(1) Any person who meets all of the conditions prescribed in s. 517.131 may apply to 131 who is approved by the office for payment to be made to such person from the Securities Guaranty



Fund.

~~(2) A claimant is entitled to disbursement in the amount equal to the lesser of the unsatisfied portion of such person's the claimant's final judgment or \$10,000, whichever is less, order of restitution but only to the extent and amount reflected in the the final judgment as being reflects actual or compensatory damages, excluding postjudgment interest, costs, and attorney's fees.; or either~~

~~(2)(a) \$15,000; or~~

~~(b) \$25,000 if the claimant is a specified adult as defined in s. 517.34(1)(b), or the specified adult is a beneficial owner or beneficiary of a claimant.~~

~~(3) Regardless of the number of claims or claimants involved, payments for claims shall be limited in the aggregate to \$100250,000 against any one dealer, investment adviser, or associated person. If the total claims exceed claim filed by a receiver on behalf of claimants exceeds the aggregate limit of \$100250,000, the office shall prorate the payment to each claimant based upon the ratio that the person's each claimant's individual claim bears to the total claims claim filed.~~

~~(4) If, at any time, the money in the Securities Guaranty Fund is insufficient to satisfy any valid claim or portion of a valid claim approved by the office, the office shall satisfy such unpaid claim or portion of such valid claim as soon as a sufficient amount of money has been deposited in or transferred to the Securities Guaranty Fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by final order of the office, which order is not subject to an appeal or other pending proceeding.~~

~~(3) No payment shall be made on any claim against any one dealer, investment adviser, or associated person before the expiration of 2 years from the date any claimant is found by the office to be eligible for recovery pursuant to this section. If during this 2-year period more than one claim is filed against the same dealer, investment adviser, or associated person, or if the office receives notice pursuant to s. 517.131(4) that an action against the same dealer, investment adviser, or associated person is pending, all such claims and notices of pending claims received during this period against the same dealer, investment adviser, or associated person may be handled by the office as provided in this section. Two years after the first claimant against that same dealer, investment adviser, or associated person applies for payment pursuant to this section:~~

~~(a) (5) All payments and disbursements made from the Securities Guaranty Fund shall be made by the Chief Financial Officer upon authorization by the office, or designee. The office shall determine those persons eligible for payment or for potential payment in the~~

event of a pending action. All such persons may be entitled to receive their pro rata shares of the fund as provided in this section.

(b) ~~Those persons who meet all the conditions prescribed in s. 517.131 and who have applied for payment pursuant to this section will be entitled to receive their pro rata shares~~ submit such authorization within 30 days of the total disbursement.

(c) ~~Those persons who have filed notice with the office approval of a pending claim pursuant to s. 517.131(4) but who are not yet eligible an eligible person for payment from the fund will be entitled to receive their pro rata shares of the total disbursement once they have complied with subsection (1). However, in the event that the amounts they are eligible to receive pursuant to subsection (1) are less than their pro rata shares as determined under this section, any excess shall be distributed pro rata to those persons entitled to disbursement under this subsection whose pro rata shares of the total disbursement were less than the amounts of their claims~~ Securities Guaranty Fund.

(4) ~~6~~ Individual claims filed by persons owning the same joint account, or claims ~~stemming arising~~ from any other type of account ~~maintained by a particular licensee~~ on which more than one name appears, shall be treated as the claims of one eligible claimant with respect to payment from the ~~fund~~ Securities Guaranty Fund. If a claimant who has obtained a final judgment or order of restitution which qualifies for disbursement under s. ~~517.131~~ 517.131 has maintained more than one account with the ~~dealer, investment adviser, or associated~~ person who is the subject of the claims, for purposes of disbursement of the ~~fund~~ Securities Guaranty Fund, all such accounts, whether joint or individual, shall be considered as one account and shall entitle such claimant to only one distribution from the fund ~~not to exceed the lesser of \$10,000 or the unsatisfied portion of such claimant's judgment as provided in subsection (1).~~. To the extent that a claimant obtains more than one final judgment or order of restitution against a ~~dealer, investment adviser, or one or more associated persons~~ person arising out of the same transactions, occurrences, or conduct or out of ~~the dealer's, investment adviser's, or associated~~ such person's handling of the claimant's account, such final judgments or orders of restitution shall be consolidated for purposes of this section and shall entitle the claimant to only one disbursement from the fund ~~not to exceed the lesser of \$10,000 or the unsatisfied portion of such claimant's judgment as provided in subsection (1).~~.

~~(5)~~ ~~7~~ If the final judgment or final order of restitution that gave rise to the claim is overturned in any appeal or in any collateral proceeding, the claimant shall reimburse the ~~fund~~ Securities Guaranty Fund all amounts paid from the ~~fund~~ Securities Guaranty Fund to the claimant on the claim. If the claimant satisfies the final judgment specified in s. 517.131(3)(a), or order of restitution, the claimant shall reimburse the ~~fund~~ Securities Guaranty Fund all amounts paid from

the ~~fund~~Securities Guaranty Fund to the claimant on the claim. Such reimbursement shall be paid to the office within 60 days after the final resolution of the appellate or collateral proceedings or the satisfaction of the final judgment or order of restitution, with the 60-day period commencing on the date the final order or decision is entered in such proceedings.

(6) ~~8~~ If a claimant receives payments in excess of that which is permitted under this chapter, the claimant shall reimburse the ~~fund~~Securities Guaranty Fund such excess within 60 days after the claimant receives such excess payment or after the payment is determined to be in excess of that permitted by law, whichever is later.

~~(7)~~ 9) A claimant who knowingly and willfully files or causes to be filed an application under s. 517.131 or documents supporting the application any of which contain false, incomplete, or misleading information in any material aspect shall forfeit all payments from the Securities Guaranty Fund and such act shall be a violation of s. 517.301(c).

(10) The office may institute legal proceedings to enforce compliance with this section and with s. ~~517.131 to~~ 517.131 to recover moneys owed to the ~~fund~~Securities Guaranty Fund, and shall be entitled to recover interest, costs, and attorney's fees in any action brought pursuant to this section in which the office prevails.

~~(8) If at any time the money in the Securities Guaranty Fund is insufficient to satisfy any valid claim or portion of a valid claim approved by the office, the office shall satisfy such unpaid claim or portion of such valid claim as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by final order of the office, which order is not subject to an appeal or other pending proceeding.~~

~~(9) Upon receipt by the claimant of the payment from the Securities Guaranty Fund, the claimant shall assign any additional right, title, and interest in the judgment, to the extent of such payment, to the office. If the provisions of s. 517.131(3)(e) apply, the claimant must assign to the office any right, title, and interest in the debt to the extent of any payment by the office from the Securities Guaranty Fund.~~

~~(10) All payments and disbursements made from the Securities Guaranty Fund shall be made by the Chief Financial Officer upon authorization signed by the director of the office, or such agent as she or he may designate.~~

~~(11) The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 specifying procedures for complying with this section, including rules for the form of submission and guidelines for the sufficiency and content of submissions of notices and claims.~~

### **517.191 Enforcement by the Office; enforcement by Attorney General**

*The maximum civil and administrative penalties under this section are proposed to be increased as further deterrence to violations of this chapter. The maximum penalty is proposed to be increased from \$10,000 for a natural person to \$20,000 for a violation other than s. 517.301.*

*Penalty provisions were examined in other states. Seventeen states currently have caps of \$10,000 per violation. Thirteen states have larger caps. Some states had increased penalties when seniors and other certain adults were victims of a violation. In light of the high percentage of Florida's senior population, and their vulnerability to financial exploitation, we propose adding a provision for increasing the penalty up to double the amount when the violation is against "specified adults," as that term is defined in s. 517.34(1)(b), i.e. "a natural person 65 years of age or older, or a vulnerable adult as defined in Fl. Stat. s. 415.102."*

*A provision is proposed to be added to ss. 4 which allows the Office to recover any costs and attorney fees related to the Office's investigation or enforcement of this section. Moneys recovered by the Office for costs and attorney fees are to be deposited into the Anti-Fraud Trust Fund.*

*Consistent with federal securities law and the Uniform Securities Act, we propose to add a provision as s. (5) which holds control persons jointly and severally liable with, and to the same extent as, any person they control that is found to have violated any provision of chapter 517, Florida Statutes, or the rules promulgated thereunder. A control person is not liable if such control person can establish, by a preponderance of the evidence, that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation.*

*Also consistent with federal law, a provision was added as s. (6) deeming a person who knowingly or recklessly provides substantial assistance to another person in violation of a provision of chapter 517 or the rules promulgated thereunder violates the provision or the rule to the same extent as the person to whom such assistance is provided. Aiding and abetting liability already exists as a civil remedy in s. 517.211. We believed it appropriate to add a provision allowing for state action as well.*

*Subsections (7)-(10) regarding cease-and-desist orders, fines and other actions by the Office have been incorporated without change from s. 517.241, as well as subsections (14)-(15). References to ss. 517.311 and 312 in proposed subsection (11) were deleted because of the proposed consolidation of those sections in to s. 517.301, as discussed below.*

**517.191 Enforcement by the Office ~~Injunction to restrain violations; civil penalties; enforcement by Attorney General.~~—**

(1) When it appears to the office, either upon complaint or otherwise, that a person has engaged or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may investigate; and whenever it shall believe from evidence satisfactory to it that any such person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may, in addition to any other remedies, bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter to enjoin such person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter. In any such court proceedings, the office may apply for, and on due showing be entitled to have issued, the

court's subpoena requiring forthwith the appearance of any defendant and her or his employees, associated persons, or agents and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify or give evidence concerning the acts or conduct or things complained of in such application for injunction. In such action, the equity courts shall have jurisdiction of the subject matter, and a judgment may be entered awarding such injunction as may be proper.

(2) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in any such court proceedings, the court shall have the power and jurisdiction, upon application of the office, to impound and to appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon her or him by the court. In any such action, the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the said property, assets, and business or, in its discretion, may with the consent of the presiding judge of the circuit require that all such suits be assigned to the circuit court judge appointing the said receiver or administrator.

(3) In addition to, or in lieu of, any other remedies provided by this chapter, the office may apply to the court hearing this matter for an order directing the defendant to make restitution of those sums shown by the office to have been obtained in violation of any of the provisions of this chapter. The office has standing to request such restitution on behalf of victims in cases brought by the office under this chapter, regardless of the appointment of an administrator or receiver under

subsection (2) or an injunction under subsection (1). Further, such restitution shall, at the option of the court, be payable to the administrator or receiver appointed pursuant to this section or directly to the persons whose assets were obtained in violation of this chapter.

(4) In addition to any other remedies provided by this chapter, the office may apply to the court hearing the matter for, and the court shall have jurisdiction to impose, a civil penalty against any person found to have violated any provision of this chapter, any rule or order adopted by the commission or office, or any written agreement entered into with the office in an amount not to exceed:

(a) the greater of \$20,000 ~~\$10,000~~ for a natural person or \$25,000 for a business entity ~~any other person~~, or the gross amount of any pecuniary loss to investors or pecuniary gain to a natural person or business entity ~~such defendant~~ for each such violation, other than a violation of s. 517.301, plus;

(b) the greater of \$50,000 for a natural person or \$250,000 for a business entity ~~any other person~~, or the gross amount of any pecuniary loss to investors or pecuniary gain to a natural person or business entity ~~such defendant~~ for each violation of s. 517.301; or

(c) if a specified adult as such term is defined in s. 517.34(1)(b) is the victim of a violation of this chapter, then up to twice the amount of the civil penalty that would otherwise be imposed under this subsection.

All civil penalties collected pursuant to this subsection shall be deposited into the Anti-Fraud Trust Fund. The office may recover any costs and attorney fees related to the office's investigation or enforcement of this section. Notwithstanding any other law, moneys recovered by the office for costs and attorney fees collected pursuant to this subsection must be deposited into the Anti-Fraud Trust Fund.

(5) For purposes of any action brought by the office under this section, a control person of a controlled person found to have violated any provision of this chapter or any rule adopted under any provision of this chapter is jointly and severally liable with, and to the same extent as, such controlled person in any action brought by the office under this section unless the control person can establish by a preponderance of the evidence that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action.

(6) For purposes of any action brought by the office under this section, a person who knowingly or recklessly provides substantial assistance to another person in violation of a provision of this chapter or of any rule adopted under any provision of this chapter is deemed to violate the provision or the rule to the same extent as the person to whom such assistance is provided.

(7) The office may issue and serve upon a person a cease and desist order whenever the office has reason to believe that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order promulgated by the commission or office, or any written agreement entered into with the office.

(8) Whenever the office finds that conduct described in subsection (6) presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent named therein and remains effective for 90 days. If the office begins nonemergency cease and desist proceedings under subsection (6), the emergency cease and desist order remains effective until conclusion of the proceedings under ss. 120.569 and 120.57.



(9) The office may impose and collect an administrative fine against any person found to have violated any provision of this chapter, any rule or order promulgated by the commission or office, or any written agreement entered into with the office in an amount not to exceed the penalties set forth in subsection (4). All fines collected hereunder shall be deposited as received in the Anti-Fraud Trust Fund.

(10) The office may bar, permanently or for a specific time period, any person found to have violated any provision of this chapter, any rule or order adopted by the commission or office, or any written agreement entered into with the office from submitting an application or notification for a license or registration with the office.

(11) ~~(5)~~ In addition to all other means provided by law for enforcing any of the provisions of this chapter, when the Attorney General, upon complaint or otherwise, has reason to believe that a person has engaged or is engaged in any act or practice constituting a violation of s. 517.275, s. 517.301, or any rule or order issued under such sections, the Attorney General may investigate and bring an action to enforce these provisions as provided in ss. 517.171, 517.201, and 517.2015 after receiving written approval from the office. Such an action may be brought against such person and any other person in any way participating in such act or practice or engaging in such act or practice or doing any act in furtherance of such act or practice, to obtain injunctive relief, restitution, civil penalties, and any remedies provided for in this section. The Attorney General may recover any costs and attorney fees related to the Attorney General's investigation or enforcement of this section. Notwithstanding any other provision of law, moneys recovered by the Attorney General for costs, attorney fees, and civil penalties for a violation of s. 517.275, s. 517.301, or any rule or order issued pursuant to such sections, shall be deposited in the Legal Affairs Revolving Trust Fund. The Legal Affairs Revolving Trust Fund may be used to investigate and enforce this section.

(12) ~~(6)~~ This section does not limit the authority of the office to bring an administrative action against any person that is the subject of a civil action brought pursuant to this section or limit the authority of the office to engage in investigations or enforcement actions with the Attorney General. However, a person may not be subject to both a civil penalty under subsection (4) and an administrative fine under subsection (8) s. 517.221(3) as the result of the same facts.

(13) ~~(7)~~ Notwithstanding s. 95.11(4)(e), an enforcement action brought under this section based on a violation of any provision of this chapter or any rule or order issued under this chapter shall be brought within 6 years after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than 8 years after the date such violation occurred.

(14) Nothing in this chapter limits any statutory right of the state to punish any person for a violation of a law.

(15) When not in conflict with the Constitution or laws of the United States, the courts of this state have the same jurisdiction over civil suits instituted in connection with the sale or offer of sale of securities under any laws of the United States as the courts of this state may have under similar cases instituted under the laws of the state.

#### **517.211 Private remedies available in cases of unlawful sale**

*For clarity purposes the Task Force determined that it was preferable to have one section containing all the private remedies available under chapter 517. As a result, we propose moving s. 517.241 subsection (3) and part of subsection (2) to section 517.211 as new subsections (8) and (9) and remove redundant language. We propose adding language to clarify that interest should be calculated from the date of purchase.*

*There was lengthy discussion and debate about the impact of the attorney fee provision in subsection (7) on a plaintiff's decision to bring a claim in cases of an unlawful sale. Currently, in an action involving an unlawful sale of securities, attorney fees are to be awarded to the "prevailing party" unless the court finds the award of such fees would be unjust. The attorney fees provision that allows recovery for either side is inconsistent with the Uniform Securities Act and 46 other states that allow only the "prevailing party purchaser" to recover attorney's fees. The group considered amending the provision consistent with the Uniform Securities Act, but concern was raised as to the litigation impact and fairness of a one-sided provision. We decided not to amend the provision but recommend to the Business Law Section that this issue be further considered.*

*Consistent with federal law and the Uniform Securities Act, a provision was added as s. (3) that holds control persons jointly and severally liable with, and to the same extent as, any person they control that is found to have violated any provision of subsection (1). A control person is not liable if such control person can establish, by a preponderance of the evidence, that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation.*

**517.211:** (1) Every sale made in violation of either s. 517.07 or s. 517.12(1), (3), (4), (8), (10), (12), (15), or (17) may be rescinded at the election of the purchaser, except a sale made in violation of the provisions of s. 517.1202(3) relating to a renewal of a branch office notification shall not be subject to this section, and a sale made in violation of the provisions of s. 517.12(12) relating to filing a change of address amendment shall not be subject to this section. Each person making the sale and every director, officer, partner, or agent of or for the seller, if the

director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days of receipt, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

(2) Any person purchasing or selling a security in violation of s. 517.301, and every director, officer, partner, or agent of or for the purchaser or seller, if the director, officer, partner, or agent has personally participated or aided in making the sale or purchase, is jointly and severally liable to the person selling the security to or purchasing the security from such person in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.

(3) For purposes of any action brought under this section, a control person of a controlled person found to have violated any provision specified in subsection (1) is jointly and severally liable with, and to the same extent as, such controlled person in any action brought under this section unless the control person can establish by a preponderance of the evidence that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action.

(4) In an action for rescission:

(a) A purchaser may recover the consideration paid for the security or investment, plus interest thereon at the legal rate **from the date of purchase**, less the amount of any income received by the purchaser on the security or investment upon tender of the security or investment.

(b) A seller may recover the security upon tender of the consideration paid for the security, plus interest at the legal rate **from the date of purchase**, less the amount of any income received by the defendant on the security.

(5) In an action for damages brought by a purchaser of a security or investment, the plaintiff shall recover an amount equal to the difference between:

(a) The consideration paid for the security or investment, plus interest thereon at the legal rate from the date of purchase; and

(b) The value of the security or investment at the time it was disposed of by the plaintiff, plus the amount of any income received on the security or investment by the plaintiff.

(5) In an action for damages brought by a seller of a security, the plaintiff shall recover an amount equal to the difference between:

(a) The value of the security at the time of the complaint, plus the amount of any income received by the defendant on the security; and

(b) The consideration received for the security, plus interest at the legal rate from the date of sale.

(7) In any action brought under this section, including an appeal, the court shall award reasonable attorneys' fees to the prevailing party unless the court finds that the award of such fees would be unjust.

**(8) Nothing in this chapter limits any statutory or common-law right of a person to bring an action in a court for an act involved in the sale of securities or investments.**

(9) The same civil remedies provided by laws of the United States for the purchasers or sellers of securities, under any such laws, in interstate commerce extend also to purchasers or sellers of securities under this chapter.

### **517.241 Remedies**

*This entire section has been deleted. Subsection (1) was deleted because it was restating information from chapter 120, Florida Statutes and was not necessary. Subsection (2) was retained but split and moved to sections 517.191 and 517.211 as discussed above. Subsection (3) was retained and moved to section 517. Subsection (4) was retained and moved to section 517.191.*

### **Anti-Fraud Provisions, Sections 517.301, 311 and 312**

*Sections 517.301, 311 and 312 contain the principal provisions creating liabilities under the statute for material misrepresentations or omissions. Section 517.301 has the same terminology as SEC Rule 10b-5 and is the broadest, most comprehensive disclosure-oriented basis of liability. Section 517.311 deals with a specific type of misrepresentation, principally that the security or the person selling the security has been sponsored or approved by a government agency. Section 517.312 is a narrow provision dealing solely with boiler rooms. The Task Force proposal consolidates the three different sections into Section 517.301, providing for a single provision that sets forth the disclosure-oriented liabilities in addition to the boiler room provision. This provides, we believe, a more comprehensive provision and allows for the elimination of duplicate language.*

*The proposed new section 517.301 on a consolidated basis does not eliminate any of the liability provisions currently existing in the three sections. Current Section 517.301 provisions are in proposed 517.301(1) and (7). Current 517.311 provisions are in proposed 517.301(2)-(5). The boiler room provision in current 517.312 is now in 517.301(6).*

*Current 517.301 applies to the offer and sale of “investments” as well as securities. We discussed the possible differences between those terms. In most cases the terms will overlap. However, there may be circumstances where the asset being sold does not meet the strict definition of a security. We debated whether to leave the concept of “investment” in the statute, as the statute is principally directed at the sale of securities. Based on advice from the Office of Financial Regulation, we decided to retain the “investment” concept in the statute. We retained the exemption from the “investment” application for the sale of business opportunities as defined in Fl. Stat. 559.801 and an exemption for offers where there are no specific representations regarding an economic benefit to be derived from the purchase. Like the definition of “security,” the meaning of the term “investment” as distinct from a security will need to be determined by courts on a case-by-case basis.*

**517.301 Fraudulent transactions; falsification or concealment of facts (red-lined)**

- (1) It is unlawful and a violation of the provisions of this chapter for a person:
- (a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment or security, including any security exempted under the provisions of s. 517.051 and including any security sold in a transaction exempted under the provisions of s. 517.061, s. 517.0611, or s. 57.0612, directly or indirectly:
1. To employ any device, scheme, or artifice to defraud;

2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

3. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

(b) **By use of any means, to** publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, communication, or broadcast which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or from an agent or employee of an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount of the consideration.

(c) In any matter within the jurisdiction of the office, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

**(2) It is unlawful for a person in issuing or selling a security within the state, including a security exempted under the provisions of s. 517.051 and including a transaction exempted under the provisions of s. 517.061, s. 517.0611, or s. 517.0612, to misrepresent that such security, or company has been guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.**

**(3) It is unlawful for a person registered or required to be registered, or subject to the notice requirements, under any section of this chapter, including such persons and issuers within the**



purview of ss. 517.051, 517.061, 517.0611, or 517.0612, to misrepresent that such person has been sponsored, recommended, or approved, or that her or his abilities or qualifications have in any respect been passed upon, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(4) It is unlawful and a violation of this chapter for a person in connection with the offer or sale of an investment to obtain money or property by means of:

(a) A misrepresentation that the investment offered or sold is guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States; or

(b) A misrepresentation that such person is sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(5)(a) No provision of subsection (2) or subsection (3) shall be construed to prohibit a statement that a person or security is registered or has made a notice filing under this chapter if such statement is required by the provisions of this chapter or rules promulgated thereunder, if such statement is true in fact, and if the effect of such statement is not misrepresented.

(b) A statement that a person is registered made in connection with the offer or sale of a security under the provisions of this chapter shall include the following disclaimer: "Registration does not imply that such person has been sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States."

1. If the statement of registration is made in writing, the disclaimer shall immediately follow such statement and shall be in the same size and style of print as the statement of registration.

2. If the statement of registration is made orally, the disclaimer shall be made or broadcast with the same force and effect as the statement of registration.

(6) It is unlawful and a violation of this chapter for a person to directly or indirectly manage, supervise, control, or own, either alone or in association with others, a boiler room in this state which sells or offers for sale a security or investment in violation of subsections (1), (2), (3), (4) or (5).

(7) For purposes of this section, the term “investment” means a commitment of money or property principally induced by a representation that an economic benefit may be derived from such commitment, except that the term does not include a commitment of money or property for:

(a) The purchase of a business opportunity as defined in s. 559.80(1)(a), business enterprise, or real property through a person licensed under chapter 475 or registered under former chapter 498; or

(b) The purchase of tangible personal property through a person not engaged in solicitation by telephone, electronic mail, text messages, social media, chat rooms, or other electronic means where there

are no specific representations or guarantees made by the offeror or seller as to the economic benefit to be derived from the purchase.

**517.301 Fraudulent transactions; falsification or concealment of facts** (clean)

(1) It is unlawful and a violation of the provisions of this chapter for a person:

(a) In connection with the rendering of investment advice or in connection with the offer, sale, or purchase of an investment or security, including a security exempted under the provisions of s. 517.051 and including a security sold in a transaction exempted under the provisions of s. 517.061, s. 517.0611, or s. 517.0612, directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;
2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
3. To engage in any transaction practice, or course of business which operates or would operate as a fraud or deceit upon a person.

(b) By the use of any means, to publish, give publicity to, or circulate a notice, circular, advertisement, newspaper, article, letter, investment service, communication, or broadcast which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or from an agent or employee of an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(c) In a matter within the jurisdiction of the office, to knowingly and willfully falsify, conceal, or cover up, by a trick, scheme, or device, a material fact, make a false, fictitious, or fraudulent statement or representation, or make or use a false writing or document, knowing the same to contain a false, fictitious, or fraudulent statement or entry.

(2) It is unlawful for a person in issuing or selling a security within the state, including a security exempted under the provisions of s. 517.051 and including a transaction exempted under the provisions of s. 517.061, s. 517.0611, or s. 517.0612, to misrepresent that such security, or company has been guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the

United States or an agency or officer of the United States.

(3) It is unlawful for a person registered or required to be registered, or subject to the notice requirements, under any section of this chapter, including such persons and issuers within the purview of ss. 517.051, 517.061, 517.0611, or 517.0612, to misrepresent that such person has been sponsored, recommended, or approved, or that her or his abilities or qualifications have in any respect been passed upon, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(4) It is unlawful and a violation of this chapter for a person in connection with the offer or sale of an investment to obtain money or property by means of:

(a) A misrepresentation that the investment offered or sold is guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States; or

(b) A misrepresentation that such person is sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(5)(a) No provision of subsection (2) or subsection (3) shall be construed to prohibit a statement that a person or security is registered or has made a notice filing under this chapter if such statement is required by the provisions of this chapter or rules promulgated thereunder, if such statement is true in fact, and if the effect of such statement is not misrepresented.

(b) A statement that a person is registered made in connection with the offer or sale of a security under the provisions of this chapter shall include the following disclaimer: “Registration does not imply that such person has been sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.”

1. If the statement of registration is made in writing, the disclaimer shall immediately follow such statement and shall be in the same size and style of print as the statement of registration.

2. If the statement of registration is made orally, the disclaimer shall be made or broadcast with the same force and effect as the statement of registration.

(6) It is unlawful and a violation of this chapter for a person to directly or indirectly manage, supervise, control, or own, either alone or in association with others, a boiler room in this state which sells or offers for sale a security or investment in violation of subsections (1), (2), (3), (4) or (5).

(7) For purposes of this section, the term “investment” means a commitment of money or property principally induced by a representation that an economic benefit may be derived from such commitment, except that the term does not include a commitment of money or property for:

(a) The purchase of a business opportunity (as defined in s. 559.801(1)(a)), business enterprise, or real property through a person licensed under chapter 475 or registered under former chapter 498; or

(b) The purchase of tangible personal property through a person not engaged in solicitation by telephone, electronic mail, text messages, social media, chat rooms, or other electronic means where there are no specific representations or guarantees made by the offeror or seller as to the economic benefit to be derived from the purchase.

**517.302 Criminal penalties; alternative fine; Anti criminal prosecution. Fraud Trust Fund; time limitation for criminal prosecution**

*The consensus was to retain the provision as written. Discussion centered on whether to increase the penalties for criminal violations. Currently, pursuant to section 517.302, a violation of chapter 517 is a third degree felony; and a violation of certain provisions involving fraud, boiler rooms, and false representations where a person obtains money or property of an aggregate value exceeding \$50,000 from five or more persons is a first degree felony. The offense severity ranking chart contained in section 921.0022 is used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender. The offense severity ranking chart has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense. Unless specifically identified in the severity ranking chart, violations of chapter 517 are a level 1 offense. Failure to file a prospectus meeting requirements, a violation of section 517.07(2), is identified as a level 2 offense; failure to register securities, or to register as a dealer, issuer, or associated person is identified as a level 4 offense; knowing securities fraud while obtaining money or property of less than \$100,000 is identified as a level 7 offense;*

*and knowing securities fraud while obtaining money or property of \$100,000 or more is identified as a level 8 offense.*

*It was ultimately decided that any changes involved too many potentially interested parties and factors, so the decision was to make no changes to this section.*

*Discussion also focused on whether there should be a scienter requirement or whether the majority of violations of chapter 517 should remain strict liability offenses. The USA and many states require a “willful” violation. However, it was ultimately decided to keep the provisions unchanged.*

**517.311: Deleted --- provisions moved to 517.301.**

**517.312: Deleted --- provisions moved to 517.301.**

**Chapter 517 Task Force:**

**Chair: Will Blair**

**Academic Chair: Stuart Cohn**

**Vice Chair: Roland Chase**

**Subgroup Chairs:**

**Registration Exemptions (Stuart Cohn)**

**Registration of Securities (Dan Newman, Roland Chase)**

**Dealers and Investment Advisers (Robert Brighton)**

**Administrative and Judicial Review (Michelle Suarez)**

**Anti-Fraud (Will Blair)**

**SCHEDULE 7**

Chapter 517 Triple Motion Language



*RESOLVED, that the Florida Bar Business Law Section (the "Section") supports proposed legislation updating and modernizing Chapter 517 of the Florida Statutes – The Florida Securities and Investor Protection Act (the "Proposed Legislation"), substantially in the form of the draft legislation, dated as of August 4, 2023, presented to the Executive Council of the Section, and subject to such further changes as are deemed appropriate and approved by the Chapter 517 Task Force and the Executive Council of the Section; and it is further*

*RESOLVED, that the Proposed Legislation: (1) Is within the Section's subject matter jurisdiction as described in the Section's bylaws; (2) Either is beyond the scope of the bar's permissible legislative or political activity, or is within the bar's permissible scope of legislative or political activity and the proposed Section position is consistent with an official bar position on that issue; and (3) Does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.*

**SCHEDULE 8**

UCC Article 12 – Fla. Stat. 669 – White Paper

## Florida's New UCC Article 12 – Fla. Stat. 669 [ver 20230803]

### Secured Transactions for Digital Assets and Associated UCC Amendments<sup>1</sup>

The Uniform Law Commission (“ULC”) proposed new UCC Article 12 as an expansion of the Uniform Commercial Code (“UCC”), § 668.001 - § 688.001, which establishes a baseline framework allowing creditors to secure liens on digital assets owned by debtors. This White Paper consists of an eight page summary and a 21 page chart mapping all changes to Florida’s UCC.

Art. 12 defines a “controllable electronic record” (CER), § 669.102(1), to be part of or logically attached to, a digital asset. The foundation of Art. 12 is UCC Article 9, Secured Transactions, § 679.1011, and Art 12 amendments effect § 679. Art 12 updates and clarifies debtor-creditor relationships and other related transactions for emerging technologies like cryptocurrencies, distributed ledger technology, blockchains, non-fungible tokens (“NFTs”) and can be incorporated into smart contracts. Florida should adopt § 669 to reduce transaction costs while providing protections for market participants and traditional market players. As of June 2023, six (6) states have adopted Art. 12 (AL, CO, IN, NM, ND, WA)<sup>2</sup> and if enacted, Florida would be the largest state to adopt this new law. Florida’s Office of Financial Regulation (OFR) has generally endorsed Art. 12.<sup>3</sup>

Current Florida law does not have provisions specifically addressing digital assets. A *traditional, common approach*, based on Art. 8, § 678, applies general intangible principles, namely: (1) digital assets are transferred to a securities intermediary, (2) the intermediary treats the assets as “financial assets” and credits them to debtor’s account, creating a security entitlement with respect to the financial asset, (3) the secured party then obtains complete “control,” § 678.5011(2)(b), of the security entitlement, which perfects the secured party’s security interest in the securities account. Alternatively, the lender may perfect his or her interest with Art. 9, § 679, by filing a financing statement in the debtor’s state registry per § 679.3011. The traditional approach does not address technical issues associated with easily transferrable digital assets. A *technologic approach* obtains technical control of assets with the debtor giving private key control to the lender or its designee. The resulting secured party’s interest is not perfected under the current UCC. Hence, this creates legal doubt in the transaction.

Art. 12, § 669, and concurrent revisions to §§ 670, 671, 672, 673, 675, 677, 678, 679, and 680, have procedures providing for: (a) providing assurance to securities intermediaries and secured party creditors that they acquire their interests free of the property claims of others, and (b) the security interest created thereby confers upon the intermediary a super-priority status.

**UCC Article 12 and Related Amendments - Summary.** New § 669.102(1)(a) defines a “controllable electronic record” (CER) and provide rules for transfers of CERs to buyers and secured parties. A transferee will take the CER free of any claim to the CER if the transferee is a

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<sup>1</sup> This White Paper was prepared by a Joint Task Force between the Business Law Section’s Blockchain and Digital Assets Committee and the Section’s UCC/Bankruptcy Committee. Recently, the Task Force engaged the Real Property Probate and Trust Law Section (RPPTL) and the Florida Bankers Assn.

<sup>2</sup> Indiana, New Hampshire, Iowa, and Nebraska adopted the UCC amendments.

<sup>3</sup> “Assessment of Commerce and Regulatory Issues Presented by Blockchain Technology and Virtual Currency,” OFR, Dec. 2022.

“qualifying purchaser” (“QP”), §§ 669.102(1)(b) and 669.104(1) and (2). Additionally, a secured party that obtains control of the CER will have non-temporal priority, over another secured party that does not have control and has perfected its security interest only by filing a financing statement, § 669.104(8).

**Examples and Exclusions.** The following are generally *included*: (a) Electronic accounts (generally including accounts receivable) and electronic payment intangibles (including electronic promises to pay akin to notes and electronic loan agreements); (b) Cryptocurrencies; (c) NFTs that qualify as CERs and other tethered assets; and (d) Electronic (fiat) money other than central bank digital currencies, § 671.201(10) and (25). Controllable payment intangibles and controllable accounts may have an opt-out Art. 12 feature. The definition of CER *excludes* certain types of assets, even if they would otherwise meet the definition: (i) Money (fiat); (ii) Investment property; (iii) Electronic accounts and payment intangibles, if not evidenced by a CER or that lack certain other characteristics; (iv) Chattel paper in electronic form; (v) “Transferable records” under the Uniform Electronic Transactions Act (UETA), § 668.001, and the Electronic Signature in Global Commerce Act (E-SIGN), 15 U.S.C. § 7021(a)(1)(B), and (vi) Documents of Title, § 677.101.

The definition of CER specifically excludes “investment property,” § 669.102(1)(a), and the Art. 12 amendments do not change the definitions of investment property or financial asset, § 678.1011.<sup>4</sup> However, parties may agree to treat digital assets as investment property and transact them to a financial intermediary under Art. 12.

**Controllable Electronic Records (CERs).** New § 669 applies to outright transfers of CERs and security interests in CERs, controllable accounts, and controllable payment intangibles. These controllable accounts and controllable payment intangibles must have the “controllable” attribute to be a CER. See §§ 678.1021, 1061; §§ 679.1021, 1041(1)(d), 1051, 1053, and 1054. A CER must be a “record,” § 671.201(34), and be retrievable in a perceivable form (e.g., an identifiable digital asset, debtor, lender data or account), § 669.105(1)(b). The record must be “electronic,” § 671.201(17). The electronic record must be “controllable,” § 669.105. A NFT can be a CER, if it meets the definition of a CER, and since NFTs are often tethered to other assets, the transfer of the NFT also transfers an interest in the other asset. However, other law may apply to the substantial use of the NFT, § 669.104(3). See § 669.105(1)(a)(1.) requiring that the person having control of a CER must have substantially all the benefit of the CER.

**Controllable Accounts and Controllable Payment Intangibles:** Certain CERs are subsets of payment intangibles and accounts, § 679.1021. A controllable payment intangible, or a controllable account, is an “account,” § 679.1021(1)(b), or a “payment intangible,” § 679.1021(1)(mmm), that: (a) is evidenced by a CER, §§ 679.1021(1)(x) and (w); and (b) provides that it is payable to the person in control of the CER that evidences the controllable

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<sup>4</sup> Art. 12 Comments for Article 8 state: “If the parties agree to treat a digital asset as a financial asset under Article 8 and the digital asset is in fact held in a securities account for an entitlement holder, the rules applicable to controllable electronic records under Article 12 would not apply to the entitlement holder’s security entitlement related to the financial asset. If the financial asset itself is a controllable electronic record, however, then the rules in Article 12 could apply to the securities intermediary’s rights with respect to the controllable electronic record if the intermediary holds the asset directly.” UCC section 8-102(9), Comment 18. Comments following the definition of “uncertified security,” section 8-102(9), provide examples in which CERs may play a role in Article 8 transactions.

account or controllable payment intangible, §§ 679.1021(1)(x) and (w). If the controllable payment intangible or controllable account does not have this “pay person in control” feature, this is sometimes referred to as the “opt-out” provision in Art. 12. A security interest in a CER, a controllable account, or a controllable payment intangible can be perfected by the secured party obtaining “control” of the CER. A security interest in a CER, controllable account, or controllable payment intangible perfected by “control” has priority over a security interest in the CER, controllable account, or controllable payment intangible perfected only by filing (or by another method other than control). This is the non-temporal, super priority security interest in the § 669.<sup>5, 6</sup>

**Control Defined.** “Control” means that a person has each of the following powers:<sup>7</sup> (a) the power to avail itself of “substantially” all of the “benefits” of the electronic record, (b) the “exclusive” power, defined below, to prevent others from enjoying the benefits of the electronic record, and (c) the power readily to identify itself as having these powers by name, office, account number, or otherwise, § 669.105(1)(a)(1). This identification may be on or in the CER, or digital asset or be “logically associated” via a program on the platform or the wallet permitting access to the CER or asset, FS 669.105(1). “The goal is to embrace [CER] records and systems that are connected to a particular electronic record in such a manner that the information contained in or the functions performed by those ‘attached’ or ‘associated’ records are appropriately and reasonably attributable to and, identifiable as connected with, the electronic record itself.”<sup>8</sup>

**Exclusive Defined.** “Exclusive” may allow more than one person to have the relevant power, for example, an asset subject to multi-sig controls, § 669.105(1) and (2). A power is still exclusive even if power is “shared” with others, except in stated circumstances. New § 669.105(3) establishes when the power is not “shared” and therefore is *not exclusive*. There is a statutory presumption of exclusivity, § 669.105(4), because of the difficulty of “proving the negative.” A person may have control through another person who acknowledges such control, § 669.105(5) and § 679.1053 (controllable accounts and controllable payment intangibles).

**Take Free Rule and Qualified Purchasers (QP).** Article 12 applies to outright transfers of and security interests in CERs, controllable accounts, and controllable payment intangibles. Art. 12 provides many of the characteristics of negotiability for these types of assets.<sup>9</sup> A QP, defined at § 669.102(1)(b), is similar to a bona fide purchaser, and acquires all rights in the CER

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<sup>5</sup> Several examples describing perfecting a security interest on digital assets with CERs are provided in “Explaining the 2022 UCC Amendments through Illustrations,” *The Transactional Lawyer*, S. Sepinuck, vol. 12, Oct. 2022.

<sup>6</sup> An example of a post-transitional period non-temporal event follows. SP-1 lends to Debtor, (i) obtains a security interest in Debtor’s accounts, payment intangibles, and general intangibles, and (ii) perfects the security interest by the filing of a financing statement. SP-2 later lends to Debtor, obtains a security interest in a CER in which is functionally an electronic promissory note payable to the person in control of the CER, and files a financing statement to perfect its security interest. SP-1’s security interest has priority under the first to file or perfect priority rule of Article 9. If SP-2 obtains control of the CER, SP-2’s security interest in the electronic promissory note is senior to SP-1’s security interest in the electronic promissory note. In this example, the CER’s security interest is non-temporal.

<sup>7</sup> The use of the word “power” is distinguished from “right.” See UCC § 12-105, Comment 2.

<sup>8</sup> UCC 12-105, comment 2.

<sup>9</sup> See generally, UCC Article 12, Prefatory Note. Article 12 rules make CERs negotiable, in the sense that a QP acting in good faith for value could take a CER free of third-party claims of a property interest in the CER. To receive these benefits, a person must have control of the CER.

that the transferor had or had power to transfer, § 669.104(3), and takes the asset free of any property claims, § 669.104(4) – (7). A QP is a person who: (a) acquires a CER in a transaction that constitutes a “purchase,” § 671.201(32); (b) has control of the CER; (c) gives value; (d) acts in good faith; and (e) does not have notice of a claim of a property right in the CER, § 669.102(1)(b); § 671.201(20) (good faith); and § 671.201(25) (notice).

**Obtaining Control.** A person obtains control of a controllable account or a controllable payment intangible by obtaining control of the CER that evidences the controllable account or controllable payment intangible. Correspondingly, a person will be a QP with respect to a controllable account or controllable payment intangible only if it is a QP with respect to the CER that represents the controllable account or controllable payment intangible.<sup>10</sup>

**Choice of Law – Governing Law - Perfection.** The choice-of-law rules for Art. 12, § 669.107, are relatively straightforward and are set forth in the statute. The same choice-of-law rule as for security interests in other property generally applies to the perfection and priority of a security interest in a CER.

#### **Revisions to Secured Transactions, § 679**

**Attachment, § 679.2031.** There are very few changes that affect attachment of a security interest in a CER, a controllable account, or a controllable payment intangible. The assets, subject to Art. 9 and affected by the Art. 12 amendments, fall within the following types of collateral: (a) a CER is a “general intangible,” 679.1021(1)(ss); (b) a controllable account is an “account,” § 679.1021(1)(w); and (c) a controllable payment intangible is a “payment intangible,” 679.1021(1)(mmm). Thus, a collateral description for a CER, a controllable account, or a controllable payment intangible will not need to be changed in documents.<sup>11</sup>

**Perfection of Security Interests: CERs, Controllable Accounts, and Controllable Payment Intangibles.** A security interest in a CER, a controllable payment intangible, or a controllable account can be perfected by the filing of a financing statement, § 679.3121(1), or by an acknowledged control over the CER, § 679.3141. A sale of a controllable payment intangible, as with any payment intangible, is automatically perfected, § 679.3091(3). A sale of a CER (as a “general intangible”) is *not* automatically perfected. § 679 incorporates the Art. 12 definition of “control” for CERs, controllable accounts, and controllable payment intangibles. See definitions §§ 679.1021(1)(w) and (x) referring to control in § 669.105. As discussed below, a security interest in “money,” other than electronic money (which by definition, § 679.1021(fff), is not controllable), cannot be perfected by the filing of a financing statement, § 679.3121(2)(c).

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<sup>10</sup> UCC § 12-104(a) and Comment 2. “Applicability of Section to Controllable Account and Controllable Payment Intangible. This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits under subsections (c), (d), (e), (g), and (h) of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.”

<sup>11</sup> It would be good practice for a buyer or secured party obtaining an interest in a controllable account or controllable payment intangible to also describe and obtain an interest in the CER that evidences the controllable account or controllable payment intangible. § 669.104(5) and (6), Rights in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible. Once the secured party obtains control of the CER, there is no need to change collateral descriptions in security agreements or financing statements because Art. 12 amendments are designed to preserve the availability of existing transaction patterns. See “Proposed 2022 Amendments to the Uniform Commercial Code: Digital Assets,” E. Smith, et al., ABA, Business Law Today, March 25, 2022, at <https://businesslawtoday.org/2022/03/proposed-2022-amendments-uniform-commercial-code-digital-assets/>.

Security interests in CERs, controllable accounts, and controllable payment intangibles can be perfected by filing, § 679.3121(1).

**Priority of a Security Interests in CERs, Controllable Accounts, and Controllable Payment Intangibles.** A security interest perfected by “control” of a CER (and any controllable account or controllable payment intangible evidenced by the CER) will have priority over a security interest not perfected by control, § 679.3251. This is the non-temporal, super-priority perfection function of the Art. 12 amendments.<sup>12</sup> Unlike the QP provisions of § 669.102(1)(b), the amended Art. 9 § 679.331 priority does not require that the secured party not have notice of someone else’s property claim to the collateral.

**Choice of Law for CERs.** The choice-of-law rule applies to CERs, controllable accounts, and controllable payment intangibles for matters covered by Art. 12 also applies to the perfection and priority of a security interest in a CER, § 679.3063(1), except for the perfection of a security interest in a CER by the filing of a financing statement, which is governed by the existing rule applying the “location” of the debtor, § 679.3063(2). Even for a security interest in a CER perfected by the filing of a financing statement, the priority of the security interest is governed by the controllable electronic record’s jurisdiction, rather than location of the debtor, § 679.3063(1).

#### **Revisions to § 679 - Money**

**General Meaning of “money.”** The definition of “money” is modified, § 671.201(26), and the term does not include electronic money authorized by a government nor does it include digital currencies issued by central banks.<sup>13</sup> This definition of money, § 671.201(26), is subject to limits in § 679 for purposes of transactions covered by § 679, as described. The current UCC definition of money already accommodates money in intangible form. Under the new definition of money, § 671.201(26): (a) the item must be a “medium of exchange”; (b) the “medium of exchange” must have been adopted or authorized by a government; and (c) the term does not include an electronic record that “existed” before it was adopted or authorized by a government as a medium of exchange. As a result, *existing* types of digital assets (including bitcoin, which was adopted by El Salvador and the Central African Republic as legal tender) are not “money” for UCC purposes because they existed before any government adopted the cryptocurrency as legal tender or money. Regardless, bitcoin and other cryptocurrencies can still be a CER.<sup>14</sup>

**“Money” under § 679.** The new § 679.1021(fff) definition of money in Art 9 places limits on the Art 1, § 671.201(26), definition of money for purposes of § 679. Money in § 679.1021(fff) “has the meaning in § 671.201, but does not include a deposit account or money in an electronic form that cannot be subjected to control under § 679.1052.” Hence, (a) in connection with money in a deposit account for purposes of § 679 – it will be a “deposit account;” and (b) an electronic record that would be “money” under § 671.201(26) will not be

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<sup>12</sup> See examples in “Explaining the 2022 UCC Amendments through Illustrations,” Transactional Lawyer, S. Sepinuck, vol. 12, Oct. 2022.

<sup>13</sup> The Central Bank Digital Currency Act (the “CBDC Act”), enacted July 2023, added a definition of central bank digital currency, § 671.201(10) and excluded, as money subject to the UCC, all central bank digital currencies issued by central banks are excluded from the definition of money under the UCC, § 671.201(25). TASK FORCE NOTE – these subsections to be incremented by 1 unit due to added CBDC definition at § 671.201(10).

<sup>14</sup> An existing cryptocurrency can be a CER. If a cryptocurrency is “money” under § 671.201(26), it is excluded from the definition of CER.

“money” under Art 9, § 679.1021(fff), if it is not “controllable,” per § 679.1052. Money in electronic form that is controllable is defined as “electronic money,” § 679.1021(hh), and § 679.1052 defines control of electronic money in a manner similar to §§ 669.105. As described below, money in electronic form that is not controllable will not be subject to the perfection procedures for tangible money (defined at § 679.1021(1)(cccc)) and “electronic money.” Instead, money in electronic form that is not controllable will be a “general intangible,” § 679.1031(pp).

**Perfection of Security Interest in Money.** A security interest in tangible money is perfected only by possession of the money, which continues the current rule, § 679.3121(2)(c). A security interest in “electronic money” can be perfected only by control, §§ 679.3121(2)(d) and 679.3141.<sup>15</sup> There is no special choice-of-law rule for the perfection and priority of a security interest in electronic money, so the default rule of the debtor’s “location” applies (unless preempted by federal law), § 679.3011(1).

**Priority of Security Interest in Money.** The “take free” rules for transferees of “money” who are not in collusion with debtor are revised to apply to “electronic money” in a manner similar to their application to tangible money, § 679.332(1)(tangible money) and (3)(electronic money). The effect of this is that a security interest in money that is perfected by control has priority over a security interest that is not perfected by control.

#### **Revisions to § 679 – Chattel Paper**

**Chattel Paper Defined.** The term “chattel paper” itself has been modified, § 679.1021(1), to refer to the relevant “right to payment” and not to the record that evidences the right to payment. As result, the relevant record “evidences” the right to payment rather than being itself “chattel paper.” The terms “tangible chattel paper” and “electronic chattel paper” have been eliminated and have been replaced by references in other sections of the UCC to a “tangible copy of the record evidencing the chattel paper” and an “electronic copy of the record evidencing the chattel paper.” For tangible copy, see § 671.201(15) (delivery); § 671.3062 (governing law perfection and priority); § 679.3152 (possession and control); and § 679.3171 (take free); for electronic copy see § 679.1051 (control (similar to § 669.105); § 679.2081 (duties of secured party); § 679.3051 (perfection and priority); § 679.3062 (law); § 679.3152 (possession); § 679.3171 (take free), inter alia.

**Further Modifications.** The definition of “chattel paper” has also been modified for hybrid transactions which are transaction that include both the sale or lease of goods and other aspects, such as the sale of services or the license of intellectual property, § 679.1021(1)(2.). In a hybrid transaction, the term “chattel paper” will apply to a lease of goods only if the “predominant” purpose of the lease transaction relates to the possession and use of the goods.

**Perfection of Security Interest in Chattel Paper by Control.** An additional method [ADD CITE TO filing fin stmt]<sup>16</sup> for perfection of a security interest in chattel paper in electronic form has been added, § 679.3101(2)(h)(filing of a financing statement is not

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<sup>15</sup> Control is defined in a manner similar to the definition for control of a CER, including a presumption of exclusivity, the meaning of sharing, and holding control through another person. UCC § 9-105A will require an amendment to Fla. Stat. 679.1051 (**FBD5.23 pg. 58**), control of electronic chattel paper.

<sup>16</sup> The UCC amendments preserve the existing method of perfecting a security interest in the electronic record evidencing chattel paper. UCC § 9-105(b). The method is not suitable for chattel paper maintained on a distributed ledger. UCC § 9-105, Comment 4; see also Fla. Stat. 679.1051; **FBD5.23 pg. 58**.



necessary). The new method has a definition, sharing rules, a presumption of exclusivity, and provision for control through another person comparable to the meaning of control for a CER in § 669.105. If the relevant right to payment that constitutes chattel paper is evidenced by both a tangible copy and an electronic copy, the secured party can perfect by possession and control by having possession of each authoritative tangible copy and control of each authoritative electronic copy, § 679.3152. New § 679.3251 provides “A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the 2482 account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.”

**Perfection of Security Interest by Third Party Control.** Provisions have been added to confirm that a secured party can perfect a security interest in chattel paper by control through a third party in control if the third party “acknowledges that it has control of behalf of” the secured party, § 679.1051(7), similar to § 669.105(5). In providing examples of CERs perfecting security interests, commentators often refer to acknowledgement by the system or platform holding the CER.<sup>17</sup>

### **Revisions to Definitions in § 671**

**The Term “Conspicuous” Updated.** The current definition of conspicuous has statutory examples of what satisfies the requirements of the definition (e.g., ALL CAPS). The revised UCC definition has dropped the statutory examples and instead has a “totality of the circumstances” factors test, § 671.201(11).<sup>18</sup> The word “signed”<sup>19</sup> has been revised to include electronic signatures, §§ 671.201(42).

### **Transition Rules**

**General.** The general rule is that the UCC amendments will have a certain effective date, such as July 1, 2024. As a result, the choice-of-law rules (discussed above) may be important to determine which state’s transition rules apply.

**Established Priorities.** The key exception to the transition rule on the effective date is that any pre-effective date priority will stay in place for two (2) years following the statute’s effective date, § 669.502 (adjustment date). See §§ 669.702 through 669.706 for further details. After the adjustment date, the new priority rules will apply, even to transactions completed before the effective date. Thus, as shown in the examples below, a secured party with pre-effective date “control” can jump ahead of a secured party that before the effective date had perfected only by the filing of a financing statement. The goal is to have the adjustment date be the same in a critical mass of states.

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<sup>17</sup> Several examples describing perfecting a security interest in digital assets with CERs is provided in “Explaining the 2022 UCC Amendments through Illustrations,” *The Transactional Lawyer*, S. Sepinuck, vol. 12, Oct. 2022.

<sup>18</sup> Statutory examples are mentioned in the comments for UCC § 1-201(b)(10).

<sup>19</sup> The word “authenticate” has been replaced by “signed.” See, e.g., UCC § 9-203(b)(3)(A); Fla. Stat. 679.2031(2)(c); *FBD5.23* pg. 64. Also, “record” replaces “writing” in some instances in reference to electronic records. See, e.g., UCC § 1-201(b)(36) (definition of “send”); Fla Stat. 671.201(39) (definition of “send”). Some instances of “writing” remain. See, e.g., UCC § 9-102(a)(47) (definition of “instrument”); Fla. Stat. 679.1021(1)(uu); *FBD5.23* pg. 55 (definition of “instrument”).

A writing signed electronically will ordinarily be sufficiently signed (in a non-UCC sense) under UETA or E-SIGN to be effective as a contract, but will not be a “signed writing” where required by the UCC. See UCC § 1-201, Comment 37.

**Example 1:** *Before* the effective date, SP 1 perfects a security interest in the debtor’s accounts and general intangibles by filing a financing statement, which indicates the collateral is “accounts” and “general intangibles”. The accounts and general intangibles are evidenced by what would be a CER if the UCC amendments were in effect. *Before* the effective date and *after* SP 1 files its financing statement, SP 2 perfects in the same collateral in the same manner. SP 2 *also* takes actions that would give it control of the CER that evidences the controllable accounts and controllable payment intangibles if the new law were in effect. The “control” acts do not (yet) perfect the security interest because the new law is not yet in effect.

**Example 1 (amended):** On the *effective* date, SP 2 has “control” of the collateral and is perfected by control (as well as by the filing of a financing statement). Although under the amendments SP 2’s perfection by control would have priority over SP 1’s security interest (perfected only by the filing of a financing statement), because *before* the effective date SP 1 perfected only by filing a financing statement (the only available method at that time), SP 2 is still junior to SP 1 because their relative priority was established before the effective date.

**Example 1 (second amended):** On the *adjustment* date, SP 2 will then obtain priority under the new rules because SP 2 has “control” under the new rules.

**Example 2:** *Before* the effective date, SP 1 perfects a security interest in a CER by filing a financing statement. *After* the effective date, SP 2 perfects a security interest in the same CER by obtaining control of the CER. SP 2 immediately has priority under the amendments because the priorities between the two secured parties were not established before the effective date.

Fla. Bar UCC Article 12 Joint Task Force  
Blockchain and Digital Assets Committee and  
UCC/Bankruptcy Committee  
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*White Paper Truncated Ver\_20230803*

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**SUMMARY COMPARISON OF EXISTING UCC ARTICLES TO PROPOSED ADOPTION OF  
UNIFORM COMMERCIAL CODE AMENDMENTS (2022) INCLUDING NEW ART. 12.**

Uniform Law §	Fla. Stat. §	Bill Page & Line	Per Fla. Bill Draft 2024-XXX <i>Ver Aug 2, 2023</i> (herein the “Bill”)
Art 12	Ch. 669 (Part I)		<b>UCC Article 12: UNIFORM COMMERCIAL CODE: CONTROLLABLE ELECTRONIC RECORDS</b>
§ 12-101	§ 669.101	p. 11, lines 315-318.	Creating § 669.101, Part I, Title: Controllable Electronic Records (herein “CERs”).
§ 12-102	§ 669.102	pp. 11- 13, lines 319-351.	<p>Creating § 669.102, <b>Definitions.</b></p> <p>§ 669.102(1)(a): “<b>controllable electronic record</b>” (here, “<b>CER</b>”) [means a record in an electronic medium, subject to control as defined in § 669.105. The term does not include controllable accounts, controllable payment intangibles, deposit accounts, electronic chattel paper, electronic documents of title, electronic money, investment property, or transferable records. However, see § 669.102(2) below for these excluded assets.]</p> <p>§ 669.102(1)(b): “<b>qualifying purchaser</b>” (here, “<b>QP</b>”) [means a purchaser of a CER or an interest in a CER that obtains control of the CER for value, in good faith, and without notice of an adverse property right claim in the CER.]</p> <p>§ 669.102(1)(c): “<b>transferable record</b>” [has same meaning as in § 201(a)(1) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7021(a)(1) or F.S. § 668.50(16)(a).]</p> <p>§ 669.102(1)(d): “<b>value</b>” [has the same meaning as § 673.3031 (Secured Transactions)]. The CER must be subject to control as defined and specified in § 669.105.]</p> <p>§ 669.102(2): provides that UCC Art. 9 definitions for the terms “account debtor” “controllable account,” “controllable payment intangible,” “chattel paper,” “deposit account,” “electronic money,” and “investment property” are the same as defined in § 679.1021. See § 679.1021 for new or amended definitions.</p> <p>NOTE: For electronic documents of title, see Control of Electronic Documents of Title, § 677.106(2), (3), and (7).</p>

§ 12-103	§ 669.103	p. 13, lines 352-361.	<p>creating § 669.103, <b>Relation to Article 9 and Consumer Laws.</b></p> <p>§ 669.103(1): in the event of conflict between § 669.101 et al. (Art. 12) and F.S. § 679 (Secured Transactions) then § 679 governs.</p> <p>§ 669.103(2): any transaction subject to Art. 12 that is subject to “any applicable rule of law” for consumers, then Ch. 669 (CERs, Art. 12) “is subject to” those consumer laws.</p> <p>§ 669.103(2): a similar “subject to” rule is applied to (i) “any other law or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit” and to (ii) F.S. § 501 (consumer protection laws, including FDUPTA, § 501.201, et seq.)</p>
§ 12-104	§ 669.104	pp. 13-14, lines 362-406.	<p>creating § 669.104, <b>Rights in Controllable Account, Controllable Electronic Record, Controllable Payment Intangible.</b></p> <p>§ 669.104(2): the QP must “obtain control” per § 669.105 of CER/controllable account/controllable payment intangible account.</p> <p>§ 669.104(3): except as provided in § 669.104 otherwise, “law other than § 669.101 (Art. 12)” determines whether a person acquires a right in a CER and the right the person acquires. [As an example of application of an “other law”, the rights of a purchaser of an NFT token is determined by trademark law or copyright law. <i>See Hermès Int'l v. Rothschild</i>, No. 1:22-cv-00384-JSR (S.D.N.Y Jan. 14, 2022) (MetaBirkin NFTs violate Hermès rights in its BIRKIN trademarks).]</p> <p>§ 669.104(4): a purchaser of a CER acquires all rights in the CER that transferor had or had power to transfer. A purchaser who purchases a “limited interest” in the CER is limited to the extent of “the interest purchased.”</p> <p>§ 669.104 (5), (6) and (7): a QP acquires all CER rights free of claims of others; takes rights to payment, performance or “other interest” in CER property; and bars actions against a QP for conversion, replevin, constructive trust, equitable lien, or “other theory.” This is the Art. 12 “take free” provision.</p> <p>§ 669.104(8): filing a financial statement under Ch. 679 (Art. 9) <b>is not notice of claim</b> of a property right in a CER.</p>
§ 12-105	§ 669.105	pp. 14-16, lines 407-469.	<p>creating § 669.105, <b>Control of Controllable Electronic Record.</b></p> <p>[Specifies when a person has “control” of a CER, or a record “attached to or logically associated with” the CER, or “a system” where the CER “is recorded.” In general, control of the CER is established by several “exclusive” powers, including the power to enjoy substantially all the CER benefits and the power to transfer, however Art. 12 recognizes that exclusivity may be shared with others.]</p>

			<p>§ 669.105(1)(a)(1): control of a CER is evidenced when the person has the power to avail itself of “substantially all” benefits of CER. In addition to this beneficial requirement, § 669.105(1)(b) further requires that the person having control must also “readily identify[] itself in any way including by name, [] number, cryptographic key, office, or account number” as having the powers of control in § 669.105(1)(a)(1) and (1)(a)(2).</p> <p>§ 669.105(1)(a)(2.a) and (1)(a)(2.b): control must be exclusive, but exclusivity can be shared. Exclusive control is evidenced by the power to prevent others from enjoying substantially all the benefits of the CER, § 669.105(1)(a)(2)(a), AND the power to transfer the CER to another, § 669.105(1)(a)(2.b). Shared exclusivity is defined by § 669.105(2)(a) and (2)(b).</p> <p>§ 669.105(2)(a): provides that the power is exclusive if the CER, or the record attached to the CER, or the system where the CER is recorded, “limits the use” of the CER or “has [] protocol programmed” to cause a change, transfer, loss of control, or modification “of the benefits afforded by” the CER. F.S. § 669.105(2)(b) provides that control of the CER may be shared with others and such sharing is exclusive.</p> <p>§ 669.105(3) establishes when the power is not a shared power with another. See § 669.105(3)(a) and (3)(b)(1) describing permissible multi-signature requirements. Also, the power is not shared when a person is a “transferor ... evidenced by” the CER/controllable account/controllable payment account. § 669.105(3)(b)(2).</p> <p>§ 669.105(4): establishes a presumption of exclusivity if the person has the powers in (1)(a)(2.a). and 1)(a)(2.b).</p> <p>§ 669.105(5) establishes that a person has control if acknowledgement of control is provided by another</p> <p>§ 669.105(6) and (7) provides that a person, who has control, has no duty to acknowledge control unless the person otherwise agrees OR acknowledgement is required by F.S. § 679 (secured transactions) or other law.</p>
§ 12-106	§ 669.106	pp. 17-19, lines 470-548.	creating § 669.106, <b>Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible.</b>

			<p>§ 669.106(1): A debtor may discharge its controllable account/payment intangible by paying person having control or, under certain circumstances, a person formerly in control (see discharge exceptions to former CER controllers below)</p> <p>§ 669.106(2) and (3): providing requirements for such discharge when payment made to person formerly in control. Conditions per § 669.106(2) include notice (a) is signed by person formerly in control OR the person to which control was transferred; (b) identifies the controllable account/payment intangible; (c) of the transfer; (d) Identifies the transferee “in any reasonable way:” AND (e) provides a commercially reasonable way to pay. After such notice to debtor, § 669.106(3) affirms that payment to the person formerly in control does not discharge the debt.</p> <p>§ 669.106(4): notice under § 669.106(2) is NOT effective unless the debtor agrees, in a signed record, to the method of notice and proof when the controllable account/ payment intangible CER is transferred. Also, notice is not effective if the debtor’s agreement is limited by its terms or by law other than Art. 12. Notice is also not effective when the debtor can divide a payment, make partial payment, or “pay any part of a payment by more than one method or to 508 more than one person.” § 669.106(4)(c).</p> <p>§ 669.106(5) and (6): describes requests by debtor for proof of transfer and required responses by person in control.</p> <p>§ 669.106(7): Subject to § 669.106(8), an account debtor may not waive or vary its rights under § 669.106(4)(a) and (5) or its option under §§ (4)(c).</p> <p>§ 669.106(8) provides for the application of law other than Art. 12 when the debtor is an individual who incurred the obligation primarily for personal, family, or household purposes.</p>
§ 12-107	§ 669.107	pp. 19- 21, lines 549-609.	<p>creating § 669.107, <b>Governing Law</b>.</p> <p>§ 669.107(1): specifies that for Art. 12 purposes, the CER’s jurisdictional law governs the CER.</p> <p>§ 669.107(2) specifies that, for a controllable account/payment intangible CER, the local law of the CER’s jurisdiction governs a matter covered by the debtor discharge provisions in § 669.106 “unless an effective agreement determines that the local law of another jurisdiction governs.”</p> <p>§ 669.107(3) determines the CER’s jurisdiction in a cascading manner. First, if the “CER’s jurisdiction” is listed in the CER or “a record attached to or logically associated” with the CER and is readily available for review, then that is the CER’s jurisdiction. See § 669.107(3)(a). Second, §§ 107(3)(b) looks to the jurisdiction of the system wherein the CER is recorded for its jurisdiction. Third, § 669.107(3)(c) looks to the “expressly provide[d]” jurisdiction of the CER. Fourth, § 669.107(3)(d) looks to rules of the system</p>

			where the CER is recorded to determine the jurisdiction of the CER. Lastly, if all other subsections do not apply, then Washington, D.C. is the jurisdiction of the CER.
			<b>PART II OF CH. 669 – TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE AMENDMENTS (2022) – UCC ARTICLES 9 AND 12.</b>
Am. (2022) § A-101	Part II of Ch. 669	p. 21, lines 610-613.	creating Part II of Ch. 669, “ <b>Transitional Provisions for Chapter 669 and 2024 Amendments to Chapter 679.</b> ” [Title is non-uniform since transitional provisions are adopted as Part II of Ch. 669].
	§ 669.501	p. 21, lines 614-617.	§ 669.501: provides for effective date for Ch. 669 (both Part I and Part II) as July 1, 2014.
Am. (2022) § A-102	§ 669.502	p. 21, lines 618-635.	creating § 669.502, <b>Definitions for Part II.</b> § 669.502(1)(a): defines “adjustment date” as July 1, 2025. § 669.502(2): defines “ <b>Article 12</b> ”; “ <b>Article 12 property</b> ” (means a CER or a controllable account/payment intangible); and adopts the definitions from § 679.1021 for the terms, “ <b>Controllable account</b> ”; “ <b>Controllable electronic record</b> ”; “ <b>Controllable payment intangible</b> ”; “ <b>Electronic money</b> ”; and “ <b>Financing statement.</b> ” § 669.502(3): applies general definitions and principles of construction and interpretation from Ch. 671 to Part II.
Am. (2022) § A-201			NOT PART OF CH. 669: each UCC Chapter amended by the Bill is amended to include a separate savings clause based on the general savings clause language in § A-201.
Am. (2022) § A-301	§ 669.601 1	pp. 22-23, lines 636- 645.	creating § 669.601, <b>Savings Clause for Existing Transactions Covered under Articles 9 and 12.</b> § 669.601: preserves existing transactions, stating that “Except as provided in this part [Part II (§§ 669.501-669.706)] a transaction validly entered into before July 1, 2024, ... remain[s] valid” as through the Bill had not taken effect.

Am. (2022) § A-301	§ 669.701	pp. 23-24, lines 646- 670.	<p>§ 669.701 in general creates a savings clause of transitional provisions of F.S. § 669 and F.S. § 679 (secured transactions).</p> <p>§ 669.701(1) makes amendments to F.S. § 679 effective for transactions, liens, or “other interest[s] in property” that were entered into, created, or acquired before July 1, 2024.</p> <p>§ 669.701(2)(a) provides that unless § 669.701(3) or § 669.702 – 706 applies, then, pursuant to § 669.701(2)(a), non-UCC transactions which would be subject to Art. 12, F.S. § 669.101, et seq., if entered into or created or transferred on or after July 1, 2024 will remain valid after July 1, 2024.</p> <p>F.S. § 669.701(2)(b) states “The transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by [the Bill] or by the law that would apply if [this Bill] had not taken effect.”</p> <p>F.S. § 669.701(2)(c) states that “This section [F.S. § 669.701] does not affect an action, case, or proceeding commenced before July 1, 2024.”</p> <p>§ 669.701(3), the Bill does not effect existing causes of action;</p>
§ A-302	§ 669.702	p. 23, lines 671-693.	<p>creating § 669.702, <b>Security Interest Perfected Before Effective Date (of July 1, 2024)</b>.</p> <p>§ 669.702(1): provides that a security interest that is enforceable and perfected before July 1, 2024, is a perfected security interest under Art. 12, if “on July 1, 2024, the requirements for enforceability and perfection under [this Bill] are satisfied without further action.”</p> <p>§ 669.702(2): covers the situation when a security interest is perfected before July 1, 2024, but the requirements for enforceability or perfection under [this Bill] are not satisfied on July 1, 2024, and provides guidelines for establishing compliance by the “adjustment date” of January 1, 2025.</p>
§ A-303	§ 669.703	pp. 24-25, lines 694- 710.	<p>creating § 669.703, <b>Security Interest Unperfected Before Effective Date (of July 1, 2024)</b>. Concerns security interests that were enforceable but unperfected before July 1, 2024, and provides guidelines for establishing perfection by the “adjustment date” of January 1, 2025.</p>
§ A-304	§ 669.704	pp. 25-26, lines 711- 732.	<p>creating § 669.704, <b>Effectiveness of Actions Taken Before Effective Date (of July 1, 2024)</b>. Specifies the effectiveness of certain actions relating to security interests taken before July 1, 2024.</p>
§ A-305	§ 669.705	p. 26, lines 733-746.	<p>creating § 669.705, <b>Priority</b>. Determines priority of conflicting claims to collateral on July 1, 2024, and on the adjustment date.</p>



§ A-306	§ 669.706	pp. 26-27, lines 747- 765.	creating § 669.706, <b>Priority of Claims When Priority rules of Article 9 Do Not Apply</b> . Determines priority of conflicting claims to collateral when Art. 9 rules do not apply on July 1, 2024, and on the adjustment date.
<b>Art 4A</b>	<b>670</b>		<b>UNIFORM COMMERCIAL CODE: FUNDS TRANSFERS ... 670.101 et seq.</b>
§ 4A-103	§ 670.103	p. 27, lines 766-781.	amending § 670.103, <b>Payment Order – Definitions</b> . Revises the definition of the term “payment order”; adds the new Art. 9 term “record” to replace “writing”; and adds that the bank may require the use of symbols or sounds or biometrics. See § 671.201 for new definitions.
§ 4A-201	§ 670.201	pp. 27-28, lines 782- 801.	amending § 670.201, <b>Security Procedure</b> . Imposes an obligation on a receiving bank and expands list of identifiers for security procedures.
§ 4A-202	§ 670.202	pp. 28-29, lines 802- 834.	amending § 670.202, <b>Authorized and Verified Payment Orders</b> . Revises the circumstances under which payment orders received by banks are effective as the order of a customer; making technical changes; now referring to a “record.” See § 671.201 for new definitions.
§ 4A-203	§ 670.203	pp. 29-30, lines 835- 845.	amending § 670.203, <b>Unenforceability of Certain Verified Payment Orders</b> . Conforming change to use term “record,” i.e., to “an agreement evidenced by a record” instead of referring to a “written” agreement. See § 671.201 for new definitions.
§ 4A-207 § 4A-208 § 4A-210 § 4A-211 § 4A-305	§ 670.207 § 670.208 § 670.21 § 670.211 § 670.305	pp. 29-32, lines 846- 932.	Amendment to new term “record.” See § 671.201 for new definitions.
Am. (2022) § A-201	§ 670.601	p. 32, lines 933-945.	creating § 670.601, <b>Savings clause for 2024 Amendments</b> . General savings clause for existing Ch. 670 transactions.

Art 1	671		UCC Article 1: UNIFORM COMMERCIAL CODE: GENERAL PROVISIONS ... 671.101 et seq.
§ 1-101	§ 671.101	p.33, lines 946-950.	amending § 671.101(1), <b>Short title; scope of chapter</b> , to include Chapter 669 (Art. 12) within the Florida chapters that constitute the Uniform Commercial Code as adopted in Florida.
§ 1-301	§ 671.105	pp. 33-34, lines 951-960.	amending § 671.105(2), <b>Territorial applicable of the code; parties’ power to choose applicable law</b> , to include Chapter 669 (Art. 12) within the territorial application provisions.
§ 1-306	§ 671.107	p. 34, lines 961-967.	Amendment to new term “record.” See § 671.201 for new definitions.
§ 1-201	§ 671.201*	pp. 34-37, lines 968-1075.	<p>Amending 671.201, <b>General Definitions</b>. * revising definitions and defining: § 671.201(11)** conspicuous (to totality of circumstances); (16) *** delivery (adding “an authoritative copy of a record”); (18) *** adding definition of “electronic”; sign; (23) *** holder (edited); (26) *** money (to exclude “an electronic record that is a medium of exchange required and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government.”); (27) *** person has notice of a fact; (28) *** notifies; (32) *** person (now including a “protected series” of an entity); (41) *** send (delete writing, and add notification; refer to transmit); (42) *** sign (now including adopt a tangible symbol, or attach or logically associate an electronic symbol, sound or process); now referring to a record.</p> <p>NOTE: § 671.201 was amended, effective July 1, 2023. See ch. 2023-80, Laws of Florida, An Act Relating to Central Bank Digital Currency (herein the “CBDC Act”). The CBDC Act added the defined term “central bank digital currency” as new § 671.201(10) (2023) and cabined this currency to digital currency issued or processed by a central bank in the U.S. (the Federal Reserve) or a foreign government. The CBDC Act excluded central bank digital currency from the definition of “money” in § 671.201. No change is made to this 2023 legislation.</p>
§ 1-204	§ 671.211	p. 37, lines 1076-94.	amending § 671.211, <b>Value</b> , to reference chapter 669 as an exclusion if otherwise value is determined in such chapter.
Am. (2022) § A-201	§ 671.401	pp. 38-39, lines 1092-1104.	creating Part IV of chapter 671, “Transitional Provisions”, and § 671.401, <b>Savings clause for 2024 Amendments</b> . General savings clause for existing Ch. 671 transactions.

<b>Art 2</b>	<b>672</b>		<b>UCC Article 2: UNIFORM COMMERCIAL CODE: SALES ... 672.101 et seq.</b>
§ 2-102	§ 672.102	pp. 38-39, lines 1105-1133.	amending § 672.102, <b>Scope; certain security and other transactions excluded from this chapter.</b> The statute is restructured into three subsections; subsection (1) and (2) add within the scope “hybrid transactions” and the predominate aspects test determines a hybrid transaction. The Art. 12 amendments do not impair or replace statutes regulating sales to consumers, farmers or “other specified classes of buyers.” “Hybrid transaction” is defined in § 672.106.
§ 2-106	§ 672.106	pp. 39-40, lines 1134-1164.	amending § 672.106, <b>Definitions.</b> Defining new term “ <b>hybrid transaction</b> ”; making technical changes; re add record and delete “writing.”
§ 2-201 § 2-202 § 2-203 § 2-205 § 2-209	§ 672.201 § 672.202 § 672.203 § 672.205 § 672.209	pp. 40-42, lines 1165-1224.	Amendment to new term “record.” See § 671.201 for new definitions.
Am. (2022) § A-201	§ 672.801	p. 43, lines 1225-1237.	creating Part VIII of chapter 672, <b>Transitional Provisions</b> , and § 671.401, <b>Savings clause for 2024 Amendments.</b> General savings clause for existing Ch. 672 transactions.
<b>Art 3</b>	<b>673</b>		<b>UCC Article 3: UNIFORM COMMERCIAL CODE: NEGOTIABLE INSTRUMENTS .. 673.1011 et seq.</b>
§ 3-104	§ 673.1041	pp. 43-44, lines 1239-1260.	amending § 673.1041, <b>Negotiable instrument</b> , and expanding terms that a promise or order may contain to include governing law or dispute resolution forum that do not affect negotiability.
§ 3-105	§ 673.1051	p. 44, lines 1261-1272.	amending § 673.1051, <b>Issue of instrument</b> , and expanding terms to include an electronic check under federal law.

§ 3-401	§ 673.4011	pp. 44-45, lines 1273-1285.	amending § 673.4011, <b>Signature</b> , to eliminate how a signature is made with the adoption of the new term signed. See § 671.201 for new definitions.
§ 3-604	§ 673.6041	pp. 45-46, lines 1286-1307.	amending § 673.6041, <b>Discharge by cancellation or renunciation</b> . Specifying that the obligation of a party to pay a check is not discharged solely by destruction of the check in connection with a specified process that extracts the information from the check.
Am. (2022) § A-201	§ 673.701	p. 46, lines 1308-1320.	creating Part VII of chapter 673, <b>Transitional Provisions</b> , and § 673.701, <b>Savings clause for 2024 Amendments</b> . General savings clause for existing Ch. 673 transactions.
<b>Art 4</b>	<b>674</b>	<b>N/A</b>	<b>UCC Article 4: UNIFORM COMMERCIAL CODE: BANK DEPOSITS AND COLLECTIONS: No amendments.</b>
<b>Art 5</b>	<b>675</b>		<b>UCC Article 5: UNIFORM COMMERCIAL CODE: LETTERS OF CREDIT</b>
§ 5-104	§ 675.104	p. 46, lines 1321-1328.	Amendment to new term “signed.” See § 671.201 for new definitions.
§ 5-116	§ 675.116	p. 46-48, lines 1329-1376.	amending § 675.116, <b>Choice of law and forum</b> . Conforming amendments to the new term “record” and specifying the location of a branch of a bank based on its undertaking or “the address from which the undertaking was issued.”
Am. (2022) § A-201	§ 675.119	p. 48, lines 1377-1386.	creating § 675.119, <b>Savings clause for 2024 Amendments</b> . General savings clause for existing Ch. 675 transactions.
<b>Art 6</b>	<b>676</b>	<b>N/A</b>	<b>UCC Article 6: Bulk Sales REPEALED</b>

<b>Art 7</b>	<b>677</b>		<b>UCC Article 7: UNIFORM COMMERCIAL CODE: DOCUMENTS OF TITLE</b>
§ 7-102	§ 677.102	p. 48-49, lines 1387-1403.	Amendment to new term “record” and “signed.” See § 671.201 for new definitions.
§ 7-106	§ 677.106	pp. 49-52, lines 1404-1486.	amending § 677.106, <b>Control of electronic document of title</b> . Specifying when a system satisfies certain requirements and a person has control of an electronic document of title “if an authoritative electronic copy of the document, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded” has certain characteristics and gives the person exclusive powers. See § 669.105 for similar CER exclusivity requirements.
Am. (2022) § A-201	§ 677.701	p. 52, lines 1487-1499.	creating § 677.701, <b>Savings clause for 2024 Amendments</b> . General savings clause for existing Ch. 677 transactions.
<b>Art 8</b>	<b>678</b>		<b>UCC Article 8: UNIFORM COMMERCIAL CODE: INVESTMENT SECURITIES</b>
§ 8-102	§ 678.1021	pp. 52-53, lines 1500-1521.	Amending § 678.1021, <b>Definitions</b> . Adding references to the terms “controllable account” defined in § 679.1021, “controllable electronic record” defined in § 669.102 and “controllable payment intangible” defined in § 679.1021.  NOTE under § 678.1021(1)(i)(3) that “[a]ny 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.”
§ 8-103	§ 678.1031	p. 53, lines 1522-1531.	amending § 678.1031, <b>Rules for determining whether certain obligations and interest are securities or financial assets</b> . Specifying that a “financial asset” does not include “a controllable account, controllable electronic record, or controllable payment intangible” unless such account, record or intangible qualifies as a financial asset under § 678.1021(1)(i)(3).

§ 8-106	§ 678.1061	pp. 53-54, lines 1532-1556.	amending § 678.1061, <b>Control</b> . Adding new subsections (8) and (9), and revising the circumstances under which purchasers have control of security entitlements § 678.1061(4)(c); specifying a person that has such control is not required to acknowledge such control on behalf of a purchaser; specifying that certain persons do not owe any duty to purchasers and are not required to confirm certain acknowledgment under certain circumstances.  Note: “control” of a security entitlement in § 678.1061 is defined in a manner similar under § 669.105 in Art. 12.
§ 8-110	§ 678.1101	p. 54, lines 1557-1564.	amending § 678.1101, <b>Applicability; choice of law</b> . Adding a new subsection (7) to specify that the local law of the issuer’s jurisdiction governs in specific circumstances.
§ 8-303	§ 678.3031	pp. 54-55, lines 1565-1570.	amending § 678.3031, <b>Protected Purchaser</b> . Specifying that protected purchasers acquire interest in a security free of any adverse claim.
Am. (2022) § A-201	§ 678.601	p. 55, lines 1571-1583.	creating Part VI of chapter 678, <b>Transitional Provisions</b> , and § 678.601, <b>Savings clause for 2024 Amendments</b> . General savings clause for existing Ch. 678 transactions.
<b>Art 9</b>	<b>679</b>		<b>UCC Article 9: UNIFORM COMMERCIAL CODE: SECURED TRANSACTIONS .. 679.1011 et seq.</b>
§ 9-102	§ 679.1021	pp.55-62, lines 1584-1788.	amending § 679.1021, <b>Definitions and index of definitions</b> . amending § 679.1021(1)(b), to eliminate the terms, “ <b>Authenticate</b> ” and “ <b>Send</b> .” amending existing definitions in § 679.1021(1)(b): “ <b>Account</b> ,” “ <b>Account debtor</b> ,” “ <b>Accounting</b> ,” “ <b>Chattel paper</b> ” “ <b>sign/signed/signature</b> ,” “ <b>General intangible</b> ” [to include controllable electronic records § 679.1021(1)(ss)], “ <b>Instrument</b> ,” “ <b>Payment intangible</b> ” [to include a controllable payment intangible], “ <b>Proposal</b> .”  amending § 679.1021(1)(b) to add new definitions: “ <b>Assignee</b> ,” “ <b>Assignor</b> ,” “ <b>Controllable account</b> ” [§ 679.1021(1)(w)], “ <b>Controllable payment intangible</b> ” [§ 679.1021(1)(x)], “ <b>Electronic money</b> ” [§ 679.1021(1)(hh)], “ <b>Money</b> ” [now excluding “deposit account or money in an electronic form that cannot be subjected to control under § 679.1052” § 679.1021(1)(fff)]; “ <b>Tangible money</b> ” [§ 679.1021(1)(ccc)];

			amending the index in § 679.1021(2) to reference “Controllable Electronic Record” in § 699.102, “Protected Purchaser” in § 678.3031, and “Qualifying Purchaser” in § 669.102.
§ 9-104	§ 679.1041	pp.62-63, lines 1789-1807.	amending § 679.1041, <b>Control of deposit account</b> . Adding new subsection (1)(d) to specify the circumstances under which a secured party has control of a deposit account and adding that in another person, other than the debtor, acknowledges control on behalf of the secured party.
§ 9-105	§ 679.1051	pp. 62-66, lines 1808-1903.	amending § 679.1051, <b>Control of electronic chattel paper</b> . Specifying rules in detail when a person has control of electronic chattel paper; specifying when power of such control is exclusive or is not exclusive (including multi-signature exclusive control); “control of an authoritative electronic copy of a record evidencing chattel paper.”  Control may be evidenced by a system having an authoritative electronic copy of the electronic chattel paper; permitting the purchaser to readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of the authoritative electronic copy.  For further explanation, see Art. 12, discussing “control” in § 669.105
§ 9-105A	§ 679.1052	pp.66-68, lines 1904-1953.	creating § 679.1052, <b>Control of electronic money</b> . Specifying when a person has control of electronic money; specifying when power of such control is exclusive or is not exclusive.  “The electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers under paragraph (a),” § 679.1052(1)(b)  For further explanation, see similar terminology in Art. 12, discussing “control” in § 669.105
§ 9-107A	§ 679.1053	p. 68, lines 1954-1963.	creating § 679.1053, <b>“Control of controllable electronic record, controllable account, or controllable payment intangible</b> . Specifying when a person has control of controllable electronic records, controllable accounts, or controllable payment intangible; referring to § 679.1051, § 679.1052, or § 679.1053.  For further explanation, see similar terminology in Art. 12, discussing “control” in § 669.105.
§ 9-107B	§ 679.1054	pp. 68-69, lines 1964-1975.	creating § 679.1054, <b>“No requirement to acknowledge or confirm; no duties.”</b> Generally addressing acknowledgement by a person who has control, and limit on duty by a person acknowledging it has control.  For further explanation, see similar terminology in Art. 12, discussing “control” in § 669.105

§ 9-203	§ 679.2031	pp. 69-70, lines 1976-2024.	amending § 679.2031, <b>Attachment and enforceability of security interest, proceeds, supporting obligations; formal requisites.</b> Revisions to conform to new term “signed” and to address control by collateral types. Amendment adds new collateral categories of controllable accounts, controllable electronic records, controllable payment intangibles with deposit accounts, electronic documents, electronic money chattel paper, investment property, or letter-of-credit rights, or electronic documents, and the secured party has control under § 677.106, § 679.1041, § 679.105, § 679.1051, § 679.1061, or § 679.1071 pursuant to the debtor’s security agreement. Chattel paper is addressed in subparagraph 5, and references a secured party in possession and control under § 679.3152 pursuant to the debtor’s security agreement.”
§ 9-204	§ 679.2041	pp. 70-71, lines 2025-2044.	amending § 679.2041, <b>After-acquired property; future advances.</b> Revising the circumstances under which a security interest can attach to consumer goods or a commercial tort claim as proceeds under an after-acquired property clause;
§ 9-207	§ 679.2071	p. 71, lines 2045-2058.	Amendment to new term “signed” and to cross-reference new § 679.1052. See § 671.201 for new definitions.
§ 9-208	§ 679.2081	pp. 71-74, lines 2059-2137.	amending § 679.2081, <b>Additional duties of secured party having control of collateral.</b> Revisions to conform to new terms “record” and “signed” and to conform to control of chattel papers under amended § 679.1051.  § 679.2081(2)(f) discusses transfer of control of document of title.  § 679.2081(2)(g) discusses transfer of control of electronic money.  § 679.2081(2)(h) discusses transfer of control of controllable account or controllable payment intangible evidenced by the controllable electronic record.
§ 9-209	§ 679.209	pp. 74-75, lines 2138-2148.	amending § 679.209, <b>Duties of secured party if account debtor has been notified of assignment.</b> Conforming cross-reference to notice to an account debtor under § 679.4091 or § 669.106(2)
§ 9-210	§ 679.210	pp. 75-77, lines 2149-2226.	Amendment to new terms “record” and “signed.” See § 671.201 for new definitions.



§ 9-301	§ 679.3011	pp. 77-79, lines 2227-2264.	amending § 679.3011, <b>Law governing perfection and priority of security interests.</b> Revision to exclude chattel paper now addressed in § 679.3062 and to refer to “tangible money,”
§ 9-304	§ 679.3041	p. 79, lines 2265-2273.	amending § 679.3041, <b>Law governing perfection and priority of security interests in deposit accounts.</b> Specifying that the local law of a bank’s jurisdiction governs even if a transaction does not bear any relation to the bank’s jurisdiction.
§ 9-305	§ 679.3051	p. 79, lines 2274-2281.	amending § 679.3051, <b>Law governing perfection and priority of security interests in investment accounts.</b> Specifying that paragraphs (b), (c) and (d) apply even if the transaction does not bear any relation to the jurisdiction.
§ 9-306A	§ 679.3062	pp. 79-81, lines 2282-2335.	creating § 679.3062, <b>Law governing perfection and priority of security interests in chattel paper.</b> Specifying governing law based on terms and relationship of authoritative electronic copy and authoritative tangible copies.  For further explanation, see similar terminology in Art. 12, § 669.107
§ 9-306B	§ 679.3063	pp. 81-82, lines 2336-2355.	creating § 679.3063, <b>Law governing perfection and priority of security interests in controllable accounts, controllable electronic records, and controllable payment intangibles.</b> Specifying which local law applies between local law of controllable electronic record and in which debtor is located.  Refers to Art. 12, § 669.107 for perfection and priority. For further explanation, see similar terminology in Art. 12, § 669.107.
§ 9-310	§ 679.3101	p.81, lines 2356-2367.	amending § 679.3101, <b>When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.</b> Revision to include “controllable accounts, controllable electronic records, controllable payment intangibles” as collateral category that does not require the filing of a financing statement.
§ 9-312	§ 679.3121	pp. 81-84, lines 2368-2431	amending § 679.3121, <b>Perfection....:</b> Revisions to include controllable accounts, controllable electronic records, and controllable payment intangibles.  § 679.3121(1) makes filing of a financing statement for chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles negotiable documents, instruments, or investment property, or negotiable documents” permissive.

			<p>§ 679.3121(1)(c) specifies that a security interest in tangible money is only by taking possession under § 679.3131.</p> <p>§ 679.3121(1)(d) specifies that a security interest in electronic money is perfected only by control under § 679.3141.</p>
§ 9-313	§ 679.3131	pp. 84-85, lines 2432-2460.	Amendment to new terms “record” and “signed” and to conform to terminology of “negotiable tangible documents” and “tangible money.” See § 671.201 for new definitions.
§ 9-314	§ 679.3141	pp. 85-87, lines 2461-2495.	amending § 679.3141, <b>Perfection by control.</b> Conforming changes to include controllable accounts, controllable electronic records, controllable payment intangibles, electronic documents and electronic money along with deposit accounts, investment property, and letter-of-credit rights.
§ 9-314A	§ 679.3152	p. 87, lines 2496-2511.	creating § 679.3152, “ <b>Perfection by possession and control of chattel paper.</b> ” Provides for perfection of a security interest in chattel paper by possession and control.
§ 9-316	§ 679.3161	pp. 87-88, lines 2512-2540.	amending § 679.3161, <b>Continued perfection of security interest following change in governing law.</b> Conforming changes to include controllable accounts, controllable electronic records, controllable payment intangibles, electronic documents, electronic money and tangible documents, along with deposit accounts, investment property, and letter-of-credit rights.
§ 9-317	§ 679.3171	pp. 88-90, lines 2541-2585.	<p>amending 679.3171, <b>Interests that take priority over or take free of security interest or agricultural lien.</b> Addresses rights of buyers and a licensee to take free of a security interest.</p> <p>§ 679.3171(8) specifies when a buyer takes free of a security interest in chattel paper.</p> <p>§ 679.3171(9) specifies when a buyer takes free of a security interest in an electronic document.</p> <p>§ 679.3171(10) specifies when a buyer takes free of a security interest in a controllable electronic document.</p> <p>§ 679.3171(11) specifies when a buyer takes free of a security interest in a controllable account or a controllable payment intangible.</p>
§ 9-323	§ 679.323	p. 90, lines 2586-2604.	amending § 679.323, <b>Future Advances.</b> Eliminates references to a buyer or lessee in the ordinary course of business as an exception to a buyer or lessee who takes free of a security interest.

§ 9-324	§ 679.324	pp. 90-92, lines 2605-2647.	Amendment to new term “signed.” See § 671.201 for new definitions.
§ 9-326A	§ 679.3251	p. 92, lines 2648-2657.	creating § 679.3251, “ <b>Priority of security interest in controllable account, controllable electronic record, and controllable payment intangible.</b> ” Specifies that perfection by control trumps any other method of perfection by a person not having control.
§ 9-330	§ 679.330	pp. 92-93, lines 2658-2691.	amending § 679.330, <b>Priority of purchaser of chattel paper or instrument.</b> Specifies the requirements for a purchaser of chattel paper or an instrument to take free of a security interest based on taking possession of authoritative tangible or electronic records.
§ 9-331	§ 679.331	pp. 93-94, lines 2692-2715.	amending § 679.331, <b>Priority of rights of purchasers of controllable accounts, controllable electronic records, controllable payment intangibles instruments, documents, instruments, and securities under other articles; priority of interests in financial assets and security entitlements and protection against assertion of claim under chapters 669 and 678.</b> Conforming amendments for new Art. 12, and to address rights of a QP.
§ 9-332	§ 679.332	pp. 94-95, lines 2716-2732.	amending § 679.332, <b>Transfer of money; transfer of funds from deposit account; transfer of electronic money.</b> Specifying when a transferee takes free from a security interest for tangible money, funds from a deposit account, and electronic money.
§ 9-341 § 9-404	§ 679.341 § 679. 4041	pp. 95-96, lines 2733-2760.	Amendment to confirm to new term “signed.” See § 671.201 for new definitions.
§ 9-406	§ 679.4061	pp. 96-98, lines 2761-28230	amending § 679.4061, <b>Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.</b> Conforming amendment to new term “signed.” Excluding subsections (1), (2), (3) and (7) from applying to a controllable account or controllable payment intangibles. Specifying that a promissory note includes a negotiable instrument that evidences chattel paper for subsection (4).
§ 9-408	§ 679.4081	p. 98, lines 2824-2831.	amending § 679.4081, <b>Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.</b> Conforming amendment that “For the purposes of this section, the term “promissory note” includes a negotiable instrument that evidences chattel paper.”

§ 9-509 § 9-513 § 9-601 § 9-604	§ 679.509 § 679.513 § 679.601 § 679.604	pp. 98-101, lines 2832- 2911.	Amendment to confirm to new defined terms “record” and “signed.” See § 671.201 for new definitions. Conforming amendment to reference new § 679.1052 and § 679.1053 in § 679.601(2).
§ 9-605	§ 679.605	pp. 101- 102, lines 2912-2938.	amending § 679.605, <b>Unknown Debtor or secondary obligor</b> . Conforming amendment to address a secured party’s duty when perfection is by control of a controllable account, controllable electronic record, or controllable payment intangible.  See also Art. 12, § 669.105, and control of a CER.
§ 9-608 § 9-611	§ 679.608 § 679.611	pp. 102- 106, lines 2939-3069.	Amendment to confirm to new defined term “signed.” See § 671.201 for new definitions.
§ 9-613	§ 679.613	pp. 106- 108, lines 3070-3127.	amending § 679.613, <b>Contents and form of notification before disposition of collateral; general</b> . Revising sufficient form of notification under § 679.613 and updating cross-reference to § 679.614(3)(a).
§ 9-614	§ 679.614	pp. 108- 112, lines 3128-3228.	amending § 679.614, <b>Contents and form of notification before disposition of collateral; consumer-goods transaction</b> . Revising sufficient form of notification under § 679.64.
§ 9-615 § 9-616 § 9-619 § 9-620 § 9-621 § 9-624 § 9-625	§ 679.615 § 679.616 § 679.619 § 679.620 § 679.621 § 679.624 § 679.625	pp. 112- 120, lines 3229-3452.	Amendment to confirm to new defined terms “record” and “signed.” See § 671.201 for new definitions.

§ 9-628	§ 679.628	pp. 120-121, lines 3453-3489.	amending § 679.628, <b>Nonliability and limitation on liability of secured party</b> . Conforming amendment to address a secured party's duty when perfection is by control of a controllable account, controllable electronic record, or controllable payment intangible.
Am. (2022) § A-201  § A-101 - 306	§ 679.901 § 679.902	pp. 121-122, lines 3490-3510.	creating Part IX of chapter 679, <b>Transitional Provisions for 2024 Amendments</b> , § 679.901, <b>Savings clause for 2024 Amendments</b> , and § 679.90, General savings clause for existing Ch. 679 transactions, and adopting by reference the transitional provisions in Part II of Chapter 669.
<b>Art 2A</b>	<b>680</b>		<b>UCC Article 8 - UNIFORM COMMERCIAL CODE: LEASES ... 680.1011 et seq.</b>
§ 2A-102	§ 680.1021	p. 122, lines 3511-3531.	amending § 680.1021, <b>Scope</b> . Revised to include hybrid lease and to address when certain provisions apply to a finance lease. Hybrid lease is defined in § 680.1031.
§ 2A-103	§ 680.1031	pp. 122-123, lines 3532-3554.	Amending § 680.1031, <b>Definitions and Index of Definitions</b> . amending § 680.1031(1) to add new definition: <b>"Hybrid lease."</b>  amending the index in § 680.1031(3) to conform reference to term in § 679.1021.
§ 2A-107 § 2A-201 § 2A-202 § 2A-203 § 2A-205 § 2A-208	§ 680.1071 § 680.201 § 680.202 § 680.203 § 680.205 § 680.208	pp. 123-125, lines 3555-3625.	Amendment to confirm to new defined terms "record" and "signed." See § 671.201 for new definitions. Amending references to § 679.1021.
Am. (2022) § A-201	§ 680.601	p. 126, lines 3626-3638.	creating Part VI of chapter 680, <b>Transitional Provisions</b> , and § 680.601, <b>Savings clause for 2024 Amendments</b> . General savings clause for existing Ch. 680 transactions.

			<b>Miscellaneous Conforming Cross-Reference Changes</b>
	§ 319.27 § 328.0015 § 559.9232 § 563.022 § 668.50	pp. 126-129, lines 3639-3743.	Amendments are solely to cross cross-references to amendments in the Bill.
		pp. 129-146, lines 3744-4230.	<b>REENACTED Provisions – per Senate procedure. These sections have no additions nor deletions</b>
		p. 146, line 4231.	<b>Effective date of law, July 1, 2024.</b>

**SCHEDULE 9**

UCC Article 12 Amendments

# Uniform Commercial Code Amendments (2022)

Drafted, in partnership with the American Law Institute, by the

Uniform Law Commission

and by it

Approved and Recommended for Enactment in All the States

at its

Meeting in Its One-Hundred-and-Thirty-First Year  
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National Conference of Commissioners on Uniform State Laws

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## Uniform Commercial Code Amendments (2022)

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**AMENDMENTS (2022)**

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**UNIFORM COMMERCIAL CODE AMENDMENTS (2022)**

**ARTICLE 1**

**GENERAL PROVISIONS**

**Section 1-201. General Definitions.**

\* \* \*

(b) Subject to definitions contained in other articles of [the Uniform Commercial Code] that apply to particular articles or parts thereof:

\* \* \*

(10) “Conspicuous”, with reference to a term, means so written, displayed, or presented that, based on the totality of the circumstances, a reasonable person against which it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. ~~Conspicuous terms include the following:~~

~~(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and~~

~~(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.~~

\* \* \*

(15) “Delivery”, with respect to an electronic document of title, means voluntary transfer of control and, with respect to an instrument, a tangible document of title, or an authoritative tangible copy of a record evidencing chattel paper, means voluntary transfer of possession.



\* \* \*

(16A) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

\* \* \*

(21) “Holder” means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control, other than pursuant to Section 7-106(g), of a negotiable electronic document of title.

\* \* \*

(24) “Money” means a medium of exchange that is currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization, or pursuant to an agreement between two or more countries. The term does not include an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government.

\* \* \*

(27) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, ~~public corporation,~~ or any other legal or commercial entity. The term includes a protected series, however denominated, of an entity if the protected

series is established under law other than [the Uniform Commercial Code] that limits, or limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.

\* \* \*

(36) “Send”<sub>1</sub> in connection with a ~~writing, record, or notice~~ notification means:

(A) to deposit in the mail, ~~or deliver for transmission, or transmit~~ by any other usual means of communication, with postage or cost of transmission provided for, ~~and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none~~ addressed to any address reasonable under the circumstances; or

(B) ~~in any other way to cause to be received any record or notice within the time it would have arrived if properly sent~~ to cause the record or notification to be received within the time it would have been received if properly sent under subparagraph (A).

(37) “Signed” ~~includes using any symbol executed or adopted with present intention to adopt or accept a writing.~~ “Sign” means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

“Signed”, “signing”, and “signature” have corresponding meanings.

\* \* \*

**Legislative Note:**

*A state should review and amend any statute or regulation that relies on or refers to the definition of “money” in subsection (b)(24) to account for the amendment to that definition.*

*A state should enact the amendment to subsection (b)(27) whether the state has enacted the*

Uniform Protected Series Act (2017) or otherwise recognizes a protected series under its law. Because the amendment applies only under the enacting state's Uniform Commercial Code, inclusion of the amendment does not require the enacting state to recognize a limit on liability of a protected series organized under the law of another jurisdiction or a limit on liability of the entity that established the protected series. The amendment clarifies the status of a protected series as a "person" under the choice-of-law and substantive law rules of the enacting state's Uniform Commercial Code.

**Section 1-204. Value.**

Except as otherwise provided in Articles 3, 4, ~~and~~ 5, ~~and 6~~, [6.] and 12, a person gives value for rights if the person acquires them:

\* \* \*

**Section 1-301. Territorial Applicability; Parties' Power to Choose Applicable Law.**

\* \* \*

(c) If one of the following provisions of [the Uniform Commercial Code] specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

\* \* \*

(8) Sections 9-301 through 9-307;

(9) Section 12-107.

**Section 1-306. Waiver or Renunciation of Claim or Right After Breach.**

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in ~~an authenticated~~ a signed record.

**ARTICLE 2**

**SALES**

**Section 2-102. Scope; Certain Security and Other Transactions Excluded from**

**this Article.**

~~Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.~~

(1) Unless the context otherwise requires, and except as provided in subsection (3), this Article applies to transactions in goods and, in the case of a hybrid transaction, it applies to the extent provided in subsection (2).

(2) In a hybrid transaction:

(a) If the sale-of-goods aspects do not predominate, only the provisions of this Article which relate primarily to the sale-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply.

(b) If the sale-of-goods aspects predominate, this Article applies to the transaction but does not preclude application in appropriate circumstances of other law to aspects of the transaction which do not relate to the sale of goods.

(3) This Article does not:

(a) apply to a transaction that, even though in the form of an unconditional contract to sell or present sale, operates only to create a security interest; or

(b) impair or repeal a statute regulating sales to consumers, farmers, or other specified classes of buyers.

**Section 2-106. Definitions: “Contract”; “Agreement”; “Contract for Sale”; “Sale”; “Present Sale”; “Conforming” to Contract; “Termination”; “Cancellation”; “Hybrid Transaction”.**

\* \* \*

(5) “Hybrid transaction” means a single transaction involving a sale of goods and:

(a) the provision of services;

(b) a lease of other goods; or

(c) a sale, lease, or license of property other than goods.

**Section 2-201. Formal Requirements; Statute of Frauds.**

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is ~~some writing~~ a record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by ~~his~~ the party’s authorized agent or broker. A ~~writing~~ record is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this ~~paragraph~~ subsection beyond the quantity of goods shown in ~~such writing~~ the record.

(2) Between merchants if within a reasonable time a ~~writing~~ record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against ~~such~~ the party unless ~~written~~ notice in a record of objection to its contents is given within 10 days after it is received.

\* \* \*

**Section 2-202. Final ~~Written~~ Expression: Parol or Extrinsic Evidence.**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a ~~writing~~ record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained

or supplemented:

\* \* \*

(b) by evidence of consistent additional terms unless the court finds the writing record to have been intended also as a complete and exclusive statement of the terms of the agreement.

**Section 2-203. Seals Inoperative.**

The affixing of a seal to a writing record evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing record a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

**Section 2-205. Firm Offers.**

An offer by a merchant to buy or sell goods in a signed writing record which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**Section 2-209. Modification, Rescission, and Waiver.**

\* \* \*

(2) A signed agreement which excludes modification or rescission except by a signed writing or other signed record cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

\* \* \*

**ARTICLE 2A**

**LEASES**

**Section 2A-102. Scope.**

(1) This Article applies to any transaction, regardless of form, that creates a lease and, in the case of a hybrid lease, it applies to the extent provided in subsection (2).

(2) In a hybrid lease:

(a) if the lease-of-goods aspects do not predominate:

(i) only the provisions of this Article which relate primarily to the lease-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply;

(ii) Section 2A-209 applies if the lease is a finance lease; and

(iii) Section 2A-407 applies to the promises of the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods; and

(b) if the lease-of-goods aspects predominate, this Article applies to the transaction, but does not preclude application in appropriate circumstances of other law to aspects of the lease which do not relate to the lease of goods.

**Section 2A-103. Definitions and Index of Definitions.**

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

\* \* \*

(h.1) “Hybrid lease” means a single transaction involving a lease of goods and:

(i) the provision of services;

(ii) a sale of other goods; or

(iii) a sale, lease, or license of property other than goods.

\* \* \*

**Section 2A-107. Waiver or Renunciation of Claim or Right After Default.**

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a ~~written~~ waiver or renunciation in a signed and record delivered by the aggrieved party.

**Section 2A-201. Statute of Frauds.**

(1) A lease contract is not enforceable by way of action or defense unless:

\* \* \*

(b) there is a ~~writing~~ record, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

\* \* \*

(3) A ~~writing~~ record is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the ~~writing~~ record.

\* \* \*

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a ~~writing~~ record signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

\* \* \*

**Section 2A-202. Final ~~Written~~ Expression: Parol or Extrinsic Evidence.**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a ~~writing~~ record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by



evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

\* \* \*

(b) by evidence of consistent additional terms unless the court finds the ~~writing~~ record to have been intended also as a complete and exclusive statement of the terms of the agreement.

**Section 2A-203. Seals Inoperative.**

The affixing of a seal to a ~~writing~~ record evidencing a lease contract or an offer to enter into a lease contract does not render the ~~writing~~ record a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

**Section 2A-205. Firm Offers.**

An offer by a merchant to lease goods to or from another person in a signed ~~writing~~ record that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**Section 2A-208. Modification, Rescission, and Waiver.**

\* \* \*

(2) A signed lease agreement that excludes modification or rescission except by a signed ~~writing~~ record may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

\* \* \*

## ARTICLE 3

### NEGOTIABLE INSTRUMENTS

#### Section 3-104. Negotiable Instrument.

(a) Except as provided in subsections (c) and (d), “negotiable instrument” means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

\* \* \*

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, ~~or~~ (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor, (iv) a term that specifies the law that governs the promise or order, or (v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.

\* \* \*

#### Section 3-105. Issue of Instrument.

(a) “Issue” means:

(1) the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person; or

(2) if agreed by the payee, the first transmission by the drawer to the payee of an image of an item and information derived from the item that enables the depository bank to collect the item by transferring or presenting under federal law an electronic check.

\* \* \*

**Section 3-401. Signature Necessary for Liability on Instrument.**

~~(a)~~ A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3-402.

~~(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.~~

**Section 3-604. Discharge by Cancellation or Renunciation.**

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record. The obligation of a party to pay a check is not discharged solely by destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made and, subsequently, the information and image are transmitted for payment.

\* \* \*

~~(e) In this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.~~

**ARTICLE 4A**

**FUNDS TRANSFERS**

### **Section 4A-103. Payment Order – Definitions.**

(a) In this Article:

(1) “Payment order” means an instruction of a sender to a receiving bank, transmitted orally, ~~electronically, or in writing~~ or in a record, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

\* \* \*

### **Section 4A-201. Security Procedure.**

“Security procedure” means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may impose an obligation on the receiving bank or the customer and may require the use of algorithms or other codes, identifying words, ~~or~~ numbers, symbols, sounds, biometrics, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer or requiring a payment order to be sent from a known email address, IP address, or telephone number is not by itself a

security procedure.

**Section 4A-202. Authorized and Verified Payment Orders.**

\* \* \*

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the bank's obligations under the security procedure and any ~~written~~ agreement or instruction of the customer, evidenced by a record, restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates ~~a written~~ an agreement with the customer, evidenced by a record, or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in ~~writing~~ a record to be bound by any payment order, whether or not

authorized, issued in its name and accepted by the bank in compliance with the bank's obligations under the security procedure chosen by the customer.

\* \* \*

**Section 4A-203. Unenforceability of Certain Verified Payment Orders.**

(a) If an accepted payment order is not, under Section 4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to Section 4A-202(b), the following rules apply:

(1) By express ~~written~~ agreement evidenced by a record, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

\* \* \*

**Section 4A-207. Misdescription of Beneficiary.**

\* \* \*

(c) If (i) a payment order described in subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

\* \* \*

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible

evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing record stating the information to which the notice relates.

\* \* \*

**Section 4A-208. Misdescription of Intermediary Bank or Beneficiary's Bank.**

\* \* \*

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

\* \* \*

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing record stating the information to which the notice relates.

\* \* \*

**Section 4A-210. Rejection of Payment Order.**

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, ~~electronically~~, or in writing a record. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or

will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

\* \* \*

**Section 4A-211. Cancellation and Amendment of Payment Order.**

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally, ~~electronically~~, or in ~~writing~~ a record. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

\* \* \*

**Section 4A-305. Liability for Late or Improper Execution or Failure to Execute Payment Order.**

\* \* \*

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express ~~written~~ agreement of the receiving bank, evidenced by a record.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction



and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express ~~written~~ agreement of the receiving bank, evidenced by a record, but are not otherwise recoverable.

\* \* \*

## ARTICLE 5

### LETTERS OF CREDIT

#### **Section 5-104. Formal Requirements.**

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a signed record ~~and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in Section 5-108(e).~~

#### **Section 5-116. Choice of Law and Forum.**

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed ~~or otherwise authenticated~~ by the affected parties ~~in the manner provided in Section 5-104~~ or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued.

~~(c)~~ For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under ~~this~~ subsection (d).

(d) A branch of a bank is considered to be located at the address indicated in the branch's undertaking. If more than one address is indicated, the branch is considered to be located at the address from which the undertaking was issued.

~~(e)~~ (e) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 5-103(c).

~~(f)~~ (f) If there is conflict between this article and Article 3, 4, 4A, or 9, this article governs.

~~(g)~~ (g) The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

## ARTICLE 7

### DOCUMENTS OF TITLE

#### Section 7-102. Definitions and Index of Definitions.

(a) In this article, unless the context otherwise requires:

\* \* \*

(10) ~~“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. [Reserved.]~~

(11) ~~“Sign” means, with present intent to authenticate or adopt a record:~~

~~(A) to execute or adopt a tangible symbol; or~~

~~(B) to attach to or logically associate with the record an electronic sound, symbol, or process. [Reserved.]~~

\* \* \*

#### **Section 7-106. Control of Electronic Document of Title.**

\* \* \*

(b) A system satisfies subsection (a), and a person ~~is deemed to have~~ has control of an electronic document of title, if the document is created, stored, and ~~assigned~~ transferred in such a manner that:

\* \* \*

(4) copies or amendments that add or change an identified ~~assignee~~ transferee of the authoritative copy can be made only with the consent of the person asserting control;

\* \* \*

(c) A system satisfies subsection (a), and a person has control of an electronic document of title, if an authoritative electronic copy of the document, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(1) enables the person readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;

(2) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the person to which each authoritative electronic copy was issued or transferred; and

(3) gives the person exclusive power, subject to subsection (d), to:

(A) prevent others from adding or changing the person to which each authoritative electronic copy has been issued or transferred; and

(B) transfer control of each authoritative electronic copy.

(d) Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B) even if:

(1) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the document of title or has a protocol that is programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(e) A power of a person is not shared with another person under subsection (d)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the document of title.

(f) If a person has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) A person has control of an electronic document of title if another person, other than the transferor to the person of an interest in the document:

(1) has control of the document and acknowledges that it has control on behalf of the person; or

(2) obtains control of the document after having acknowledged that it will obtain control of the document on behalf of the person.

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(i) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article or Article 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

## ARTICLE 8

### INVESTMENT SECURITIES

#### Section 8-102. Definitions and Index of Definitions.

(a) In this Article:

\* \* \*

(6) “Communicate” means to:

(i) send a signed ~~writing~~ record; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

\* \* \*

(b) ~~Other~~ The following definitions applying to in this Article and the sections in which

~~they appear~~ are other Articles apply to this Article:

\* \* \*

“Controllable account”. Section 9-102.

“Controllable electronic record”. Section 12-102.

“Controllable payment intangible”. Section 9-102.

\* \* \*

**Section 8-103. Rules for Determining Whether Certain Obligations and Interests are Securities or Financial Assets.**

\* \* \*

(h) A controllable account, controllable electronic record, or controllable payment intangible is not a financial asset unless Section 8-102(a)(9)(iii) applies.

**Section 8-106. Control**

\* \* \*

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

\* \* \*

~~(3) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.~~ person, other than the transferor to the purchaser of an interest in the security entitlement:

(A) has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or

(B) obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.

\* \* \*

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of a purchaser.

(i) If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than this Article or Article 9 otherwise provides, the person does not owe any duty to the purchaser and is not required to confirm the acknowledgment to any other person.

### **Section 8-110. Applicability; Choice of Law.**

\* \* \*

(g) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction governs a matter or transaction specified in subsection (a) or (b) even if the matter or transaction does not bear any relation to the jurisdiction.

### **Section 8-303. Protected Purchaser.**

\* \* \*

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

## **ARTICLE 9**

### **SECURED TRANSACTIONS**

#### **Section 9-102. Definitions and Index of Definitions.**

(a) [Article 9 definitions.] In this article:

\* \* \*

(2) "Account", except as used in "account for", "account statement", "account to", "commodity account" in paragraph (14), "customer's account", "deposit account" in

paragraph (29), “on account of”, and “statement of account”, means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes controllable accounts and health-care-insurance receivables. The term does not include (i) ~~rights to payment evidenced by chattel paper or an instrument~~ chattel paper, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, ~~or~~ (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the ~~card~~ card, or (vii) rights to payment evidenced by an instrument.

(3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the negotiable instrument constitutes part of evidences chattel paper.

(4) “Accounting”, except as used in “accounting for”, means a record:

(A) ~~authenticated~~ signed by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.



\* \* \*

(7) ~~“Authenticate” means:~~

~~(A) to sign; or~~

~~(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process. [Reserved.]~~

(7A) “Assignee”, except as used in “assignee for benefit of creditors”, means a person (i) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not the obligation is outstanding or (ii) to which an account, chattel paper, payment intangible, or promissory note has been sold. The term includes a person to which a security interest has been transferred by a secured party.

(7B) “Assignor” means a person that (i) under a security agreement creates or provides for a security interest that secures an obligation or (ii) sells an account, chattel paper, payment intangible, or promissory note. The term includes a secured party that has transferred a security interest to another person.

\* \* \*

~~(11) “Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of~~

~~a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.~~

(11) “Chattel paper” means:

(A) a right to payment of a monetary obligation secured by specific goods, if the right to payment and security agreement are evidenced by a record; or

(B) a right to payment of a monetary obligation owed by a lessee under a lease agreement with respect to specific goods and a monetary obligation owed by the lessee in connection with the transaction giving rise to the lease, if:

(i) the right to payment and lease agreement are evidenced by a record; and

(ii) the predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

The term does not include a right to payment arising out of a charter or other contract involving the use or hire of a vessel or a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

\* \* \*

(27A) “Controllable account” means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under Section 12-105 of the controllable electronic record.

(27B) “Controllable payment intangible” means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under Section 12-105 of the controllable electronic record.

\* \* \*

(31) ~~“Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium. [Reserved.]~~

(31A) “Electronic money” means money in an electronic form.

\* \* \*

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes controllable electronic records, payment intangibles, and software.

(43) [Reserved.] [“Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.]

\* \* \*

(47) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, ~~or~~ (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, or (iv) writings that evidence chattel paper.

\* \* \*

(54A) “Money” has the meaning in Section 1-201(b)(24), but does not include (i) a deposit account or (ii) money in an electronic form that cannot be subjected to control under

Section 9-105A.

\* \* \*

(61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation. The term includes a controllable payment intangible.

\* \* \*

(66) “Proposal” means a record ~~authenticated~~ signed by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9-620, 9-621, and 9-622.

\* \* \*

(75) ~~“Send”, in connection with a record or notification, means:~~

~~(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or~~

~~(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A). [Reserved.]~~

\* \* \*

(79) ~~“Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium. [Reserved.]~~

(79A) “Tangible money” means money in a tangible form.

\* \* \*

(b) **[Definitions in other articles.]** “Control” as provided in Section 7-106 and the following definitions in other articles apply to this article:

\* \* \*

“Controllable electronic record”. Section 12-102.

\* \* \*

“Protected purchaser”. Section 8-303.

\* \* \*

“Qualifying purchaser”. Section 12-102.

\* \* \*

*Legislative Note: Replicate the formatting of the tabulated material in subsection (a)(11) exactly to ensure that the meaning of the material is preserved.*

*The definition of “good faith” in subsection (a)(43) was deleted from subsection (a) pursuant to a conforming amendment accompanying the 2001 amendments of Article 1. However, any jurisdiction that has not adopted the revised definition of “good faith” in Section 1-201(b)(20) should retain the definition of “good faith” in subsection (a)(43).*

#### **Section 9-104. Control of Deposit Account.**

(a) **[Requirements for control.]** A secured party has control of a deposit account if:

\* \* \*

(2) the debtor, secured party, and bank have agreed in ~~an authenticated~~ a signed record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; ~~or~~

(3) the secured party becomes the bank’s customer with respect to the deposit account; or

(4) another person, other than the debtor:

(A) has control of the deposit account and acknowledges that it has control on behalf of the secured party; or

(B) obtains control of the deposit account after having acknowledged that

it will obtain control of the deposit account on behalf of the secured party.

\* \* \*

**Section 9-105. Control of Electronic Chattel Paper.**

~~(a) [General rule: control of electronic chattel paper.] A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.~~

~~(b) [Specific facts giving control.] A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:~~

~~(1) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;~~

~~(2) the authoritative copy identifies the secured party as the assignee of the record or records;~~

~~(3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;~~

~~(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;~~

~~(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and~~

~~(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.~~

**Section 9-105. Control of Electronic Copy of Record Evidencing Chattel Paper.**

**(a) [General rule: control of electronic copy of record evidencing chattel paper.] A**

purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if a system employed for evidencing the assignment of interests in the chattel paper reliably establishes the purchaser as the person to which the authoritative electronic copy was assigned.

(b) [Single authoritative copy.] A system satisfies subsection (a) if the record or records evidencing the chattel paper are created, stored, and assigned in a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the purchaser as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the purchaser or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the purchaser;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) [One or more authoritative copies.] A system satisfies subsection (a), and a purchaser has control of an authoritative electronic copy of a record evidencing chattel paper, if the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(1) enables the purchaser readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;

(2) enables the purchaser readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of the authoritative electronic copy; and

(3) gives the purchaser exclusive power, subject to subsection (d), to:

(A) prevent others from adding or changing an identified assignee of the authoritative electronic copy; and

(B) transfer control of the authoritative electronic copy.

(d) **[Meaning of exclusive.]** Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B) even if:

(1) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the authoritative electronic copy or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(e) **[When power not shared with another person.]** A power of a purchaser is not shared with another person under subsection (d)(2) and the purchaser's power is not exclusive if:

(1) the purchaser can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the purchaser; or

(B) is the transferor to the purchaser of an interest in the chattel paper.

(f) **[Presumption of exclusivity of certain powers.]** If a purchaser has the powers



specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) [Obtaining control through another person.] A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if another person, other than the transferor to the purchaser of an interest in the chattel paper:

(1) has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(2) obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

### **Section 9-105A. Control of Electronic Money.**

(a) [General rule: control of electronic money.] A person has control of electronic money if:

(1) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded gives the person:

(A) power to avail itself of substantially all the benefit from the electronic money; and

(B) exclusive power, subject to subsection (b), to:

(i) prevent others from availing themselves of substantially all the benefit from the electronic money; and

(ii) transfer control of the electronic money to another person or cause another person to obtain control of other electronic money as a result of the transfer of the electronic money; and

(2) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded enables the person

readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers under paragraph (1).

**(b) [Meaning of exclusive.]** Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) even if:

(1) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded limits the use of the electronic money or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

**(c) [When power not shared with another person.]** A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the electronic money.

**(d) [Presumption of exclusivity of certain powers.]** If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

**(e) [Control through another person.]** A person has control of electronic money if another person, other than the transferor to the person of an interest in the electronic money:

(1) has control of the electronic money and acknowledges that it has control on behalf of the person; or

(2) obtains control of the electronic money after having acknowledged that it will

obtain control of the electronic money on behalf of the person.

**Section 9-107A. Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible.**

(a) [Control under Section 12-105.] A secured party has control of a controllable electronic record as provided in Section 12-105.

(b) [Control of controllable account and controllable payment intangible.] A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

**Section 9-107B. No Requirement to Acknowledge or Confirm; No Duties.**

(a) [No requirement to acknowledge.] A person that has control under Section 9-104, 9-105, or 9-105A is not required to acknowledge that it has control on behalf of another person.

(b) [No duties or confirmation.] If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

**Section 9-203. Attachment and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requisites.**

\* \* \*

(b) **[Enforceability.]** Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

\* \* \*

(3) one of the following conditions is met:

(A) the debtor has ~~authenticated~~ signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

\* \* \*

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement; ~~or~~

(D) the collateral is controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, ~~electronic chattel paper, electronic documents, electronic money,~~ investment property, or letter-of-credit rights, ~~or electronic documents,~~ and the secured party has control under Section 7-106, 9-104, 9-105A, 9-106, ~~or~~ 9-107, or 9-107A pursuant to the debtor's security agreement; or

(E) the collateral is chattel paper and the secured party has possession and control under Section 9-314A pursuant to the debtor's security agreement.

\* \* \*

**Section 9-204. After-Acquired Property; Future Advances.**

\* \* \*

(b) **[When after-acquired property clause not effective.]** A Subject to subsection (b.1), a security interest does not attach under a term constituting an after-acquired property clause to:

\* \* \*

(b.1) [Limitation on subsection (b).] Subsection (b) does not prevent a security interest from attaching:

(1) to consumer goods as proceeds under Section 9-315(a) or commingled goods under Section 9-336(c);

(2) to a commercial tort claim as proceeds under Section 9-315(a); or

(3) under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.

\* \* \*

**Section 9-207. Rights and Duties of Secured Party Having Possession or Control of Collateral.**

\* \* \*

(c) **[Duties and rights when secured party in possession or control.]** Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-105A, 9-106, ~~or~~ 9-107, or 9-107A:

\* \* \*

**Section 9-208. Additional Duties of Secured Party Having Control of Collateral.**

\* \* \*

(b) **[Duties of secured party after receiving demand from debtor.]** Within 10 days after receiving ~~an authenticated~~ a signed demand by the debtor:

(1) a secured party having control of a deposit account under Section 9-104(a)(2) shall send to the bank with which the deposit account is maintained ~~an authenticated statement a~~ signed record that releases the bank from any further obligation to comply with instructions originated by the secured party;

\* \* \*

~~(3) a secured party, other than a buyer, having control of electronic chattel paper~~

under Section 9-105 shall:

~~(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;~~

~~(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and~~

~~(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party; and~~

(3) a secured party, other than a buyer, having control under Section 9-105 of an authoritative electronic copy of a record evidencing chattel paper shall transfer control of the electronic copy to the debtor or a person designated by the debtor;

(4) a secured party having control of investment property under Section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained ~~an authenticated~~ a signed record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under Section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party ~~an authenticated~~ a signed release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; ~~and~~

~~(6) a secured party having control of an electronic document shall:~~

~~(A) give control of the electronic document to the debtor or its designated custodian;~~

~~(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and~~

~~(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.~~

(6) a secured party having control under Section 7-106 of an authoritative electronic copy of an electronic document of title shall transfer control of the electronic copy to the debtor or a person designated by the debtor;

(7) a secured party having control under Section 9-105A of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor; and

(8) a secured party having control under Section 12-105 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

**Section 9-209. Duties of Secured Party if Account Debtor Has Been Notified of Assignment.**

\* \* \*

(b) **[Duties of secured party after receiving demand from debtor.]** Within 10 days after receiving ~~an authenticated~~ a signed demand by the debtor, a secured party shall send to an account debtor that has received notification under Section 9-406(a) or 12-106(b) of an assignment to the secured party as assignee ~~under Section 9-406(a) an authenticated~~ a signed record that releases the account debtor from any further obligation to the secured party.

\* \* \*

**Section 9-210. Request for Accounting; Request Regarding List of Collateral or Statement of Account.**

(a) **[Definitions.]** In this section:

\* \* \*

(2) “Request for an accounting” means a record ~~authenticated~~ signed by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) “Request regarding a list of collateral” means a record ~~authenticated~~ signed by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) “Request regarding a statement of account” means a record ~~authenticated~~ signed by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.



(b) [**Duty to respond to requests.**] Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) in the case of a request for an accounting, by ~~authenticating~~ signing and sending to the debtor an accounting; and

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by ~~authenticating~~ signing and sending to the debtor an approval or correction.

(c) [**Request regarding list of collateral; statement concerning type of collateral.**] A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor ~~an authenticated~~ a signed record including a statement to that effect within 14 days after receipt.

(d) [**Request regarding list of collateral; no interest claimed.**] A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor ~~an authenticated~~ a signed record:

\* \* \*

(e) [**Request for accounting or regarding statement of account; no interest in obligation claimed.**] A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor ~~an authenticated~~ a signed record:

\* \* \*

**Section 9-301. Law Governing Perfection and Priority of Security Interests.**

Except as otherwise provided in Sections 9-303 through ~~9-306~~ 9-306B, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

\* \* \*

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

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a

nonpossessory security interest in the collateral.

\* \* \*

**Section 9-304. Law Governing Perfection and Priority of Security Interests in Deposit Accounts.**

(a) [**Law of bank's jurisdiction governs.**] The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank even if the transaction does not bear any relation to the bank's jurisdiction.

\* \* \*

**Section 9-305. Law Governing Perfection and Priority of Security Interests in Investment Property.**

(a) [**Governing law: general rules.**] Except as otherwise provided in subsection (c), the

following rules apply:

\* \* \*

(5) Paragraphs (2), (3), and (4) apply even if the transaction does not bear any relation to the jurisdiction.

\* \* \*

**Section 9-306A. Law Governing Perfection and Priority of Security Interests in Chattel Paper.**

(a) [Chattel paper evidenced by authoritative electronic copy.] Except as provided in subsection (d), if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper, even if the transaction does not bear any relation to the chattel paper's jurisdiction.

(b) [Chattel paper's jurisdiction.] The following rules determine the chattel paper's jurisdiction under this section:

(1) If the authoritative electronic copy of the record evidencing chattel paper, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this part, this article, or [the Uniform Commercial Code], that jurisdiction is the chattel paper's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this part, this

article, or [the Uniform Commercial Code], that jurisdiction is the chattel paper's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the authoritative electronic copy, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.

(4) If paragraphs (1), (2), and (3) do not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that the chattel paper or the system is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

**(c) [Chattel paper evidenced by authoritative tangible copy.]** If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(1) perfection of a security interest in the chattel paper by possession under Section 9-314A; and

(2) the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

**(d) [When perfection governed by law of jurisdiction where debtor located.]** The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

**Section 9-306B. Law Governing Perfection and Priority of Security Interests in**

**Controllable Accounts, Controllable Electronic Records, and Controllable Payment Intangibles.**

(a) **[Governing law: general rules.]** Except as provided in subsection (b), the local law of the controllable electronic record's jurisdiction specified in Section 12-107(c) and (d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record and a security interest in a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(b) **[When perfection governed by law of jurisdiction where debtor located.]** The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and

(2) automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible.

**Section 9-310. When Filing Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply.**

\* \* \*

(b) **[Exceptions: filing not necessary.]** The filing of a financing statement is not necessary to perfect a security interest:

\* \* \*

(8) in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, ~~electronic chattel paper,~~ electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 9-314;

(8.1) in chattel paper which is perfected by possession and control under Section 9-314A;

\* \* \*

**Section 9-312. Perfection of Security Interests in Chattel Paper, Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles, Deposit Accounts, Negotiable Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.**

(a) [**Perfection by filing permitted.**] A security interest in chattel paper, ~~negotiable documents,~~ controllable accounts, controllable electronic records, controllable payment intangibles, instruments, ~~or investment property,~~ or negotiable documents may be perfected by filing.

(b) [**Control or possession of certain collateral.**] Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

\* \* \*

(2) except as otherwise provided in Section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314; ~~and~~

(3) a security interest in tangible money may be perfected only by the secured party's taking possession under Section 9-313; and

(4) a security interest in electronic money may be perfected only by control under Section 9-314.

\* \* \*

(e) [**Temporary perfection: new value.**] A security interest in certificated securities,

negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under ~~an authenticated~~ a signed security agreement.

\* \* \*

**Section 9-313. When Possession by or Delivery to Secured Party Perfects Security Interest Without Filing.**

(a) **[Perfection by possession or delivery.]** Except as otherwise provided in subsection (b), a secured party may perfect a security interest in ~~tangible negotiable documents~~, goods, instruments, negotiable tangible documents, or tangible money, ~~or tangible chattel paper~~ by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8-301.

\* \* \*

(c) **[Collateral in possession of person other than debtor.]** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession ~~authenticates~~ signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having ~~authenticated~~ signed a record acknowledging that it will hold possession of the collateral for the secured party's benefit.

(d) **[Time of perfection by possession; continuation of perfection.]** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs

~~no~~ not earlier than the time the secured party takes possession and continues only while the secured party retains possession.

\* \* \*

**Section 9-314. Perfection by Control.**

(a) [**Perfection by control.**] A security interest in ~~investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents~~ controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, or letter-of-credit rights may be perfected by control of the collateral under Section 7-106, 9-104, ~~9-105,~~ 9-105A, 9-106, ~~or 9-107,~~ or 9-107A.

(b) [**Specified collateral: time of perfection by control; continuation of perfection.**] A security interest in ~~deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents,~~ controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, or letter-of-credit rights is perfected by control under Section 7-106, 9-104, ~~9-105,~~ 9-105A, ~~or 9-107,~~ or 9-107A when not earlier than the time the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) [**Investment property: time of perfection by control; continuation of perfection.**] A security interest in investment property is perfected by control under Section 9-106 ~~from~~ not earlier than the time the secured party obtains control and remains perfected by control until:

\* \* \*

**Section 9-314A. Perfection by Possession and Control of Chattel Paper.**

(a) [**Perfection by possession and control.**] A secured party may perfect a security interest in chattel paper by taking possession of each authoritative tangible copy of the record



evidencing the chattel paper and obtaining control of each authoritative electronic copy of the electronic record evidencing the chattel paper.

**(b) [Time of perfection; continuation of perfection.]** A security interest is perfected under subsection (a) not earlier than the time the secured party takes possession and obtains control and remains perfected under subsection (a) only while the secured party retains possession and control.

**(c) [Application of Section 9-313 to perfection by possession of chattel paper.]** Section 9-313(c) and (f) through (i) applies to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

#### **Section 9-316. Continued Perfection of Security Interest Following Change in Governing Law.**

**(a) [General rule: effect on perfection of change in governing law.]** A security interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1), ~~or~~ 9-305(c), 9-306A(d), or 9-306B(b) remains perfected until the earliest of:

\* \* \*

**(f) [Change in jurisdiction of chattel paper, controllable electronic record, bank, issuer, nominated person, securities intermediary, or commodity intermediary.]** A security interest in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the chattel paper's jurisdiction, the controllable electronic record's jurisdiction, the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

\* \* \*

## Section 9-317. Interests That Take Priority Over or Take Free of Security

### Interest or Agricultural Lien.

\* \* \*

(b) **[Buyers that receive delivery.]** Except as otherwise provided in subsection (e), a buyer, other than a secured party, ~~of tangible chattel paper, tangible documents,~~ of goods, instruments, tangible documents, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

\* \* \*

(d) **[Licensees and buyers of certain collateral.]** ~~A~~ Subject to subsections (f) through (i), a licensee of a general intangible or a buyer, other than a secured party, of collateral other than ~~tangible chattel paper, electronic money, tangible documents,~~ goods, instruments, tangible documents, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

\* \* \*

(f) **[Buyers of chattel paper.]** A buyer, other than a secured party, of chattel paper takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and:

(1) receives delivery of each authoritative tangible copy of the record evidencing the chattel paper; and

(2) if each authoritative electronic copy of the record evidencing the chattel paper can be subjected to control under Section 9-105, obtains control of each authoritative electronic

copy.

(g) [Buyers of electronic documents.] A buyer of an electronic document takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and, if each authoritative electronic copy of the document can be subjected to control under Section 7-106, obtains control of each authoritative electronic copy.

(h) [Buyers of controllable electronic records.] A buyer of a controllable electronic record takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable electronic record.

(i) [Buyers of controllable accounts and controllable payment intangibles.] A buyer, other than a secured party, of a controllable account or a controllable payment intangible takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable account or controllable payment intangible.

### **Section 9-323. Future Advances.**

\* \* \*

(d) **[Buyer of goods.]** Except as otherwise provided in subsection (e), a buyer of goods ~~other than a buyer in ordinary course of business~~ takes free of a security interest to the extent that it secures advances made after the earlier of:

\* \* \*

(f) **[Lessee of goods.]** Except as otherwise provided in subsection (g), a lessee of goods, ~~other than a lessee in ordinary course of business,~~ takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

\* \* \*

**Section 9-324. Priority of Purchase-Money Security Interests.**

\* \* \*

(b) [**Inventory purchase-money priority.**] Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 9-330, and, except as otherwise provided in Section 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

\* \* \*

(2) the purchase-money secured party sends ~~an authenticated~~ a signed notification to the holder of the conflicting security interest;

\* \* \*

(d) [**Livestock purchase-money priority.**] Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

\* \* \*

(2) the purchase-money secured party sends ~~an authenticated~~ a signed notification to the holder of the conflicting security interest;

\* \* \*

**Section 9-326A. Priority of Security Interest in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible.**

A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.

**Section 9-330. Priority of Purchaser of Chattel Paper or Instrument.**

(a) **[Purchaser's priority: security interest claimed merely as proceeds.]** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value, ~~and~~ takes possession of each authoritative tangible copy of the record evidencing the chattel paper, ~~or~~ and obtains control ~~of~~ under Section 9-105 of each authoritative electronic copy of the record evidencing the chattel paper ~~under Section 9-105;~~ and

(2) ~~the chattel paper does~~ authoritative copies of the record evidencing the chattel paper do not indicate that ~~it~~ the chattel paper has been assigned to an identified assignee other than the purchaser.

(b) **[Purchaser's priority: other security interests.]** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value, ~~and~~ takes possession of each authoritative tangible copy of the record evidencing the chattel paper, ~~or~~ and obtains control ~~of~~ under Section 9-105 of each authoritative electronic copy of the record evidencing the chattel paper ~~under Section 9-105~~ in good faith, in the ordinary course of the

purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

\* \* \*

(f) [**Indication of assignment gives knowledge.**] For purposes of subsections (b) and (d), if the authoritative copies of the record evidencing chattel paper or an instrument ~~indicates~~ indicate that ~~it~~ the chattel paper or instrument has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

**Section 9-331. Priority of Rights of Purchasers of Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles, Instruments, Documents, Instruments, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements and Protection Against Assertion of Claim Under ~~Article 8~~ Articles 8 and 12.**

(a) [**Rights under Articles 3, 7, ~~and 8, and 12~~ not limited.**] This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, ~~or~~ a protected purchaser of a security, or a qualifying purchaser of a controllable account, controllable electronic record, or controllable payment intangible. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, ~~and 8, and 12.~~

(b) [**Protection under ~~Article 8~~ Articles 8 and 12.**] This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8 or 12.

\* \* \*

**Section 9-332. Transfer of Money; Transfer of Funds from Deposit Account.**

(a) [**Transferee of tangible money.**] A transferee of tangible money takes the money free of a security interest ~~unless the transferee acts~~ if the transferee receives possession of the money without acting in collusion with the debtor in violating the rights of the secured party.

(b) [**Transferee of funds from deposit account.**] A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account ~~unless the transferee acts~~ if the transferee receives the funds without acting in collusion with the debtor in violating the rights of the secured party.

(c) [**Transferee of electronic money.**] A transferee of electronic money takes the money free of a security interest if the transferee obtains control of the money without acting in collusion with the debtor in violating the rights of the secured party.

**Section 9-334. Priority of Security Interests in Fixtures and Crops.**

\* \* \*

(f) [**Priority based on consent, disclaimer, or right to remove.**] A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in ~~an authenticated~~ a signed record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

\* \* \*

**Section 9-341. Bank's Rights and Duties with Respect to Deposit Account.**

Except as otherwise provided in Section 9-340(c), and unless the bank otherwise agrees in ~~an authenticated~~ a signed record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

\* \* \*

**Section 9-404. Rights Acquired by Assignee; Claims and Defenses Against Assignee.**

(a) [**Assignee's rights subject to terms, claims, and defenses; exceptions.**] Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

\* \* \*

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment ~~authenticated~~ signed by the assignor or the assignee.

\* \* \*

**Section 9-406. Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.**

(a) [**Discharge of account debtor; effect of notification.**] Subject to subsections (b) through (i) and (l), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, ~~authenticated~~ signed by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) [**When notification ineffective.**] Subject to ~~subsection~~ subsections (h) and (l), notification is ineffective under subsection (a):



\* \* \*

(c) **[Proof of assignment.]** Subject to ~~subsection~~ subsections (h) and (l), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) **[Term restricting assignment generally ineffective.]** In this subsection, “promissory note” includes a negotiable instrument that evidences chattel paper. Except as otherwise provided in subsections (e) and (k) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

\* \* \*

(g) **[Subsection (b)(3) not waivable.]** Subject to ~~subsection~~ subsections (h) and (l), an account debtor may not waive or vary its option under subsection (b)(3).

\* \* \*

**(l) [Inapplicability of certain subsections.]** Subsections (a), (b), (c) and (g) do not apply to a controllable account or controllable payment intangible.

\* \* \*

**Section 9-408. Restrictions on Assignment of Promissory Notes, Health-Care-Insurance Receivables, and Certain General Intangibles Ineffective.**

\* \* \*

**(g) [“Promissory note.”]** In this section, “promissory note” includes a negotiable instrument that evidences chattel paper.

**Section 9-509. Persons Entitled to File a Record.**

(a) [**Person entitled to file record.**] A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) the debtor authorizes the filing in ~~an authenticated~~ a signed record or pursuant to subsection (b) or (c); or

\* \* \*

(b) [**Security agreement as authorization.**] By ~~authenticating~~ signing or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

\* \* \*

**Section 9-513. Termination Statement.**

\* \* \*

(b) [**Time for compliance with subsection (a).**] To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

\* \* \*

(2) if earlier, within 20 days after the secured party receives ~~an authenticated~~ a signed demand from a debtor.

(c) [**Other collateral.**] In cases not governed by subsection (a), within 20 days after a secured party receives ~~an authenticated~~ a signed demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

\* \* \*

**Section 9-601. Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes.**

\* \* \*

(b) **[Rights and duties of secured party in possession or control.]** A secured party in possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-105A, 9-106, ~~or 9-107~~, or 9-107A has the rights and duties provided in Section 9-207.

\* \* \*

**Section 9-605. Unknown Debtor or Secondary Obligor.**

~~A~~ (a) **[In general: No duty owed by secured party.]** Except as provided in subsection (b), a secured party does not owe a duty based on its status as secured party:

\* \* \*

(b) **[Exception: Secured party owes duty to debtor or obligor.]** A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subsection (a)(1)(A), (B), or (C) relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

**Section 9-608. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus.**

(a) **[Application of proceeds, surplus, and deficiency if obligation secured.]** If a

security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 9-607 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives ~~an authenticated a~~ signed demand for proceeds before distribution of the proceeds is completed.

\* \* \*

**Section 9-611. Notification Before Disposition of Collateral.**

(a) [**“Notification date.”**] In this section, “notification date” means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor ~~an authenticated~~ a signed notification of disposition; or

\* \* \*

(b) [**Notification of disposition required.**] Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 9-610 shall send to the persons specified in subsection (c) a reasonable ~~authenticated~~ signed notification of disposition.

(c) **[Persons to be notified.]** To comply with subsection (b), the secured party shall send ~~an authenticated~~ a signed notification of disposition to:

\* \* \*

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, ~~an authenticated~~ a signed notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9-311(a).

\* \* \*

(e) **[Compliance with subsection (c)(3)(B).]** A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

\* \* \*

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent ~~an~~ ~~authenticated~~ a signed notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

**Section 9-613. Contents and Form of Notification Before Disposition of Collateral: General.**

**(a) [Contents and form of notification.]** Except in a consumer-goods transaction, the following rules apply:

- (1) The contents of a notification of disposition are sufficient if the notification:
  - (A) describes the debtor and the secured party;
  - (B) describes the collateral that is the subject of the intended disposition;
  - (C) states the method of intended disposition;
  - (D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
  - (E) states the time and place of a public disposition or the time after which any other disposition is to be made.
- (2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.
- (3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:
  - (A) information not specified by that paragraph; or
  - (B) minor errors that are not seriously misleading.
- (4) A particular phrasing of the notification is not required.
- (5) The following form of notification and the form appearing in Section 9-

614(3) 9-614(a)(3), when completed in accordance with the instructions in subsection (b) and Section 9-614(b), each provides sufficient information:

**NOTIFICATION OF DISPOSITION OF COLLATERAL**

To: \_\_\_\_\_ [Name of debtor, obligor, or other person to which the notification is sent] \_\_\_\_\_

From: \_\_\_\_\_ [Name, address, and telephone number of secured party] \_\_\_\_\_

Name of Debtor(s): \_\_\_\_\_ [Include only if debtor(s) are not an addressee] \_\_\_\_\_

[For a public disposition:]

We will sell [or lease or license, *as applicable*] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

[For a private disposition:] \_\_\_\_\_

We will sell [or lease or license, *as applicable*] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, *as applicable*] [for a charge of \$ \_\_\_\_\_]. You may request an accounting by calling us at [telephone number].

**{End of Form}**

**NOTIFICATION OF DISPOSITION OF COLLATERAL**

To: (Name of debtor, obligor, or other person to which the notification is sent)

From: (Name, address, and telephone number of secured party)

{1} Name of any debtor that is not an addressee: (Name of each debtor)

{2} We will sell (describe collateral) (to the highest qualified bidder) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)

(Time)

(Place)

{3} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{4} You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell or, as applicable, lease or license.

{5} If you request an accounting you must pay a charge of \$ (amount).

{6} You may request an accounting by calling us at (telephone number).

**[End of Form]**

**(b) [Instructions for form of notification.]** The following instructions apply to the form of notification in subsection (a)(5):

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(5). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2) Include and complete item {1} only if there is a debtor that is not an addressee of the notification and list the name or names.

(3) Include and complete either item {2}, if the notification relates to a public disposition of the collateral, or item {3}, if the notification relates to a private disposition of the



collateral. If item {2} is included, include the words “to the highest qualified bidder” only if applicable.

(4) Include and complete items {4} and {6}.

(5) Include and complete item {5} only if the sender will charge the recipient for an accounting.

**Section 9-614. Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction.**

**(a) [Contents and form of notification.]** In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) the information specified in Section ~~9-613(1)~~ 9-613(a)(1);

(B) a description of any liability for a deficiency of the person to which the notification is sent;

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 9-623 is available; and

(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed in accordance with the instructions in subsection (b), provides sufficient information:

—[Name and address of secured party]—

—[Date]—

**~~NOTICE OF OUR PLAN TO SELL PROPERTY~~**

~~\_\_\_\_[Name and address of any obligor who is also a debtor]\_\_\_\_~~

Subject: ~~\_\_\_\_[Identification of Transaction]\_\_\_\_~~

We have your ~~\_\_\_\_[describe collateral]\_\_\_\_~~, because you broke promises in our agreement.

~~[For a public disposition:]~~

We will sell ~~\_\_\_\_[describe collateral]\_\_\_\_~~ at public sale. A sale could include a lease or license.

The sale will be held as follows:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

You may attend the sale and bring bidders if you want.

~~[For a private disposition:]~~

We will sell ~~\_\_\_\_[describe collateral]\_\_\_\_~~ at private sale sometime after ~~\_\_\_\_[date]\_\_\_\_~~. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you ~~\_\_\_\_[will or will not, as applicable]\_\_\_\_~~ still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at ~~\_\_\_\_[telephone number]\_\_\_\_~~.

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at ~~\_\_\_\_[telephone number]\_\_\_\_~~ [or write us at ~~\_\_\_\_[secured party's address]\_\_\_\_~~] and request a written explanation. [We will charge you \$ \_\_\_\_\_ for the explanation if we sent you

~~another written explanation of the amount you owe us within the last six months.]~~

~~If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].~~

~~We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:~~

~~[Names of all other debtors and obligors, if any]~~

**{End of Form}**

(Name and address of secured party)

(Date)

### **NOTICE OF OUR PLAN TO SELL PROPERTY**

(Name and address of any obligor who is also a debtor)

Subject: (Identify transaction)

We have your (describe collateral), because you broke promises in our agreement.

{1} We will sell (describe collateral) at public sale. A sale could include a lease or

license. The sale will be held as follows:

(Date)

(Time)

(Place)

You may attend the sale and bring bidders if you want.

{2} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{3} The money that we get from the sale, after paying our costs, will reduce the amount you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the

difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

{4} You can get the property back at any time before we sell it by paying us the full amount you owe, not just the past due payments, including our expenses. To learn the exact amount you must pay, call us at (telephone number).

{5} If you want us to explain to you in (writing) (writing or in (description of electronic record) (description of electronic record) how we have figured the amount that you owe us, {6} call us at (telephone number) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)) {7} and request (a written explanation) (a written explanation or an explanation in (description of electronic record)) (an explanation in (description of electronic record)).

{8} We will charge you \$ (amount) for the explanation if we sent you another written explanation of the amount you owe us within the last six months.

{9} If you need more information about the sale (call us at (telephone number)) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)).

{10} We are sending this notice to the following other people who have an interest in (describe collateral) or who owe money under your agreement:  
(Names of all other debtors and obligors, if any)

**[End of Form]**

**(b) [Instructions for form of notification.]** The following instructions apply to the form of notification in subsection (a)(3):

(1) The instructions in this subsection refer to the numbers in braces before items

in the form of notification in subsection (a)(3). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2) Include and complete either item {1}, if the notification relates to a public disposition of the collateral, or item {2}, if the notification relates to a private disposition of the collateral.

(3) Include and complete items {3}, {4}, {5}, {6}, and {7}.

(4) In item {5}, include and complete any one of the three alternative methods for the explanation—writing, writing or electronic record, or electronic record.

(5) In item {6}, include the telephone number. In addition, the sender may include and complete either or both of the two additional alternative methods of communication—writing or electronic communication—for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included.

(6) In item {7}, include and complete the method or methods for the explanation—writing, writing or electronic record, or electronic record—included in item {5}.

(7) Include and complete item {8} only if a written explanation is included in item {5} as a method for communicating the explanation and the sender will charge the recipient for another written explanation.

(8) In item {9}, include either the telephone number or the address or both the telephone number and the address. In addition, the sender may include and complete the additional method of communication—electronic communication—for the recipient of the notification to communicate with the sender. The additional method of electronic communication is not required to be included.

(9) If item {10} does not apply, insert “None” after “agreement:”.

**Section 9-615. Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus.**

(a) [**Application of proceeds.**] A secured party shall apply or pay over for application the cash proceeds of disposition under Section 9-610 in the following order to:

\* \* \*

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien ~~an authenticated~~ a signed demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor ~~an authenticated~~ a signed demand for proceeds before distribution of the proceeds is completed.

\* \* \*

**Section 9-616. Explanation of Calculation of Surplus or Deficiency.**

(a) [**Definitions.**] In this section:

(1) “Explanation” means a ~~writing~~ record that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) ~~authenticated~~ signed by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under Section 9-610.

(b) **[Explanation of calculation.]** In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9-615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes ~~written~~ demand in a record on the consumer obligor after the disposition for payment of the deficiency; and

(B) within 14 days after receipt of a request; or

\* \* \*

(c) **[Required information.]** To comply with subsection (a)(1)(B), a ~~writing~~ an explanation must provide the following information in the following order:

\* \* \*

**Section 9-619. Transfer of Record or Legal Title.**

(a) [**“Transfer statement.”**] In this section, “transfer statement” means a record ~~authenticated~~ signed by a secured party stating:

\* \* \*

**Section 9-620. Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Compulsory Disposition of Collateral.**

(a) [**Conditions to acceptance in satisfaction.**] Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

\* \* \*

(2) the secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal ~~authenticated~~ signed by:

(A) a person to which the secured party was required to send a proposal under Section 9-621; or

(B) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

\* \* \*

(b) [**Purported acceptance ineffective.**] A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) the secured party consents to the acceptance in ~~an authenticated~~ a signed record or sends a proposal to the debtor; and

\* \* \*

(c) [**Debtor’s consent.**] For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the



obligation it secures only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~ signed after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~ signed after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection ~~authenticated~~ signed by the debtor within 20 days after the proposal is sent.

\* \* \*

(f) [**Compliance with mandatory disposition requirement.**] To comply with subsection (e), the secured party shall dispose of the collateral:

\* \* \*

(2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and ~~authenticated~~ signed after default.

\* \* \*

**Section 9-621. Notification Of Proposal to Accept Collateral.**

(a) [**Persons to which proposal to be sent.**] A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) any person from which the secured party has received, before the debtor

consented to the acceptance, ~~an authenticated~~ a signed notification of a claim of an interest in the collateral;

\* \* \*

**Section 9-624. Waiver.**

(a) [**Waiver of disposition notification.**] A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 9-611 only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

(b) [**Waiver of mandatory disposition.**] A debtor may waive the right to require disposition of collateral under Section 9-620(e) only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

(c) [**Waiver of redemption right.**] Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 9-623 only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

**Section 9-628. Nonliability and Limitation on Liability of Secured Party;  
Liability of Secondary Obligor.**

(a) [**Limitation of liability of secured party for noncompliance with article.**] ~~Unless~~ Subject to subsection (f), unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

\* \* \*

(b) [**Limitation of liability based on status as secured party.**] ~~A~~ Subject to subsection (f), a secured party is not liable because of its status as secured party:

\* \* \*

(f) [Exception: Limitation of liability under subsections (a) and (b) does not apply.]

Subsections (a) and (b) do not apply to limit the liability of a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subsection (b)(1)(A), (B), or (C) relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

## **ARTICLE 12**

### **CONTROLLABLE ELECTRONIC RECORDS**

#### **Section 12-101. Title.**

This article may be cited as Uniform Commercial Code—Controllable Electronic Records.

#### **Section 12-102. Definitions.**

##### **(a) [Article 12 definitions.]**

In this article:

(1) “Controllable electronic record” means a record stored in an electronic medium that can be subjected to control under Section 12-105. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic money, investment property, or a transferable record.

(2) “Qualifying purchaser” means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic

record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record.

(3) “Transferable record” has the meaning provided for that term in:

(A) Section 201(a)(1) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7021(a)(1)[, as amended]; or

(B) [cite to Uniform Electronic Transactions Act Section 16(a)].

(4) “Value” has the meaning provided in Section 3-303(a), as if references in that subsection to an “instrument” were references to a controllable account, controllable electronic record, or controllable payment intangible.

(b) **[Definitions in Article 9.]** The definitions in Article 9 of “account debtor”, “controllable account”, “controllable payment intangible”, “chattel paper”, “deposit account”, “electronic money”, and “investment property” apply to this article.

(c) **[Article 1 definitions and principles.]** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

*Legislative Note: It is the intent of this act to incorporate future amendments to the federal law cited in subsection (a)(3)(A). A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase “[as amended]”. A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

*In subsection (a)(3)(B), the state should cite to the state’s version of the Uniform Electronic Transactions Act Section 16(a) or comparable state law.*

### **Section 12-103. Relation to Article 9 and Consumer Laws.**

(a) **[Article 9 governs in case of conflict.]** If there is conflict between this article and Article 9, Article 9 governs.

(b) **[Applicable consumer law and other laws.]** A transaction subject to this article is subject to any applicable rule of law that establishes a different rule for consumers and [insert

reference to (i) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection statute or regulation].

**Section 12-104. Rights in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible.**

**(a) [Applicability of section to controllable account and controllable payment intangible.]** This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits under subsections (c), (d), (e), (g), and (h) of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.

**(b) [Control of controllable account and controllable payment intangible.]** To determine whether a purchaser of a controllable account or a controllable payment intangible is a qualifying purchaser, the purchaser obtains control of the account or payment intangible if it obtains control of the controllable electronic record that evidences the account or payment intangible.

**(c) [Applicability of other law to acquisition of rights.]** Except as provided in this section, law other than this article determines whether a person acquires a right in a controllable electronic record and the right the person acquires.

**(d) [Shelter principle and purchase of limited interest.]** A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

**(e) [Rights of qualifying purchaser.]** A qualifying purchaser acquires its rights in the

controllable electronic record free of a claim of a property right in the controllable electronic record.

**(f) [Limitation of rights of qualifying purchaser in other property.]** Except as provided in subsections (a) and (e) for a controllable account and a controllable payment intangible or law other than this article, a qualifying purchaser takes a right to payment, right to performance, or other interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

**(g) [No-action protection for qualifying purchaser.]** An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether the action is framed in conversion, replevin, constructive trust, equitable lien, or other theory.

**(h) [Filing not notice.]** Filing of a financing statement under Article 9 is not notice of a claim of a property right in a controllable electronic record.

### **Section 12-105. Control of Controllable Electronic Record.**

**(a) [General rule: control of controllable electronic record.]** A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:

(1) gives the person:

(A) power to avail itself of substantially all the benefit from the electronic record; and

(B) exclusive power, subject to subsection (b), to:

(i) prevent others from availing themselves of substantially all the benefit from the electronic record; and

(ii) transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and

(2) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in paragraph (1).

(b) **[Meaning of exclusive.]** Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) even if:

(1) the controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control or a modification of benefits afforded by the electronic record; or

(2) the power is shared with another person.

(c) **[When power not shared with another person.]** A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the

controllable electronic record.

(d) [Presumption of exclusivity of certain powers.] If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e) [Control through another person.] A person has control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record:

(1) has control of the electronic record and acknowledges that it has control on behalf of the person; or

(2) obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.

(f) [No requirement to acknowledge.] A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(g) [No duties or confirmation.] If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article or Article 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

### **Section 12-106. Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible.**

(a) [Discharge of account debtor.] An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

(1) the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or



(2) except as provided in subsection (b), a person that formerly had control of the controllable electronic record.

**(b) [Content and effect of notification.]** Subject to subsection (d), the account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1) is signed by a person that formerly had control or the person to which control was transferred;

(2) reasonably identifies the controllable account or controllable payment intangible;

(3) notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5) provides a commercially reasonable method by which the account debtor is to pay the transferee.

**(c) [Discharge following effective notification.]** After receipt of a notification that complies with subsection (b), the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

**(d) [When notification ineffective.]** Subject to subsection (h), notification is ineffective under subsection (b):

(1) unless, before the notification is sent, the account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable

account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;

(2) to the extent an agreement between the account debtor and seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of the account debtor, if the notification notifies the account debtor to:

(A) divide a payment;

(B) make less than the full amount of an installment or other periodic payment; or

(C) pay any part of a payment by more than one method or to more than one person.

(e) **[Proof of transfer of control.]** Subject to subsection (h), if requested by the account debtor, the person giving the notification under subsection (b) seasonably shall furnish reasonable proof, using the method in the agreement referred to in subsection (d)(1), that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (b).

(f) **[What constitutes reasonable proof.]** A person furnishes reasonable proof under subsection (e) that control has been transferred if the person demonstrates, using the method in the agreement referred to in subsection (d)(1), that the transferee has the power to:

(1) avail itself of substantially all the benefit from the controllable electronic record;

(2) prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(3) transfer the powers specified in paragraphs (1) and (2) to another person.

(g) **[Rights not waivable.]** Subject to subsection (h), an account debtor may not waive or vary its rights under subsections (d)(1) and (e) or its option under subsection (d)(3).

(h) **[Rule for individual under other law.]** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

### **Section 12-107. Governing Law.**

(a) **[Governing law: general rule.]** Except as provided in subsection (b), the local law of a controllable electronic record's jurisdiction governs a matter covered by this article.

(b) **[Governing law: Section 12-106.]** For a controllable electronic record that evidences a controllable account or controllable payment intangible, the local law of the controllable electronic record's jurisdiction governs a matter covered by Section 12-106 unless an effective agreement determines that the local law of another jurisdiction governs.

(c) **[Controllable electronic record's jurisdiction.]** The following rules determine a controllable electronic record's jurisdiction under this section:

(1) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or [the Uniform Commercial Code], that jurisdiction is the controllable electronic record's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the

controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or [the Uniform Commercial Code], that jurisdiction is the controllable electronic record's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(4) If paragraphs (1), (2), and (3) do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the controllable electronic record's jurisdiction is the District of Columbia.

(d) [Applicability of Article 12.] If subsection (c)(5) applies and Article 12 is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this article is the law of the District of Columbia as though Article 12 were in effect in the District of Columbia without material modification. In this subsection, "Article 12" means Article 12 of Uniform Commercial Code Amendments (2022).

(e) [Relation of matter or transaction to controllable electronic record's jurisdiction not necessary.] To the extent subsections (a) and (b) provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this article, that law

governs even if the matter or a transaction to which the matter relates does not bear any relation to the controllable electronic record's jurisdiction.

(f) [Rights of purchasers determined at time of purchase.] The rights acquired under Section 12-104 by a purchaser or qualifying purchaser are governed by the law applicable under this section at the time of purchase.

## **ARTICLE A**

### **TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE AMENDMENTS (2022)**

*Legislative Note: A state should codify Parts 1, 2 and 3 of this article as a part of the state's [Uniform Commercial Code].*

*In its codification of this article a state should provide a title that is conducive to its usual methods of codification, which is likely to ensure that it is called to the attention of users of the state's [Uniform Commercial Code], and which will avoid misunderstandings as to the relationship of this article to the other provisions of the state's [Uniform Commercial Code]. The designation of "Article" indicates that this article is a part of the state's [Uniform Commercial Code] as are the other articles. A state that uses a designation other than "article" may adopt for this article that other designation (such as "division"). Alternatively, a state may wish to adopt for this article a distinctive designation," such as "annex," which would distinguish its focus on transitional provisions from the content of other articles.*

## **PART 1**

### **GENERAL PROVISIONS AND DEFINITIONS**

#### **Section A-101. Title.**

This article may be cited as Transitional Provisions for Uniform Commercial Code Amendments (2022).

#### **Section A-102. Definitions.**

(a) [Article A Definitions.] In this article:

(1) "Adjustment date" means July 1, 2025, or the date that is one year after [the effective date of this [act]], whichever is later.

(2) “Article 12” means Article 12 of [the Uniform Commercial Code].

(3) “Article 12 property” means a controllable account, controllable electronic record, or controllable payment intangible.

(b) [Definitions in other articles.] The following definitions in other articles of [the Uniform Commercial Code] apply to this article.

“Controllable account”. Section 9-102.

“Controllable electronic record”. Section 12-102.

“Controllable payment intangible”. Section 9-102.

“Electronic money”. Section 9-102.

“Financing statement”. Section 9-102.

(c) [Article 1 definitions and principles.] Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

## **PART 2**

### **GENERAL TRANSITIONAL PROVISION**

#### **Section A-201. Saving Clause.**

Except as provided in Part 3, a transaction validly entered into before [the effective date of this [act]] and the rights, duties, and interests flowing from the transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by law other than [the Uniform Commercial Code] or, if applicable, [the Uniform Commercial Code], as though this [act] had not taken effect.

## **PART 3**

### **TRANSITIONAL PROVISIONS FOR ARTICLES 9 AND 12**

#### **Section A-301. Saving Clause.**

(a) [Pre-effective-date transaction, lien, or interest.] Except as provided in this part, Article 9 as amended by this [act] and Article 12 apply to a transaction, lien, or other interest in property, even if the transaction, lien, or interest was entered into, created, or acquired before [the effective date of this [act]].

(b) [Continuing validity.] Except as provided in subsection (c) and Sections A-302 through A-306:

(1) a transaction, lien, or interest in property that was validly entered into, created, or transferred before [the effective date of this [act]] and was not governed by [the Uniform Commercial Code], but would be subject to Article 9 as amended by this [act] or Article 12 if it had been entered into, created, or transferred on or after [the effective date of this [act]], including the rights, duties, and interests flowing from the transaction, lien, or interest, remains valid on and after [the effective date of this [act]]; and

(2) the transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by this [act] or by the law that would apply if this [act] had not taken effect.

(c) [Pre-effective-date proceeding.] This [act] does not affect an action, case, or proceeding commenced before [the effective date of this [act]].

#### **Section A-302. Security Interest Perfected Before Effective Date.**

(a) [Continuing perfection: perfection requirements satisfied.] A security interest that is enforceable and perfected immediately before [the effective date of this [act]] is a perfected security interest under this [act] if, on [the effective date of this [act]], the requirements for enforceability and perfection under this [act] are satisfied without further action.

(b) [Continuing perfection: enforceability or perfection requirements not satisfied.]

If a security interest is enforceable and perfected immediately before [the effective date of this [act]], but the requirements for enforceability or perfection under this [act] are not satisfied on [the effective date of this [act]], the security interest:

(1) is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before [the effective date of this [act]] or the adjustment date;

(2) remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under Section 9-203, as amended by this [act], before the adjustment date; and

(3) remains perfected thereafter only if the requirements for perfection under this [act] are satisfied before the time specified in paragraph (1).

### **Section A-303. Security Interest Unperfected Before Effective Date.**

A security interest that is enforceable immediately before [the effective date of this [act]] but is unperfected at that time:

(1) remains an enforceable security interest until the adjustment date;

(2) remains enforceable thereafter if the security interest becomes enforceable under Section 9-203, as amended by this [act], on [the effective date of this [act]] or before the adjustment date; and

(3) becomes perfected:

(A) without further action, on [the effective date of this [act]] if the requirements for perfection under this [act] are satisfied before or at that time; or

(B) when the requirements for perfection are satisfied if the requirements are satisfied after that time.



**Section A-304. Effectiveness of Actions Taken Before Effective Date.**

(a) **[Pre-effective-date action; attachment and perfection before adjustment date.]** If action, other than the filing of a financing statement, is taken before [the effective date of this [act]] and the action would have resulted in perfection of the security interest had the security interest become enforceable before [the effective date of this [act]], the action is effective to perfect a security interest that attaches under this [act] before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under this [act] before the adjustment date.

(b) **[Pre-effective-date filing.]** The filing of a financing statement before [the effective date of this [act]] is effective to perfect a security interest on [the effective date of this [act]] to the extent the filing would satisfy the requirements for perfection under this [act].

(c) **[Pre-effective-date enforceability action.]** The taking of an action before [the effective date of this [act]] is sufficient for the enforceability of a security interest on [the effective date of this [act]] if the action would satisfy the requirements for enforceability under this [act].

**Section A-305. Priority.**

(a) **[Determination of priority.]** Subject to subsections (b) and (c), this [act] determines the priority of conflicting claims to collateral.

(b) **[Established priorities.]** Subject to subsection (c), if the priorities of claims to collateral were established before [the effective date of this [act]], Article 9 as in effect before [the effective date of this [act]] determines priority.

(c) **[Determination of certain priorities on adjustment date.]** On the adjustment date, to the extent the priorities determined by Article 9 as amended by this [act] modify the priorities

established before [the effective date of this [act]], the priorities of claims to Article 12 property and electronic money established before [the effective date of this [act]] cease to apply.

**Section A-306. Priority of Claims When Priority Rules of Article 9 Do Not Apply.**

(a) [Determination of priority.] Subject to subsections (b) and (c), Article 12 determines the priority of conflicting claims to Article 12 property when the priority rules of Article 9 as amended by this [act] do not apply.

(b) [Established priorities.] Subject to subsection (c), when the priority rules of Article 9 as amended by this [act] do not apply and the priorities of claims to Article 12 property were established before [the effective date of this [act]], law other than Article 12 determines priority.

(c) [Determination of certain priorities on adjustment date.] When the priority rules of Article 9 as amended by this [act] do not apply, to the extent the priorities determined by this [act] modify the priorities established before [the effective date of this [act]], the priorities of claims to Article 12 property established before [the effective date of this [act]] cease to apply on the adjustment date.

**PART 4**

**EFFECTIVE DATE**

**Section A-401. Effective Date.**

This [act] takes effect on . . .

**SCHEDULE 10**

Draft Florida Article 12 Bill

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1 A bill to be entitled (ver Aug\_4\_2023; May 2023 FBD)  
2 An act relating to the Uniform Commercial Code;  
3 providing a directive to the Division of Law Revision;  
4 creating part I of ch. 669, F.S., relating to  
5 controllable electronic records; creating s. 669.101,  
6 F.S.; providing a short title; creating s. 669.102,  
7 F.S.; defining terms; providing construction; creating  
8 s. 669.103, F.S.; providing construction; creating s.  
9 669.104, F.S.; providing applicability; specifying  
10 when a purchaser of a controllable account or  
11 controllable payment intangible is a qualifying  
12 purchaser; specifying rights acquired relating to  
13 controllable electronic records; prohibiting actions  
14 from being asserted against qualifying purchasers  
15 under certain circumstances; specifying that filing a  
16 certain financial statement is not notice of claim of  
17 a property right in a controllable electronic record;  
18 creating s. 669.105, F.S.; specifying when a person  
19 has control of a controllable electronic record;  
20 providing when a person's power relating to  
21 controllable electronic records is or is not  
22 exclusive; creating s. 669.106, F.S.; authorizing  
23 account debtors on a controllable account or  
24 controllable payment intangible to discharge  
25 obligations under certain circumstances; providing  
26 requirements for such discharge; prohibiting account  
27 debtors from waiving or varying certain rights and  
28 options; providing construction; creating s. 669.107,  
29 F.S.; specifying the governing laws and jurisdictions

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30 relating to controllable electronic records; creating  
31 part II of ch. 669, F.S., relating to transitional  
32 provisions; creating s. 669.501, F.S.; providing a  
33 short title; creating s. 669.502, F.S.; defining  
34 terms; creating ss. 669.601 and 669.701, F.S.;  
35 providing saving clauses for certain transactions;  
36 providing applicability; creating s. 669.702, F.S.;  
37 specifying requirements for perfecting security  
38 interests enforceable and perfected before a specified  
39 date; creating s. 669.703, F.S.; specifying  
40 requirements for security interests that were  
41 unperfected before a specified date; creating s.  
42 669.704, F.S.; specifying the effectiveness of certain  
43 actions relating to security interests taken before a  
44 specified date; creating ss. 669.705 and 669.706,  
45 F.S.; providing priority for conflicting claims to  
46 collateral; amending s. 670.103, F.S.; revising the  
47 definition of the term "payment order"; amending s.  
48 670.201, F.S.; revising authorizations and  
49 requirements relating to security procedures; amending  
50 s. 670.202, F.S.; revising the circumstances under  
51 which payment orders received by banks are effective  
52 as the order of a customer; making technical changes;  
53 amending s. 670.203, F.S.; revising rules that apply  
54 to payments orders that are not authorized orders of  
55 certain customers; amending ss. 670.207, 670.208,  
56 670.21, 670.211 and 670.305, F.S.; making technical  
57 changes; amending s. 671.101, F.S.; revising liability  
58 requirements relating to payment orders; amending s.

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59 671.105, F.S.; revising construction; amending s.  
60 671.107, F.S.; making a technical change; amending s.  
61 671.201, F.S.; revising definitions; defining the  
62 terms "electronic," "sign," and "signature"; creating  
63 s. 671.401, F.S.; savings provision; amending s.  
64 672.102, F.S.; revising applicability; amending s.  
65 672.106, F.S.; defining the term "hybrid transaction";  
66 amending s. 672.201, 672.202, 672.203, and 672.205,  
67 F.S.; making technical changes; amending s. 672.209,  
68 F.S.; revising a prohibition on modifying or  
69 rescinding a signed agreement that excludes  
70 modification or rescission; creating Part VIII of  
71 chapter 672, "Transitional Provisions", and s.  
72 672.801, F.S.; savings provision; amending s.  
73 673.1041, F.S.; revising the definition of the term  
74 "negotiable instrument"; amending s. 673.1051, F.S.;  
75 revising the definition of the term "issue"; amending  
76 s. 673.4011, F.S.; conforming provisions to changes  
77 made by the act; amending s. 673.6041, F.S.;  
78 specifying that the obligation of a party to pay a  
79 check is not discharged solely by destruction of the  
80 check in connection with a specified process; creating  
81 Part VII of chapter 673, "Transitional Provisions",  
82 and s. 673.701, F.S.; amending s. 675.104, F.S.;  
83 conforming provisions to changes made by the act;  
84 amending s. 675.116, F.S.; making technical changes;  
85 creating s. 675.119, F.S.; savings provision; amending  
86 s. 677.102, F.S.; deleting definitions of the terms  
87 "record" and "sign"; amending s. 677.106, F.S.;

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88 specifying when a system satisfies certain  
89 requirements and a person has control of an electronic  
90 document of title; specifying when certain powers are  
91 or are not exclusive; specifying that a person does  
92 not owe a duty to another person under certain  
93 circumstances; creating s. 677.701, F.S.; savings  
94 provision; amending s. 678.1021, F.S.; revising  
95 definitions; revising applicability of definitions;  
96 amending s. 678.1031, F.S.; specifying a controllable  
97 account, controllable electronic record, or  
98 controllable payment intangible is not a financial  
99 asset under certain circumstances; conforming a cross-  
100 reference; amending s. 678.1061, F.S.; revising the  
101 circumstances under which purchasers have control of  
102 security entitlements; specifying a person that has  
103 such control is not required to acknowledge such  
104 control on behalf of a purchaser; specifying that  
105 certain persons do not owe any duty to purchasers and  
106 are not required to confirm certain acknowledgment  
107 under certain circumstances; amending s. 678.1101,  
108 F.S.; providing applicability; amending s. 678.3031,  
109 F.S.; specifying that protected purchasers acquire  
110 interest in a security free of any adverse claim;  
111 creating Part VI of chapter 678, "Transitional  
112 Provisions", and s. 678.601, F.S.; savings provision;  
113 amending s. 679.1021, F.S.; defining terms; revising  
114 and deleting definitions; revising applicability of  
115 definitions; amending s. 679.1041, F.S.; revising the  
116 circumstances under which a secured party has control

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117 of a deposit account; amending s. 679.1051, F.S.;

118 revising when a person has control of electronic

119 chattel paper; specifying when power of such control

120 is or is not exclusive; creating s. 679.1052, F.S.;

121 specifying when a person has control of electronic

122 money; specifying when power of such control is or is

123 not exclusive; creating s. 679.1053, F.S.; specifying

124 when a person has control of controllable electronic

125 records, controllable accounts, or controllable

126 payment intangibles; creating s. 679.1054, F.S.;

127 providing that specified persons with certain control

128 are not required to acknowledge such control;

129 specifying that such persons do not owe any duty to

130 certain persons and are not required to confirm

131 acknowledgment to any other person; amending s.

132 679.2031, F.S.; revising the circumstances under which

133 a security interest is enforceable against a debtor

134 and third parties; amending s. 679.2041, F.S.;

135 revising the circumstances under which a security

136 interest does not attach to a term constituting an

137 after-acquired property clause; amending s. 679.2071,

138 F.S.; conforming a provision to changes made by the

139 act; amending s. 679.2081, F.S.; revising duties

140 relating to secured parties having control of

141 collateral; amending s. 679.209, F.S.; revising duties

142 relating to secured parties if an account debtor has

143 been notified of an assignment; amending s. 679.210,

144 F.S.; conforming provisions to changes made by the

145 act; amending s. 679.3011, F.S.; revising requirements



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146 relating to laws governing perfection and priority of  
147 security interests; amending s. 679.3041, F.S.;  
148 specifying that the local law of a bank's jurisdiction  
149 governs even if a transaction does not bear any  
150 relation to the bank's jurisdiction; amending s.  
151 679.3051, F.S.; revising applicability; creating s.  
152 679.3062, F.S.; specifying which laws govern the  
153 perfection and priority of security interests in  
154 chattel paper; creating s. 679.3063, F.S.; specifying  
155 which laws govern the perfection and priority of  
156 security interests in controllable accounts,  
157 controllable electronic records, and controllable  
158 payment intangibles; amending s. 679.3101, F.S.;  
159 revising the circumstances under which the filing of a  
160 financing statement is not necessary to perfect a  
161 security interest; amending s. 679.3121, F.S.;  
162 providing requirements for perfecting a security  
163 interest in controllable accounts, controllable  
164 electronic records, and controllable payment  
165 intangibles; amending s. 679.3131, F.S.; conforming  
166 provisions to changes made by the act; amending s.  
167 679.3141, F.S.; revising requirements for perfection  
168 by control; creating s. 679.3152, F.S.; providing  
169 requirements for perfecting a security interest in  
170 chattel paper by possession and control; amending s.  
171 679.3161, F.S.; revising requirements relating to  
172 maintaining perfection of security interests following  
173 a change in governing law; amending s. 679.3171, F.S.;  
174 revising the circumstances under which persons take

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175 free of a security interest; amending s. 679.323,  
176 F.S.; revising the circumstances under which a buyer  
177 of goods takes free of a security interest; amending  
178 s. 679.324, F.S.; conforming provisions to changes  
179 made by the act; creating s. 679.3251, F.S.;  
180 specifying that certain security interests in  
181 controllable accounts, controllable electronic  
182 records, or controllable payment intangibles have  
183 priority over conflicting security interests; amending  
184 s. 679.330, F.S.; revising the circumstances under  
185 which purchasers of chattel paper have priority over  
186 certain security interests in the chattel paper;  
187 amending s. 679.331, F.S.; revising construction;  
188 amending s. 679.332, F.S.; revising the circumstances  
189 under which a transferee takes money or funds free of  
190 a security interest; amending ss. 679.341 and  
191 679.4041, F.S.; conforming provisions to changes made  
192 by the act; amending s. 679.4061, F.S.; defining the  
193 term "promissory note"; conforming provisions to  
194 changes made by the act; revising applicability;  
195 amending s. 679.4081, F.S.; defining the term  
196 "promissory note"; amending s. 679.509, 679.513, and  
197 679.601, F.S.; conforming provisions to changes made  
198 by the act; amending s. 679.605, F.S.; specifying when  
199 a secured party owes a duty to a person based on the  
200 party's status as a secured party; amending s. 679.608  
201 and 679.611, F.S.; conforming provisions to changes  
202 made by the act; amending s. 679.613, F.S.; revising  
203 the form for a notification of disposition of

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204 collateral; providing requirements relating to such  
205 form; amending s. 679.614, F.S.; revising form  
206 requirements for a notice of a plan to sell property;  
207 providing requirements relating to such form; amending  
208 ss. 679.615, 679.616, 679.619, 679.620, 679.621,  
209 679.624 and 679.625, F.S.; conforming provisions to  
210 changes made by the act; amending s. 679.628, F.S.;  
211 providing applicability; creating Part IX of chapter  
212 679, "Transitional Provisions for 2024 Amendments",  
213 and s. 679.901 and s. 679.902, F.S.; savings  
214 provision; adopting transition provisions in Part II  
215 of Chapter 679; amending s. 680.1021, F.S.; revising  
216 applicability; amending s. 680.1031, F.S.; defining  
217 the term "hybrid lease"; conforming cross-references;  
218 amending ss. 680.1071, 680.201, 680.202, 680.203,  
219 680.205, and 680.208, F.S.; conforming provisions to  
220 changes made by the act; amending ss. 319.27,  
221 328.0015, 559.9232, 563.022, 668.50, 671.101, and  
222 680.1031, F.S.; conforming cross-references;  
223 reenacting s. 328.0015(2)(c), F.S., relating to  
224 definitions, to incorporate the amendments made to s.  
225 671.201, F.S., in references thereto; reenacting ss.  
226 655.55(1) and (2) and 685.101(2), F.S., relating to  
227 law applicable to deposits in and contracts relating  
228 to extensions of credit by a deposit or lending  
229 institution located in this state and choice of law,  
230 respectively, to incorporate the amendments made to s.  
231 671.105, F.S., in references thereto; reenacting ss.  
232 90.953(1), 673.1061(1), (3), and (4), and 673.1151(2),

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233 F.S., relating to admissibility of duplicates,  
234 unconditional promise or order, and incomplete  
235 instruments, respectively, to incorporate the  
236 amendments made to s. 673.1041, F.S., in references  
237 thereto; reenacting s. 673.1031(2), F.S., relating to  
238 definitions, to incorporate the amendments made to ss.  
239 673.1041 and 673.1051, F.S., in references thereto;  
240 reenacting s. 675.103(1)(j), F.S., relating to  
241 definitions, to incorporate the amendments made to s.  
242 675.104, F.S., in references thereto; reenacting ss.  
243 678.5101(3), 679.1061(1), and 679.328(2), F.S.,  
244 relating to rights of purchaser of security  
245 entitlement from entitlement holder, control of  
246 investment property, and priority of security  
247 interests in investment property, respectively, to  
248 incorporate the amendments made to s. 678.1061, F.S.,  
249 in references thereto; reenacting s. 671.105(2)(e),  
250 F.S., relating to territorial application of the code  
251 and parties' power to choose applicable law, to  
252 incorporate the amendments made to s. 678.1101, F.S.,  
253 in references thereto; reenacting s. 680.1031(3)(a),  
254 F.S., relating to definitions, to incorporate the  
255 amendments made to s. 679.1021, F.S., in references  
256 thereto; reenacting s. 679.327(1), F.S., relating to  
257 priority of security interests in deposit account, to  
258 incorporate the amendments made to s. 679.1041, F.S.,  
259 in references thereto; reenacting ss. 679.1091(4)(k),  
260 679.3171(1)(b), and 679.709(2), F.S., relating to  
261 scope, interests that take priority over or take free

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262 of security interest or agricultural lien, and  
263 priority, respectively, to incorporate the amendments  
264 made to s. 679.2031, F.S., in references thereto;  
265 reenacting s. 679.625(5), F.S., relating to remedies  
266 for failure to comply with article, to incorporate the  
267 amendments made to s. 679.2081, F.S., in references  
268 thereto; reenacting s. 679.3101(1), F.S., relating to  
269 when filing required to perfect security interest or  
270 agricultural lien and security interests and  
271 agricultural liens to which filing provisions do not  
272 apply, to incorporate the amendments made to s.  
273 679.3121, F.S., in references thereto; reenacting ss.  
274 679.327(2), 679.328(5), and 679.329(2), F.S., relating  
275 to priority of security interests in deposit account,  
276 priority of security interests in investment property,  
277 and priority of security interests in letter-of-credit  
278 right, respectively, to incorporate the amendments  
279 made to s. 679.3141, F.S., in references thereto;  
280 reenacting ss. 679.3101(2)(j) and 679.320(3), F.S.,  
281 relating to when filing required to perfect security  
282 interest or agricultural lien and buyer of goods,  
283 respectively, to incorporate the amendments made to s.  
284 679.3161, F.S., in references thereto; reenacting ss.  
285 680.307(3) and 727.109(8)(b), F.S., relating to  
286 priority of liens arising by attachment or levy on,  
287 security interests in, and other claims to goods and  
288 power of the court, respectively, to incorporate the  
289 amendments made to s. 679.3171, F.S., in references  
290 thereto; reenacting s. 668.50(16)(d), F.S., relating

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291 to the Uniform Electronic Transaction Act, to  
292 incorporate the amendments made to s. 679.330, F.S.,  
293 in references thereto; reenacting s. 679.330(4), F.S.,  
294 relating to priority of purchaser of chattel paper or  
295 instrument, to incorporate the amendments made to s.  
296 679.331, F.S., in references thereto; reenacting s.  
297 679.601(4), F.S., relating to rights after default, to  
298 incorporate the amendments made to s. 679.605, F.S.,  
299 in references thereto; reenacting ss. 679.625(3) and  
300 679.626(3), F.S., relating to remedies for failure to  
301 comply with article and action in which deficiency or  
302 surplus is in issue, to incorporate the amendments  
303 made to s. 679.628, F.S., in references thereto;  
304 providing an effective date.  
305

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

307  
308 Section 1. The Division of Law Revision is directed to  
309 create chapter 669, Florida Statutes, to be entitled "Uniform  
310 Commercial Code: Controllable Electronic Records and  
311 Transitional Provisions."

312 Section 2. Part I of chapter 669, Florida Statutes,  
313 consisting of sections 669.101-669.107 is created and entitled  
314 "Controllable Electronic Records."

315 Section 3. Section 669.101, Florida Statutes, is created to  
316 read:

317 669.101 Short title.—This chapter may be cited as "Uniform  
318 Commercial Code—Controllable Electronic Records."

319 Section 4. Section 669.102, Florida Statutes, is created to

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320 read:

321 669.102 Definitions.-

322 (1) As used in this chapter, the term:

323 (a) "Controllable electronic record" means a record stored  
324 in an electronic medium that can be subjected to control under  
325 s. 669.105. The term does not include a controllable account, a  
326 controllable payment intangible, a deposit account, an  
327 electronic copy of a record evidencing chattel paper, an  
328 electronic document of title, electronic money, investment  
329 property, or a transferable record.

330 (b) "Qualifying purchaser" means a purchaser of a  
331 controllable electronic record or an interest in a controllable  
332 electronic record that obtains control of the controllable  
333 electronic record for value, in good faith, and without notice  
334 of a claim of a property right in the controllable electronic  
335 record.

336 (c) "Transferable record" has the meaning provided for that  
337 term in:

338 1. Section 201(a)(1) of the Electronic Signatures in Global  
339 and National Commerce Act, 15 U.S.C. s. 7021(a)(1); or

340 2. Section 668.50(16)(a).

341 (d) "Value" has the meaning provided in s. 673.3031, as if  
342 references in that subsection to an "instrument" were references  
343 to a controllable account, controllable electronic record, or  
344 controllable payment intangible.

345 (2) The definitions in s. 679.1021 for the terms "account  
346 debtor," "controllable account," "controllable payment  
347 intangible," "chattel paper," "deposit account," "electronic  
348 money," and "investment property" apply to this part.

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349       (3) Chapter 671 contains general definitions and principles  
350 of construction and interpretation applicable throughout this  
351 chapter.

352       Section 5. Section 669.103, Florida Statutes, is created to  
353 read:

354       669.103 Relation to chapter 679 and consumer laws.-

355       (1) If there is conflict between this part and chapter 679,  
356 chapter 679 governs.

357       (2) A transaction subject to this part is subject to any  
358 applicable rule of law that establishes a different rule for  
359 consumers; any other law or regulation that regulates the rates,  
360 charges, agreements, and practices for loans, credit sales, or  
361 other extensions of credit; and chapter 501.

362       Section 6. Section 669.104, Florida Statutes, is created to  
363 read:

364       669.104 Rights in controllable account, controllable  
365 electronic record, and controllable payment intangible.-

366       (1) This section applies to the acquisition and purchase of  
367 rights in a controllable account or controllable payment  
368 intangible, including the rights and benefits under subsections  
369 (3), (4), (5), (7), and (8) of a purchaser and qualifying  
370 purchaser, in the same manner this section applies to a  
371 controllable electronic record.

372       (2) To determine whether a purchaser of a controllable  
373 account or a controllable payment intangible is a qualifying  
374 purchaser, the purchaser obtains control of the account or  
375 payment intangible if it obtains control of the controllable  
376 electronic record that evidences the account or payment  
377 intangible.



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378       (3) Except as provided in this section, law other than this  
379 chapter determines whether a person acquires a right in a  
380 controllable electronic record and the right the person  
381 acquires.

382       (4) A purchaser of a controllable electronic record  
383 acquires all rights in the controllable electronic record that  
384 the transferor had or had power to transfer, except that a  
385 purchaser of a limited interest in a controllable electronic  
386 record acquires rights only to the extent of the interest  
387 purchased.

388       (5) A qualifying purchaser acquires its rights in the  
389 controllable electronic record free of a claim of a property  
390 right in the controllable electronic record.

391       (6) Except as provided in subsections (1) and (5) for a  
392 controllable account and a controllable payment intangible or  
393 law other than this part, a qualifying purchaser takes a right  
394 to payment, right to performance, or other interest in property  
395 evidenced by the controllable electronic record subject to a  
396 claim of a property right in the right to payment, right to  
397 performance, or other interest in property.

398       (7) An action may not be asserted against a qualifying  
399 purchaser based on both a purchase by the qualifying purchaser  
400 of a controllable electronic record and a claim of a property  
401 right in another controllable electronic record, whether the  
402 action is framed in conversion, replevin, constructive trust,  
403 equitable lien, or other theory.

404       (8) Filing of a financing statement under chapter 679 is  
405 not notice of a claim of a property right in a controllable  
406 electronic record.

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407 Section 7. Section 669.105, Florida Statutes, is created to  
408 read:

409 669.105 Control of controllable electronic record.—

410 (1) A person has control of a controllable electronic  
411 record if the electronic record, a record attached to or  
412 logically associated with the electronic record, or a system in  
413 which the electronic record is recorded:

414 (a) Gives the person:

415 1. Power to avail itself of substantially all the benefit  
416 from the electronic record; and

417 2. Exclusive power, subject to subsection (b), to:

418 a. Prevent others from availing themselves of substantially  
419 all the benefit from the electronic record; and

420 b. Transfer control of the electronic record to another  
421 person or cause another person to obtain control of another  
422 controllable electronic record as a result of the transfer of  
423 the electronic record; and

424 (b) Enables the person readily to identify itself in any  
425 way, including by name, identifying number, cryptographic key,  
426 office, or account number, as having the powers specified in  
427 paragraph (a).

428 (2) Subject to subsection (3), a power is exclusive under  
429 subsection (1)(a)2.a. and b. even if:

430 (a) The controllable electronic record, a record attached  
431 to or logically associated with the electronic record, or a  
432 system in which the electronic record is recorded limits the use  
433 of the electronic record or has a protocol programmed to cause a  
434 change, including a transfer or loss of control or a  
435 modification of benefits afforded by the electronic record; or

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- 436       (b) The power is shared with another person.  
437       (3) A power of a person is not shared with another person  
438 under paragraph (2)(b) and the person's power is not exclusive  
439 if:  
440       (a) The person can exercise the power only if the power  
441 also is exercised by the other person; and  
442       (b) The other person:  
443       1. Can exercise the power without exercise of the power by  
444 the person; or  
445       2. Is the transferor to the person of an interest in the  
446 controllable electronic record or a controllable account or  
447 controllable payment intangible evidenced by the controllable  
448 electronic record.  
449       (4) If a person has the powers specified in subsection  
450 (1)(a)2.a. and b., the powers are presumed to be exclusive.  
451       (5) A person has control of a controllable electronic  
452 record if another person, other than the transferor to the  
453 person of an interest in the controllable electronic record or a  
454 controllable account or controllable payment intangible  
455 evidenced by the controllable electronic record:  
456       (a) Has control of the electronic record and acknowledges  
457 that it has control on behalf of the person; or  
458       (b) Obtains control of the electronic record after having  
459 acknowledged that it will obtain control of the electronic  
460 record on behalf of the person.  
461       (6) A person that has control under this section is not  
462 required to acknowledge that it has control on behalf of another  
463 person.  
464       (7) If a person acknowledges that it has or will obtain

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465 control on behalf of another person, unless the person otherwise  
466 agrees or law other than this part or chapter 679 otherwise  
467 provides, the person does not owe any duty to the other person  
468 and is not required to confirm the acknowledgment to any other  
469 person.

470 Section 8. Section 669.106, Florida Statutes, is created to  
471 read:

472 669.106 Discharge of account debtor on controllable account  
473 or controllable payment intangible.—

474 (1) An account debtor on a controllable account or  
475 controllable payment intangible may discharge its obligation by  
476 paying:

477 (a) The person having control of the controllable  
478 electronic record that evidences the controllable account or  
479 controllable payment intangible; or

480 (b) Except as provided in subsection (2), a person that  
481 formerly had control of the controllable electronic record.

482 (2) Subject to subsection (4), the account debtor may not  
483 discharge its obligation by paying a person that formerly had  
484 control of the controllable electronic record if the account  
485 debtor receives a notification that:

486 (a) Is signed by a person that formerly had control or the  
487 person to which control was transferred;

488 (b) Reasonably identifies the controllable account or  
489 controllable payment intangible;

490 (c) Notifies the account debtor that control of the  
491 controllable electronic record that evidences the controllable  
492 account or controllable payment intangible was transferred;

493 (d) Identifies the transferee, in any reasonable way,

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494 including by name, identifying number, cryptographic key,  
495 office, or account number; and

496 (e) Provides a commercially reasonable method by which the  
497 account debtor is to pay the transferee.

498 (3) After receipt of a notification that complies with  
499 subsection (2), the account debtor may discharge its obligation  
500 by paying in accordance with the notification and may not  
501 discharge the obligation by paying a person that formerly had  
502 control.

503 (4) Subject to subsection (8), notification is ineffective  
504 under subsection (2):

505 (a) Unless, before the notification is sent, the account  
506 debtor and the person that, at that time, had control of the  
507 controllable electronic record that evidences the controllable  
508 account or controllable payment intangible agree in a signed  
509 record to a commercially reasonable method by which a person may  
510 furnish reasonable proof that control has been transferred;

511 (b) To the extent an agreement between the account debtor  
512 and seller of a payment intangible limits the account debtor's  
513 duty to pay a person other than the seller and the limitation is  
514 effective under law other than this part; or

515 (c) At the option of the account debtor, if the  
516 notification notifies the account debtor to:

517 1. Divide a payment;

518 2. Make less than the full amount of an installment or  
519 other periodic payment; or

520 3. Pay any part of a payment by more than one method or to  
521 more than one person.

522 (5) Subject to subsection (8), if requested by the account

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523 debtor, the person giving the notification under subsection (2)  
524 seasonably shall furnish reasonable proof, using the method in  
525 the agreement referred to in subsection(4)(a), that control of  
526 the controllable electronic record has been transferred. Unless  
527 the person complies with the request, the account debtor may  
528 discharge its obligation by paying a person that formerly had  
529 control, even if the account debtor has received a notification  
530 under subsection (2).

531 (6) A person furnishes reasonable proof under subsection  
532 (5) that control has been transferred if the person  
533 demonstrates, using the method in the agreement referred to in  
534 paragraph (4)(a), that the transferee has the power to:

535 (a) Avail itself of substantially all the benefit from the  
536 controllable electronic record;

537 (b) Prevent others from availing themselves of  
538 substantially all the benefit from the controllable electronic  
539 record; and

540 (c) Transfer the powers specified in paragraphs (a) and (b)  
541 to another person.

542 (7) Subject to subsection (8), an account debtor may not  
543 waive or vary its rights under subsection (4)(a) and subsection  
544 (5) or its option under subsection (4)(c).

545 (8) This section is subject to law other than this chapter  
546 which establishes a different rule for an account debtor who is  
547 an individual and who incurred the obligation primarily for  
548 personal, family, or household purposes.

549 Section 9. Section 669.107, Florida Statutes, is created to  
550 read:

551 669.107 Governing law.—

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552 (1) Except as provided in subsection (2), the local law of  
553 a controllable electronic record's jurisdiction governs a matter  
554 covered by this part.

555 (2) For a controllable electronic record that evidences a  
556 controllable account or controllable payment intangible, the  
557 local law of the controllable electronic record's jurisdiction  
558 governs a matter covered by s. 669.106 unless an effective  
559 agreement determines that the local law of another jurisdiction  
560 governs.

561 (3) The following rules determine a controllable electronic  
562 record's jurisdiction under this section:

563 (a) If the controllable electronic record, or a record  
564 attached to or logically associated with the controllable  
565 electronic record and readily available for review, expressly  
566 provides that a particular jurisdiction is the controllable  
567 electronic record's jurisdiction for purposes of this part or  
568 the Uniform Commercial Code, that jurisdiction is the  
569 controllable electronic record's jurisdiction.

570 (b) If paragraph (a) does not apply and the rules of the  
571 system in which the controllable electronic record is recorded  
572 are readily available for review and expressly provide that a  
573 particular jurisdiction is the controllable electronic record's  
574 jurisdiction for purposes of this part or the Uniform Commercial  
575 Code, that jurisdiction is the controllable electronic record's  
576 jurisdiction.

577 (c) If paragraphs (a) and (b) do not apply and the  
578 controllable electronic record, or a record attached to or  
579 logically associated with the controllable electronic record and  
580 readily available for review, expressly provides that the

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581 controllable electronic record is governed by the law of a  
582 particular jurisdiction, that jurisdiction is the controllable  
583 electronic record's jurisdiction.

584 (d) If paragraphs (a), (b), and (c) do not apply and the  
585 rules of the system in which the controllable electronic record  
586 is recorded are readily available for review and expressly  
587 provide that the controllable electronic record or the system is  
588 governed by the law of a particular jurisdiction, that  
589 jurisdiction is the controllable electronic record's  
590 jurisdiction.

591 (e) If paragraphs (a) through (d) do not apply, the  
592 controllable electronic record's jurisdiction is the District of  
593 Columbia.

594 (4) If paragraph (3)(e) applies and Article 12 is not in  
595 effect in the District of Columbia without material  
596 modification, the governing law for a matter covered by this  
597 part is the law of the District of Columbia as though Article 12  
598 were in effect in the District of Columbia without material  
599 modification. For the purposes of this subsection, "Article 12"  
600 means Article 12 of Uniform Commercial Code Amendments (2022).

601 (5) To the extent subsections (1) and (2) provide that the  
602 local law of the controllable electronic record's jurisdiction  
603 governs a matter covered by this part, that law governs even if  
604 the matter or a transaction to which the matter relates does not  
605 bear any relation to the controllable electronic record's  
606 jurisdiction.

607 (6) The rights acquired under s. 669.104 by a purchaser or  
608 qualifying purchaser are governed by the law applicable under  
609 this section at the time of purchase.



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610           Section 10. Part II of chapter 669, Florida Statutes,  
611 consisting of sections 669.501-669.706 is created and entitled  
612 "Transitional Provisions for Chapter 669 and 2024 Amendments to  
613 Chapter 679."

614           Section 11. Section 669.501, Florida Statutes, is created  
615 to read:

616           669.501 Effective Date.— This chapter takes effect on July  
617 1, 2024."

618           Section 12. Section 669.502, Florida Statutes, is created  
619 to read:

620           669.502 Definitions.—As used in this part:

621           (1)(a) "Adjustment date" means July 1, 2025.

622           (b) "Article 12" means Part I of chapter 669.

623           (c) "Article 12 property" means a controllable account,  
624 controllable electronic record, or controllable payment  
625 intangible.

626           (2) Other definitions applying to this part, or to  
627 specified parts thereof, and the sections in which they appear:

628           "Controllable account," s. 679.1021.

629           "Controllable electronic record," s. 669.102.

630           "Controllable payment intangible," s. 679.1021.

631           "Electronic money," s. 679.1021.

632           "Financing statement," s. 679.1021.

633           (3) Chapter 671 contains general definitions and principles  
634 of construction and interpretation applicable throughout this  
635 part.

636           Section 13. Section 669.601, Florida Statutes, is created  
637 to read:

638           669.601 Saving clause for general transitional provision.—

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639 Except as provided in this part, a transaction validly entered  
640 into before July 1, 2024, and the rights, duties, and interests  
641 flowing from the transaction remain valid thereafter and may be  
642 terminated, completed, consummated, or enforced as required or  
643 permitted by law other than the Uniform Commercial Code or, if  
644 applicable, the Uniform Commercial Code as though ch. 2024-XX,  
645 Laws of Florida, had not taken effect.

646 Section 14. Section 669.701, Florida Statutes, is created  
647 to read:

648 669.701 Saving clause for transitional provisions for  
649 chapters 669 and 679.—

650 (1) Except as provided in this part, chapter 679, as  
651 amended by ch. 2024-XX, Laws of Florida, and Article 12 apply to  
652 a transaction, lien, or other interest in property, even if the  
653 transaction, lien, or interest was entered into, created, or  
654 acquired before July 1, 2024.

655 (2) Except as provided in subsection (3) and ss. 669.702-  
656 669.706:

657 (a) A transaction, lien, or interest in property that was  
658 validly entered into, created, or transferred before July 1,  
659 2024, and was not governed by the Uniform Commercial Code, but  
660 would be subject to chapter 679, as amended by ch. 2024-XX, Laws  
661 of Florida, or Article 12 if it had been entered into, created,  
662 or transferred on or after July 1, 2024, including the rights,  
663 duties, and interests flowing from the transaction, lien, or  
664 interest, remains valid on and after July 1, 2024; and

665 (b) The transaction, lien, or interest may be terminated,  
666 completed, consummated, and enforced as required or permitted by  
667 ch. 2024-XX, Laws of Florida, or by the law that would apply if

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668 ch. 2024-XX, Laws of Florida, had not taken effect.

669 (3) Ch. 2024-XX, Laws of Florida, does not affect an  
670 action, case, or proceeding commenced before July 1, 2024.

671 Section 15. Section 669.702, Florida Statutes, is created  
672 to read:

673 669.702 Security interest perfected before effective date.—

674 (1) A security interest that is enforceable and perfected  
675 immediately before July 1, 2024, is a perfected security  
676 interest under ch. 2024-XX, Laws of Florida, if, on July 1,  
677 2024, the requirements for enforceability and perfection under  
678 ch. 2024-XX, Laws of Florida, are satisfied without further  
679 action.

680 (2) If a security interest is enforceable and perfected  
681 immediately before July 1, 2024, but the requirements for  
682 enforceability or perfection under ch. 2024-XX, Laws of Florida,  
683 are not satisfied on July 1, 2024, the security interest:

684 (a) Is a perfected security interest until the earlier of  
685 the time perfection would have ceased under the law in effect  
686 immediately before July 1, 2024, or the adjustment date;

687 (b) Remains enforceable thereafter only if the security  
688 interest satisfies the requirements for enforceability under s.  
689 679.2031, as amended by ch. 2024-XX, Laws of Florida, before the  
690 adjustment date; and

691 (c) Remains perfected thereafter only if the requirements  
692 for perfection under ch. 2024-XX, Laws of Florida, are satisfied  
693 before the time specified in paragraph (a).

694 Section 16. Section 669.703, Florida Statutes, is created  
695 to read:

696 669.703 Security interest unperfected before effective

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697 date.—A security interest that is enforceable immediately before  
698 July 1, 2024, but is unperfected at that time:  
699 (1) Remains an enforceable security interest until the  
700 adjustment date;  
701 (2) Remains enforceable thereafter if the security interest  
702 becomes enforceable under s. 679.2031, as amended by ch. 2024-  
703 XX, Laws of Florida, on July 1, 2024, or before the adjustment  
704 date; and  
705 (3) Becomes perfected:  
706 (a) Without further action, on July 1, 2024, if the  
707 requirements for perfection under ch. 2024-XX, Laws of Florida,  
708 are satisfied before or at that time; or  
709 (b) When the requirements for perfection are satisfied if  
710 the requirements are satisfied after that time.  
711 Section 17. Section 669.704, Florida Statutes, is created  
712 to read:  
713 669.704 Effectiveness of actions taken before effective  
714 date.—  
715 (1) If action, other than the filing of a financing  
716 statement, is taken before July 1, 2024, and the action would  
717 have resulted in perfection of the security interest had the  
718 security interest become enforceable before July 1, 2024, the  
719 action is effective to perfect a security interest that attaches  
720 under ch. 2024-XX, Laws of Florida, before the adjustment date.  
721 An attached security interest becomes unperfected on the  
722 adjustment date unless the security interest becomes a perfected  
723 security interest under ch. 2024-XX, Laws of Florida, before the  
724 adjustment date.  
725 (2) The filing of a financing statement before July 1,

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726 2024, is effective to perfect a security interest on July 1,  
727 2024, to the extent the filing would satisfy the requirements  
728 for perfection under ch. 2024-XX, Laws of Florida.

729 (3) The taking of an action before July 1, 2024, is  
730 sufficient for the enforceability of a security interest on July  
731 1, 2024, if the action would satisfy the requirements for  
732 enforceability under ch. 2024-XX, Laws of Florida.

733 Section 18. Section 669.705, Florida Statutes, is created  
734 to read:

735 669.705 Priority.—

736 (1) Subject to subsections (2) and (3), ch. 2024-XX, Laws  
737 of Florida, determines the priority of conflicting claims to  
738 collateral.

739 (2) Subject to subsection (3), if the priorities of claims  
740 to collateral were established before July 1, 2024, chapter 679  
741 as in effect before July 1, 2024, determines priority.

742 (3) On the adjustment date, to the extent the priorities  
743 determined by chapter 679, as amended by ch. 2024-XX, Laws of  
744 Florida, modify the priorities established before July 1, 2024,  
745 the priorities of claims to Article 12 property and electronic  
746 money established before July 1, 2024, cease to apply.

747 Section 19. Section 669.706, Florida Statutes, is created  
748 to read:

749 669.706 Priority of claims when priority rules of chapter  
750 679 do not apply.—

751 (1) Subject to subsections (2) and (3), Article 12  
752 determines the priority of conflicting claims to Article 12  
753 property when the priority rules of chapter 679, as amended by  
754 ch. 2024-XX , Laws of Florida, do not apply.

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755       (2) Subject to subsection (3), when the priority rules of  
756 chapter 679, as amended by ch. 2024-XX, Laws of Florida, do not  
757 apply and the priorities of claims to Article 12 property were  
758 established before July 1, 2024, law other than Article 12  
759 determines priority.

760       (3) When the priority rules of chapter 679, as amended by  
761 ch. 2024-XX, Laws of Florida, do not apply, to the extent the  
762 priorities determined by ch. 2024-XX, Laws of Florida, modify  
763 the priorities established before July 1, 2024, the priorities  
764 of claims to Article 12 property established before July 1,  
765 2024, cease to apply on the adjustment date.

766       Section 20. Paragraph (c) of subsection (1) of section  
767 670.103, Florida Statutes, is amended to read:

768       670.103 Payment order: definitions.—

769       (1) In this chapter, the term:

770       (c) "Payment order" means an instruction of a sender to a  
771 receiving bank, transmitted orally or in a record,  
772 ~~electronically, or in writing,~~ to pay, or to cause another bank  
773 to pay, a fixed or determinable amount of money to a beneficiary  
774 if:

775       1. The instruction does not state a condition to payment to  
776 the beneficiary other than time of payment;

777       2. The receiving bank is to be reimbursed by debiting an  
778 account of, or otherwise receiving payment from, the sender; and

779       3. The instruction is transmitted by the sender directly to  
780 the receiving bank or to an agent, funds-transfer system, or  
781 communication system for transmittal to the receiving bank.

782       Section 21. Section 670.201, Florida Statutes, is amended  
783 to read:

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784           670.201 Security procedure.—“Security procedure” means a  
785 procedure established by agreement of a customer and a receiving  
786 bank for the purpose of:

787           (1) Verifying that a payment order or communication  
788 amending or canceling a payment order is that of the customer;  
789 or

790           (2) Detecting error in the transmission or the content of  
791 the payment order or communication.

792  
793 A security procedure may impose an obligation on the receiving  
794 bank or the customer and may require the use of algorithms or  
795 other codes, identifying words, ~~or~~ numbers, symbols, sounds,  
796 biometrics, encryption, callback procedures, or similar security  
797 devices. Comparison of a signature on a payment order or  
798 communication with an authorized specimen signature of the  
799 customer or requiring a payment order to be sent from a known e-  
800 mail address, IP address, or telephone number is not by itself a  
801 security procedure.

802           Section 22. Subsection (2) and paragraph (b) of subsection  
803 (3) of section 670.202, Florida Statutes, are amended to read:

804           670.202 Authorized and verified payment orders.—

805           (2) If a bank and its customer have agreed that the  
806 authenticity of payment orders issued to the bank in the name of  
807 the customer as sender will be verified pursuant to a security  
808 procedure, a payment order received by the receiving bank is  
809 effective as the order of the customer, whether or not  
810 authorized, if the security procedure is a commercially  
811 reasonable method of providing security against unauthorized  
812 payment orders and the bank proves that it accepted the payment

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813 order in good faith and in compliance with the bank's  
814 obligations under the security procedure and any ~~written~~  
815 agreement or instruction of the customer, evidenced by a record,  
816 restricting acceptance of payment orders issued in the name of  
817 the customer. The bank is not required to follow an instruction  
818 that violates an ~~a written~~ agreement with the customer,  
819 evidenced by a record, or notice of which is not received at a  
820 time and in a manner affording the bank a reasonable opportunity  
821 to act on it before the payment order is accepted.

822 (3) The commercial reasonableness of a security procedure  
823 is a question of law to be determined by considering the wishes  
824 of the customer expressed to the bank; the circumstances of the  
825 customer known to the bank, including the size, type, and  
826 frequency of payment orders normally issued by the customer to  
827 the bank; alternative security procedures offered to the  
828 customer; and security procedures in general use by customers  
829 and receiving banks similarly situated. A security procedure is  
830 deemed to be commercially reasonable if:

831 (b) The customer expressly agreed in a record ~~writing~~ to be  
832 bound by any payment order, whether or not authorized, issued in  
833 its name and accepted by the bank in compliance with the bank's  
834 obligations under the security procedure chosen by the customer.

835 Section 23. Paragraph (a) of subsection (1) of section  
836 670.203, Florida Statutes, is amended to read:

837 670.203 Unenforceability of certain verified payment  
838 orders.—

839 (1) If an accepted payment order is not, under s.  
840 670.202(1), an authorized order of a customer identified as  
841 sender, but is effective as an order of the customer pursuant to



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842 s. 670.202(2), the following rules apply:

843 (a) By express ~~written~~ agreement evidenced by a record, the  
844 receiving bank may limit the extent to which it is entitled to  
845 enforce or retain payment of the payment order.

846 Section 24. Paragraph (b) of subsection (3) of section  
847 670.207, Florida Statutes, is amended to read:

848 670.207 Misdescription of beneficiary.—

849 (3) If a payment order described in subsection (2) is  
850 accepted, the originator's payment order described the  
851 beneficiary inconsistently by name and number, and the  
852 beneficiary's bank pays the person identified by number as  
853 permitted by paragraph (2)(a), the following rules apply:

854 (b) If the originator is not a bank and proves that the  
855 person identified by number was not entitled to receive payment  
856 from the originator, the originator is not obliged to pay its  
857 order unless the originator's bank proves that the originator,  
858 before acceptance of the originator's order, had notice that  
859 payment of a payment order issued by the originator might be  
860 made by the beneficiary's bank on the basis of an identifying or  
861 bank account number even if it identifies a person different  
862 from the named beneficiary. Proof of notice may be made by any  
863 admissible evidence. The originator's bank satisfies the burden  
864 of proof if it proves that the originator, before the payment  
865 order was accepted, signed a record ~~writing~~ stating the  
866 information to which the notice relates.

867 Section 25. Paragraph (b) of subsection (2) of section  
868 670.208, Florida Statutes, is amended to read:

869 670.208 Misdescription of intermediary bank or  
870 beneficiary's bank.—

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871 (2) This subsection applies to a payment order identifying  
872 an intermediary bank or the beneficiary's bank both by name and  
873 an identifying number if the name and number identify different  
874 persons.

875 (b) If the sender is not a bank and the receiving bank  
876 proves that the sender, before the payment order was accepted,  
877 had notice that the receiving bank might rely on the number as  
878 the proper identification of the intermediary or beneficiary's  
879 bank even if it identifies a person different from the bank  
880 identified by name, the rights and obligations of the sender and  
881 the receiving bank are governed by paragraph (a), as though the  
882 sender were a bank. Proof of notice may be made by any  
883 admissible evidence. The receiving bank satisfies the burden of  
884 proof if it proves that the sender, before the payment order was  
885 accepted, signed a record writing stating the information to  
886 which the notice relates.

887 Section 26. The numbering of section 670.21 and Subsection  
888 (1) of section 670.21, Florida Statutes, are amended to read:

889 670.21 Rejection of payment order.—

890 (1) A payment order is rejected by the receiving bank by a  
891 notice of rejection transmitted to the sender orally,  
892 ~~electronically~~, or in a record writing. A notice of rejection  
893 need not use any particular words and is sufficient if it  
894 indicates that the receiving bank is rejecting the order or will  
895 not execute or pay the order. Rejection is effective when the  
896 notice is given if transmission is by a means that is reasonable  
897 in the circumstances. If notice of rejection is given by a means  
898 that is not reasonable, rejection is effective when the notice  
899 is received. If an agreement of the sender and receiving bank

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900 establishes the means to be used to reject a payment order:

901 (a) Any means complying with the agreement is reasonable;

902 and

903 (b) Any means not complying is not reasonable unless no  
904 significant delay in receipt of the notice resulted from the use  
905 of the noncomplying means.

906 Section 27. Subsection (1) of section 670.211, Florida  
907 Statutes, is amended to read:

908 670.211 Cancellation and amendment of payment order.—

909 (1) A communication of the sender of a payment order  
910 canceling or amending the order may be transmitted to the  
911 receiving bank orally, ~~electronically~~, or in a record ~~writing~~.  
912 If a security procedure is in effect between the sender and the  
913 receiving bank, the communication is not effective to cancel or  
914 amend the order unless the communication is verified pursuant to  
915 the security procedure or the bank agrees to the cancellation or  
916 amendment.

917 Section 28. Subsections (3) and (4) of section 670.305,  
918 Florida Statutes, are amended to read:

919 670.305 Liability for late or improper execution or failure  
920 to execute payment order.—

921 (3) In addition to the amounts payable under subsections  
922 (1) and (2), damages, including consequential damages, are  
923 recoverable to the extent provided in an express ~~written~~  
924 agreement of the receiving bank, evidenced by a record.

925 (4) If a receiving bank fails to execute a payment order it  
926 was obliged by express agreement to execute, the receiving bank  
927 is liable to the sender for its expenses in the transaction and  
928 for incidental expenses and interest losses resulting from the

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929 failure to execute. Additional damages, including consequential  
930 damages, are recoverable to the extent provided in an express  
931 ~~written~~ agreement of the receiving bank, evidenced by a record,  
932 but are not otherwise recoverable.

933 Section 29. Part VI of chapter 670, Florida Statutes,  
934 consisting of section 670.601, is created and entitled  
935 "Transitional Provisions."

936 Section 30. Section 670.601, Florida Statutes, is created  
937 to read:

938 670.601 Saving clause for 2024 Amendments.—Except as  
939 provided in ss. 669.501-669.706, a transaction validly entered  
940 into before July 1, 2024, and the rights, duties, and interests  
941 flowing from the transaction remain valid thereafter and may be  
942 terminated, completed, consummated, or enforced as required or  
943 permitted by law other than the Uniform Commercial Code or, if  
944 applicable, the Uniform Commercial Code as though ch. 2024-XX,  
945 Laws of Florida, had not taken effect.

946 Section 31. Subsection (1) of section 671.101, Florida  
947 Statutes, is amended to read:

948 671.101 Short title; scope of chapter.—

949 (1) Chapters ~~669-680~~~~670-680~~ may be cited as the "Uniform  
950 Commercial Code" or "Code."

951 Section 32. Paragraph (h) is added to subsection (2) of  
952 section 671.105, Florida Statutes, to read:

953 671.105 Territorial application of the code; parties' power  
954 to choose applicable law.—

955 (2) When one of the following provisions of this code  
956 specifies the applicable law, that provision governs; and a  
957 contrary agreement is effective only to the extent permitted by

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958 the law (including the conflict-of-laws rules) so specified:

959 (h) Governing law in the chapter on controllable electronic  
960 records. (s. 669.107).

961 Section 33. Section 671.107, Florida Statutes, is amended  
962 to read:

963 671.107 Waiver or renunciation of claim or right after  
964 breach.—A claim or right arising out of an alleged breach can be  
965 discharged in whole or in part without consideration by  
966 agreement of the aggrieved party in a signed ~~an authenticated~~  
967 record.

968 Section 34. Present subsections (18) through (47) of  
969 section 671.201, Florida Statutes, are redesignated as  
970 subsections (19) through (48), respectively, a new subsection  
971 (18) is added to that section, and present subsections (11),  
972 (16), (22), (25), (26), (27), (31), (40), and (41) of that  
973 section are amended, to read:

974 671.201 General definitions.—Unless the context otherwise  
975 requires, words or phrases defined in this section, or in the  
976 additional definitions contained in other chapters of this code  
977 which apply to particular chapters or parts thereof, have the  
978 meanings stated. Subject to definitions contained in other  
979 chapters of this code which apply to particular chapters or  
980 parts thereof, the term:

981 (11) "Conspicuous," with reference to a term, means so  
982 written, displayed, or presented that, based on the totality of  
983 the circumstances, a reasonable person against which it is to  
984 operate ought to have noticed it. Whether a term is  
985 "conspicuous" is a decision for the court. ~~Conspicuous terms~~  
986 ~~include the following:~~

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987 ~~(a) A heading in capitals equal to or greater in size than~~  
988 ~~the surrounding text, or in contrasting type, font, or color to~~  
989 ~~the surrounding text of the same or lesser size; and~~

990 ~~(b) Language in the body of a record or display in larger~~  
991 ~~type than the surrounding text or set off from surrounding text~~  
992 ~~of the same size by symbols or other marks that call attention~~  
993 ~~to the language.~~

994 (16) "Delivery," with respect to an electronic document of  
995 title, means voluntary transfer of control and, "delivery," with  
996 respect to an instrument, tangible document of title, or an  
997 authoritative tangible copy of a record evidencing chattel  
998 paper, ~~or certificated securities,~~ means voluntary transfer of  
999 possession.

1000 (18) "Electronic" means relating to technology having  
1001 electrical, digital, magnetic, wireless, optical,  
1002 electromagnetic, or similar capabilities.

1003 ~~(23)(22)~~ "Holder" means:

1004 (a) The person in possession of a negotiable instrument  
1005 that is payable either to bearer or to an identified person that  
1006 is the person in possession;

1007 (b) The person in possession of a negotiable tangible  
1008 document of title if the goods are deliverable either to bearer  
1009 or to the order of the person in possession; or

1010 (c) The person in control, other than pursuant to s.  
1011 677.106(7), of a negotiable electronic document of title.

1012 ~~(26)(25)~~ "Money" means a medium of exchange that is  
1013 currently authorized or adopted by a domestic or foreign  
1014 government. The term includes a monetary unit of account  
1015 established by an intergovernmental organization or by agreement

Commented [DW1]: Fla is non-uniform. Is "or certificated securities" to remain or be deleted. the ULC definition excludes "or certificated securities."

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1016 between two or more countries. The term does not include a  
1017 central bank digital currency. The term does not include an  
1018 electronic record that is a medium of exchange recorded and  
1019 transferable in a system that existed and operated for the  
1020 medium of exchange before the medium of exchange was authorized  
1021 or adopted by the government.

1022 ~~(27)(26)~~ Subject to subsection (29) ~~(28)~~, a person has  
1023 "notice" of a fact if the person:

1024 (a) Has actual knowledge of it;  
1025 (b) Has received a notice or notification of it; or  
1026 (c) From all the facts and circumstances known to the  
1027 person at the time in question, has reason to know that it  
1028 exists. A person "knows" or has "knowledge" of a fact when the  
1029 person has actual knowledge of it. "Discover" or "learn" or a  
1030 word or phrase of similar import refers to knowledge rather than  
1031 to reason to know. The time and circumstances under which a  
1032 notice or notification may cease to be effective are not  
1033 determined by this section.

1034 ~~(28)(27)~~ A person "notifies" or "gives" a notice or  
1035 notification to another person by taking such steps as may be  
1036 reasonably required to inform the other person in ordinary  
1037 course, whether or not the other person actually comes to know  
1038 of it. Subject to subsection (29) ~~(28)~~, a person "receives" a  
1039 notice or notification when:

1040 (a) It comes to that person's attention; or  
1041 (b) It is duly delivered in a form reasonable under the  
1042 circumstances at the place of business through which the  
1043 contract was made or at another location held out by that person  
1044 as the place for receipt of such communications.

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1045 (32)~~(31)~~ "Person" means an individual; corporation;  
 1046 business trust; estate; trust; partnership; limited liability  
 1047 company; association; joint venture; government; governmental  
 1048 subdivision, agency, or instrumentality; ~~public corporation;~~ or  
 1049 any other legal or commercial entity. The term includes a  
 1050 protected series, however denominated, of an entity if the  
 1051 protected series is established under law other than the Uniform  
 1052 Commercial Code that limits, or limits if conditions specified  
 1053 under the law are satisfied, the ability of a creditor of the  
 1054 entity or of any other protected series of the entity to satisfy  
 1055 a claim from assets of the protected series.

1056 (41)~~(40)~~ "Send," in connection with a ~~writing,~~ record, or  
 1057 ~~notification notice,~~ means:

1058 (a) To deposit in the mail, ~~or~~ deliver for transmission, or  
 1059 transmit by any other usual means of communication, with postage  
 1060 or cost of transmission provided for, and properly addressed  
 1061 ~~and, in the case of an instrument, to an address specified~~  
 1062 ~~thereon or otherwise agreed or, if there be none, to any address~~  
 1063 ~~reasonable under the circumstances; or~~

1064 (b) To cause the record or notification to be received  
 1065 within the time it would have been received if properly sent  
 1066 ~~under paragraph (a) In any other way to cause to be received any~~  
 1067 ~~record or notice within the time it would have arrived if~~  
 1068 ~~properly sent.~~

1069 (42)~~(41)~~ "Sign," "signing," "signed," or "signature" means,  
 1070 with present intent to authenticate or adopt a record:

- 1071 (a) Execute or adopt a tangible symbol; or
- 1072 (b) Attach to or logically associate with the record an  
 1073 electronic symbol, sound, or process ~~means bearing any symbol~~

**Commented [DW2]:** This ULC text is for series LLC amendments. What is section position?

**Commented [DW3]:** Matches ULC. Verify if change of Fla law.



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1074 ~~executed or adopted by a party with present intention to adopt~~  
1075 ~~or accept a writing.~~

1076 Section 35. Section 671.211, Florida Statutes, is amended  
1077 to read:

1078 671.211 Value.—Except as otherwise provided with respect to  
1079 negotiable instruments and bank collections as provided in ss.  
1080 673.3031, 674.2101, ~~and~~ 674.2111, and chapter 669, a person  
1081 gives value for rights if the person acquires them:

1082 (1) In return for a binding commitment to extend credit or  
1083 for the extension of immediately available credit whether or not  
1084 drawn upon and whether or not a charge-back is provided for in  
1085 the event of difficulties in collection;

1086 (2) As security for, or in total or partial satisfaction  
1087 of, a preexisting claim;

1088 (3) By accepting delivery under a preexisting contract for  
1089 purchase; or

1090 (4) In return for any consideration sufficient to support a  
1091 simple contract.

1092 Section 36. Part IV of chapter 671, Florida Statutes,  
1093 consisting of section 671.401, is created and entitled  
1094 "Transitional Provisions."

1095 Section 37. Section 671.401, Florida Statutes, is created  
1096 to read:

1097 671.401 Saving clause for 2024 Amendments.—Except as  
1098 provided in ss. 669.501-669.706, a transaction validly entered  
1099 into before July 1, 2024, and the rights, duties, and interests  
1100 flowing from the transaction remain valid thereafter and may be  
1101 terminated, completed, consummated, or enforced as required or  
1102 permitted by law other than the Uniform Commercial Code or, if

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1103 applicable, the Uniform Commercial Code as though ch. 2024-XX,  
1104 Laws of Florida, had not taken effect.

1105 Section 38. Section 672.102, Florida Statutes, is amended  
1106 to read:

1107 672.102 Scope; certain security and other transactions  
1108 excluded from this chapter.-

1109 (1) Unless the context otherwise requires, and except as  
1110 provided in subsection (3), this chapter applies to transactions  
1111 in goods and, in the case of a hybrid transaction, this chapter  
1112 applies to the extent provided in subsection (2).

1113 (2) In a hybrid transaction:

1114 (a) If the sale-of-goods aspects do not predominate, only  
1115 the provisions of this chapter which relate primarily to the  
1116 sale-of-goods aspects of the transaction apply, and the  
1117 provisions that relate primarily to the transaction as a whole  
1118 do not apply.

1119 (b) If the sale-of-goods aspects predominate, this chapter  
1120 applies to the transaction but does not preclude application in  
1121 appropriate circumstances of other law to aspects of the  
1122 transaction which do not relate to the sale of goods.

1123 (3) This chapter does not:

1124 (a) Apply to a transaction that, even though in the form of  
1125 an unconditional contract to sell or present sale, operates only  
1126 to create a security interest; or

1127 (b) Impair or repeal a statute regulating sales to  
1128 consumers, farmers, or other specified classes of buyers; ~~it~~  
1129 ~~670does not apply to any transaction which although in the form~~  
1130 ~~of an unconditional contract to sell or present sale is intended~~  
1131 ~~to operate only as a security transaction nor does this chapter~~

**Commented [DW4]:** Text is correct to ULC. But change is less than shown because deleted existing text without should the word changes. Same concept.

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1132 ~~impair or repeal any statute regulating sales to consumers,~~  
1133 ~~farmers or other specified classes of buyers.~~

1134 Section 39. Section 672.106, Florida Statutes, is amended  
1135 to read:

1136 672.106 Definitions: "contract"; "agreement"; "contract for  
1137 sale"; "sale"; "present sale"; "conforming" to contract;  
1138 "termination"; "cancellation-"; "hybrid transaction."-

1139 (1) In this chapter unless the context otherwise requires  
1140 "contract" and "agreement" are limited to those relating to the  
1141 present or future sale of goods. "Contract for sale" includes  
1142 both a present sale of goods and a contract to sell goods at a  
1143 future time. A "sale" consists in the passing of title from the  
1144 seller to the buyer for a price (s. 672.401). A "present sale"  
1145 means a sale which is accomplished by the making of the  
1146 contract.

1147 (2) Goods or conduct including any part of a performance  
1148 are "conforming" or conform to the contract when they are in  
1149 accordance with the obligations under the contract.

1150 (3) "Termination" occurs when either party pursuant to a  
1151 power created by agreement or law puts an end to the contract  
1152 otherwise than for its breach. On termination, all obligations  
1153 which are still executory on both sides are discharged but any  
1154 right based on prior breach or performance survives.

1155 (4) "Cancellation" occurs when either party puts an end to  
1156 the contract for breach by the other and its effect is the same  
1157 as that of "termination" except that the canceling party also  
1158 retains any remedy for breach of the whole contract or any  
1159 unperformed balance.

1160 (5) "Hybrid transaction" means a single transaction

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1161 involving a sale of goods and:  
1162       (a) The provision of services;  
1163       (b) A lease of other goods; or  
1164       (c) A sale, lease, or license of property other than goods.  
1165       Section 40. Subsections (1) and (2) of section 672.201,  
1166 Florida Statutes, are amended to read:  
1167       672.201 Formal requirements; statute of frauds.—  
1168       (1) Except as otherwise provided in this section a contract  
1169 for the sale of goods for the price of \$500 or more is not  
1170 enforceable by way of action or defense unless there is a record  
1171 ~~some writing~~ sufficient to indicate that a contract for sale has  
1172 been made between the parties and signed by the party against  
1173 whom enforcement is sought or by the party's ~~his or her~~  
1174 authorized agent or broker. A record ~~writing~~ is not insufficient  
1175 because it omits or incorrectly states a term agreed upon but  
1176 the contract is not enforceable under this subsection ~~paragraph~~  
1177 beyond the quantity of goods shown in the record ~~such writing~~.  
1178       (2) Between merchants if within a reasonable time a record  
1179 ~~writing~~ in confirmation of the contract and sufficient against  
1180 the sender is received and the party receiving it has reason to  
1181 know its contents, it satisfies the requirements of subsection  
1182 (1) against the ~~such~~ party unless ~~written~~ notice in a record of  
1183 objection to its contents is given within 10 days after it is  
1184 received.  
1185       Section 41. Section 672.202, Florida Statutes, is amended  
1186 to read:  
1187       672.202 Final ~~written~~ expression; parol or extrinsic  
1188 evidence.—Terms with respect to which the confirmatory memoranda  
1189 of the parties agree or which are otherwise set forth in a

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1190 record ~~writing~~ intended by the parties as a final expression of  
1191 their agreement with respect to such terms as are included  
1192 therein may not be contradicted by evidence of any prior  
1193 agreement or of a contemporaneous oral agreement but may be  
1194 explained or supplemented:

1195 (1) By course of dealing or usage of trade (s. 671.205) or  
1196 by course of performance (s. 672.208); and

1197 (2) By evidence of consistent additional terms unless the  
1198 court finds the record ~~writing~~ to have been intended also as a  
1199 complete and exclusive statement of the terms of the agreement.

1200 Section 42. Section 672.203, Florida Statutes, is amended  
1201 to read:

1202 672.203 Seals inoperative.—The affixing of a seal to a  
1203 record ~~writing~~ evidencing a contract for sale or an offer to buy  
1204 or sell goods does not constitute the record of ~~writing~~ a sealed  
1205 instrument and the law with respect to sealed instruments does  
1206 not apply to such a contract or offer.

1207 Section 43. Section 672.205, Florida Statutes, is amended  
1208 to read:

1209 672.205 Firm offers.—An offer by a merchant to buy or sell  
1210 goods in a signed record ~~writing~~ which by its terms gives  
1211 assurance that it will be held open is not revocable, for lack  
1212 of consideration, during the time stated or if no time is stated  
1213 for a reasonable time, but in no event may such period of  
1214 irrevocability exceed 3 months; but any such term of assurance  
1215 on a form supplied by the offeree must be separately signed by  
1216 the offeror.

1217 Section 44. Subsection (2) of section 672.209, Florida  
1218 Statutes, is amended to read:

**Commented [DW5]:**Matches ULC. But is there a typo? ...does not constitute the record "of" a sealed instrument? .. or record sealed instrument with no "a"? Verify wording.

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1219 672.209 Modification, rescission, and waiver.—

1220 (2) A signed agreement which excludes modification or  
1221 rescission except by a signed writing or other signed record  
1222 cannot be otherwise modified or rescinded, but except as between  
1223 merchants such a requirement on a form supplied by the merchant  
1224 must be separately signed by the other party.

1225 Section 45. Part VIII of chapter 672, Florida Statutes,  
1226 consisting of section 672.801, is created and entitled  
1227 "Transitional Provisions."

1228 Section 46. Section 672.801, Florida Statutes, is created  
1229 to read:

1230 672.801 Saving clause for 2024 Amendments.—Except as  
1231 provided in ss. 669.501-669.706, a transaction validly entered  
1232 into before July 1, 2024, and the rights, duties, and interests  
1233 flowing from the transaction remain valid thereafter and may be  
1234 terminated, completed, consummated, or enforced as required or  
1235 permitted by law other than the Uniform Commercial Code or, if  
1236 applicable, the Uniform Commercial Code as though ch. 2024-XX,  
1237 Laws of Florida, had not taken effect.

1238  
1239 Section 47. Paragraph (c) of subsection (1) of section  
1240 673.1041, Florida Statutes, is amended to read:

1241 673.1041 Negotiable instrument.—

1242 (1) Except as provided in subsections (3), (4), and (11),  
1243 the term "negotiable instrument" means an unconditional promise  
1244 or order to pay a fixed amount of money, with or without  
1245 interest or other charges described in the promise or order, if  
1246 it:

1247 (c) Does not state any other undertaking or instruction by

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1248 the person promising or ordering payment to do any act in  
1249 addition to the payment of money, but the promise or order may  
1250 contain:

1251 1. An undertaking or power to give, maintain, or protect  
1252 collateral to secure payment;

1253 2. An authorization or power to the holder to confess  
1254 judgment or realize on or dispose of collateral; ~~or~~

1255 3. A waiver of the benefit of any law intended for the  
1256 advantage or protection of an obligor;

1257 4. A term that specifies the law that governs the promise  
1258 or order; or

1259 5. An undertaking to resolve in a specified forum a dispute  
1260 concerning the promise or order.

1261 Section 48. Subsection (1) of section 673.1051, Florida  
1262 Statutes, is amended to read:

1263 673.1051 Issue of instrument.—

1264 (1) The term "issue" means:

1265 (a) The first delivery of an instrument by the maker or  
1266 drawer, whether to a holder or nonholder, for the purpose of  
1267 giving rights on the instrument to any person; or

1268 (b) If agreed to by the payee, the first transmission by  
1269 the drawer to the payee of an image of an item and information  
1270 derived from the item that enables the depository bank to  
1271 collect the item by transferring or presenting under federal law  
1272 an electronic check.

1273 Section 49. Section 673.4011, Florida Statutes, is amended  
1274 to read:

1275 673.4011 Signature.—

1276 ~~(1)~~ A person is not liable on an instrument unless+

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1277       ~~(a) the person signed the instrument; or~~  
1278       ~~(b) the person is represented by an agent or representative~~  
1279 who signed the instrument and the signature is binding on the  
1280 represented person under s. 673.4021.

1281       ~~(2) A signature may be made:~~

1282       ~~(a) Manually or by means of a device or machine; and~~

1283       ~~(b) By the use of any name, including a trade or assumed~~  
1284 ~~name, or by a word, mark, or symbol executed or adopted by a~~  
1285 ~~person with present intention to authenticate a writing.~~

1286       Section 50. Subsection (1) of section 673.6041, Florida  
1287 Statutes, is amended to read:

1288       673.6041 Discharge by cancellation or renunciation.—

1289       (1) A person entitled to enforce an instrument, with or  
1290 without consideration, may discharge the obligation of a party  
1291 to pay the instrument:

1292       (a) By an intentional voluntary act, such as:

1293       1. Surrender of the instrument to the party;

1294       2. Destruction, mutilation, or cancellation of the  
1295 instrument;

1296       3. Cancellation or striking out of the party's signature;  
1297 or

1298       4. Addition of words to the instrument indicating  
1299 discharge; or

1300       (b) By agreeing not to sue or otherwise renouncing rights  
1301 against the party by a signed writing.

1302  
1303 The obligation of a party to pay a check is not discharged  
1304 solely by destruction of the check in connection with a process  
1305 in which information is extracted from the check and an image of



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1306 the check is made and, subsequently, the information and image  
1307 are transmitted for payment.

1308 Section 51. Part VII of chapter 673, Florida Statutes,  
1309 consisting of section 673.701, is created and entitled  
1310 "Transitional Provisions."

1311 Section 52. Section 673.701, Florida Statutes, is created  
1312 to read:

1313 673.701 Saving clause for 2024 Amendments.—Except as  
1314 provided in ss. 669.501-669.706, a transaction validly entered  
1315 into before July 1, 2024, and the rights, duties, and interests  
1316 flowing from the transaction remain valid thereafter and may be  
1317 terminated, completed, consummated, or enforced as required or  
1318 permitted by law other than the Uniform Commercial Code or, if  
1319 applicable, the Uniform Commercial Code as though ch. 2024-XX,  
1320 Laws of Florida, had not taken effect.

1321 Section 53. Section 675.104, Florida Statutes, is amended  
1322 to read:

1323 675.104 Formal requirements.—A letter of credit,  
1324 confirmation, advice, transfer, amendment, or cancellation may  
1325 be issued in any form that is a signed record ~~and is~~  
1326 ~~authenticated by a signature or in accordance with the agreement~~  
1327 ~~of the parties or the standard practice referred to in s.~~  
1328 ~~675.108(5).~~

1329 Section 54. Section 675.116, Florida Statutes, is amended  
1330 to read:

1331 675.116 Choice of law and forum.—

1332 (1) The liability of an issuer, nominated person, or  
1333 adviser for action or omission is governed by the law of the  
1334 jurisdiction chosen by an agreement in the form of a record

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1335 signed ~~or otherwise authenticated~~ by the affected parties ~~in the~~  
1336 ~~manner provided in s. 675.104~~ or by a provision in the person's  
1337 letter of credit, confirmation, or other undertaking. The  
1338 jurisdiction whose law is chosen need not bear any relation to  
1339 the transaction.

1340 (2) Unless subsection (1) applies, the liability of an  
1341 issuer, nominated person, or adviser for action or omission is  
1342 governed by the law of the jurisdiction in which the person is  
1343 located. The person is considered to be located at the address  
1344 indicated in the person's undertaking. If more than one address  
1345 is indicated, the person is considered to be located at the  
1346 address from which the person's undertaking was issued.

1347 (a) For the purpose of jurisdiction, choice of law, and  
1348 recognition of interbranch letters of credit, but not  
1349 enforcement of a judgment, all branches of a bank are considered  
1350 separate juridical entities and a bank is considered to be  
1351 located at the place where its relevant branch is considered to  
1352 be located under paragraph (b) ~~this subsection~~.

1353 (b) A branch of a bank is considered to be located at the  
1354 address indicated in the branch's undertaking. If more than one  
1355 address is indicated, the branch is considered to be located at  
1356 the address from which the undertaking was issued.

1357 (c) ~~(3)~~ Except as otherwise provided in this paragraph  
1358 ~~subsection~~, the liability of an issuer, nominated person, or  
1359 adviser is governed by any rules of custom or practice, such as  
1360 the Uniform Customs and Practice for Documentary Credits, to  
1361 which the letter of credit, confirmation, or other undertaking  
1362 is expressly made subject. If this chapter governs the liability  
1363 of an issuer, nominated person, or adviser under subsection (1)

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1364 or this subsection ~~subsection (2)~~, the relevant undertaking  
1365 incorporates rules of custom or practice, and there is conflict  
1366 between this chapter and such rules as applied to that  
1367 undertaking, such rules govern except to the extent of any  
1368 conflict with the nonvariable provisions specified in s.  
1369 675.102(3).

1370 ~~(3)(4)~~ This chapter governs to the extent of any conflict  
1371 between this chapter and chapter 670, chapter 673, chapter 674,  
1372 or chapter 679.

1373 ~~(4)(5)~~ The forum for settling disputes arising out of an  
1374 undertaking within this chapter may be chosen in the manner and  
1375 with the binding effect that governing law may be chosen in  
1376 accordance with subsection (1).

1377 Section 55. Section 675.119, Florida Statutes, is created  
1378 to read:

1379 675.119 Saving clause 2024 Amendments.—Except as provided  
1380 in ss. 669.501-669.706, a transaction validly entered into  
1381 before July 1, 2024, and the rights, duties, and interests  
1382 flowing from the transaction remain valid thereafter and may be  
1383 terminated, completed, consummated, or enforced as required or  
1384 permitted by law other than the Uniform Commercial Code or, if  
1385 applicable, the Uniform Commercial Code as though ch. 2024-XX,  
1386 Laws of Florida, had not taken effect.

1387 Section 56. Paragraphs (j) and (l) of subsection (1) of  
1388 section 677.102, Florida Statutes, are deleted and such  
1389 subsection (1) is amended to read:

1390 677.102 Definitions and index of definitions.—

1391 (1) In this chapter, unless the context otherwise requires:

1392 (j) "Record" means information that is inscribed on a

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1393 ~~tangible medium or that is stored in an electronic or other~~  
1394 ~~medium and is retrievable in perceivable form.~~

1395 (k) "Shipper" means a person that enters into a contract  
1396 of transportation with a carrier.

1397 ~~(l) "Sign" means, with present intent to authenticate or~~  
1398 ~~adopt a record:~~

1399 1. ~~To execute or adopt a tangible symbol; or~~

1400 2. ~~To attach to or logically associate with the record an~~  
1401 ~~electronic sound, symbol, or process.~~

1402 (m) "Warehouse" means a person engaged in the business of  
1403 storing goods for hire.

1404 Section 57. Subsection (2) of section 677.106, Florida  
1405 Statutes, is amended, and subsections (3) through (9) are added  
1406 to that section, to read:

1407 677.106 Control of electronic document of title.—

1408 (2) A system satisfies subsection (1), and a person has is  
1409 ~~deemed to have~~ control of an electronic document of title, if  
1410 the document is created, stored, and transferred ~~assigned~~ in a  
1411 manner that:

1412 (a) A single authoritative copy of the document exists  
1413 which is unique, identifiable, and, except as otherwise provided  
1414 in paragraphs (d), (e), and (f), unalterable;

1415 (b) The authoritative copy identifies the person asserting  
1416 control as:

1417 1. The person to which the document was issued; or

1418 2. If the authoritative copy indicates that the document  
1419 has been transferred, the person to which the document was most  
1420 recently transferred;

1421 (c) The authoritative copy is communicated to and

Commented [DW6]: fix - need to override format

Commented [RK7R6]: In the May23 Fla Bill Draft, there are NO edits to 677.102(k) (shipper) and 677.102(m) (warehouse\_). Therefore this Markup seems to be acceptable

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Commented [RK9R8]: See comment above, subsection (m)

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1422 maintained by the person asserting control or its designated  
1423 custodian;

1424 (d) Copies or amendments that add or change an identified  
1425 transferee ~~assignee~~ of the authoritative copy can be made only  
1426 with the consent of the person asserting control;

1427 (e) Each copy of the authoritative copy and any copy of a  
1428 copy is readily identifiable as a copy that is not the  
1429 authoritative copy; and

1430 (f) Any amendment of the authoritative copy is readily  
1431 identifiable as authorized or unauthorized.

1432 (3) A system satisfies subsection (1), and a person has  
1433 control of an electronic document of title, if an authoritative  
1434 electronic copy of the document, a record attached to or  
1435 logically associated with the electronic copy, or a system in  
1436 which the electronic copy is recorded:

1437 (a) Enables the person readily to identify each electronic  
1438 copy as either an authoritative copy or a nonauthoritative copy;

1439 (b) Enables the person readily to identify itself in any  
1440 way, including by name, identifying number, cryptographic key,  
1441 office, or account number, as the person to which each  
1442 authoritative electronic copy was issued or transferred; and

1443 (c) Gives the person exclusive power, subject to subsection  
1444 (4), to:

1445 1. Prevent others from adding or changing the person to  
1446 which each authoritative electronic copy has been issued or  
1447 transferred; and

1448 2. Transfer control of each authoritative electronic copy.

1449 (4) Subject to subsection (5), a power is exclusive under  
1450 subparagraphs (3)(c)1. and 2. even if:

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1451 (a) The authoritative electronic copy, a record attached to  
1452 or logically associated with the authoritative electronic copy,  
1453 or a system in which the authoritative electronic copy is  
1454 recorded limits the use of the document of title or has a  
1455 protocol that is programmed to cause a change, including a  
1456 transfer or loss of control; or

1457 (b) The power is shared with another person.

1458 (5) A power of a person is not shared with another person  
1459 under paragraph (4)(b) and the person's power is not exclusive  
1460 if:

1461 (a) The person can exercise the power only if the power  
1462 also is exercised by the other person; and

1463 (b) The other person:

1464 1. Can exercise the power without exercise of the power by  
1465 the person; or

1466 2. Is the transferor to the person of an interest in the  
1467 document of title.

1468 (6) If a person has the powers specified in subparagraphs  
1469 (3)(c)1. and 2., the powers are presumed to be exclusive.

1470 (7) A person has control of an electronic document of title  
1471 if another person, other than the transferor to the person of an  
1472 interest in the document:

1473 (a) Has control of the document and acknowledges that it  
1474 has control on behalf of the person; or

1475 (b) Obtains control of the document after having  
1476 acknowledged that it will obtain control of the document on  
1477 behalf of the person.

1478 (8) A person that has control under this section is not  
1479 required to acknowledge that it has control on behalf of another

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1480 person.  
1481 (9) If a person acknowledges that it has or will obtain  
1482 control on behalf of another person, unless the person otherwise  
1483 agrees or law other than this chapter or chapter 679 otherwise  
1484 provides, the person does not owe any duty to the other person  
1485 and is not required to confirm the acknowledgment to any other  
1486 person.  
1487 Section 58. Part VII of chapter 677, Florida Statutes,  
1488 consisting of section 677.701, is created and entitled  
1489 "Transitional Provisions."  
1490 Section 59. Section 677.701, Florida Statutes, is created  
1491 to read:  
1492 677.701 Saving clause for 2024 Amendments.—Except as  
1493 provided in ss. 669.501-669.706, a transaction validly entered  
1494 into before July 1, 2024, and the rights, duties, and interests  
1495 flowing from the transaction remain valid thereafter and may be  
1496 terminated, completed, consummated, or enforced as required or  
1497 permitted by law other than the Uniform Commercial Code or, if  
1498 applicable, the Uniform Commercial Code as though ch. 2024-XX,  
1499 Laws of Florida, had not taken effect.  
1500 Section 60. Paragraph (f) of subsection (1) and subsection  
1501 (2) of section 678.1021, Florida Statutes, are amended to read:  
1502 678.1021 Definitions.—  
1503 (1) In this chapter:  
1504 (f) "Communicate" means to:  
1505 1. Send a signed record ~~writing~~; or  
1506 2. Transmit information by any mechanism agreed upon by the  
1507 persons transmitting and receiving the information.  
1508 (2) The following ~~Other~~ definitions in ~~applying to~~ this

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1509 chapter and other chapters apply to this section ~~the sections in~~  
1510 ~~which they appear are:~~

1511 "Appropriate person," s. 678.1071.

1512 "Control," s. 678.1061.

1513 "Controllable account," s. 679.1021.

1514 "Controllable electronic record," s. 669.102.

1515 "Controllable payment intangible," s. 679.1021.

1516 "Delivery," s. 678.3011.

1517 "Investment company security," s. 678.1031.

1518 "Issuer," s. 678.2011.

1519 "Overissue," s. 678.2101.

1520 "Protected purchaser," s. 678.3031.

1521 "Securities account," s. 678.5011.

1522 Section 61. Subsection (6) of section 678.1031, Florida  
1523 Statutes, is amended, and subsection (8) is added to that  
1524 section, to read:

1525 678.1031 Rules for determining whether certain obligations  
1526 and interests are securities or financial assets.—

1527 (6) A commodity contract, as defined in s. 679.1021(1)(p)  
1528 ~~s. 679.1021(1)(e)~~, is not a security or a financial asset.

1529 (8) A controllable account, controllable electronic record,  
1530 or controllable payment intangible is not a financial asset  
1531 unless s. 678.1021(1)(i)(3) applies.

1532 Section 62. Paragraph (c) of subsection (4) of section  
1533 678.1061, Florida Statutes, is amended, and subsections (8) and  
1534 (9) are added to that section, to read:

1535 678.1061 Control.—

1536 (4) A purchaser has "control" of a security entitlement if:

1537 (c) Another person, other than the transferor to the



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1538 purchaser of an interest in the security entitlement:

1539 1. Has control of the security entitlement and acknowledges  
1540 that it has control on behalf of the purchaser; or

1541 2. Obtains control of the security entitlement after having  
1542 acknowledged that it will obtain control of the security  
1543 entitlement on behalf of the purchaser ~~has control of the~~  
1544 ~~security entitlement on behalf of the purchaser or, having~~  
1545 ~~previously acquired control of the security entitlement,~~  
1546 ~~acknowledges that the person has control on behalf of the~~  
1547 ~~purchaser.~~

1548 (8) A person that has control under this section is not  
1549 required to acknowledge that it has control on behalf of a  
1550 purchaser.

1551 (9) If a person acknowledges that it has or will obtain  
1552 control on behalf of a purchaser, unless the person otherwise  
1553 agrees or law other than this chapter or chapter 679 otherwise  
1554 provides, the person does not owe any duty to the purchaser and  
1555 is not required to confirm the acknowledgment to any other  
1556 person.

1557 Section 63. Subsection (7) is added to section 678.1101,  
1558 Florida Statutes, to read:

1559 678.1101 Applicability; choice of law.—

1560 (7) The local law of the issuer's jurisdiction or the  
1561 securities intermediary's jurisdiction governs a matter or  
1562 transaction specified in subsection (1) or subsection (2) even  
1563 if the matter or transaction does not bear any relation to the  
1564 jurisdiction.

1565 Section 64. Subsection (2) of section 678.3031, Florida  
1566 Statutes, is amended to read:

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1567 678.3031 Protected purchaser.—

1568 (2) ~~In addition to acquiring the rights of a purchaser, A~~  
1569 protected purchaser ~~also~~ acquires its interest in the security  
1570 free of any adverse claim.

1571 Section 65. Part VI of chapter 678, Florida Statutes,  
1572 consisting of section 678.601, is created and entitled  
1573 "Transitional Provisions."

1574 Section 66. Section 678.601, Florida Statutes, is created  
1575 to read:

1576 678.601 Saving clause for 2024 Amendments.—Except as  
1577 provided in ss. 669.501-669.706, a transaction validly entered  
1578 into before July 1, 2024, and the rights, duties, and interests  
1579 flowing from the transaction remain valid thereafter and may be  
1580 terminated, completed, consummated, or enforced as required or  
1581 permitted by law other than the Uniform Commercial Code or, if  
1582 applicable, the Uniform Commercial Code as though ch. 2024-XX,  
1583 Laws of Florida, had not taken effect.

1584 Section 67. Present paragraphs (h) through (aa), (bb)  
1585 through (bbb), and (ccc) through (bbbb) of subsection (1) of  
1586 section 679.1021, Florida Statutes, are redesignated as  
1587 paragraphs (i) through (bb), (cc) through (eee), and (ggg)  
1588 through (eeee), respectively, new paragraphs (g), (h), (cc),  
1589 (dd), and (fff) are added to that subsection, and paragraphs  
1590 (b), (c), (d), and (g) and present paragraphs (k), (hh), (pp),  
1591 (uu), (iii), (nnn), (vvv), and (zzz) of subsection (1) and  
1592 subsection (2) of that section are amended, to read:

1593 679.1021 Definitions and index of definitions.—

1594 (1) In this chapter, the term:

1595 (b) "Account," except as used in "account for," "account

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1596 statement," "account to," "commodity account" as used in  
1597 paragraph (o), "customer account," "deposit account" as used in  
1598 paragraph (ff), "on account of," and "statement of account"  
1599 means a right to payment of a monetary obligation, whether or  
1600 not earned by performance, for property that has been or is to  
1601 be sold, leased, licensed, assigned, or otherwise disposed of;  
1602 for services rendered or to be rendered; for a policy of  
1603 insurance issued or to be issued; for a secondary obligation  
1604 incurred or to be incurred; for energy provided or to be  
1605 provided; for the use or hire of a vessel under a charter or  
1606 other contract; arising out of the use of a credit or charge  
1607 card or information contained on or for use with the card; or as  
1608 winnings in a lottery or other game of chance operated or  
1609 sponsored by a state, governmental unit of a state, or person  
1610 licensed or authorized to operate the game by a state or  
1611 governmental unit of a state. The term includes controllable  
1612 accounts and health-care-insurance receivables. The term does  
1613 not include ~~rights to payment evidenced by~~ chattel paper ~~or an~~  
1614 ~~instrument~~; commercial tort claims; deposit accounts; investment  
1615 property; letter-of-credit rights or letters of credit; ~~or~~  
1616 rights to payment for money or funds advanced or sold, other  
1617 than rights arising out of the use of a credit or charge card or  
1618 information contained on or for use with the card; or rights to  
1619 payment evidenced by an instrument.

1620 (c) "Account debtor" means a person obligated on an  
1621 account, chattel paper, or general intangible. The term does not  
1622 include persons obligated to pay a negotiable instrument, even  
1623 if the negotiable instrument evidences ~~constitutes part of~~  
1624 chattel paper.

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1625 (d) "Accounting," except as used in the term "accounting  
1626 for," means a record:

- 1627 1. ~~Signed~~ ~~Authenticated~~ by a secured party;  
1628 2. Indicating the aggregate unpaid secured obligations as  
1629 of a date not more than 35 days earlier or 35 days later than  
1630 the date of the record; and  
1631 3. Identifying the components of the obligations in  
1632 reasonable detail.

1633 (g) "Assignee," except as used in "assignee for benefit of  
1634 creditors," means a person:

- 1635 1. In whose favor a security interest that secures an  
1636 obligation is created or provided for under a security  
1637 agreement, whether or not the obligation is outstanding; or  
1638 2. To which an account, chattel paper, payment intangible,  
1639 or promissory note has been sold.

1640  
1641 The term includes a person to which a security interest has been  
1642 transferred by a secured party.

1643 (h) "Assignor" means a person that:

- 1644 1. Under a security agreement creates or provides for a  
1645 security interest that secures an obligation; or  
1646 2. Sells an account, chattel paper, payment intangible, or  
1647 promissory note.

1648  
1649 The term includes a secured party that has transferred a  
1650 security interest to another person ~~"Authenticate" means:~~

- 1651 1. ~~To sign; or~~  
1652 2. ~~With the present intent to adopt or accept a record, to~~  
1653 ~~attach to or logically associate with the record an electronic~~

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1654 ~~sound, symbol, or process.~~

1655 ~~(1)(\*)~~ "Chattel paper" means:

1656 1. A right to payment of a monetary obligation secured by  
1657 specific goods, if the right to payment and security agreement  
1658 are evidenced by a record; or

1659 2. A right to payment of a monetary obligation owed by a  
1660 lessee under a lease agreement with respect to specific goods  
1661 and a monetary obligation owed by the lessee in connection with  
1662 the transaction giving rise to the lease, if:

1663 a. The right to payment and lease agreement are evidenced  
1664 by a record; and

1665 b. The predominant purpose of the transaction giving rise  
1666 to the lease was to give the lessee the right to possession and  
1667 use of the goods.

1668  
1669 The term does not include a right to payment arising out of a  
1670 charter or other contract involving the use or hire of a vessel  
1671 or a right to payment arising out of the use of a credit or  
1672 charge card or information contained on or for use with the card  
1673 ~~a record or records that evidence both a monetary obligation and~~  
1674 ~~a security interest in specific goods, a security interest in~~  
1675 ~~specific goods and software used in the goods, a security~~  
1676 ~~interest in specific goods and license of software used in the~~  
1677 ~~goods, a lease of specific goods, or a lease of specific goods~~  
1678 ~~and license of software used in the goods. In this paragraph,~~  
1679 ~~"monetary obligation" means a monetary obligation secured by the~~  
1680 ~~goods or owed under a lease of the goods and includes a monetary~~  
1681 ~~obligation with respect to software used in the goods. The term~~  
1682 ~~does not include charters or other contracts involving the use~~

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1683 ~~or hire of a vessel or records that evidence a right to payment~~  
1684 ~~arising out of the use of a credit or charge card or information~~  
1685 ~~contained on or for use with the card. If a transaction is~~  
1686 ~~evidenced by records that include an instrument or series of~~  
1687 ~~instruments, the group of records taken together constitutes~~  
1688 ~~chattel paper.~~

1689 (cc) "Controllable account" means an account evidenced by a  
1690 controllable electronic record that provides that the account  
1691 debtor undertakes to pay the person that has control under s.  
1692 669.105 of the controllable electronic record.

1693 (dd) "Controllable payment intangible" means a payment  
1694 intangible evidenced by a controllable electronic record that  
1695 provides that the account debtor undertakes to pay the person  
1696 that has control under s. 669.105 of the controllable electronic  
1697 record.

1698 (hh)~~(ee)~~ "Electronic money" means money in an electronic  
1699 form ~~chattel paper" means chattel paper evidenced by a record or~~  
1700 ~~records consisting of information stored in an electronic~~  
1701 ~~medium.~~

1702 (ss)~~(pp)~~ "General intangible" means any personal property,  
1703 including things in action, other than accounts, chattel paper,  
1704 commercial tort claims, deposit accounts, documents, goods,  
1705 instruments, investment property, letter-of-credit rights,  
1706 letters of credit, money, and oil, gas, or other minerals before  
1707 extraction. The term includes controllable electronic records,  
1708 payment intangibles, and software.

1709 (xx)~~(uu)~~ "Instrument" means a negotiable instrument or any  
1710 other writing that evidences a right to the payment of a  
1711 monetary obligation, is not itself a security agreement or

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1712 lease, and is of a type that in the ordinary course of business  
1713 is transferred by delivery with any necessary indorsement or  
1714 assignment. The term does not include investment property,  
1715 letters of credit, ~~or~~ writings that evidence a right to payment  
1716 arising out of the use of a credit or charge card or information  
1717 contained on or for use with the card, or writings that evidence  
1718 chattel paper.

1719 (fff) "Money" has the meaning in s. 671.201, but does not  
1720 include a deposit account or money in an electronic form that  
1721 cannot be subjected to control under s. 679.1052.

1722 (mmm)(iii) "Payment intangible" means a general intangible  
1723 under which the account debtor's principal obligation is a  
1724 monetary obligation. The term includes a controllable payment  
1725 intangible.

1726 (rrr)(nnn) "Proposal" means a record signed ~~authenticated~~  
1727 by a secured party which includes the terms on which the secured  
1728 party is willing to accept collateral in full or partial  
1729 satisfaction of the obligation it secures pursuant to ss.  
1730 679.620, 679.621, and 679.622.

1731 ~~(vvv) "Send," in connection with a record or notification,~~  
1732 ~~means:~~

1733 ~~1. To deposit in the mail, deliver for transmission, or~~  
1734 ~~transmit by any other usual means of communication, with postage~~  
1735 ~~or cost of transmission provided for, addressed to any address~~  
1736 ~~reasonable under the circumstances; or~~

1737 ~~2. To cause the record or notification to be received~~  
1738 ~~within the time that it would have been received if properly~~  
1739 ~~sent under subparagraph 1.~~

1740 (ccc)(zzz) "Tangible money ~~chattel paper~~" means money in

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1741 tangible form ~~chattel paper evidenced by a record or records~~  
1742 ~~consisting of information that is inscribed on a tangible~~  
1743 ~~medium.~~

1744 (2) The following definitions in other chapters apply to  
1745 this chapter:

1746 "Applicant," s. 675.103.

1747 "Beneficiary," s. 675.103.

1748 "Broker," s. 678.1021.

1749 "Certificated security," s. 678.1021.

1750 "Check," s. 673.1041.

1751 "Clearing corporation," s. 678.1021.

1752 "Contract for sale," s. 672.106.

1753 "Control," s. 677.106.

1754 "Controllable electronic record," s. 699.102.

1755 "Customer," s. 674.104.

1756 "Entitlement holder," s. 678.1021.

1757 "Financial asset," s. 678.1021.

1758 "Holder in due course," s. 673.3021.

1759 "Issuer" (with respect to a letter of credit  
1760 or letter-of-credit right), s. 675.103.

1761 "Issuer" (with respect to a security), s. 678.2011.

1762 "Issuer" (with respect to documents  
1763 of title), s. 677.102.

1764 "Lease," s. 680.1031.

1765 "Lease agreement," s. 680.1031.

1766 "Lease contract," s. 680.1031.

1767 "Leasehold interest," s. 680.1031.

1768 "Lessee," s. 680.1031.

1769 "Lessee in ordinary course of



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1770 business," s. 680.1031.  
1771 "Lessor," s. 680.1031.  
1772 "Lessor's residual interest," s. 680.1031.  
1773 "Letter of credit," s. 675.103.  
1774 "Merchant," s. 672.104.  
1775 "Negotiable instrument," s. 673.1041.  
1776 "Nominated person," s. 675.103.  
1777 "Note," s. 673.1041.  
1778 "Proceeds of a letter of credit," s. 675.114.  
1779 "Protected purchaser," s. 678.3031.  
1780 "Prove," s. 673.1031.  
1781 "Qualifying purchaser," s. 669.102  
1782 "Sale," s. 672.106.  
1783 "Securities account," s. 678.5011.  
1784 "Securities intermediary," s. 678.1021.  
1785 "Security," s. 678.1021.  
1786 "Security certificate," s. 678.1021.  
1787 "Security entitlement," s. 678.1021.  
1788 "Uncertificated security," s. 678.1021.  
1789 Section 68. Subsection (1) of section 679.1041, Florida  
1790 Statutes, is amended to read:  
1791 679.1041 Control of deposit account.—  
1792 (1) A secured party has control of a deposit account if:  
1793 (a) The secured party is the bank with which the deposit  
1794 account is maintained;  
1795 (b) The debtor, secured party, and bank have agreed in a  
1796 signed ~~an authenticated~~ record that the bank will comply with  
1797 instructions originated by the secured party directing  
1798 disposition of the funds in the deposit account without further

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1799 consent by the debtor; ~~or~~  
1800 (c) The secured party becomes the bank's customer with  
1801 respect to the deposit account; or  
1802 (d) Another person, other than the debtor:  
1803 1. Has control of the deposit account and acknowledges that  
1804 it has control on behalf of the secured party; or  
1805 2. Obtains control of the deposit account after having  
1806 acknowledged that it will obtain control of the deposit account  
1807 on behalf of the secured party.  
1808 Section 69. Section 679.1051, Florida Statutes, is amended  
1809 to read:  
1810 679.1051 Control of electronic chattel paper.—  
1811 (1) A purchaser has control of an authoritative electronic  
1812 copy of a record evidencing chattel paper if a system employed  
1813 for evidencing the assignment of interests in the chattel paper  
1814 reliably establishes the purchaser as the person to which the  
1815 authoritative electronic copy was assigned.  
1816 (2) A system satisfies subsection (1) if the record or  
1817 records evidencing the chattel paper are created, stored, and  
1818 assigned in a manner that:  
1819 (a) A single authoritative copy of the record or records  
1820 exists which is unique, identifiable, and, except as otherwise  
1821 provided in paragraphs (d), (e), and (f), unalterable;  
1822 (b) The authoritative copy identifies the purchaser as the  
1823 assignee of the record or records;  
1824 (c) The authoritative copy is communicated to and  
1825 maintained by the purchaser or its designated custodian;  
1826 (d) Copies or amendments that add or change an identified  
1827 assignee of the authoritative copy can be made only with the

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1828 consent of the purchaser;

1829 (e) Each copy of the authoritative copy and any copy of a  
1830 copy is readily identifiable as a copy that is not the  
1831 authoritative copy; and

1832 (f) Any amendment of the authoritative copy is readily  
1833 identifiable as authorized or unauthorized.

1834 (3) A system satisfies subsection (1), and a purchaser has  
1835 control of an authoritative electronic copy of a record  
1836 evidencing chattel paper, if the electronic copy, a record  
1837 attached to or logically associated with the electronic copy, or  
1838 a system in which the electronic copy is recorded:

1839 (a) Enables the purchaser readily to identify each  
1840 electronic copy as either an authoritative copy or a  
1841 nonauthoritative copy;

1842 (b) Enables the purchaser readily to identify itself in any  
1843 way, including by name, identifying number, cryptographic key,  
1844 office, or account number, as the assignee of the authoritative  
1845 electronic copy; and

1846 (c) Gives the purchaser exclusive power, subject to  
1847 subsection (4), to:

1848 1. Prevent others from adding or changing an identified  
1849 assignee of the authoritative electronic copy; and

1850 2. Transfer control of the authoritative electronic copy.

1851 (4) Subject to subsection (5), a power is exclusive under  
1852 subsection (3)(c)1. and 2. even if:

1853 (a) The authoritative electronic copy, a record attached to  
1854 or logically associated with the authoritative electronic copy,  
1855 or a system in which the authoritative electronic copy is  
1856 recorded limits the use of the authoritative electronic copy or

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1857 has a protocol programmed to cause a change, including a  
1858 transfer or loss of control; or  
1859 (b) The power is shared with another person.  
1860 (5) A power of a purchaser is not shared with another  
1861 person under subsection(4)(b) and the purchaser's power is not  
1862 exclusive if:  
1863 (a) The purchaser can exercise the power only if the power  
1864 also is exercised by the other person; and  
1865 (b) The other person:  
1866 1. Can exercise the power without exercise of the power by  
1867 the purchaser; or  
1868 2. Is the transferor to the purchaser of an interest in the  
1869 chattel paper.  
1870 (6) If a purchaser has the powers specified in subsection  
1871 (3)(c)1. and 2., the powers are presumed to be exclusive.  
1872 (7) A purchaser has control of an authoritative electronic  
1873 copy of a record evidencing chattel paper if another person,  
1874 other than the transferor to the purchaser of an interest in the  
1875 chattel paper:  
1876 (a) Has control of the authoritative electronic copy and  
1877 acknowledges that it has control on behalf of the purchaser; or  
1878 (b) Obtains control of the authoritative electronic copy  
1879 after having acknowledged that it will obtain control of the  
1880 electronic copy on behalf of the purchaser ~~A secured party has~~  
1881 ~~control of electronic chattel paper if a system employed for~~  
1882 ~~evidencing the transfer of interests in the chattel paper~~  
1883 ~~reliably establishes the secured party as the person to which~~  
1884 ~~the chattel paper was assigned.~~  
1885 ~~(2) A system satisfies subsection (1), and a secured party~~

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1886 ~~has control of electronic chattel paper, if the record or~~  
1887 ~~records comprising the chattel paper are created, stored, and~~  
1888 ~~assigned in such a manner that:~~

1889 ~~(a) A single authoritative copy of the record or records~~  
1890 ~~exists which is unique, identifiable and, except as otherwise~~  
1891 ~~provided in paragraphs (d), (e), and (f), unalterable;~~

1892 ~~(b) The authoritative copy identifies the secured party as~~  
1893 ~~the assignee of the record or records;~~

1894 ~~(c) The authoritative copy is communicated to and~~  
1895 ~~maintained by the secured party or its designated custodian;~~

1896 ~~(d) Copies or amendments that add or change an identified~~  
1897 ~~assignee of the authoritative copy can be made only with the~~  
1898 ~~consent of the secured party;~~

1899 ~~(e) Each copy of the authoritative copy and any copy of a~~  
1900 ~~copy is readily identifiable as a copy that is not the~~  
1901 ~~authoritative copy; and~~

1902 ~~(f) Any amendment of the authoritative copy is readily~~  
1903 ~~identifiable as authorized or unauthorized.~~

1904 Section 70. Section 679.1052, Florida Statutes, is created  
1905 to read:

1906 679.1052 Control of electronic money.-

1907 (1) A person has control of electronic money if:

1908 (a) The electronic money, a record attached to or logically  
1909 associated with the electronic money, or a system in which the  
1910 electronic money is recorded gives the person:

1911 1. Power to avail itself of substantially all the benefit  
1912 from the electronic money; and

1913 2. Exclusive power, subject to subsection (2), to:

1914 a. Prevent others from availing themselves of substantially

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1915 all the benefit from the electronic money; and  
1916 b. Transfer control of the electronic money to another  
1917 person or cause another person to obtain control of other  
1918 electronic money as a result of the transfer of the electronic  
1919 money; and  
1920 (b) The electronic money, a record attached to or logically  
1921 associated with the electronic money, or a system in which the  
1922 electronic money is recorded enables the person readily to  
1923 identify itself in any way, including by name, identifying  
1924 number, cryptographic key, office, or account number, as having  
1925 the powers under paragraph (a).  
1926 (2) Subject to subsection (3), a power is exclusive under  
1927 subsection (1)(a)2.a. and b. even if:  
1928 (a) The electronic money, a record attached to or logically  
1929 associated with the electronic money, or a system in which the  
1930 electronic money is recorded limits the use of the electronic  
1931 money or has a protocol programmed to cause a change, including  
1932 a transfer or loss of control; or  
1933 (b) The power is shared with another person.  
1934 (3) A power of a person is not shared with another person  
1935 under subsection (2)(b) and the person's power is not exclusive  
1936 if:  
1937 (a) The person can exercise the power only if the power  
1938 also is exercised by the other person; and  
1939 (b) The other person:  
1940 1. Can exercise the power without exercise of the power by  
1941 the person; or  
1942 2. Is the transferor to the person of an interest in the  
1943 electronic money.

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1944 (4) If a person has the powers specified in subsection  
1945 (1)(a)2.a. and b., the powers are presumed to be exclusive.

1946 (5) A person has control of ~~electronic money~~ if another  
1947 person, other than the transferor to the person of an interest  
1948 in the electronic money:

1949 (a) Has control of the electronic money and acknowledges  
1950 that it has control on behalf of the person; or

1951 (b) Obtains control of the electronic money after having  
1952 acknowledged that it will obtain control of the electronic money  
1953 on behalf of the person.

1954 Section 71. Section 679.1053, Florida Statutes, is created  
1955 to read:

1956 679.1053 Control of controllable electronic record,  
1957 controllable account, or controllable payment intangible.—

1958 (1) A secured party has control of a controllable  
1959 electronic record as provided in s. 669.105.

1960 (2) A secured party has control of a controllable account  
1961 or controllable payment intangible if the secured party has  
1962 control of the controllable electronic record that evidences the  
1963 controllable account or controllable payment intangible.

1964 Section 72. Section 679.1054, Florida Statutes, is created  
1965 to read:

1966 679.1054 No requirement to acknowledge or confirm; no  
1967 duties.—

1968 (1) A person that has control under s 679.1051, s 679.1052,  
1969 or s 679.1053 is not required to acknowledge that it has control  
1970 on behalf of another person.

1971 (2) If a person acknowledges that it has or will obtain  
1972 control on behalf of another person, unless the person otherwise

**Commented [DW10]:** Can repetition in s. 679.1052 be reduced?

**Commented [RK11R10]:** I think it best to match the ULC version, which includes "electronic money"

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1973 agrees or law other than this chapter otherwise provides, the  
1974 person does not owe any duty to the other person and is not  
1975 required to confirm the acknowledgment to any other person.

1976 Section 73. Paragraph (c) of subsection (2) and Paragraph  
1977 (d) of subsection (10) of section 679.2031, Florida Statutes,  
1978 are amended to read:

1979 679.2031 Attachment and enforceability of security  
1980 interest; proceeds; supporting obligations; formal requisites.—

1981 (2) Except as otherwise provided in subsections (3) through  
1982 (10), a security interest is enforceable against the debtor and  
1983 third parties with respect to the collateral only if:

1984 (c) One of the following conditions is met:

1985 1. The debtor has signed ~~authenticated~~ a security agreement  
1986 that provides a description of the collateral and, if the  
1987 security interest covers timber to be cut, a description of the  
1988 land concerned;

1989 2. The collateral is not a certificated security and is in  
1990 the possession of the secured party under s. 679.3131 pursuant  
1991 to the debtor's security agreement;

1992 3. The collateral is a certificated security in registered  
1993 form and the security certificate has been delivered to the  
1994 secured party under s. 678.3011 pursuant to the debtor's  
1995 security agreement; ~~or~~

1996 4. The collateral is controllable accounts, controllable  
1997 electronic records, controllable payment intangibles, deposit  
1998 accounts, electronic documents, electronic money ~~chattel paper,~~  
1999 investment property, or letter-of-credit rights, or electronic  
2000 ~~documents,~~ and the secured party has control under s. 677.106,  
2001 s. 679.1041, s. 679.105, s. 679.1051, s. 679.1061, or s.



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2002 679.1071 pursuant to the debtor's security agreement; or  
2003 5. The collateral is chattel paper and the secured party  
2004 has possession and control under s. 679.3152 pursuant to the  
2005 debtor's security agreement.

2006 (10) A security interest in an account consisting of a  
2007 right to payment of a monetary obligation for the sale of real  
2008 property that is the debtor's homestead under the laws of this  
2009 state is not enforceable unless:

2010 (a) The description of the account in the security  
2011 agreement conspicuously states that the collateral includes the  
2012 debtor's right to payment of a monetary obligation for the sale  
2013 of real property;

2014 (b) The description of the account in the security  
2015 agreement includes a legal description of the real property;

2016 (c) The description of the account in the security  
2017 agreement conspicuously states that the real property is the  
2018 debtor's homestead; and

2019 (d) The security agreement is also signed ~~authenticated~~ by  
2020 the debtor's spouse, if the debtor is married; if the debtor's  
2021 spouse is incompetent, then the method of authentication by the  
2022 debtor's spouse is the same as provided by the laws of this  
2023 state, other than this chapter, which apply to the alienation or  
2024 encumbrance of homestead property by an incompetent person.

2025 Section 74. Present subsection (3) of section 679.2041,  
2026 Florida Statutes, is redesignated as subsection (4), a new  
2027 subsection (3) is added to that section, and subsection (2) of  
2028 that section is amended, to read:

2029 679.2041 After-acquired property; future advances.—

2030 (2) Subject to subsection (3), a security interest does not

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2031 attach under a term constituting an after-acquired property  
2032 clause to:

2033 (a) Consumer goods, other than an accession when given as  
2034 additional security, unless the debtor acquires rights in them  
2035 within 10 days after the secured party gives value; or

2036 (b) A commercial tort claim.

2037 (3) Subsection (2) does not prevent a security interest  
2038 from attaching:

2039 (a) To a consumer good as proceeds under s. 679.3151(1) or  
2040 commingled goods under s. 679.336(3);

2041 (b) To a commercial tort claim as proceeds under s.  
2042 679.3151(1); or

2043 (c) Under an after-acquired property clause to property  
2044 that is proceeds of consumer goods or a commercial tort claim.

2045 Section 75. Subsection (3) of section 679.2071, Florida  
2046 Statutes, is amended to read:

2047 679.2071 Rights and duties of secured party having  
2048 possession or control of collateral.—

2049 (3) Except as otherwise provided in subsection (4), a  
2050 secured party having possession of collateral or control of  
2051 collateral under s. 677.106, s. 679.1041, s. 679.1051, s.  
2052 679.1052, s. 679.1061, or s. 679.1071:

2053 (a) May hold as additional security any proceeds, except  
2054 money or funds, received from the collateral;

2055 (b) Shall apply money or funds received from the collateral  
2056 to reduce the secured obligation, unless remitted to the debtor;  
2057 and

2058 (c) May create a security interest in the collateral.

2059 Section 76. Subsection (2) of section 679.2081, Florida

**Commented [DW12]:** This language needs to be underlined as new language. Formatting lost.

**Commented [RK13R12]:** The text seems to be locked. NOTE: 679.2041(3) is all added by the Bill.

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2060 Statutes, is amended to read:

2061 679.2081 Additional duties of secured party having control  
2062 of collateral.—

2063 (2) Within 10 days after receiving a signed ~~an~~  
2064 ~~authenticated~~ demand by the debtor:

2065 (a) A secured party having control of a deposit account  
2066 under s. 679.1041(1)(b) shall send to the bank with which the  
2067 deposit account is maintained a signed record ~~an authenticated~~  
2068 ~~statement~~ that releases the bank from any further obligation to  
2069 comply with instructions originated by the secured party;

2070 (b) A secured party having control of a deposit account  
2071 under s. 679.1041(1)(c) shall:

2072 1. Pay the debtor the balance on deposit in the deposit  
2073 account; or

2074 2. Transfer the balance on deposit into a deposit account  
2075 in the debtor's name;

2076 (c) A secured party, other than a buyer, having control  
2077 under s. 679.1051 of an authoritative electronic copy of a  
2078 record evidencing chattel paper shall transfer control of the  
2079 electronic copy to the debtor or a person designated by the  
2080 debtor; a secured party, other than a buyer, having control of  
2081 electronic chattel paper under s. 679.1051 shall:

2082 ~~1. Communicate the authoritative copy of the electronic~~  
2083 ~~chattel paper to the debtor or its designated custodian;~~

2084 ~~2. If the debtor designates a custodian that is the~~  
2085 ~~designated custodian with which the authoritative copy of the~~  
2086 ~~electronic chattel paper is maintained for the secured party,~~  
2087 ~~communicate to the custodian an authenticated record releasing~~  
2088 ~~the designated custodian from any further obligation to comply~~

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2089 ~~with instructions originated by the secured party and~~  
2090 ~~instructing the custodian to comply with instructions originated~~  
2091 ~~by the debtor; and~~

2092 ~~3. Take appropriate action to enable the debtor or the~~  
2093 ~~debtor's designated custodian to make copies of or revisions to~~  
2094 ~~the authoritative copy which add or change an identified~~  
2095 ~~assignee of the authoritative copy without the consent of the~~  
2096 ~~secured party;~~

2097 (d) A secured party having control of investment property  
2098 under s. 678.1061(4)(b) or s. 679.1061(2) shall send to the  
2099 securities intermediary or commodity intermediary with which the  
2100 security entitlement or commodity contract is maintained a  
2101 signed and authenticated record that releases the securities  
2102 intermediary or commodity intermediary from any further  
2103 obligation to comply with entitlement orders or directions  
2104 originated by the secured party;

2105 (e) A secured party having control of a letter-of-credit  
2106 right under s. 679.1071 shall send to each person having an  
2107 unfulfilled obligation to pay or deliver proceeds of the letter  
2108 of credit to the secured party a signed and authenticated release  
2109 from any further obligation to pay or deliver proceeds of the  
2110 letter of credit to the secured party; ~~and~~

2111 (f) A secured party having control under s. 677.106 of an  
2112 authoritative electronic copy of an electronic document of title  
2113 shall transfer control of the electronic copy to the debtor or a  
2114 person designated by the debtor;

2115 (g) A secured party having control under s. 679.1052 of  
2116 electronic money shall transfer control of the electronic money  
2117 to the debtor or a person designated by the debtor; and

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2118           (h) A secured party having control under s. 669.105 of a  
2119 controllable electronic record, other than a buyer of a  
2120 controllable account or controllable payment intangible  
2121 evidenced by the controllable electronic record, shall transfer  
2122 control of the controllable electronic record to the debtor or a  
2123 person designated by the debtor ~~of an electronic document shall:~~  
2124           ~~1. Give control of the electronic document to the debtor or~~  
2125 ~~its designated custodian;~~  
2126           ~~2. If the debtor designates a custodian that is the~~  
2127 ~~designated custodian with which the authoritative copy of the~~  
2128 ~~electronic document is maintained for the secured party,~~  
2129 ~~communicate to the custodian an authenticated record releasing~~  
2130 ~~the designated custodian from any further obligation to comply~~  
2131 ~~with instructions originated by the secured party and~~  
2132 ~~instructing the custodian to comply with instructions originated~~  
2133 ~~by the debtor; and~~  
2134           ~~3. Take appropriate action to enable the debtor or its~~  
2135 ~~designated custodian to make copies of or revisions to the~~  
2136 ~~authenticated copy which add or change an identified assignee of~~  
2137 ~~the authoritative copy without the consent of the secured party.~~  
2138           Section 77. Subsection (2) of section 679.209, Florida  
2139 Statutes, is amended to read:  
2140           679.209 Duties of secured party if account debtor has been  
2141 notified of assignment.—  
2142           (2) Within 10 days after receiving a signed an  
2143 ~~authenticated~~ demand by the debtor, a secured party shall send  
2144 to an account debtor that has received notification under s.  
2145 679.4016(1) or 669.106(2) of an assignment to the secured party  
2146 as assignee a signed under s. 679.4061(1) an authenticated

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2147 record that releases the account debtor from any further  
2148 obligation to the secured party.

2149 Section 78. Paragraphs (b), (c), and (d) of subsection (1)  
2150 and subsections (2) through (6) of section 679.210, Florida  
2151 Statutes, are amended to read:

2152 679.210 Request for accounting; request regarding list of  
2153 collateral or statement of account.—

2154 (1) In this section, the term:

2155 (b) "Request for an accounting" means a record signed  
2156 ~~authenticated~~ by a debtor requesting that the recipient provide  
2157 an accounting of the unpaid obligations secured by collateral  
2158 and reasonably identifying the transaction or relationship that  
2159 is the subject of the request.

2160 (c) "Request regarding a list of collateral" means a record  
2161 signed ~~authenticated~~ by a debtor requesting that the recipient  
2162 approve or correct a list of what the debtor believes to be the  
2163 collateral securing an obligation and reasonably identifying the  
2164 transaction or relationship that is the subject of the request.

2165 (d) "Request regarding a statement of account" means a  
2166 record signed ~~authenticated~~ by a debtor requesting that the  
2167 recipient approve or correct a statement indicating what the  
2168 debtor believes to be the aggregate amount of unpaid obligations  
2169 secured by collateral as of a specified date and reasonably  
2170 identifying the transaction or relationship that is the subject  
2171 of the request.

2172 (2) Subject to subsections (3), (4), (5), and (6), a  
2173 secured party, other than a buyer of accounts, chattel paper,  
2174 payment intangibles, or promissory notes or a consignor, shall  
2175 comply with a request within 14 days after receipt:

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- 2176 (a) In the case of a request for an accounting, by signing  
2177 ~~authenticating~~ and sending to the debtor an accounting; and
- 2178 (b) In the case of a request regarding a list of collateral  
2179 or a request regarding a statement of account, by signing  
2180 ~~authenticating~~ and sending to the debtor an approval or  
2181 correction.
- 2182 (3) A secured party that claims a security interest in all  
2183 of a particular type of collateral owned by the debtor may  
2184 comply with a request regarding a list of collateral by sending  
2185 to the debtor a signed ~~an authenticated~~ record including a  
2186 statement to that effect within 14 days after receipt.
- 2187 (4) A person who receives a request regarding a list of  
2188 collateral, claims no interest in the collateral when the  
2189 request is received, and claimed an interest in the collateral  
2190 at an earlier time shall comply with the request within 14 days  
2191 after receipt by sending to the debtor a signed ~~an authenticated~~  
2192 record:
- 2193 (a) Disclaiming any interest in the collateral; and  
2194 (b) If known to the recipient, providing the name and  
2195 mailing address of any assignee of or successor to the  
2196 recipient's interest in the collateral.
- 2197 (5) A person who receives a request for an accounting or a  
2198 request regarding a statement of account, claims no interest in  
2199 the obligations when the request is received, and claimed an  
2200 interest in the obligations at an earlier time shall comply with  
2201 the request within 14 days after receipt by sending to the  
2202 debtor a signed ~~an authenticated~~ record:
- 2203 (a) Disclaiming any interest in the obligations; and  
2204 (b) If known to the recipient, providing the name and

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2205 mailing address of any assignee of or successor to the  
2206 recipient's interest in the obligations.

2207 (6) A debtor is entitled under this section without charge  
2208 to one response to a request for an accounting or a request  
2209 regarding a statement of account for each secured obligation  
2210 during any 6-month period. A debtor in a consumer transaction is  
2211 entitled to a single response to a request regarding a list of  
2212 collateral without charge during any 6-month period. The secured  
2213 party may require payment of a charge not exceeding \$25 for each  
2214 additional response to a request for an accounting, a request  
2215 regarding a statement of account, or a request regarding a list  
2216 of collateral for a consumer transaction. To the extent provided  
2217 in a signed ~~an authenticated~~ record, the secured party may  
2218 require the payment of reasonable expenses, including attorney's  
2219 fees, reasonably incurred in providing a response to a request  
2220 regarding a list of collateral for a transaction other than a  
2221 consumer transaction under this section; otherwise, the secured  
2222 party may not charge more than \$25 for each request regarding a  
2223 list of collateral. Excluding a request related to a proposed  
2224 satisfaction of the secured obligation, a secured party is not  
2225 required to respond to more than 12 of each of the permitted  
2226 requests in any 12-month period.

2227 Section 79. Section 679.3011, Florida Statutes, is amended  
2228 to read:

2229 679.3011 Law governing perfection and priority of security  
2230 interests. ~~Except as otherwise provided in ss. 679.1091,~~  
2231 ~~679.3031, 679.3041, 679.3051, and 679.3061, and 679.3062,~~ the  
2232 following rules determine the law governing perfection, the  
2233 effect of perfection or nonperfection, and the priority of a

**Commented [DW14]:** Need to verify this list. ULC says: 9-303 through 9-306(B).

**Commented [RK15R14]:** Bkry-UCC Committee -- Please cross check citations.



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2234 security interest in collateral:

2235 (1) Except as otherwise provided in this section, while a  
2236 debtor is located in a jurisdiction, the local law of that  
2237 jurisdiction governs perfection, the effect of perfection or  
2238 nonperfection, and the priority of a security interest in  
2239 collateral.

2240 (2) While collateral is located in a jurisdiction, the  
2241 local law of that jurisdiction governs perfection, the effect of  
2242 perfection or nonperfection, and the priority of a possessory  
2243 security interest in that collateral.

2244 (3) Except as otherwise provided in subsections (4) and  
2245 (5), while tangible negotiable documents, goods, instruments, or  
2246 tangible money, ~~or tangible chattel paper~~ is located in a  
2247 jurisdiction, the local law of that jurisdiction governs:

2248 (a) Perfection of a security interest in the goods by  
2249 filing a fixture filing;

2250 (b) Perfection of a security interest in timber to be cut;  
2251 and

2252 (c) The effect of perfection or nonperfection and the  
2253 priority of a nonpossessory security interest in the collateral.

2254 (4) The local law of the jurisdiction in which the wellhead  
2255 or minehead is located governs perfection, the effect of  
2256 perfection or nonperfection, and the priority of a security  
2257 interest in as-extracted collateral.

2258 (5) The law of this state governs:

2259 (a) The perfection of a security interest in goods that are  
2260 or are to become fixtures in this state by the filing of a  
2261 fixture filing.

2262 (b) The effect of perfection or nonperfection and the

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2263 priority of a security interest in goods that are or are to  
2264 become fixtures in this state.

2265 Section 80. Subsection (1) of section 679.3041, Florida  
2266 Statutes, is amended to read:

2267 679.3041 Law governing perfection and priority of security  
2268 interests in deposit accounts.—

2269 (1) The local law of a bank’s jurisdiction governs  
2270 perfection, the effect of perfection or nonperfection, and the  
2271 priority of a security interest in a deposit account maintained  
2272 with that bank even if the transaction does not bear any  
2273 relation to the bank’s jurisdiction.

Commented [DW16]: Verify if this is a change of Fla law.

2274 Section 81. Paragraph (e) is added to subsection (1) of  
2275 section 679.3051, Florida Statutes, to read:

2276 679.3051 Law governing perfection and priority of security  
2277 interests in investment property.—

2278 (1) Except as otherwise provided in subsection (3), the  
2279 following rules apply:

2280 (e) Paragraphs (b), (c), and (d) apply even if the  
2281 transaction does not bear any relation to the jurisdiction.

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2282 Section 82. Section 679.3062, Florida Statutes, is created  
2283 to read:

2284 679.3062 Law governing perfection and priority of security  
2285 interests in chattel paper.—

2286 (1) Except as provided in section (4), if chattel paper is  
2287 evidenced only by an authoritative electronic copy of the  
2288 chattel paper or is evidenced by an authoritative electronic  
2289 copy and an authoritative tangible copy, the local law of the  
2290 chattel paper’s jurisdiction governs perfection, the effect of  
2291 perfection or nonperfection, and the priority of a security

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2292 interest in the chattel paper, even if the transaction does not  
2293 bear any relation to the chattel paper's jurisdiction.

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2294 (2) .-The following rules determine the chattel paper's  
2295 jurisdiction under this section:

2296 (a) If the authoritative electronic copy of the record  
2297 evidencing chattel paper, or a record attached to or logically  
2298 associated with the electronic copy and readily available for  
2299 review, expressly provides that a particular jurisdiction is the  
2300 chattel paper's jurisdiction for purposes of this part, this  
2301 chapter, or the Uniform Commercial Code, that jurisdiction is  
2302 the chattel paper's jurisdiction.

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2303 (b) If paragraph (a) does not apply and the rules of the  
2304 system in which the authoritative electronic copy is recorded  
2305 are readily available for review and expressly provide that a  
2306 particular jurisdiction is the chattel paper's jurisdiction for  
2307 purposes of this part, this chapter, or the Uniform Commercial  
2308 Code, that jurisdiction is the chattel paper's jurisdiction.

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2309 (c) If paragraphs (a) and (b) do not apply and the  
2310 authoritative electronic copy, or a record attached to or  
2311 logically associated with the electronic copy and readily  
2312 available for review, expressly provides that the chattel paper  
2313 is governed by the law of a particular jurisdiction, that  
2314 jurisdiction is the chattel paper's jurisdiction.

2315 (d) If paragraphs (a), (b), and (c) do not apply and the  
2316 rules of the system in which the authoritative electronic copy  
2317 is recorded are readily available for review and expressly  
2318 provide that the chattel paper or the system is governed by the  
2319 law of a particular jurisdiction, that jurisdiction is the  
2320 chattel paper's jurisdiction.

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2321 (e) If paragraphs (a) through (d) do not apply, the chattel  
2322 paper's jurisdiction is the jurisdiction in which the debtor is  
2323 located.

2324 (3) If an authoritative tangible copy of a record  
2325 evidences chattel paper and the chattel paper is not evidenced  
2326 by an authoritative electronic copy, while the authoritative  
2327 tangible copy of the record evidencing chattel paper is located  
2328 in a jurisdiction, the local law of that jurisdiction governs:

2329 (a) perfection of a security interest in the chattel paper  
2330 by possession under s. 679.3152; and

2331 (b) the effect of perfection or nonperfection and the  
2332 priority of a security interest in the chattel paper.

2333 (4) The local law of the jurisdiction in which the debtor  
2334 is located governs perfection of a security interest in chattel  
2335 paper by filing.

2336 Section 83. Section 679.3063, Florida Statutes, is created  
2337 to read:

2338 679.3063 Law governing perfection and priority of security  
2339 interests in controllable accounts, controllable electronic  
2340 records, and controllable payment intangibles.—

2341 (1) Except as provided in subsection (2), the local law of  
2342 the controllable electronic record's jurisdiction specified in  
2343 s. 669.107(3) and (4) governs perfection, the effect of  
2344 perfection or nonperfection, and the priority of a security  
2345 interest in a controllable electronic record and a security  
2346 interest in a controllable account or controllable payment  
2347 intangible evidenced by the controllable electronic record.

2348 (2) The local law of the jurisdiction in which the debtor  
2349 is located governs:

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2350           (a) Perfection of a security interest in a controllable  
2351 account, controllable electronic record, or controllable payment  
2352 intangible by filing; and

2353           (b) Automatic perfection of a security interest in a  
2354 controllable payment intangible created by a sale of the  
2355 controllable payment intangible.

2356           Section 84. Paragraph (h) of subsection (2) of section  
2357 679.3101, Florida Statutes, is amended to read:

2358           679.3101 When filing required to perfect security interest  
2359 or agricultural lien; security interests and agricultural liens  
2360 to which filing provisions do not apply.—

2361           (2) The filing of a financing statement is not necessary to  
2362 perfect a security interest:

2363           (h) In controllable accounts, controllable electronic  
2364 records, controllable payment intangibles, deposit accounts,  
2365 ~~electronic chattel paper,~~ electronic documents, investment  
2366 property, or letter-of-credit rights which is perfected by  
2367 control under s. 679.3141(1);

2368           Section 85. Section 679.3121, Florida Statutes, is amended  
2369 to read:

2370           679.3121 Perfection of security interests in chattel paper,  
2371 controllable accounts, controllable electronic records,  
2372 controllable payment intangibles, deposit accounts, documents,  
2373 goods covered by documents, instruments, investment property,  
2374 letter-of-credit rights, and money; perfection by permissive  
2375 filing; temporary perfection without filing or transfer of  
2376 possession.—

2377           (1) A security interest in chattel paper, controllable  
2378 accounts, controllable electronic records, controllable payment

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2379 intangibles ~~negotiable documents~~, instruments, ~~or~~ investment  
2380 property, or negotiable documents may be perfected by filing.

2381 (2) Except as otherwise provided in s. 679.3151(3) and (4)  
2382 for proceeds:

2383 (a) A security interest in a deposit account may be  
2384 perfected only by control under s. 679.3141.

2385 (b) And except as otherwise provided in s. 679.3081(4), a  
2386 security interest in a letter-of-credit right may be perfected  
2387 only by control under s. 679.3141.

2388 (c) A security interest in tangible money may be perfected  
2389 only by the secured party's taking possession under s. 679.3131.

2390 (d) A security interest in electronic money may be  
2391 perfected only by control under s. 679.3141.

2392 (3) While goods are in the possession of a bailee that has  
2393 issued a negotiable document covering the goods:

2394 (a) A security interest in the goods may be perfected by  
2395 perfecting a security interest in the document; and

2396 (b) A security interest perfected in the document has  
2397 priority over any security interest that becomes perfected in  
2398 the goods by another method during that time.

2399 (4) While goods are in the possession of a bailee that has  
2400 issued a nonnegotiable document covering the goods, a security  
2401 interest in the goods may be perfected by:

2402 (a) Issuance of a document in the name of the secured  
2403 party;

2404 (b) The bailee's receipt of notification of the secured  
2405 party's interest; or

2406 (c) Filing as to the goods.

2407 (5) A security interest in certificated securities,

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2408 negotiable documents, or instruments is perfected without filing  
2409 or the taking of possession or control for a period of 20 days  
2410 from the time it attaches to the extent that it arises for new  
2411 value given under a signed ~~an authenticated~~ security agreement.

2412 (6) A perfected security interest in a negotiable document  
2413 or goods in possession of a bailee, other than one that has  
2414 issued a negotiable document for the goods, remains perfected  
2415 for 20 days without filing if the secured party makes available  
2416 to the debtor the goods or documents representing the goods for  
2417 the purpose of:

2418 (a) Ultimate sale or exchange; or

2419 (b) Loading, unloading, storing, shipping, transshipping,  
2420 manufacturing, processing, or otherwise dealing with them in a  
2421 manner preliminary to their sale or exchange.

2422 (7) A perfected security interest in a certificated  
2423 security or instrument remains perfected for 20 days without  
2424 filing if the secured party delivers the security certificate or  
2425 instrument to the debtor for the purpose of:

2426 (a) Ultimate sale or exchange; or

2427 (b) Presentation, collection, enforcement, renewal, or  
2428 registration of transfer.

2429 (8) After the 20-day period specified in subsection (5),  
2430 subsection (6), or subsection (7) expires, perfection depends  
2431 upon compliance with this chapter.

2432 Section 86. Subsections (1), (3), and (4) of section  
2433 679.3131, Florida Statutes, are amended to read:

2434 679.3131 When possession by or delivery to secured party  
2435 perfects security interest without filing.-

2436 (1) Except as otherwise provided in subsection (2), a

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2437 secured party may perfect a security interest in ~~tangible~~  
2438 ~~negotiable documents,~~ goods, instruments, negotiable tangible  
2439 documents, or tangible money, ~~or tangible chattel paper~~ by  
2440 taking possession of the collateral. A secured party may perfect  
2441 a security interest in certificated securities by taking  
2442 delivery of the certificated securities under s. 678.3011.

2443 (3) With respect to collateral other than certificated  
2444 securities and goods covered by a document, a secured party  
2445 takes possession of collateral in the possession of a person  
2446 other than the debtor, the secured party, or a lessee of the  
2447 collateral from the debtor in the ordinary course of the  
2448 debtor's business, when:

2449 (a) The person in possession signs ~~authenticates~~ a record  
2450 acknowledging that it holds possession of the collateral for the  
2451 secured party's benefit; or

2452 (b) The person takes possession of the collateral after  
2453 having signed ~~authenticated~~ a record acknowledging that the  
2454 person will hold possession of the collateral for the secured  
2455 party's benefit.

2456 (4) If perfection of a security interest depends upon  
2457 possession of the collateral by a secured party, perfection  
2458 occurs not ~~no~~ earlier than the time the secured party takes  
2459 possession and continues only while the secured party retains  
2460 possession.

2461 Section 87. Section 679.3141, Florida Statutes, is amended  
2462 to read:

2463 679.3141 Perfection by control.—

2464 (1) A security interest in controllable accounts,  
2465 controllable electronic records, controllable payment



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2466 intangibles, deposit accounts, electronic documents, electronic  
2467 money, investment property, or letter-of-credit rights  
2468 ~~investment property, deposit accounts, letter of credit rights,~~  
2469 ~~electronic chattel paper, or electronic documents~~ may be  
2470 perfected by control of the collateral under s. 677.106, s.  
2471 679.1041, s. 679.1052, s. 679.1053 ~~s. 679.1051~~, s. 679.1061, or  
2472 s. 679.1071.

2473 (2) A security interest in controllable accounts,  
2474 controllable electronic records, controllable payment  
2475 intangibles, deposit accounts, electronic documents, electronic  
2476 money, or letter-of-credit rights ~~deposit accounts, electronic~~  
2477 ~~chattel paper, letter of credit rights, or electronic documents~~  
2478 is perfected by control under s. 677.106, s. 679.1041, s.  
2479 679.1052, s. 679.1053 ~~s. 679.1051~~, or s. 679.1071 not earlier  
2480 than the time ~~when~~ the secured party obtains control and remains  
2481 perfected by control only while the secured party retains  
2482 control.

2483 (3) A security interest in investment property is perfected  
2484 by control under s. 679.1061 not earlier than ~~from~~ the time the  
2485 secured party obtains control and remains perfected by control  
2486 until:

- 2487 (a) The secured party does not have control; and  
2488 (b) One of the following occurs:
- 2489 1. If the collateral is a certificated security, the debtor  
2490 has or acquires possession of the security certificate;
  - 2491 2. If the collateral is an uncertificated security, the  
2492 issuer has registered or registers the debtor as the registered  
2493 owner; or
  - 2494 3. If the collateral is a security entitlement, the debtor

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2495 is or becomes the entitlement holder.

2496 Section 88. Section 679.3152, Florida Statutes, is created  
2497 to read:

2498 679.3152 Perfection by possession and control of chattel  
2499 paper.—

2500 (1) A secured party may perfect a security interest in  
2501 chattel paper by taking possession of each authoritative  
2502 tangible copy of the record evidencing the chattel paper and  
2503 obtaining control of each authoritative electronic copy of the  
2504 electronic record evidencing the chattel paper.

2505 (2) A security interest is perfected under subsection (1)  
2506 not earlier than the time the secured party takes possession and  
2507 obtains control and remains perfected under subsection (1) only  
2508 while the secured party retains possession and control.

2509 (3) Sections 679.3131(3) and (5) through (8) apply to  
2510 perfection by possession of an authoritative tangible copy of a  
2511 record evidencing chattel paper.

2512 Section 89. Subsections (1) and (6) of section 679.3161,  
2513 Florida Statutes, are amended to read:

2514 679.3161 Continued perfection of security interest  
2515 following change in governing law.—

2516 (1) A security interest perfected pursuant to the law of  
2517 the jurisdiction designated in s. 679.3011(1), ~~or~~ s.  
2518 679.3051(3), s. 679.3062(4), or s. 679.3063(2) remains perfected  
2519 until the earliest of:

2520 (a) The time perfection would have ceased under the law of  
2521 that jurisdiction;

2522 (b) The expiration of 4 months after a change of the  
2523 debtor's location to another jurisdiction; or

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2524 (c) The expiration of 1 year after a transfer of collateral  
2525 to a person who thereby becomes a debtor and is located in  
2526 another jurisdiction.

2527 (6) A security interest in chattel paper, controllable  
2528 accounts, controllable electronic records, controllable payment  
2529 intangibles, deposit accounts, letter-of-credit rights, or  
2530 investment property which is perfected under the law of the  
2531 chattel paper's jurisdiction, the controllable electronic  
2532 record's jurisdiction, the bank's jurisdiction, the issuer's  
2533 jurisdiction, a nominated person's jurisdiction, the securities  
2534 intermediary's jurisdiction, or the commodity intermediary's  
2535 jurisdiction, as applicable, remains perfected until the earlier  
2536 of:

2537 (a) The time the security interest would have become  
2538 unperfected under the law of that jurisdiction; or

2539 (b) The expiration of 4 months after a change of the  
2540 applicable jurisdiction to another jurisdiction.

2541 Section 90. Subsections (2) and (4) of section 679.3171,  
2542 Florida Statutes, are amended, and subsections (8) through (11)  
2543 are added to that section, to read:

2544 679.3171 Interests that take priority over or take free of  
2545 security interest or agricultural lien.—

2546 (2) Except as otherwise provided in subsection (5), a  
2547 buyer, other than a secured party, of ~~tangible chattel paper,~~  
2548 ~~tangible documents,~~ goods, instruments, tangible documents, or a  
2549 certificated security takes free of a security interest or  
2550 agricultural lien if the buyer gives value and receives delivery  
2551 of the collateral without knowledge of the security interest or  
2552 agricultural lien and before it is perfected.

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2553           (4) Subject to subsections (6), (7), and (8), a licensee of  
2554 a general intangible or a buyer, other than a secured party, of  
2555 collateral other than ~~electronic money~~ ~~tangible chattel paper~~,  
2556 tangible documents, goods, instruments, tangible documents, or a  
2557 certificated security takes free of a security interest if the  
2558 licensee or buyer gives value without knowledge of the security  
2559 interest and before it is perfected.

2560           (8) A buyer, other than a secured party, of chattel paper  
2561 takes free of a security interest if, without knowledge of the  
2562 security interest and before it is perfected, the buyer gives  
2563 value and:

2564           (a) Receives delivery of each authoritative tangible copy  
2565 of the record evidencing the chattel paper; and

2566           (b) If each authoritative electronic copy of the record  
2567 evidencing the chattel paper can be subjected to control under  
2568 s. 679.1052, obtains control of each authoritative electronic  
2569 copy.

2570           (9) A buyer of an electronic document takes free of a  
2571 security interest if, without knowledge of the security interest  
2572 and before it is perfected, the buyer gives value and, if each  
2573 authoritative electronic copy of the document can be subjected  
2574 to control under s. 677.106, obtains control of each  
2575 authoritative electronic copy.

2576           (10) A buyer of a controllable electronic record takes free  
2577 of a security interest if, without knowledge of the security  
2578 interest and before it is perfected, the buyer gives value and  
2579 obtains control of the controllable electronic record.

2580           (11) A buyer, other than a secured party, of a controllable  
2581 account or a controllable payment intangible takes free of a

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2582 security interest if, without knowledge of the security interest  
2583 and before it is perfected, the buyer gives value and obtains  
2584 control of the controllable account or controllable payment  
2585 intangible.

2586 Section 91. Subsections (4) and (6) of section 679.323,  
2587 Florida Statutes, are amended to read:

2588 679.323 Future advances.—

2589 (4) Except as otherwise provided in subsection (5), a buyer  
2590 of goods ~~other than a buyer in ordinary course of business~~ takes  
2591 free of a security interest to the extent that it secures  
2592 advances made after the earlier of:

2593 (a) The time the secured party acquires knowledge of the  
2594 buyer's purchase; or

2595 (b) Forty-five days after the purchase.

2596 (6) Except as otherwise provided in subsection (7), a  
2597 lessee of goods, ~~other than a lessee in ordinary course of~~  
2598 ~~business~~, takes the leasehold interest free of a security  
2599 interest to the extent that it secures advances made after the  
2600 earlier of:

2601 (a) The time the secured party acquires knowledge of the  
2602 lease; or

2603 (b) Forty-five days after the lease contract becomes  
2604 enforceable.

2605 Section 92. Subsections (2) and (4) of section 679.324,  
2606 Florida Statutes, are amended to read:

2607 679.324 Priority of purchase-money security interests.—

2608 (2) Subject to subsection (3) and except as otherwise  
2609 provided in subsection (7), a perfected purchase-money security  
2610 interest in inventory has priority over a conflicting security

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2611 interest in the same inventory, has priority over a conflicting  
2612 security interest in chattel paper or an instrument constituting  
2613 proceeds of the inventory and in proceeds of the chattel paper,  
2614 if so provided in s. 679.330, and, except as otherwise provided  
2615 in s. 679.327, also has priority in identifiable cash proceeds  
2616 of the inventory to the extent the identifiable cash proceeds  
2617 are received on or before the delivery of the inventory to a  
2618 buyer, if:

2619 (a) The purchase-money security interest is perfected when  
2620 the debtor receives possession of the inventory;

2621 (b) The purchase-money secured party sends a signed an  
2622 ~~authenticated~~ notification to the holder of the conflicting  
2623 security interest;

2624 (c) The holder of the conflicting security interest  
2625 receives the notification within 5 years before the debtor  
2626 receives possession of the inventory; and

2627 (d) The notification states that the person sending the  
2628 notification has or expects to acquire a purchase-money security  
2629 interest in inventory of the debtor and describes the inventory.

2630 (4) Subject to subsection (5) and except as otherwise  
2631 provided in subsection (7), a perfected purchase-money security  
2632 interest in livestock that are farm products has priority over a  
2633 conflicting security interest in the same livestock, and, except  
2634 as otherwise provided in s. 679.327, a perfected security  
2635 interest in their identifiable proceeds and identifiable  
2636 products in their unmanufactured states also has priority, if:

2637 (a) The purchase-money security interest is perfected when  
2638 the debtor receives possession of the livestock;

2639 (b) The purchase-money secured party sends a signed an

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2640 ~~authenticated~~ notification to the holder of the conflicting  
2641 security interest;

2642 (c) The holder of the conflicting security interest  
2643 receives the notification within 6 months before the debtor  
2644 receives possession of the livestock; and

2645 (d) The notification states that the person sending the  
2646 notification has or expects to acquire a purchase-money security  
2647 interest in livestock of the debtor and describes the livestock.

2648 Section 93. Section 679.3251, Florida Statutes, is created  
2649 to read:

2650 679.3251 Priority of security interest in controllable  
2651 account, controllable electronic record, and controllable  
2652 payment intangible.—A security interest in a controllable  
2653 account, controllable electronic record, or controllable payment  
2654 intangible held by a secured party having control of the  
2655 account, electronic record, or payment intangible has priority  
2656 over a conflicting security interest held by a secured party  
2657 that does not have control.

2658 Section 94. Subsections (1), (2), and (6) of section  
2659 679.330, Florida Statutes, are amended to read:

2660 679.330 Priority of purchaser of chattel paper or  
2661 instrument.—

2662 (1) A purchaser of chattel paper has priority over a  
2663 security interest in the chattel paper which is claimed merely  
2664 as proceeds of inventory subject to a security interest if:

2665 (a) In good faith and in the ordinary course of the  
2666 purchaser's business, the purchaser gives new value, ~~and~~ takes  
2667 possession of each authoritative tangible copy of the record  
2668 evidencing the chattel paper, and ~~or~~ obtains control under s.

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2669 679.1051 of each authoritative electronic copy of the record  
2670 evidencing chattel paper under s. 679.1051; and

2671 (b) The authoritative copies of the record evidencing the  
2672 chattel paper do ~~does~~ not indicate that the chattel paper ~~it~~ has  
2673 been assigned to an identified assignee other than the  
2674 purchaser.

2675 (2) A purchaser of chattel paper has priority over a  
2676 security interest in the chattel paper which is claimed other  
2677 than merely as proceeds of inventory subject to a security  
2678 interest if the purchaser gives new value, ~~and~~ takes possession  
2679 of each authoritative copy of the record evidencing the chattel  
2680 paper, and ~~or~~ obtains control under s. 679.1051 of each  
2681 authoritative electronic copy of the record evidencing the  
2682 chattel paper under s. 679.1051 in good faith, in the ordinary  
2683 course of the purchaser's business, and without knowledge that  
2684 the purchase violates the rights of the secured party.

2685 (6) For purposes of subsections (2) and (4), if the  
2686 authoritative copies of the record evidencing chattel paper or  
2687 an instrument indicate ~~indicates~~ that the chattel paper or  
2688 instrument ~~it~~ has been assigned to an identified secured party  
2689 other than the purchaser, a purchaser of the chattel paper or  
2690 instrument has knowledge that the purchase violates the rights  
2691 of the secured party.

2692 Section 95. Section 679.331, Florida Statutes, is amended  
2693 to read:

2694 679.331 Priority of rights of purchasers of controllable  
2695 accounts, controllable electronic records, controllable payment  
2696 intangibles ~~instruments~~, documents, instruments, and securities  
2697 under other articles; priority of interests in financial assets



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2698 and security entitlements and protection against assertion of  
2699 claim under chapters 669 and 678 ~~chapter 678.~~

2700 (1) This chapter does not limit the rights of a holder in  
2701 due course of a negotiable instrument, a holder to which a  
2702 negotiable document of title has been duly negotiated, or a  
2703 protected purchaser of a security, or a qualifying purchaser of  
2704 a controllable account, controllable electronic record, or  
2705 controllable payment intangible. These holders or purchasers  
2706 take priority over an earlier security interest, even if  
2707 perfected, to the extent provided in chapters 669, 673, 677, and  
2708 678.

2709 (2) This chapter does not limit the rights of or impose  
2710 liability on a person to the extent that the person is protected  
2711 against the assertion of an adverse claim under chapter 669 or  
2712 chapter 678.

2713 (3) Filing under this chapter does not constitute notice of  
2714 a claim or defense to the holders, purchasers, or persons  
2715 described in subsections (1) and (2).

2716 Section 96. Section 679.332, Florida Statutes, is amended  
2717 to read:

2718 679.332 Transfer of money; transfer of funds from deposit  
2719 account; transfer of electronic money.

2720 (1) A transferee of tangible money takes the money free of  
2721 a security interest if the transferee receives possession of the  
2722 money without acting unless the transferee acts in collusion  
2723 with the debtor in violating the rights of the secured party.

2724 (2) A transferee of funds from a deposit account takes the  
2725 funds free of a security interest in the deposit account if the  
2726 transferee receives the funds without acting unless the

**Commented [NK24]:** ULC says "a claim under." Here it says of "an adverse claim under" which follows the FL statutes language. Check if 669 is the correct inserted chapter. HIGHLIGHTS existing non-uniform language.

**Commented [RK25R24]:** Chapter 669 reference is correct; also Ch. 669 refers to a claim, not an adverse claim. Apparently, F.S. 679.331(2) re "adverse" is different than the ULC 9-331(b), which does NOT use "adverse"

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2727 ~~transferee acts~~ in collusion with the debtor in violating the  
2728 rights of the secured party.

2729 (3) A transferee of electronic money takes the money free  
2730 of a security interest if the transferee obtains control of the  
2731 money without acting in collusion with the debtor in violating  
2732 the rights of the secured party.

2733 Section 97. Section 679.341, Florida Statutes, is amended  
2734 to read:

2735 679.341 Bank's rights and duties with respect to deposit  
2736 account.—Except as otherwise provided in s. 679.340(3), and  
2737 unless the bank otherwise agrees in a signed ~~an authenticated~~  
2738 record, a bank's rights and duties with respect to a deposit  
2739 account maintained with the bank are not terminated, suspended,  
2740 or modified by:

2741 (1) The creation, attachment, or perfection of a security  
2742 interest in the deposit account;

2743 (2) The bank's knowledge of the security interest; or

2744 (3) The bank's receipt of instructions from the secured  
2745 party.

2746 Section 98. Subsection (1) of section 679.4041, Florida  
2747 Statutes, is amended to read:

2748 679.4041 Rights acquired by assignee; claims and defenses  
2749 against assignee.—

2750 (1) Unless an account debtor has made an enforceable  
2751 agreement not to assert defenses or claims, and subject to  
2752 subsections (2) through (5), the rights of an assignee are  
2753 subject to:

2754 (a) All terms of the agreement between the account debtor  
2755 and assignor and any defense or claim in recoupment arising from

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2756 the transaction that gave rise to the contract; and

2757 (b) Any other defense or claim of the account debtor  
2758 against the assignor which accrues before the account debtor  
2759 receives a notification of the assignment signed ~~authenticated~~  
2760 by the assignor or the assignee.

2761 Section 99. Subsections (1) through (4) and (7) of section  
2762 679.4061, Florida Statutes, are amended, and subsection (13) is  
2763 added to that section, to read:

2764 679.4061 Discharge of account debtor; notification of  
2765 assignment; identification and proof of assignment; restrictions  
2766 on assignment of accounts, chattel paper, payment intangibles,  
2767 and promissory notes ineffective.—

2768 (1) Subject to subsections (2) through (9) and (13), an  
2769 account debtor on an account, chattel paper, or a payment  
2770 intangible may discharge its obligation by paying the assignor  
2771 until, but not after, the account debtor receives a  
2772 notification, signed ~~authenticated~~ by the assignor or the  
2773 assignee, that the amount due or to become due has been assigned  
2774 and that payment is to be made to the assignee. After receipt of  
2775 the notification, the account debtor may discharge its  
2776 obligation by paying the assignee and may not discharge the  
2777 obligation by paying the assignor.

2778 (2) Subject to subsections (8) and (13) ~~subsection (8)~~,  
2779 notification is ineffective under subsection (1):

2780 (a) If it does not reasonably identify the rights assigned;

2781 (b) To the extent that an agreement between an account  
2782 debtor and a seller of a payment intangible limits the account  
2783 debtor's duty to pay a person other than the seller and the  
2784 limitation is effective under law other than this chapter; or

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2785 (c) At the option of an account debtor, if the notification  
2786 notifies the account debtor to make less than the full amount of  
2787 any installment or other periodic payment to the assignee, even  
2788 if:

- 2789 1. Only a portion of the account, chattel paper, or payment  
2790 intangible has been assigned to that assignee;  
2791 2. A portion has been assigned to another assignee; or  
2792 3. The account debtor knows that the assignment to that  
2793 assignee is limited.

2794 (3) Subject to subsections (8) and (13) ~~subsection (8)~~, if  
2795 requested by the account debtor, an assignee shall seasonably  
2796 furnish reasonable proof that the assignment has been made.  
2797 Unless the assignee complies, the account debtor may discharge  
2798 its obligation by paying the assignor, even if the account  
2799 debtor has received a notification under subsection (1).

2800 (4) For the purposes of this subsection, the term  
2801 "promissory note" includes a negotiable instrument that  
2802 evidences chattel paper. Except as otherwise provided in  
2803 subsections (5) and (12) and ss. 680.303 and 679.4071, and  
2804 subject to subsection (8), a term in an agreement between an  
2805 account debtor and an assignor or in a promissory note is  
2806 ineffective to the extent that it:

2807 (a) Prohibits, restricts, or requires the consent of the  
2808 account debtor or person obligated on the promissory note to the  
2809 assignment or transfer of, or the creation, attachment,  
2810 perfection, or enforcement of a security interest in, the  
2811 account, chattel paper, payment intangible, or promissory note;  
2812 or

2813 (b) Provides that the assignment or transfer or the

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2814 creation, attachment, perfection, or enforcement of the security  
2815 interest may give rise to a default, breach, right of  
2816 recoupment, claim, defense, termination, right of termination,  
2817 or remedy under the account, chattel paper, payment intangible,  
2818 or promissory note.

2819 (7) Subject to subsections (8) and (13) ~~subsection (8)~~, an  
2820 account debtor may not waive or vary its option under paragraph  
2821 (2)(c).

2822 (13) Subsections (1), (2), (3), and (7) do not apply to a  
2823 controllable account or controllable payment intangible.

2824 Section 100. Subsection (9) is added to section 679.4081,  
2825 Florida Statutes, to read:

2826 679.4081 Restrictions on assignment of promissory notes,  
2827 health-care-insurance receivables, and certain general  
2828 intangibles ineffective.—

2829 (9) For the purposes of this section, the term "promissory  
2830 note" includes a negotiable instrument that evidences chattel  
2831 paper.

2832 Section 101. Subsections (1) and (2) of section 679.509,  
2833 Florida Statutes, are amended to read:

2834 679.509 Persons entitled to file a record.—

2835 (1) A person may file an initial financing statement,  
2836 amendment that adds collateral covered by a financing statement,  
2837 or amendment that adds a debtor to a financing statement only  
2838 if:

2839 (a) The debtor authorizes the filing in a signed an  
2840 ~~authenticated~~ record or pursuant to subsection (2) or subsection  
2841 (3); or

2842 (b) The person holds an agricultural lien that has become

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2843 effective at the time of filing and the financing statement  
2844 covers only collateral in which the person holds an agricultural  
2845 lien.

2846 (2) By signing ~~authenticating~~ or becoming bound as a debtor  
2847 by a security agreement, a debtor or new debtor authorizes the  
2848 filing of an initial financing statement, and an amendment,  
2849 covering:

2850 (a) The collateral described in the security agreement; and

2851 (b) Property that becomes collateral under s.

2852 679.3151(1)(b), whether or not the security agreement expressly  
2853 covers proceeds.

2854 Section 102. Subsections (2) and (3) of section 679.513,  
2855 Florida Statutes, are amended to read:

2856 679.513 Termination statement.—

2857 (2) To comply with subsection (1), a secured party shall  
2858 cause the secured party of record to file the termination  
2859 statement:

2860 (a) Within 1 month after there is no obligation secured by  
2861 the collateral covered by the financing statement and no  
2862 commitment to make an advance, incur an obligation, or otherwise  
2863 give value; or

2864 (b) If earlier, within 20 days after the secured party  
2865 receives a signed ~~an authenticated~~ demand from a debtor.

2866 (3) In cases not governed by subsection (1), within 20 days  
2867 after a secured party receives a signed ~~an authenticated~~ demand  
2868 from a debtor, the secured party shall cause the secured party  
2869 of record for a financing statement to send to the debtor a  
2870 termination statement for the financing statement or file the  
2871 termination statement in the filing office if:

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2872 (a) Except in the case of a financing statement covering  
2873 accounts or chattel paper that has been sold or goods that are  
2874 the subject of a consignment, there is no obligation secured by  
2875 the collateral covered by the financing statement and no  
2876 commitment to make an advance, incur an obligation, or otherwise  
2877 give value;

2878 (b) The financing statement covers accounts or chattel  
2879 paper that has been sold but as to which the account debtor or  
2880 other person obligated has discharged its obligation;

2881 (c) The financing statement covers goods that were the  
2882 subject of a consignment to the debtor but are not in the  
2883 debtor's possession; or

2884 (d) The debtor did not authorize the filing of the initial  
2885 financing statement.

2886 Section 103. Subsection (2) of section 679.601, Florida  
2887 Statutes, is amended to read:

2888 679.601 Rights after default; judicial enforcement;  
2889 consignor or buyer of accounts, chattel paper, payment  
2890 intangibles, or promissory notes.—

2891 (2) A secured party in possession of collateral or control  
2892 of collateral under s. 679.1041, s. 679.1051, s. 679.1052, s.  
2893 679.1053, s. 679.1061, or s. 679.1071 has the rights and duties  
2894 provided in s. 679.2071.

2895 Section 104. Subsection (4) of Section 679.604, Florida  
2896 Statutes, is amended to read:

2897 679.604 Procedure if security agreement covers real  
2898 property or fixtures.—

2899 4) A secured party that removes collateral shall promptly  
2900 reimburse any encumbrancer or owner of the real property, other

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2901 than the debtor, for the cost of repair of any physical injury  
2902 caused by the removal. The secured party need not reimburse the  
2903 encumbrancer or owner for any diminution in value of the real  
2904 property caused by the absence of the goods removed or by any  
2905 necessity of replacing them. A person entitled to reimbursement  
2906 may refuse permission to remove until the secured party gives  
2907 adequate assurance for the performance of the obligation to  
2908 reimburse. This subsection does not prohibit a secured party and  
2909 the person entitled to reimbursement from entering into a signed  
2910 ~~an authenticated~~ record providing for the removal of fixtures  
2911 and reimbursement for any damage caused thereby.

2912 Section 105. Section 679.605, Florida Statutes, is amended  
2913 to read:

2914 679.605 Unknown debtor or secondary obligor.—

2915 (1) Except as provided in subsection (2), a secured party  
2916 does not owe a duty based on its status as secured party:

2917 (a)~~(1)~~ To a person who is a debtor or obligor, unless the  
2918 secured party knows:

2919 1.~~(a)~~ That the person is a debtor or obligor;

2920 2.~~(b)~~ The identity of the person; and

2921 3.~~(c)~~ How to communicate with the person; or

2922 (b)~~(2)~~ To a secured party or lienholder that has filed a  
2923 financing statement against a person, unless the secured party  
2924 knows:

2925 1.~~(a)~~ That the person is a debtor; and

2926 2.~~(b)~~ The identity of the person.

2927 (2) A secured party owes a duty based on its status as a  
2928 secured party to a person if, at the time the secured party  
2929 obtains control of collateral that is a controllable account,



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2930 controllable electronic record, or controllable payment  
2931 intangible or at the time the security interest attaches to the  
2932 collateral, whichever is later:

2933 (a) The person is a debtor or obligor; and

2934 (b) The secured party knows that the information relating  
2935 to the person in subparagraphs (1), (2) or (3) of subsection  
2936 (1)(a) is not provided by the collateral, a record attached to  
2937 or logically associated with the collateral, or the system in  
2938 which the collateral is recorded.

2939 Section 106. Paragraph (a) of subsection (1) and subsection  
2940 (3) of section 679.608, Florida Statutes, are amended to read:

2941 679.608 Application of proceeds of collection or  
2942 enforcement; liability for deficiency and right to surplus.—

2943 (1) If a security interest or agricultural lien secures  
2944 payment or performance of an obligation, the following rules  
2945 apply:

2946 (a) A secured party shall apply or pay over for application  
2947 the cash proceeds of collection or enforcement under s. 679.607  
2948 in the following order to:

2949 1. The reasonable expenses of collection and enforcement  
2950 and, to the extent provided for by agreement and not prohibited  
2951 by law, reasonable attorney's fees and legal expenses incurred  
2952 by the secured party;

2953 2. The satisfaction of obligations secured by the security  
2954 interest or agricultural lien under which the collection or  
2955 enforcement is made; and

2956 3. The satisfaction of obligations secured by any  
2957 subordinate security interest in or other lien on the collateral  
2958 subject to the security interest or agricultural lien under

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2959 which the collection or enforcement is made if the secured party  
2960 receives a signed ~~an authenticated~~ demand for proceeds before  
2961 distribution of the proceeds is completed.

2962 (3) If the secured party in good faith cannot determine the  
2963 validity, extent, or priority of a subordinate security interest  
2964 or other lien or there are conflicting claims of subordinate  
2965 interests or liens, the secured party may commence an  
2966 interpleader action with respect to remaining proceeds in excess  
2967 of \$2,500 in the circuit or county court, as applicable based  
2968 upon the amount to be deposited, where the collateral was  
2969 located or collected or in the county where the debtor has its  
2970 chief executive office or principal residence in this state, as  
2971 applicable. If authorized in a signed ~~an authenticated~~ record,  
2972 the interpleading secured party is entitled to be paid from the  
2973 remaining proceeds the actual costs of the filing fee and an  
2974 attorney's fee in the amount of \$250 incurred in connection with  
2975 filing the interpleader action and obtaining an order approving  
2976 the interpleader of funds. The debtor in a consumer transaction  
2977 may not be assessed for the attorney's fees and costs incurred  
2978 in the interpleader action by the holders of subordinate  
2979 security interests or other liens based upon disputes among said  
2980 holders, and a debtor in a transaction other than a consumer  
2981 transaction may only recover such fees and costs to the extent  
2982 provided for in a signed ~~an authenticated~~ record. If authorized  
2983 in a signed ~~an authenticated~~ record, the court in the  
2984 interpleader action may award reasonable attorney's fees and  
2985 costs to the prevailing party in a dispute between the debtor  
2986 and a holder of a security interest or lien which claims an  
2987 interest in the remaining interplead proceeds, but only if the

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2988 debtor challenges the validity, priority, or extent of said  
2989 security interest or lien. Except as provided in this  
2990 subsection, a debtor may not be assessed attorney's fees and  
2991 costs incurred by any party in an interpleader action commenced  
2992 under this section.

2993 Section 107. Subsections (1), (2), (3), (5) and (6) of  
2994 section 679.611, Florida Statutes, are amended to read:

2995 679.611 Notification before disposition of collateral.—

2996 (1) In this section, the term "notification date" means the  
2997 earlier of the date on which:

2998 (a) A secured party sends to the debtor and any secondary  
2999 obligor a signed ~~an authenticated~~ notification of disposition;  
3000 or

3001 (b) The debtor and any secondary obligor waive the right to  
3002 notification.

3003 (2) Except as otherwise provided in subsection (4), a  
3004 secured party that disposes of collateral under s. 679.610 shall  
3005 send to the persons specified in subsection (3) a reasonable  
3006 signed ~~authenticated~~ notification of disposition.

3007 (3) To comply with subsection (2), the secured party shall  
3008 send a signed ~~an authenticated~~ notification of disposition to:

3009 (a) The debtor;

3010 (b) Any secondary obligor; and

3011 (c) If the collateral is other than consumer goods:

3012 1. Any other person from whom the secured party has  
3013 received, before the notification date, a signed ~~an~~  
3014 ~~authenticated~~ notification of a claim of an interest in the  
3015 collateral;

3016 2. Any other secured party or lienholder that, 10 days

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3017 before the notification date, held a security interest in or  
3018 other lien on the collateral perfected by the filing of a  
3019 financing statement that:  
3020       a. Identified the collateral;  
3021       b. Was indexed under the debtor's name as of that date; and  
3022       c. Was filed in the office in which to file a financing  
3023 statement against the debtor covering the collateral as of that  
3024 date; and  
3025       3. Any other secured party that, 10 days before the  
3026 notification date, held a security interest in the collateral  
3027 perfected by compliance with a statute, regulation, or treaty  
3028 described in s. 679.3111(1).  
3029       (5) A secured party complies with the requirement for  
3030 notification prescribed by subparagraph (3)(c)2. if:  
3031       (a) Not later than 20 days or earlier than 30 days before  
3032 the notification date, the secured party requests, in a  
3033 commercially reasonable manner, information concerning financing  
3034 statements indexed under the debtor's name in the office  
3035 indicated in subparagraph (3)(c)2.; and  
3036       (b) Before the notification date, the secured party:  
3037       1. Did not receive a response to the request for  
3038 information; or  
3039       2. Received a response to the request for information and  
3040 sent a signed ~~an authenticated~~ notification of disposition to  
3041 each secured party or other lienholder named in that response  
3042 whose financing statement covered the collateral.  
3043       (6) For purposes of subsection (3), the secured party may  
3044 send the signed ~~authenticated~~ notification as follows:  
3045       (a) If the collateral is other than consumer goods, to the

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3046 debtor at the address in the financing statement, unless the  
3047 secured party has received a signed ~~an authenticated~~ record from  
3048 the debtor notifying the secured party of a different address  
3049 for such notification purposes or the secured party has actual  
3050 knowledge of the address of the debtor's chief executive office  
3051 or principal residence, as applicable, at the time the  
3052 notification is sent;

3053 (b) If the collateral is other than consumer goods, to any  
3054 secondary obligor at the address, if any, in the signed  
3055 ~~authenticated~~ agreement, unless the secured party has received a a  
3056 signed ~~an authenticated~~ record from the secondary obligor  
3057 notifying the secured party of a different address for such  
3058 notification purposes or the secured party has actual knowledge  
3059 of the address of the secondary obligor's chief executive office  
3060 or principal residence, as applicable, at the time the  
3061 notification is sent; and

3062 (c) If the collateral is other than consumer goods:

3063 1. To the person described in subparagraph (3)(c)1., at the  
3064 address stated in the notification;

3065 2. To the person described in subparagraph (3)(c)2., at the  
3066 address stated in the financing statement;

3067 3. To the person described in subparagraph (3)(c)3., at the  
3068 address stated in the official records of the recording or  
3069 registration agency.

3070 Section 108. Subsection (5) of section 679.613, Florida  
3071 Statutes, is amended to read:

3072 679.613 Contents and form of notification before  
3073 disposition of collateral; general.—Except in a consumer-goods  
3074 transaction, the following rules apply:

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3075           (5)(a) The following form of notification and the form  
3076 appearing in s. 679.614(3)(a) ~~s. 679.614(3)~~, when completed in  
3077 accordance with the instructions in paragraph (b), each provides  
3078 sufficient information:

3079  
3080                               NOTIFICATION OF DISPOSITION  
3081                               OF COLLATERAL

3082  
3083 To:...(Name of debtor, obligor, or other person to which the  
3084 notification is sent)...

3085 From:...(Name, address, and telephone number of secured  
3086 party)...

3087           {1} Name of any debtor that is not an addressee  
3088 ~~Debtor(s):...(Name of each debtor Include only if debtor(s) are~~  
3089 ~~not an addressee)...~~

3090 ~~{For a public disposition:}~~

3091           {2} We will sell ~~{or lease or license, as applicable}~~ the  
3092 ...(describe collateral)...to the highest qualified bidder at  
3093 public sale. A sale could include a lease or a license. The sale  
3094 will be held in public as follows:

3095 Date:

3096 Time:

3097 Place:

3098 ~~{For a private disposition:}~~

3099           {3} We will sell ~~{or lease or license, as applicab (le)}~~ the  
3100 ...(describe collateral)... at a private sale privately sometime  
3101 after ...(day and date).... A sale could include a lease or a  
3102 license.

3103           {4} You are entitled to an accounting of the unpaid

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3104 indebtedness secured by the property that we intend to sell or,  
3105 as applicable, for lease or license.

3106 {5} If you request an accounting, you must pay,~~as~~  
3107 ~~applicable]~~ for a charge of \$...( amount)..

3108 {6} You may request an accounting by calling us at  
3109 ...(telephone number)....

3110 (b) The following instructions apply to the form of  
3111 notification in paragraph(a):

3112 1. The instructions in this paragraph refer to the numbers  
3113 in braces before items in the form of notification in paragraph  
3114 (a). Do not include the numbers or braces in the notification.  
3115 The numbers and braces are used only for the purpose of these  
3116 instructions.

3117 2. Include and complete item {1} only if there is a debtor  
3118 that is not an addressee of the notification and list the name  
3119 or names.

3120 3. Include and complete either item {2}, if the  
3121 notification relates to a public disposition of the collateral,  
3122 or item {3}, if the notification relates to a private  
3123 disposition of the collateral. If item {2} is included, include  
3124 the words "to the highest qualified bidder" only if applicable.

3125 4. Include and complete items {4} and {6}.

3126 5. Include and complete item {5} only if the sender will  
3127 charge the recipient for an accounting.

3128 Section 109. Subsection (3) of section 679.614, Florida  
3129 Statutes, is amended to read:

3130 679.614 Contents and form of notification before  
3131 disposition of collateral; consumer-goods transaction.—In a  
3132 consumer-goods transaction, the following rules apply:

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3133           (3)(a) The following form of notification, when completed  
3134 in accordance with the instructions in paragraph (b), provides  
3135 sufficient information:

3136  
3137           ...(Name and address of secured party)...  
3138           ...(Date)...

3139  
3140                               NOTICE OF OUR PLAN TO SELL PROPERTY

3141  
3142           ...(Name and address of any obligor who is also a debtor)...  
3143 Subject:...(Identify ~~Identification~~ of Transaction)...

3144           We have your ...(describe collateral)..., because you broke  
3145 promises in our agreement.

3146           ~~{For a public disposition:}~~

3147           {1} We will sell ...(describe collateral)... at public  
3148 sale. A sale could include a lease or license. The sale will be  
3149 held as follows:

3150           Date:  
3151           Time:  
3152           Place:

3153  
3154           You may attend the sale and bring bidders if you want.

3155           ~~{For a private disposition:}~~

3156           {2} We will sell ...(describe collateral)... at private  
3157 sale sometime after ...(date).... A sale could include a lease  
3158 or license.

3159  
3160           {3} The money that we get from the sale (after paying our  
3161 costs) will reduce the amount you owe. If we get less money than



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3162 you owe, you ...(will or will not, as applicable)... still owe  
3163 us the difference. If we get more money than you owe, you will  
3164 get the extra money, unless we must pay it to someone else.

3165  
3166 {4} You can get the property back at any time before we  
3167 sell it by paying us the full amount you owe, ~~not just the past~~  
3168 ~~due payments~~, including our expenses. To learn the exact amount  
3169 you must pay, call us at ...(telephone number)....

3170  
3171 {5} If you want us to explain to you ...(in writing or in  
3172 description of electronic record)... how we have figured the  
3173 amount that you owe us, {6} ~~you may~~ call us at ...(telephone  
3174 number)..., ~~or~~ write us at ...(secured party's address)..., or  
3175 contact us by ...(description of electronic communication  
3176 method)... {7} and request a written explanation, an explanation  
3177 in ...(description of electronic record)....

3178  
3179 {8} We will charge you \$.... for the explanation if we sent  
3180 you another written explanation of the amount you owe us within  
3181 the last 6 months.

3182  
3183 {9} If you need more information about the sale, call us at  
3184 ...(telephone number)..., ~~or~~ write us at ...(secured party's  
3185 address)..., or contact us by ...(description of electronic  
3186 communication method)....

3187  
3188 {10} We are sending this notice to the following other  
3189 people who have an interest in ...(describe collateral)... or  
3190 who owe money under your agreement:

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3191           ... (Names of all other debtors and obligors, if any)...

3192           (b) The following instructions apply to the form of  
3193 notification in paragraph (a):

3194           1. The instructions in this paragraph refer to the numbers  
3195 in braces before items in the form of notification in paragraph  
3196 (a). Do not include the numbers or braces in the notification.  
3197 The numbers and braces are used only for the purpose of these  
3198 instructions.

3199           2. Include and complete either item {1}, if the  
3200 notification relates to a public disposition of the collateral,  
3201 or item {2}, if the notification relates to a private  
3202 disposition of the collateral.

3203           3. Include and complete items {3}, {4}, {5}, {6}, and {7}.

3204           4. In item {5}, include and complete any one of the three  
3205 alternative methods for the explanation-writing, writing or  
3206 electronic record, or electronic record.

3207           5. In item {6}, include the telephone number. In addition,  
3208 the sender may include and complete either or both of the two  
3209 additional alternative methods of communication-writing or  
3210 electronic communication-for the recipient of the notification  
3211 to communicate with the sender. Neither of the two additional  
3212 methods of communication is required to be included.

3213           6. In item {7}, include and complete the method or methods  
3214 for the explanation-writing, writing or electronic record, or  
3215 electronic record-included in item {5}.

3216           7. Include and complete item {8} only if a written  
3217 explanation is included in item {5} as a method for  
3218 communicating the explanation and the sender will charge the  
3219 recipient for another written explanation.

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3220       8. In item {9}, include either the telephone number or the  
3221 address or both the telephone number and the address. In  
3222 addition, the sender may include and complete the additional  
3223 method of communication—electronic communication—for the  
3224 recipient of the notification to communicate with the sender.  
3225 The additional method of electronic communication is not  
3226 required to be included.

3227       9. If item {10} does not apply, insert "None" after  
3228 "agreement+.#:."

3229       Section 110. Subsection (1) of section 679.615, Florida  
3230 Statutes, are amended to read:

3231       679.615 Application of proceeds of disposition; liability  
3232 for deficiency and right to surplus.—

3233       (1) A secured party shall apply or pay over for application  
3234 the cash proceeds of disposition under s. 679.610 in the  
3235 following order to:

3236       (a) The reasonable expenses of retaking, holding, preparing  
3237 for disposition, processing, and disposing, and, to the extent  
3238 provided for by agreement and not prohibited by law, reasonable  
3239 attorney's fees and legal expenses incurred by the secured  
3240 party;

3241       (b) The satisfaction of obligations secured by the security  
3242 interest or agricultural lien under which the disposition is  
3243 made;

3244       (c) The satisfaction of obligations secured by any  
3245 subordinate security interest in or other subordinate lien on  
3246 the collateral if:

3247       1. The secured party receives from the holder of the  
3248 subordinate security interest or other lien a signed an

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3249 ~~authenticated~~ demand for proceeds before distribution of the  
3250 proceeds is completed; and

3251 2. In a case in which a consignor has an interest in the  
3252 collateral, the subordinate security interest or other lien is  
3253 senior to the interest of the consignor; and

3254 (d) A secured party that is a consignor of the collateral  
3255 if the secured party receives from the consignor a signed ~~an~~  
3256 ~~authenticated~~ demand for proceeds before distribution of the  
3257 proceeds is completed.

3258 Section 111. Subsections (1), (2), and (3) of section  
3259 679.616, Florida Statutes, are amended to read:

3260 679.616 Explanation of calculation of surplus or  
3261 deficiency.—

3262 (1) In this section, the term:

3263 (a) "Explanation" means a record ~~writing~~ that:

3264 1. States the amount of the surplus or deficiency;

3265 2. Provides an explanation in accordance with subsection  
3266 (3) of how the secured party calculated the surplus or  
3267 deficiency;

3268 3. States, if applicable, that future debits, credits,  
3269 charges, including additional credit service charges or  
3270 interest, rebates, and expenses may affect the amount of the  
3271 surplus or deficiency; and

3272 4. Provides a telephone number or mailing address from  
3273 which additional information concerning the transaction is  
3274 available.

3275 (b) "Request" means a record:

3276 1. Signed ~~Authenticated~~ by a debtor or consumer obligor;

3277 2. Requesting that the recipient provide an explanation;

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3278 and  
3279 3. Sent after disposition of the collateral under s.  
3280 679.610.  
3281 (2) In a consumer-goods transaction in which the debtor is  
3282 entitled to a surplus or a consumer obligor is liable for a  
3283 deficiency under s. 679.615, the secured party shall:  
3284 (a) Send an explanation to the debtor or consumer obligor,  
3285 as applicable, after the disposition and:  
3286 1. Before or when the secured party accounts to the debtor  
3287 and pays any surplus or first makes ~~written~~ demand in a record  
3288 on the consumer obligor after the disposition for payment of the  
3289 deficiency; and  
3290 2. Within 14 days after receipt of a request; or  
3291  
3292 (b) In the case of a consumer obligor who is liable for a  
3293 deficiency, within 14 days after receipt of a request, send to  
3294 the consumer obligor a record waiving the secured party's right  
3295 to a deficiency.  
3296 (3) To comply with subparagraph (1)(a)2., an explanation a  
3297 ~~writing~~ must provide the following information in the following  
3298 order:  
3299 (a) The aggregate amount of obligations secured by the  
3300 security interest under which the disposition was made, and, if  
3301 the amount reflects a rebate of unearned interest or credit  
3302 service charge, an indication of that fact, calculated as of a  
3303 specified date:  
3304 1. If the secured party takes or receives possession of the  
3305 collateral after default, not more than 35 days before the  
3306 secured party takes or receives possession; or

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3307 2. If the secured party takes or receives possession of the  
3308 collateral before default or does not take possession of the  
3309 collateral, not more than 35 days before the disposition;

3310 (b) The amount of proceeds of the disposition;

3311 (c) The aggregate amount of the obligations after deducting  
3312 the amount of proceeds;

3313 (d) The amount, in the aggregate or by type, and types of  
3314 expenses, including expenses of retaking, holding, preparing for  
3315 disposition, processing, and disposing of the collateral, and  
3316 attorney's fees secured by the collateral which are known to the  
3317 secured party and relate to the current disposition;

3318 (e) The amount, in the aggregate or by type, and types of  
3319 credits, including rebates of interest or credit service  
3320 charges, to which the obligor is known to be entitled and which  
3321 are not reflected in the amount in paragraph (a); and

3322 (f) The amount of the surplus or deficiency.

3323 Section 112. Subsection (1) of section 679.619, Florida  
3324 Statutes, is amended to read:

3325 679.619 Transfer of record or legal title.—

3326 (1) In this section, the term "transfer statement" means a  
3327 record signed ~~authenticated~~ by a secured party stating:

3328 (a) That the debtor has defaulted in connection with an  
3329 obligation secured by specified collateral;

3330 (b) That the secured party has exercised its post-default  
3331 remedies with respect to the collateral;

3332 (c) That, by reason of the exercise, a transferee has  
3333 acquired the rights of the debtor in the collateral; and

3334 (d) The name and mailing address of the secured party,  
3335 debtor, and transferee.

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3336 Section 113. Subsections (1), (2), (3), and (6) of section  
3337 679.620, Florida Statutes, are amended to read:

3338 679.620 Acceptance of collateral in full or partial  
3339 satisfaction of obligation; compulsory disposition of  
3340 collateral.—

3341 (1) Except as otherwise provided in subsection (7), a  
3342 secured party may accept collateral in full or partial  
3343 satisfaction of the obligation it secures only if:

3344 (b) The secured party does not receive, within the time set  
3345 forth in subsection (4), a notification of objection to the  
3346 proposal signed ~~authenticated~~ by:

3347 1. A person to whom the secured party was required to send  
3348 a proposal under s. 679.621; or

3349 2. Any other person, other than the debtor, holding an  
3350 interest in the collateral subordinate to the security interest  
3351 that is the subject of the proposal;

3352 (2) A purported or apparent acceptance of collateral under  
3353 this section is ineffective unless:

3354 (a) The secured party consents to the acceptance in a  
3355 signed ~~an authenticated~~ record or sends a proposal to the  
3356 debtor; and

3357 (b) The conditions of subsection (1) are met.

3358 (3) For purposes of this section:

3359 (a) A debtor consents to an acceptance of collateral in  
3360 partial satisfaction of the obligation it secures only if the  
3361 debtor agrees to the terms of the acceptance in a record signed  
3362 ~~authenticated~~ after default; and

3363 (b) A debtor consents to an acceptance of collateral in  
3364 full satisfaction of the obligation it secures only if the

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3365 debtor agrees to the terms of the acceptance in a record signed  
3366 ~~authenticated~~ after default or the secured party:

3367 1. Sends to the debtor after default a proposal that is  
3368 unconditional or subject only to a condition that collateral not  
3369 in the possession of the secured party be preserved or  
3370 maintained;

3371 2. In the proposal, proposes to accept collateral in full  
3372 satisfaction of the obligation it secures, and, in a consumer  
3373 transaction, provides notice that the proposal will be deemed  
3374 accepted if it is not objected to by a signed ~~an authenticated~~  
3375 notice within 30 days after the date the proposal is sent by the  
3376 secured party; and

3377 3. Does not receive a notification of objection signed  
3378 ~~authenticated~~ by the debtor within 30 days after the proposal is  
3379 sent.

3380 (6) To comply with subsection (5), the secured party shall  
3381 dispose of the collateral:

3382 (a) Within 90 days after taking possession; or

3383 (b) Within any longer period to which the debtor and all  
3384 secondary obligors have agreed in an agreement to that effect  
3385 entered into and signed ~~authenticated~~ after default.

3386 Section 114. Subsection (1) of section 679.621, Florida  
3387 Statutes, is amended to read:

3388 679.621 Notification of proposal to accept collateral.—

3389 (1) A secured party that desires to accept collateral in  
3390 full or partial satisfaction of the obligation it secures shall  
3391 send its proposal to:

3392 (a) Any person from whom the secured party has received,  
3393 before the debtor consented to the acceptance, a signed ~~an~~



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3394 ~~authenticated~~ notification of a claim of an interest in the  
3395 collateral;

3396 (b) Any other secured party or lienholder that, 10 days  
3397 before the debtor consented to the acceptance, held a security  
3398 interest in or other lien on the collateral perfected by the  
3399 filing of a financing statement that:

- 3400 1. Identified the collateral;
- 3401 2. Was indexed under the debtor's name as of that date; and
- 3402 3. Was filed in the office or offices in which to file a  
3403 financing statement against the debtor covering the collateral  
3404 as of that date; and

3405 (c) Any other secured party that, 10 days before the debtor  
3406 consented to the acceptance, held a security interest in the  
3407 collateral perfected by compliance with a statute, regulation,  
3408 or treaty described in s. 679.3111(1).

3409 Section 115. Section 679.624, Florida Statutes, is amended  
3410 to read:

3411 679.624 Waiver.—

3412 (1) A debtor or secondary obligor may waive the right to  
3413 notification of disposition of collateral under s. 679.611 only  
3414 by an agreement to that effect entered into and signed  
3415 ~~authenticated~~ after default.

3416 (2) A debtor may waive the right to require disposition of  
3417 collateral under s. 679.620(5) only by an agreement to that  
3418 effect entered into and signed ~~authenticated~~ after default.

3419 (3) Except in a consumer-goods transaction, a debtor or  
3420 secondary obligor may waive the right to redeem collateral under  
3421 s. 679.623 only by an agreement to that effect entered into and  
3422 signed ~~authenticated~~ after default.

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3423 Section 116. Subsections (1) and (5) of section 679.625,  
3424 Florida Statutes, are amended, to read:

3425 679.625 Remedies for failure to comply with article.—

3426 (1) If it is established that a secured party is not  
3427 proceeding in accordance with this chapter, a court may order or  
3428 restrain collection, enforcement, or disposition of collateral  
3429 on appropriate terms and conditions. This subsection shall not  
3430 preclude a debtor other than a consumer and a secured party, or  
3431 two or more secured parties in other than a consumer  
3432 transaction, from agreeing in a signed ~~an authenticated~~ record  
3433 that the debtor or secured party must first provide to the  
3434 alleged offending secured party notice of a violation of this  
3435 chapter and opportunity to cure before commencing any legal  
3436 proceeding under this section.

3437 (5) In lieu of damages recoverable under subsection (2),  
3438 the debtor, consumer obligor, or person named as a debtor in a  
3439 filed record, as applicable, may recover \$500 in each case from  
3440 a person who:

3441 (a) Fails to comply with s. 679.2081;

3442 (b) Fails to comply with s. 679.209;

3443 (c) Files a record that the person is not entitled to file  
3444 under s. 679.509(1);

3445 (d) Fails to cause the secured party of record to file or  
3446 send a termination statement as required by s. 679.513(1) or (3)  
3447 after receipt of a signed ~~an authenticated~~ record notifying the  
3448 person of such noncompliance;

3449 (e) Fails to comply with s. 679.616(2)(a) and whose  
3450 failure is part of a pattern, or consistent with a practice, of  
3451 noncompliance; or

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3452 (f) Fails to comply with s. 679.616(2)(b).  
3453 Section 117. Subsections (1) and (2) of section 679.628,  
3454 Florida Statutes, are amended, and subsection (6) is added to  
3455 that section, to read:  
3456 679.628 Nonliability and limitation on liability of secured  
3457 party; liability of secondary obligor.—  
3458 (1) Subject to subsection (6), unless a secured party knows  
3459 that a person is a debtor or obligor, knows the identity of the  
3460 person, and knows how to communicate with the person:  
3461 (a) The secured party is not liable to the person, or to a  
3462 secured party or lienholder that has filed a financing statement  
3463 against the person, for failure to comply with this chapter; and  
3464 (b) The secured party's failure to comply with this chapter  
3465 does not affect the liability of the person for a deficiency.  
3466 (2) Subject to subsection (6), a secured party is not  
3467 liable because of its status as a secured party:  
3468 (a) To a person who is a debtor or obligor, unless the  
3469 secured party knows:  
3470 1. That the person is a debtor or obligor;  
3471 2. The identity of the person; and  
3472 3. How to communicate with the person; or  
3473 (b) To a secured party or lienholder that has filed a  
3474 financing statement against a person, unless the secured party  
3475 knows:  
3476 1. That the person is a debtor; and  
3477 2. The identity of the person.  
3478 (6) Subsections (1) and (2) do not apply to limit the  
3479 liability of a secured party to a person if, at the time the  
3480 secured party obtains control of collateral that is a

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3481 controllable account, controllable electronic record, or  
3482 controllable payment intangible or at the time the security  
3483 interest attaches to the collateral, whichever is later:  
3484 (a) The person is a debtor or obligor; and  
3485 (b) The secured party knows that the information in  
3486 subparagraph (2)(a)1., (a)2., or (a)3. is not provided by the  
3487 collateral, a record attached to or logically associated with  
3488 the collateral, or the system in which the collateral is  
3489 recorded.

3490 Section 118. Part IX of chapter 679, Florida Statutes,  
3491 consisting of section 679.901 through 679.902, is created and  
3492 entitled "Transitional Provisions for 2024 Amendments."

3493 Section 119. Section 679.901, Florida Statutes, is created  
3494 to read:

3495 679.901 Saving clause for 2024 Amendments.—Except as  
3496 provided in ss. 669.501-669.706, a transaction validly entered  
3497 into before July 1, 2024, and the rights, duties, and interests  
3498 flowing from the transaction remain valid thereafter and may be  
3499 terminated, completed, consummated, or enforced as required or  
3500 permitted by law other than the Uniform Commercial Code or, if  
3501 applicable, the Uniform Commercial Code as though ch. 2024-XX,  
3502 Laws of Florida, had not taken effect.

3503 Section 120. Section 679.902, Florida Statutes, is created  
3504 to read:

3505 679.902 Transitional Provisions for 2024 Amendments.—  
3506 Effective July 1, 2024, chapter 679 shall be amended by ch.  
3507 2024-XX, Laws of Florida, including the transitional provisions  
3508 for chapters 669 and 679, as amended by ch. 2024-XX, Laws of  
3509 Florida, as provided in part II of chapter 669 (ss. 669.501-

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3510 669.706).

3511 Section 121. Section 680.1021, Florida Statutes, is amended

3512 to read:

3513 680.1021 Scope.—

3514 (1) This chapter applies to any transaction, regardless of

3515 form, that creates a lease and, in the case of a hybrid lease,

3516 applies to the extent provided in subsection (2).

3517 (2) In a hybrid lease:

3518 (a) If the lease-of-goods aspects do not predominate:

3519 1. Only the provisions of this chapter which relate

3520 primarily to the lease-of-goods aspects of the transaction

3521 apply, and the provisions that relate primarily to the

3522 transaction as a whole do not apply;

3523 2. Section 608.209 applies if the lease is a finance lease;

3524 and

3525 3. Section 608.407 applies to the promises of the lessee in

3526 a finance lease to the extent the promises are consideration for

3527 the right to possession and use of the leased goods; and

3528 (b) If the lease-of-goods aspects predominate, this chapter

3529 applies to the transaction, but does not preclude application in

3530 appropriate circumstances of other law to aspects of the lease

3531 which do not relate to the lease of goods.

3532 Section 122. Present paragraphs (i) through (z) of

3533 subsection (1) of section 680.1031, Florida Statutes, are

3534 redesignated as paragraphs (j) through (aa), respectively, a new

3535 paragraph (i) is added to that subsection, and paragraphs (d),

3536 (e), (f), (h), (j), (l), and (m) of subsection (3) of that

3537 section are amended, to read:

3538 680.1031 Definitions and index of definitions.—

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- 3539 (1) In this chapter, unless the context otherwise requires:  
3540 (i) "Hybrid lease" means a single transaction involving a  
3541 lease of goods and:  
3542 1. The provision of services;  
3543 2. A sale of other goods; or  
3544 3. A sale, lease, or license of property other than goods.  
3545 (3) The following definitions in other chapters of this  
3546 code apply to this chapter:  
3547 (d) "Chattel paper," s. 679.1021~~s. 679.1021(1)(k)~~.  
3548 (e) "Consumer goods," s. 679.1021~~s. 679.1021(1)(w)~~.  
3549 (f) "Document," s. 679.1021 ~~s. 679.1021(1)(dd)~~.  
3550 (h) "General intangible," s. 679.1021~~s. 679.1021(1)(pp)~~.  
3551 (j) "Instrument," s. 679.1021 ~~s. 679.1021(1)(uu)~~.  
3552 (l) "Mortgage," s. 679.1021 ~~s. 679.1021(1)(cc)~~.  
3553 (m) "Pursuant to a commitment," s. 679.1021 ~~s.~~  
3554 ~~679.1021(1)(pp)~~.

3555 Section 123. Section 680.1071, Florida Statutes, is amended  
3556 to read:

3557 680.1071 Waiver or renunciation of claim or right after  
3558 default.—Any claim or right arising out of an alleged default or  
3559 breach of warranty may be discharged in whole or in part without  
3560 consideration by a ~~written~~ waiver or renunciation in a signed  
3561 record and delivered by the aggrieved party.

3562 Section 124. Paragraph (b) of subsection (1), and  
3563 subsections (3) and (5) of section 680.201, Florida Statutes,  
3564 are amended to read:

3565 680.201 Statute of frauds.—

3566 (1) A lease contract is not enforceable by way of action or  
3567 defense unless:

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3568 (b) There is a record writing, signed by the party against  
3569 whom enforcement is sought or by that party's authorized agent,  
3570 sufficient to indicate that a lease contract has been made  
3571 between the parties and to describe the goods leased and the  
3572 lease term.

3573 (3) A record writing is not insufficient because it omits  
3574 or incorrectly states a term agreed upon, but the lease contract  
3575 is not enforceable under paragraph (1)(b) beyond the lease term  
3576 and the quantity of goods shown in the record writing.

3577 (5) The lease term under a lease contract referred to in  
3578 subsection (4) is:

3579 (a) If there is a record writing signed by the party  
3580 against whom enforcement is sought or by that party's authorized  
3581 agent specifying the lease term, the term so specified;

3582 (b) If the party against whom enforcement is sought admits  
3583 in that party's pleading, testimony, or otherwise in court a  
3584 lease term, the term so admitted; or

3585 (c) A reasonable lease term.

3586 Section 125. Section 680.202, Florida Statutes, is amended  
3587 to read:

3588 680.202 Final ~~written~~ expression: parol or extrinsic  
3589 evidence.—Terms with respect to which the confirmatory memoranda  
3590 of the parties agree or which are otherwise set forth in a  
3591 record writing intended by the parties as a final expression of  
3592 their agreement with respect to such terms as are included  
3593 therein may not be contradicted by evidence of any prior  
3594 agreement or of a contemporaneous oral agreement but may be  
3595 explained or supplemented:

3596 (1) By course of dealing or usage of trade or by course of

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3597 performance; and

3598 (2) By evidence of consistent additional terms unless the  
3599 court finds the record ~~writing~~ to have been intended also as a  
3600 complete and exclusive statement of the terms of the agreement.

3601 Section 126. Section 680.203, Florida Statutes, is amended  
3602 to read:

3603 680.203 Seals inoperative.—The affixing of a seal to a  
3604 record ~~writing~~ evidencing a lease contract or an offer to enter  
3605 into a lease contract does not render the record ~~writing~~ a  
3606 sealed instrument, and the law with respect to sealed  
3607 instruments does not apply to the lease contract or offer.

3608 Section 127. Section 680.205, Florida Statutes, is amended  
3609 to read:

3610 680.205 Firm offers.—An offer by a merchant to lease goods  
3611 to or from another person in a signed record ~~writing~~ that by its  
3612 terms gives assurance it will be held open is not revocable, for  
3613 lack of consideration, during the time stated or, if no time is  
3614 stated, for a reasonable time, but in no event may the period of  
3615 irrevocability exceed 3 months. Any such term of assurance on a  
3616 form supplied by the offeree must be separately signed by the  
3617 offeror.

3618 Section 128. Subsection (2) of section 680.208, Florida  
3619 Statutes, is amended to read:

3620 680.208 Modification, rescission, and waiver.—

3621 (2) A signed lease agreement that excludes modification or  
3622 rescission except by a signed record ~~writing~~ may not be  
3623 otherwise modified or rescinded, but, except as between  
3624 merchants, such a requirement on a form supplied by a merchant  
3625 must be separately signed by the other party.



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3626 Section 129. Part VI of chapter 680 Florida Statutes,  
3627 consisting of section 680.601, is created and entitled  
3628 "Transitional Provisions."

3629 Section 130. Section 680.601, Florida Statutes, is created  
3630 to read:

3631 680.601 Saving clause for 2024 Amendments.—Except as  
3632 provided in ss. 669.501-669.706, a transaction validly entered  
3633 into before July 1, 2024, and the rights, duties, and interests  
3634 flowing from the transaction remain valid thereafter and may be  
3635 terminated, completed, consummated, or enforced as required or  
3636 permitted by law other than the Uniform Commercial Code or, if  
3637 applicable, the Uniform Commercial Code as though ch. 2024-XX,  
3638 Laws of Florida, had not taken effect.

3639 Section 131. Subsection (2) and paragraph (b) of  
3640 subsection (3) of section 319.27, Florida Statutes, are amended  
3641 to read:

3642 319.27 Notice of lien on motor vehicles or mobile homes;  
3643 notation on certificate; recording of lien.—

3644 (2) No lien for purchase money or as security for a debt in  
3645 the form of a security agreement, retain title contract,  
3646 conditional bill of sale, chattel mortgage, or other similar  
3647 instrument or any other nonpossessory lien, including a lien for  
3648 child support, upon a motor vehicle or mobile home upon which a  
3649 Florida certificate of title has been issued shall be  
3650 enforceable in any of the courts of this state against creditors  
3651 or subsequent purchasers for a valuable consideration and  
3652 without notice, unless a sworn notice of such lien has been  
3653 filed in the department and such lien has been noted upon the  
3654 certificate of title of the motor vehicle or mobile home. Such

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3655 notice shall be effective as constructive notice when filed. The  
3656 interest of a statutory nonpossessory lienor; the interest of a  
3657 nonpossessory execution, attachment, or equitable lienor; or the  
3658 interest of a lien creditor as defined in s. 679.1021~~s.~~  
3659 ~~679.1021(1)(zz)~~, if nonpossessory, shall not be enforceable  
3660 against creditors or subsequent purchasers for a valuable  
3661 consideration unless such interest becomes a possessory lien or  
3662 is noted upon the certificate of title for the subject motor  
3663 vehicle or mobile home prior to the occurrence of the subsequent  
3664 transaction. Provided the provisions of this subsection relating  
3665 to a nonpossessory statutory lienor; a nonpossessory execution,  
3666 attachment, or equitable lienor; or the interest of a lien  
3667 creditor as defined in s. 679.1021~~s. 679.1021(1)(zz)~~ shall not  
3668 apply to liens validly perfected prior to October 1, 1988. The  
3669 notice of lien shall provide the following information:  
3670       (a) The date of the lien if a security agreement, retain  
3671 title contract, conditional bill of sale, chattel mortgage, or  
3672 other similar instrument was executed prior to the filing of the  
3673 notice of lien;  
3674       (b) The name and address of the registered owner;  
3675       (c) A description of the motor vehicle or mobile home,  
3676 showing the make, type, and vehicle identification number; and  
3677       (d) The name and address of the lienholder.  
3678       (3)  
3679       (b) As applied to a determination of the respective rights  
3680 of a secured party under this chapter and a lien creditor as  
3681 defined by s. 679.1021 ~~s. 679.1021(1)(zz)~~, or a nonpossessory  
3682 statutory lienor, a security interest under this chapter shall  
3683 be perfected upon the filing of the notice of lien with the

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3684 department, the county tax collector, or their agents. Provided,  
3685 however, the date of perfection of a security interest of such  
3686 secured party shall be the same date as the execution of the  
3687 security agreement or other similar instrument if the notice of  
3688 lien is filed in accordance with this subsection within 15 days  
3689 after the debtor receives possession of the motor vehicle or  
3690 mobile home and executes such security agreement or other  
3691 similar instrument. The date of filing of the notice of lien  
3692 shall be the date of its receipt by the department central  
3693 office in Tallahassee, if first filed there, or otherwise by the  
3694 office of the county tax collector, or their agents.

3695 Section 132. Paragraphs (d), (e), (g), (h), (j), (l), and  
3696 (n) of subsection (2) of section 328.0015, Florida Statutes, are  
3697 amended to read:

3698 328.0015 Definitions.—

3699 (2) The following definitions and terms also apply to this  
3700 part:

3701 (d) "Consumer goods" as defined in s. 679.1021s—  
3702 ~~679.1021(1)(w)~~.

3703 (e) "Debtor" as defined in s. 679.1021 ~~s. 679.1021(1)(bb)~~.

3704 (g) "Lease" as defined in s. 680.1031s—~~680.1031(1)(j)~~.

3705 (h) "Lessor" as defined in s. 680.1031s—~~680.1031(1)(p)~~.

3706 (j) "Representative" as defined in s. 671.201s—  
3707 ~~671.201(37)~~.

3708 (l) "Security agreement" as defined in s. 679.1021s—  
3709 ~~679.1021(1)(uuu)~~.

3710 (n) "Send" as defined in s. 671.201s—~~671.201(40)~~.

3711 Section 133. Paragraph (f) of subsection (2) of section  
3712 559.9232, Florida Statutes, is amended to read:

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3713 559.9232 Definitions; exclusion of rental-purchase  
3714 agreements from certain regulations.-

3715 (2) A rental-purchase agreement that complies with this act  
3716 shall not be construed to be, nor be governed by, any of the  
3717 following:

3718 (f) A security interest as defined in s. 671.201~~s.~~  
3719 ~~671.201(39)~~.

3720 Section 134. Paragraph (g) of subsection (2) of section  
3721 563.022, Florida Statutes, is amended to read:

3722 563.022 Relations between beer distributors and  
3723 manufacturers.-

3724 (2) DEFINITIONS.-In construing this section, unless the  
3725 context otherwise requires, the word, phrase, or term:

3726 (g) "Good faith" means honesty in fact in the conduct or  
3727 transaction concerned as defined and interpreted under s.  
3728 671.201 ~~s. 671.201(21)~~.

3729 Section 135. Paragraph (d) of subsection (16) of section  
3730 668.50, Florida Statutes, is amended to read:

3731 668.50 Uniform Electronic Transaction Act.-

3732 (16) TRANSFERABLE RECORDS.-

3733 (d) Except as otherwise agreed, a person having control of  
3734 a transferable record is the holder, as defined in s. 671.201~~s.~~  
3735 ~~671.201(21)~~, of the transferable record and has the same rights  
3736 and defenses as a holder of an equivalent record or writing  
3737 under the Uniform Commercial Code, including, if the applicable  
3738 statutory requirements under s. 673.3021, s. 677.501, or s.  
3739 679.330 are satisfied, the rights and defenses of a holder in  
3740 due course, a holder to which a negotiable document of title has  
3741 been duly negotiated, or a purchaser, respectively. Delivery,

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3742 possession, and indorsement are not required to obtain or  
3743 exercise any of the rights under this paragraph.

3744 Section 136. For the purpose of incorporating the amendment  
3745 made by this act to section 671.105, Florida Statutes,  
3746 subsections (1) and (2) of section 655.55, Florida Statutes, are  
3747 reenacted to read:

3748 655.55 Law applicable to deposits in and contracts relating  
3749 to extensions of credit by a deposit or lending institution  
3750 located in this state.—

3751 (1) The law of this state, excluding its law regarding  
3752 comity and conflict of laws, governs all aspects, including  
3753 without limitation the validity and effect, of any deposit  
3754 account in a branch or office in this state of a deposit or  
3755 lending institution, including a deposit account otherwise  
3756 covered by s. 671.105(1), regardless of the citizenship,  
3757 residence, location, or domicile of any other party to the  
3758 contract or agreement governing such deposit account, and  
3759 regardless of any provision of any law of the jurisdiction of  
3760 the residence, location, or domicile of such other party,  
3761 whether or not such deposit account bears any other relation to  
3762 this state, except that this section does not apply to any such  
3763 deposit account:

3764 (a) To the extent provided to the contrary in s.  
3765 671.105(2); or

3766 (b) To the extent that all parties to the contract or  
3767 agreement governing such deposit account have agreed in writing  
3768 that the law of another jurisdiction will govern it.

3769 (2) The law of this state, excluding its law regarding  
3770 comity and conflict of laws, governs all aspects, including

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3771 without limitation the validity and effect, of any contract  
3772 relating to an extension of credit made by a branch or office in  
3773 this state of a deposit or lending institution, including a  
3774 contract otherwise covered by s. 671.105(1), if the contract  
3775 expressly provides that it will be governed by the law of this  
3776 state, regardless of the citizenship, residence, location, or  
3777 domicile of any other party to such contract and regardless of  
3778 any provision of any law of the jurisdiction of the residence,  
3779 location, or domicile of such other party, whether or not such  
3780 contract bears any other relation to this state, except that  
3781 this section does not apply to any such contract to the extent  
3782 provided to the contrary in s. 671.105(2).

3783 Section 137. For the purpose of incorporating the amendment  
3784 made by this act to section 671.105, Florida Statutes, in a  
3785 reference thereto, subsection (2) of section 685.101, Florida  
3786 Statutes, is reenacted to read:

3787 685.101 Choice of law.—

3788 (2) This section does not apply to any contract, agreement,  
3789 or undertaking:

3790 (a) Regarding any transaction which does not bear a  
3791 substantial or reasonable relation to this state in which every  
3792 party is either or a combination of:

3793 1. A resident and citizen of the United States, but not of  
3794 this state; or

3795 2. Incorporated or organized under the laws of another  
3796 state and does not maintain a place of business in this state;

3797 (b) For labor or employment;

3798 (c) Relating to any transaction for personal, family, or  
3799 household purposes, unless such contract, agreement, or

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3800 undertaking concerns a trust at least one trustee of which  
3801 resides or transacts business as a trustee in this state, in  
3802 which case this section applies;

3803 (d) To the extent provided to the contrary in s.  
3804 671.105(2); or

3805 (e) To the extent such contract, agreement, or undertaking  
3806 is otherwise covered or affected by s. 655.55.

3807 Section 138. For the purpose of incorporating the amendment  
3808 made by this act to section 673.1041, Florida Statutes, in a  
3809 reference thereto, subsection (1) of section 90.953, Florida  
3810 Statutes, is reenacted to read:

3811 90.953 Admissibility of duplicates.—A duplicate is  
3812 admissible to the same extent as an original, unless:

3813 (1) The document or writing is a negotiable instrument as  
3814 defined in s. 673.1041, a security as defined in s. 678.1021, or  
3815 any other writing that evidences a right to the payment of  
3816 money, is not itself a security agreement or lease, and is of a  
3817 type that is transferred by delivery in the ordinary course of  
3818 business with any necessary endorsement or assignment.

3819 Section 139. For the purpose of incorporating the amendment  
3820 made by this act to section 673.1041, Florida Statutes, in a  
3821 reference thereto, subsections (1), (3), and (4) of section  
3822 673.1061, Florida Statutes, are reenacted to read:

3823 673.1061 Unconditional promise or order.—

3824 (1) Except as provided in this section, for the purposes of  
3825 s. 673.1041(1), a promise or order is unconditional unless it  
3826 states:

3827 (a) An express condition to payment;

3828 (b) That the promise or order is subject to or governed by

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3829 another writing; or

3830 (c) That rights or obligations with respect to the promise  
3831 or order are stated in another writing.

3832

3833 A reference to another writing does not of itself make the  
3834 promise or order conditional.

3835 (3) If a promise or order requires, as a condition to  
3836 payment, a countersignature by a person whose specimen signature  
3837 appears on the promise or order, the condition does not make the  
3838 promise or order conditional for the purposes of s. 673.1041(1).  
3839 If the person whose specimen signature appears on an instrument  
3840 fails to countersign the instrument, the failure to countersign  
3841 is a defense to the obligation of the issuer, but the failure  
3842 does not prevent a transferee of the instrument from becoming a  
3843 holder of the instrument.

3844 (4) If a promise or order at the time it is issued or first  
3845 comes into possession of a holder contains a statement, required  
3846 by applicable statutory or administrative law, to the effect  
3847 that the rights of a holder or transferee are subject to claims  
3848 or defenses that the issuer could assert against the original  
3849 payee, the promise or order is not thereby made conditional for  
3850 the purposes of s. 673.1041(1); but if the promise or order is  
3851 an instrument, there cannot be a holder in due course of the  
3852 instrument.

3853 Section 140. For the purpose of incorporating the amendment  
3854 made by this act to section 673.1041, Florida Statutes, in a  
3855 reference thereto, subsection (2) of section 673.1151, Florida  
3856 Statutes, is reenacted to read:

3857 673.1151 Incomplete instrument.-



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3858 (2) Subject to subsection (3), if an incomplete instrument  
3859 is an instrument under s. 673.1041, it may be enforced according  
3860 to its terms if it is not completed, or according to its terms  
3861 as augmented by completion. If an incomplete instrument is not  
3862 an instrument under s. 673.1041, but, after completion, the  
3863 requirements of s. 673.1041 are met, the instrument may be  
3864 enforced according to its terms as augmented by completion.

3865 Section 141. For the purpose of incorporating the amendment  
3866 made by this act to sections 673.1041 and 673.1051, Florida  
3867 Statutes, in a reference thereto, subsection (2) of section  
3868 673.1031, Florida Statutes, is reenacted to read:

3869 673.1031 Definitions.—

3870 (2) Other definitions applying to this chapter and the  
3871 sections in which they appear are:

- 3872 "Acceptance," s. 673.4091.  
3873 "Accommodated party," s. 673.4191.  
3874 "Accommodation party," s. 673.4191.  
3875 "Alteration," s. 673.4071.  
3876 "Anomalous indorsement," s. 673.2051.  
3877 "Blank indorsement," s. 673.2051.  
3878 "Cashier's check," s. 673.1041.  
3879 "Certificate of deposit," s. 673.1041.  
3880 "Certified check," s. 673.4091.  
3881 "Check," s. 673.1041.  
3882 "Consideration," s. 673.3031.  
3883 "Draft," s. 673.1041.  
3884 "Holder in due course," s. 673.3021.  
3885 "Incomplete instrument," s. 673.1151.  
3886 "Indorsement," s. 673.2041.

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3887 "Indorser," s. 673.2041.  
3888 "Instrument," s. 673.1041.  
3889 "Issue," s. 673.1051.  
3890 "Issuer," s. 673.1051.  
3891 "Negotiable instrument," s. 673.1041.  
3892 "Negotiation," s. 673.2011.  
3893 "Note," s. 673.1041.  
3894 "Payable at a definite time," s. 673.1081.  
3895 "Payable on demand," s. 673.1081.  
3896 "Payable to bearer," s. 673.1091.  
3897 "Payable to order," s. 673.1091.  
3898 "Payment," s. 673.6021.  
3899 "Person entitled to enforce," s. 673.3011.  
3900 "Presentment," s. 673.5011.  
3901 "Reacquisition," s. 673.2071.  
3902 "Special indorsement," s. 673.2051.  
3903 "Teller's check," s. 673.1041.  
3904 "Transfer of instrument," s. 673.2031.  
3905 "Traveler's check," s. 673.1041.  
3906 "Value," s. 673.3031.  
3907 Section 142. For the purpose of incorporating the amendment  
3908 made by this act to section 675.104, Florida Statutes, in a  
3909 reference thereto, paragraph (j) of subsection (1) of section  
3910 675.103, Florida Statutes, is reenacted to read:  
3911 675.103 Definitions.—  
3912 (1) For purposes of this chapter:  
3913 (j) "Letter of credit" means a definite undertaking that  
3914 satisfies the requirements of s. 675.104 by an issuer to a  
3915 beneficiary at the request or for the account of an applicant

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3916 or, in the case of a financial institution, to itself or for its  
3917 own account, to honor a documentary presentation by payment or  
3918 delivery of an item of value.

3919 Section 143. For the purpose of incorporating the amendment  
3920 made by this act to section 678.1061, Florida Statutes, in a  
3921 reference thereto, subsection (3) of section 678.5101, Florida  
3922 Statutes, is reenacted to read:

3923 678.5101 Rights of purchaser of security entitlement from  
3924 entitlement holder.—

3925 (3) In a case not covered by the priority rules in chapter  
3926 679, a purchaser for value of a security entitlement, or an  
3927 interest therein, who obtains control has priority over a  
3928 purchaser of a security entitlement, or an interest therein, who  
3929 does not obtain control. Except as otherwise provided in  
3930 subsection (4), purchasers who have control rank according to  
3931 priority in time of:

3932 (a) The purchaser's becoming the person for whom the  
3933 securities account, in which the security entitlement is  
3934 carried, is maintained, if the purchaser obtained control under  
3935 s. 678.1061(4)(a);

3936 (b) The securities intermediary's agreement to comply with  
3937 the purchaser's entitlement orders with respect to security  
3938 entitlements carried or to be carried in the securities account  
3939 in which the security entitlement is carried, if the purchaser  
3940 obtained control under s. 678.1061(4)(b); or

3941 (c) If the purchaser obtained control through another  
3942 person under s. 678.1061(4)(c), the time on which priority would  
3943 be based under this subsection if the other person were the  
3944 secured party.

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3945 Section 144. For the purpose of incorporating the amendment  
3946 made by this act to section 678.1061, Florida Statutes, in a  
3947 reference thereto, subsection (1) of section 679.1061, Florida  
3948 Statutes, is reenacted to read:

3949 679.1061 Control of investment property.—

3950 (1) A person has control of a certificated security,  
3951 uncertificated security, or security entitlement as provided in  
3952 s. 678.1061.

3953 Section 145. For the purpose of incorporating the amendment  
3954 made by this act to section 678.1061, Florida Statutes, in a  
3955 reference thereto, subsection (2) of section 679.328, Florida  
3956 Statutes, is reenacted to read:

3957 679.328 Priority of security interests in investment  
3958 property.—The following rules govern priority among conflicting  
3959 security interests in the same investment property:

3960 (2) Except as otherwise provided in subsections (3) and  
3961 (4), conflicting security interests held by secured parties each  
3962 of which has control under s. 679.1061 rank according to  
3963 priority in time of:

3964 (a) If the collateral is a security, obtaining control;

3965 (b) If the collateral is a security entitlement carried in  
3966 a securities account and:

3967 1. If the secured party obtained control under s.  
3968 678.1061(4)(a), the secured party's becoming the person for  
3969 which the securities account is maintained;

3970 2. If the secured party obtained control under s.  
3971 678.1061(4)(b), the securities intermediary's agreement to  
3972 comply with the secured party's entitlement orders with respect  
3973 to security entitlements carried or to be carried in the

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3974 securities account; or

3975 3. If the secured party obtained control through another  
3976 person under s. 678.1061(4)(c), the time on which priority would  
3977 be based under this paragraph if the other person were the  
3978 secured party; or

3979 (c) If the collateral is a commodity contract carried with  
3980 a commodity intermediary, the satisfaction of the requirement  
3981 for control specified in s. 679.1061(2)(b) with respect to  
3982 commodity contracts carried or to be carried with the commodity  
3983 intermediary.

3984 Section 146. For the purpose of incorporating the amendment  
3985 made by this act to section 678.1101, Florida Statutes, in a  
3986 reference thereto, paragraph (e) of subsection (2) of section  
3987 671.105, Florida Statutes, is reenacted to read:

3988 671.105 Territorial application of the code; parties' power  
3989 to choose applicable law.—

3990 (2) When one of the following provisions of this code  
3991 specifies the applicable law, that provision governs; and a  
3992 contrary agreement is effective only to the extent permitted by  
3993 the law (including the conflict-of-laws rules) so specified:

3994 (e) Applicability of the chapter on investment securities.  
3995 (s. 678.1101)

3996 Section 147. For the purpose of incorporating the amendment  
3997 made by this act to section 679.1041, Florida Statutes, in a  
3998 reference thereto, subsection (1) of section 679.327, Florida  
3999 Statutes, is reenacted to read:

4000 679.327 Priority of security interests in deposit account.—  
4001 The following rules govern priority among conflicting security  
4002 interests in the same deposit account:

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4003 (1) A security interest held by a secured party having  
4004 control of the deposit account under s. 679.1041 has priority  
4005 over a conflicting security interest held by a secured party  
4006 that does not have control.

4007 Section 148. For the purpose of incorporating the amendment  
4008 made by this act to section 679.2031, Florida Statutes, in a  
4009 reference thereto, paragraph (k) of subsection (4) of section  
4010 679.1091, Florida Statutes, is reenacted to read:

4011 679.1091 Scope.—

4012 (4) This chapter does not apply to:

4013 (k) The creation or transfer of an interest in or lien on  
4014 real property, including a lease or rents thereunder, except to  
4015 the extent that provision is made for:

4016 1. Liens on real property in ss. 679.2031 and 679.3081;

4017 2. Fixtures in s. 679.334;

4018 3. Fixture filings in ss. 679.5011, 679.5021, 679.512,  
4019 679.516, and 679.519; and

4020 4. Security agreements covering personal and real property  
4021 in s. 679.604;

4022 Section 149. For the purpose of incorporating the amendment  
4023 made by this act to section 679.2031, Florida Statutes, in a  
4024 reference thereto, paragraph (b) of subsection (1) of section  
4025 679.3171, Florida Statutes, is reenacted to read:

4026 679.3171 Interests that take priority over or take free of  
4027 security interest or agricultural lien.—

4028 (1) A security interest or agricultural lien is subordinate  
4029 to the rights of:

4030 (b) Except as otherwise provided in subsection (5), a  
4031 person who becomes a lien creditor before the earlier of the

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4032 time:

4033 1. The security interest or agricultural lien is perfected;

4034 or

4035 2. One of the conditions specified in s. 679.2031(2)(c) is

4036 met and a financing statement covering the collateral is filed.

4037 Section 150. For the purpose of incorporating the amendment

4038 made by this act to section 679.2031, Florida Statutes, in a

4039 reference thereto, subsection (2) of section 679.709, Florida

4040 Statutes, is reenacted to read:

4041 679.709 Priority.—

4042 (2) For purposes of s. 679.322(1), the priority of a

4043 security interest that becomes enforceable under s. 679.2031 of

4044 this act dates from the time this act takes effect if the

4045 security interest is perfected under this act by the filing of a

4046 financing statement before this act takes effect which would not

4047 have been effective to perfect the security interest under

4048 chapter 679, Florida Statutes 2000. This subsection does not

4049 apply to conflicting security interests each of which is

4050 perfected by the filing of such a financing statement.

4051 Section 151. For the purpose of incorporating the amendment

4052 made by this act to section 679.2081, Florida Statutes, in a

4053 reference thereto, subsection (5) of section 679.625, Florida

4054 Statutes, is reenacted to read:

4055 679.625 Remedies for failure to comply with article.—

4056 (5) In lieu of damages recoverable under subsection (2),

4057 the debtor, consumer obligor, or person named as a debtor in a

4058 filed record, as applicable, may recover \$500 in each case from

4059 a person who:

4060 (a) Fails to comply with s. 679.2081;

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- 4061 (b) Fails to comply with s. 679.209;
- 4062 (c) Files a record that the person is not entitled to file  
4063 under s. 679.509(1);
- 4064 (d) Fails to cause the secured party of record to file or  
4065 send a termination statement as required by s. 679.513(1) or (3)  
4066 after receipt of an authenticated record notifying the person of  
4067 such noncompliance;
- 4068 (e) Fails to comply with s. 679.616(2)(a) and whose failure  
4069 is part of a pattern, or consistent with a practice, of  
4070 noncompliance; or
- 4071 (f) Fails to comply with s. 679.616(2)(b).
- 4072 Section 152. For the purpose of incorporating the amendment  
4073 made by this act to section 679.3121, Florida Statutes, in a  
4074 reference thereto, subsection (1) of section 679.3101, Florida  
4075 Statutes, is reenacted to read:
- 4076 679.3101 When filing required to perfect security interest  
4077 or agricultural lien; security interests and agricultural liens  
4078 to which filing provisions do not apply.—
- 4079 (1) Except as otherwise provided in subsection (2) and s.  
4080 679.3121(2), a financing statement must be filed to perfect all  
4081 security interests and agricultural liens.
- 4082 Section 153. For the purpose of incorporating the amendment  
4083 made by this act to section 679.3141, Florida Statutes, in a  
4084 reference thereto, subsection (2) of section 679.327, Florida  
4085 Statutes, is reenacted to read:
- 4086 679.327 Priority of security interests in deposit account.—  
4087 The following rules govern priority among conflicting security  
4088 interests in the same deposit account:
- 4089 (2) Except as otherwise provided in subsections (3) and



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4090 (4), security interests perfected by control under s. 679.3141  
4091 rank according to priority in time of obtaining control.

4092 Section 154. For the purpose of incorporating the amendment  
4093 made by this act to section 679.3141, Florida Statutes, in a  
4094 reference thereto, subsection (5) of section 679.328, Florida  
4095 Statutes, is reenacted to read:

4096 679.328 Priority of security interests in investment  
4097 property.—The following rules govern priority among conflicting  
4098 security interests in the same investment property:

4099 (5) A security interest in a certificated security in  
4100 registered form which is perfected by taking delivery under s.  
4101 679.3131(1) and not by control under s. 679.3141 has priority  
4102 over a conflicting security interest perfected by a method other  
4103 than control.

4104 Section 155. For the purpose of incorporating the amendment  
4105 made by this act to section 679.3141, Florida Statutes, in a  
4106 reference thereto, subsection (2) of section 679.329, Florida  
4107 Statutes, is reenacted to read:

4108 679.329 Priority of security interests in letter-of-credit  
4109 right.—The following rules govern priority among conflicting  
4110 security interests in the same letter-of-credit right:

4111 (2) Security interests perfected by control under s.  
4112 679.3141 rank according to priority in time of obtaining  
4113 control.

4114 Section 156. For the purpose of incorporating the amendment  
4115 made by this act to section 679.3161, Florida Statutes, in a  
4116 reference thereto, paragraph (j) of subsection (2) of section  
4117 679.3101, Florida Statutes, is reenacted to read:

4118 679.3101 When filing required to perfect security interest

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4119 or agricultural lien; security interests and agricultural liens  
4120 to which filing provisions do not apply.-

4121 (2) The filing of a financing statement is not necessary to  
4122 perfect a security interest:

4123 (j) That is perfected under s. 679.3161.

4124 Section 157. For the purpose of incorporating the amendment  
4125 made by this act to section 679.3161, Florida Statutes, in a  
4126 reference thereto, subsection (3) of section 679.320, Florida  
4127 Statutes, is reenacted to read:

4128 679.320 Buyer of goods.-

4129 (3) To the extent that it affects the priority of a  
4130 security interest over a buyer of goods under subsection (2),  
4131 the period of effectiveness of a filing made in the jurisdiction  
4132 in which the seller is located is governed by s. 679.3161(1) and  
4133 (2).

4134 Section 158. For the purpose of incorporating the amendment  
4135 made by this act to section 679.3171, Florida Statutes, in a  
4136 reference thereto, subsection (3) of section 680.307, Florida  
4137 Statutes, is reenacted to read:

4138 680.307 Priority of liens arising by attachment or levy on,  
4139 security interests in, and other claims to goods.-

4140 (3) Except as otherwise provided in ss. 679.3171, 679.321,  
4141 and 679.323, a lessee takes a leasehold interest subject to a  
4142 security interest held by a creditor or lessor.

4143 Section 159. For the purpose of incorporating the amendment  
4144 made by this act to section 679.3171, Florida Statutes, in a  
4145 reference thereto, paragraph (b) of subsection (8) of section  
4146 727.109, Florida Statutes, is reenacted to read:

4147 727.109 Power of the court.-The court shall have power to:

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4148 (8) Hear and determine any of the following actions brought  
4149 by the assignee, which she or he is empowered to maintain:

4150 (b) Determine the validity, priority, and extent of a lien  
4151 or other interests in assets of the estate, or to subordinate or  
4152 avoid an unperfected security interest pursuant to the  
4153 assignee's rights as a lien creditor under s. 679.3171.

4154 Section 160. For the purpose of incorporating the amendment  
4155 made by this act to section 679.330, Florida Statutes, in a  
4156 reference thereto, paragraph (d) of subsection (16) of section  
4157 668.50, Florida Statutes, is reenacted to read:

4158 668.50 Uniform Electronic Transaction Act.—

4159 (16) TRANSFERABLE RECORDS.—

4160 (d) Except as otherwise agreed, a person having control of  
4161 a transferable record is the holder, as defined in s. s.  
4162 671.201(22) ~~s. 671.201(21)~~, of the transferable record and has  
4163 the same rights and defenses as a holder of an equivalent record  
4164 or writing under the Uniform Commercial Code, including, if the  
4165 applicable statutory requirements under s. 673.3021, s. 677.501,  
4166 or s. 679.330 are satisfied, the rights and defenses of a holder  
4167 in due course, a holder to which a negotiable document of title  
4168 has been duly negotiated, or a purchaser, respectively.  
4169 Delivery, possession, and indorsement are not required to obtain  
4170 or exercise any of the rights under this paragraph.

4171 Section 161. For the purpose of incorporating the amendment  
4172 made by this act to section 679.331, Florida Statutes, in a  
4173 reference thereto, subsection (4) of section 679.330, Florida  
4174 Statutes, is reenacted to read:

4175 679.330 Priority of purchaser of chattel paper or  
4176 instrument.—

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4177 (4) Except as otherwise provided in s. 679.331(1), a  
4178 purchaser of an instrument has priority over a security interest  
4179 in the instrument perfected by a method other than possession if  
4180 the purchaser gives value and takes possession of the instrument  
4181 in good faith and without knowledge that the purchase violates  
4182 the rights of the secured party.

4183 Section 162. For the purpose of incorporating the amendment  
4184 made by this act to section 679.605, Florida Statutes, in a  
4185 reference thereto, subsection (4) of section 679.601, Florida  
4186 Statutes, is reenacted to read:

4187 679.601 Rights after default; judicial enforcement;  
4188 consignor or buyer of accounts, chattel paper, payment  
4189 intangibles, or promissory notes.—

4190 (4) Except as otherwise provided in subsection (7) and s.  
4191 679.605, after default, a debtor and an obligor have the rights  
4192 provided in this part and by agreement of the parties.

4193 Section 163. For the purpose of incorporating the amendment  
4194 made by this act to section 679.628, Florida Statutes, in a  
4195 reference thereto, subsection (3) of section 679.625, Florida  
4196 Statutes, is reenacted to read:

4197 679.625 Remedies for failure to comply with article.—

4198 (3) Except as otherwise provided in s. 679.628:

4199 (a) A person who, at the time of the failure, was a debtor,  
4200 was an obligor, or held a security interest in or other lien on  
4201 the collateral may recover damages under subsection (2) for the  
4202 person's loss; and

4203 (b) If the collateral is consumer goods, a person who was a  
4204 debtor or a secondary obligor at the time a secured party failed  
4205 to comply with this part may recover for that failure in any

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4206 event an amount not less than the credit service charge plus 10  
4207 percent of the principal amount of the obligation or the time-  
4208 price differential plus 10 percent of the cash price.

4209 Section 164. For the purpose of incorporating the amendment  
4210 made by this act to section 679.628, Florida Statutes, in a  
4211 reference thereto, subsection (3) of section 679.626, Florida  
4212 Statutes, is reenacted to read:

4213 679.626 Action in which deficiency or surplus is in issue.—  
4214 In an action arising from a transaction in which the amount of a  
4215 deficiency or surplus is in issue, the following rules apply:

4216 (3) Except as otherwise provided in s. 679.628, if a  
4217 secured party fails to prove that the collection, enforcement,  
4218 disposition, or acceptance was conducted in accordance with the  
4219 provisions of this part relating to collection, enforcement,  
4220 disposition, or acceptance, the liability of a debtor or a  
4221 secondary obligor for a deficiency is limited to an amount by  
4222 which the sum of the secured obligation, reasonable expenses,  
4223 and, to the extent provided for by agreement and not prohibited  
4224 by law, attorney's fees exceeds the greater of:

4225 (a) The proceeds of the collection, enforcement,  
4226 disposition, or acceptance; or

4227 (b) The amount of proceeds that would have been realized  
4228 had the noncomplying secured party proceeded in accordance with  
4229 the provisions of this part relating to collection, enforcement,  
4230 disposition, or acceptance.

4231 Section 165. This act shall take effect July 1, 2024.

**SCHEDULE 11**

Florida Uniform Disposition of Community Property Rights at Death Act  
(RPPTL Section White Paper and Proposed Bill)



## The Florida Bar

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To: Leadership of the Business Law Section of The Florida Bar

From: The Real Property Probate and Trust Law Section of The Florida Bar  
c/o Sancha Brennan, Co-Chair, Legislation Committee  
545 Delaney Avenue, Hovey Court Building 1  
Orlando, Florida 32801  
Telephone: 407-893-7888  
E-mail: sbrennan@thebrennanlawfirm.com

Re: Proposed Legislative Position regarding the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228) ("Act")

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As you are aware, Standing Board Policy 9.50(d) requires voluntary bar groups to contact all divisions, sections and committees that might be interested in proposed legislative or political activity. The policy also requires sections to identify all groups to which proposals have been submitted for comment and to include comments when submitting the proposal.

We thought your section might be interested in the above issue and have attached a copy of our white paper and proposed bill for your review and comment. Our proposal is in support of legislation to (1) clarify existing Florida law by statutorily exempting title disputes arising under the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228) ("Act") from Florida's probate creditor claim procedures, (2) create a new dispute resolution mechanism and 2-year statute of repose specifically designed for title disputes arising under the Act, and (3) make targeted and narrowly focused modifications to the Act and other related provisions of the Florida Probate Code to improve clarity and reduce the risk of unintended forfeitures of the property rights the Act is intended to preserve.

Thank you for your consideration of this request. Please let us know if your section will provide comments.

Attachments:

1. White Paper
2. Proposed Bill

## WHITE PAPER

### The *Johnson v. Townsend* Fix Florida Uniform Disposition of Community Property Rights at Death Act (Sections 732.216-732.228, *Florida Statutes*)

#### I. SUMMARY

Florida is the first choice for relocating retirees within the U.S.,<sup>1</sup> the largest recipient of domestic state-to-state migration within the U.S.,<sup>2</sup> and the largest recipient of international migration to the U.S.<sup>3</sup> Puerto Rico is the most populous U.S. territory,<sup>4</sup> and Florida is the largest recipient of migrants to the mainland from Puerto Rico.<sup>5</sup>

In *Malleiro v. Mori*, the court observed that “Florida is already a global community and global marketplace. The people of Florida benefit from the way many citizens of distant states and countries visit, invest, and often stay to live out their golden years in Florida. Some are drawn by the comfort of Florida’s sunshine and coastlines. Others come for the security provided by our low tax economy in which the personal income tax is barred by our traditions and expressly by our Florida Constitution. We owe it to them to ensure that their testamentary intentions are strictly honored regarding the disposition of their Florida property.”<sup>6</sup>

In 1992, Florida’s legislature took an important step towards ensuring that the testamentary intentions of this state’s new residents are strictly honored, as applied to married couples relocating from community property jurisdictions, by adopting the Florida Uniform

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<sup>1</sup> See Andy Markowitz, AARP, *Top 5 States Where Retirees Are Moving* (January 06, 2023), <https://www.aarp.org/retirement/planning-for-retirement/info-2023/most-popular-relocation-states.html>.

<sup>2</sup> See Wikipedia.org, *List of U.S. states and territories by net migration* (April 1, 2020 to July 1, 2022), [https://en.wikipedia.org/wiki/List\\_of\\_U.S.\\_states\\_and\\_territories\\_by\\_net\\_migration](https://en.wikipedia.org/wiki/List_of_U.S._states_and_territories_by_net_migration). See also Kristin Kerns and L. Slagan Locklear, U.S. Census Bureau, *Three New Census Bureau Products Show Domestic Migration at Regional, State, and County Levels* (April 29, 2019), <https://www.census.gov/library/stories/2019/04/moves-from-south-west-dominate-recent-migration-flows.html>.

<sup>3</sup> See Wikipedia.org, *List of U.S. states and territories by net migration* (April 1, 2020 to July 1, 2022), [https://en.wikipedia.org/wiki/List\\_of\\_U.S.\\_states\\_and\\_territories\\_by\\_net\\_migration](https://en.wikipedia.org/wiki/List_of_U.S._states_and_territories_by_net_migration). See also Anthony Knapp, U.S. Census Bureau, *Net Migration between the U.S. and Abroad Added 595,000 to National Population Between 2018 and 2019* (December 30, 2019), <https://www.census.gov/library/stories/2019/12/net-international-migration-projected-to-fall-lowest-levels-this-decade.html>.

<sup>4</sup> See World Population Review, *United States Territories 2023*, <https://worldpopulationreview.com/country-rankings/united-states-territories>.

<sup>5</sup> See Brian Glassman, U.S. Census Bureau, *A Third of Movers from Puerto Rico to the Mainland United States Relocated to Florida in 2018* (September 26, 2019), <https://www.census.gov/library/stories/2019/09/puerto-rico-outmigration-increases-poverty-declines.html>.

<sup>6</sup> *Malleiro v. Mori*, 182 So.3d 5, 11 (Fla. 3d DCA 2015).



Disposition of Community Property Rights at Death Act (sections 732.216-732.228, *Florida Statutes*) (the “Act”).<sup>7</sup> In 2018, close to three decades after the Act was first adopted, a Florida appellate court for the first time ruled that Florida’s probate creditor claim procedures apply to title disputes arising under the Act, resulting in the unintended forfeiture of a surviving spouse’s property rights. *See Johnson v. Townsend*, 259 So.3d 851 (Fla. 4th DCA 2018).

The primary purpose of this legislation is twofold. First, it clarifies existing Florida law by statutorily exempting title disputes arising under the Act from Florida’s probate creditor claim procedures. Second, it creates a new dispute resolution mechanism and 2-year statute of repose specifically designed for title disputes arising under the Act.<sup>8</sup>

In addition to the foregoing, this legislation makes targeted and narrowly focused modifications to the Act and other related provisions of the Florida Probate Code to improve clarity and reduce the risk of unintended forfeitures of the property rights the Act is intended to preserve.

This legislation does not have a fiscal impact on state funds.

## II. CURRENT SITUATION

### A. The Purpose of the Florida Uniform Disposition of Community Property Rights at Death Act (“Act”)

In 1958, the U.S. Fifth Circuit Court of Appeals summarized the origins and basic principles of the community property system in a case involving Texas law:

The community property system comes from the custom of the women of the Visigoths and other Germanic tribes sharing the fighting and the spoils of war with their men; it owes its strength to the civilized view that marriage is a full partnership. Husband and wife are equal partners. Each has a present, vested half interest in all community property. All property accumulated during marriage is community property, unless it is received by gift, devise, or inheritance. ... Thus, on death or divorce the community is divided equally. Neither spouse has testamentary disposition over the other’s half of the community. The wife has

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<sup>7</sup> Florida’s Act, with some modifications, is based upon the Uniform Disposition of Community Property Rights at Death Act (“UDCPRDA”), <https://www.uniformlaws.org/viewdocument/act-1971>. The UDCPRDA was promulgated in 1971. The UDCPRDA was replaced in 2021 by the Uniform Community Property Disposition at Death Act (“UCPDDA”), <https://www.uniformlaws.org/committees/community-home?communitykey=425b0732-7ff0-4b28-ada1-fc2b4638f29e>. Florida has not adopted the UCPDDA.

<sup>8</sup> A statute of repose “bar[s] actions by setting a time limit within which an action must be filed as measured from a specified act, after which time the cause of action is extinguished.” *Hess v. Philip Morris USA, Inc.*, 175 So.3d 687, 695 (Fla. 2015).

complete testamentary disposition over her half and may leave it even to her paramour.<sup>9</sup>

Domestically, “[t]he community property system has been adopted by nine states: Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, Washington, and Wisconsin. The U.S. Territories of Guam and Puerto Rico are also community property jurisdictions.”<sup>10</sup> Approximately 30% of the U.S. population resides in one of our nine community property states, including our two most populous states (California and Texas).<sup>11</sup> Internationally, “[u]nder the law of ... most countries in continental Europe and virtually all countries in Latin America, spouses own property ‘in community’ unless they have expressly adopted another marital property regime such as separation of property.”<sup>12</sup>

A married couple’s community property estate is terminated in one of only two ways: death or divorce. By statute,<sup>13</sup> as well as case law,<sup>14</sup> Florida has categorically rejected all forms

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<sup>9</sup> *Commissioner v. Chase Manhattan Bank*, 259 F.2d 231, 239 (5th Cir. 1958) (footnotes omitted).

<sup>10</sup> See IRS, Internal Revenue Manuals (IRM) § 25.18.1.2.2 (03-04-2011), [https://www.irs.gov/irm/part25/irm\\_25-018-001#idm140332604209888](https://www.irs.gov/irm/part25/irm_25-018-001#idm140332604209888).

<sup>11</sup> See World Population Review, *US States - Ranked by Population 2020*, <http://worldpopulationreview.com/states>.

<u>Community property states</u>	<u>2023 Population</u>
1. California	40,223,504
2. Texas	30,345,487
3. Washington	7,999,503
4. Arizona	7,379,346
5. Wisconsin	5,955,737
6. Louisiana	4,695,071
7. Nevada	3,225,832
8. New Mexico	2,135,024
9. Idaho	1,920,562
Total	103,880,066

Total 2023 U.S. Population: 339,172,809

$103,880,066 \div 339,172,809 = 30.63\%$ .

<sup>12</sup> See Michael W. Galligan, *International Estate Planning for U.S. Citizens: An Integrated Approach*, Estate Planning, a Thomson Reuters publication (October 2009), <https://www.phillipsnizer.com/siteFiles/24533/International-Estate-Planning-for-U-S-Citizens-An-Integrated-Approach.pdf>.

<sup>13</sup> “Title to disputed assets shall vest only by the judgment of a court. This section does not require the joinder of spouses in the conveyance, transfer, or hypothecation of a spouse’s individual property; affect the laws of descent and distribution; or establish community property in this state.” Fla. Stat. § 61.075(8) (emphasis added).

<sup>14</sup> See *Estabrook v. Wise*, 348 So.2d 355 (Fla. 1<sup>st</sup> DCA), cert. denied, 354 So.2d 980 (Fla. 1977), cert. denied, 435 U.S. 971, 98 S.Ct. 1612, 56 L.Ed.2d 63 (1978) (“Florida is not a community property state, and thus is not required to recognize an encumbrance predicated upon a foreign state’s community property law. The establishment of non-record title interests arising out of marital claims should be settled in the forum state.”); *Green v. Green*, 442 So.2d 354, 355 (Fla. 1<sup>st</sup> DCA 1983) (“Florida is not a community property state ...”); *Herrera v. Herrera*, 673 So.2d 143, 144 (Fla. 5<sup>th</sup> DCA 1996) (“Florida is not a community property state.”)

of community property rights in divorce proceedings. However, previously acquired community property rights are in practice largely preserved in Florida divorce proceedings because Florida law suggests “that equal or 50/50 is the proper starting point in making an equitable distribution of marital assets,”<sup>15</sup> regardless of whose name the asset is titled in.<sup>16</sup>

Florida’s approach regarding testamentary community property rights is distinctly different. Under long-established common law spouses relocating to Florida from community-property jurisdictions retain their testamentary rights in property that was community property prior to their change of domicile (as well as in property substituted therefor).<sup>17</sup> This conflict-of-laws rule is known as “partial mutability,” which for “nearly 200 years [has been] the prevailing doctrine in the United States.”<sup>18</sup> In 1992, Florida’s legislature both simplified and codified this pre-existing common law by adopting the Act.

The purpose of the Act is to statutorily preserve the testamentary “rights of each spouse in property which was community property prior to change of domicile, as well as in property substituted therefor where the spouses have not indicated an intention to sever or alter their ‘community’ rights. It thus follows the typical pattern of community property which permits the deceased spouse to dispose of ‘his half’ of the community property, while confirming the title of the surviving spouse in ‘her half.’”<sup>19</sup>

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<sup>15</sup> *Herrera*, 673 So.2d at 144. See also Fla. Stat. § 61.075(1) (“In a proceeding for dissolution of marriage ... the court shall set apart to each spouse that spouse’s nonmarital assets and liabilities, and in distributing the marital assets and liabilities between the parties, *the court must begin with the premise that the distribution should be equal*, unless there is a justification for an unequal distribution based on all relevant factors ...”) (Emphasis added.)

<sup>16</sup> See Fla. Stat. § 61.075(6)(a)1.a. (“Marital assets and liabilities” include: *Assets acquired* and liabilities incurred *during the marriage*, individually *by either spouse* or jointly by them.) (Emphasis added.)

<sup>17</sup> See Restatement (First) of Conflict of Laws § 292 (1934). *Movables Held in Community Taken into Another State* (“Movables held by spouses in community continue to be held in community when taken into a state which does not create community interests.”) See also *Quintana v. Ordonez*, 195 So.2d 577, 579-580 (Fla. 3d DCA 1967) (Wife’s vested interest in property acquired while domiciled in Cuba under community property law was not affected by subsequent change of domicile to Florida, a noncommunity property state.)

<sup>18</sup> See Jeffrey Schoenblum, *U.S. Conflict of Laws Involving International Estates and Marital Property: A Critical Analysis of Estate of Charania v. Shulman*, 103 Iowa L. Rev. 2119, 2121 (2018) (“For nearly 200 years, the prevailing doctrine in the United States has been ‘partial mutability.’ Under this conflict-of-laws rule, the right of a spouse in a movable asset acquired during marriage is determined by the law of the state in which the spouses had their marital domicile at the time of the acquisition of the asset. Thus, if the spouses change their marital domicile during the marriage, it is entirely possible that different movable assets will be governed by different laws. This conflict-of-laws rule is widely known as ‘partial mutability’ because the law of the original marital domicile does not remain the governing law as to assets acquired after a change in marital domicile has taken place. In other words, there is ‘mutability.’ However, it is only ‘partial’ because with respect to rights acquired at a particular marital domicile, they are not mutable and are not lost simply by moving to a new marital domicile that does not recognize those spousal rights.”) (Citing *Saul v. His Creditors*, 5 Mart. (n.s.) 569, 603-08 (La. 1827)).

<sup>19</sup> See Uniform Disposition of Community Property Rights at Death Act (UDCPRDA), *Prefatory Note*, <https://www.uniformlaws.org/viewdocument/act-1971>. See also § 732.219, Fla. Stat. (2023) (“Disposition upon death.—Upon the death of a married person, one-half of the property to which ss. 732.216-732.228 apply is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under

## **B. *Johnson v. Townsend***

In 2018, close to three decades after the Act was first adopted, a Florida appellate court for the first time ruled that Florida’s probate creditor claim procedures apply to title disputes arising under the Act, resulting in the unintended forfeiture of a surviving spouse’s property rights. *See Johnson v. Townsend*, 259 So.3d 851 (Fla. 4th DCA 2018). The *Johnson* court held that a surviving spouse’s attempt to confirm her pre-existing right to “her half” of property to which the Act applies is a form of probate creditor “claim,” as that term is defined in section 731.201(4), *Florida Statutes*, and thus subject to the limitations period applicable to creditor claims found in section 733.702(1), *Florida Statutes*, and the 2-year statute of repose applicable to creditor claims found in section 733.710(1), *Florida Statutes*.

Nowhere within the text of the Act or any other provision of the Florida Probate Code is it stated that Florida’s probate creditor claim procedures apply to title disputes arising under the Act, nor does such application comport with the Act’s existing statutory scheme, which explicitly states that one-half of the property to which the Act applies – regardless of who holds title – does not belong to the decedent but is instead the property of the surviving spouse.

**Disposition upon death.**—Upon the death of a married person, one-half of the property to which ss. 732.216-732.228 apply **is the property of the surviving spouse** and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state. The decedent’s one-half of that property is not in the elective estate.

*See* § 732.219, Fla. Stat. (2023) (emphasis added).

The effectiveness of the Act is diminished by the uncertainties created by the *Johnson* court’s ruling, which for the first time applied Florida’s probate creditor claim procedures to title disputes arising under the Act, resulting in the unintended forfeiture of a surviving spouse’s property rights.

## **III. EFFECT OF PROPOSED CHANGES**

The proposed changes: (1) clarify existing Florida law by exempting title disputes arising under the Act from the term “claim,” as defined in section 731.201(4), *Florida Statutes*, the limitations period applicable to probate creditor claims found in section 733.702(1), *Florida Statutes*, and the 2-year statute of repose applicable to probate creditor claims found in section 733.710(1), *Florida Statutes*; (2) create a new dispute resolution mechanism and 2-year statute of repose specifically designed for title disputes arising

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the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state.”)

under the Act; and (3) make targeted and narrowly focused modifications to the Act and other related provisions of the Florida Probate Code to improve clarity and reduce the risk of unintended forfeitures of the property rights the Act is intended to preserve.

## SECTION-BY-SECTION ANALYSIS

### A. Section 732.217

Current Situation: Property held as tenants by the entirety and homestead property is not property to which the Act applies.

Effect of Proposed Changes: The legislation clarifies existing Florida law by amending the text of section 732.217, *Florida Statutes*, by adding the new underlined text below:

**732.217 Application.**—Sections 732.216-732.228 apply to the disposition at death of the following property acquired by a married person:

(1) Personal property, except personal property held as tenants by the entirety, wherever located, which: (a) Was acquired as, or became and remained, community property under the laws of another jurisdiction; (b) Was acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, community property; or (c) Is traceable to that community property.

(2) Real property, except homestead and real property held as tenants by the entirety, which is located in this state, and which: (a) Was acquired with the rents, issues, or income of, the proceeds from, or in exchange for, property acquired as, or which became and remained, community property under the laws of another jurisdiction; or (b) Is traceable to that community property.

### B. Section 732.218

Current Situation: The text of section 732.218, *Florida Statutes*, currently contains a double negative.

Effect of Proposed Changes: The legislation clarifies existing Florida law by amending the text of section 732.218, *Florida Statutes*, by striking the text below:

**732.218 Rebuttable presumptions.**—In determining whether ss. 732.216-732.228 apply to specific property, the following rebuttable presumptions apply:

(1) Property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as, or to have become and remained, property to which these sections apply.

(2) Real property located in this state, ~~other than homestead and real property held as tenants by the entirety,~~ and personal property wherever located acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property and title to which was taken in a form which created rights of survivorship are presumed to be property to which these sections do not apply.

### C. Section 732.219

Current Situation: The effectiveness of the Act is diminished by the uncertainties created by the *Johnson* court's ruling, which resulted in the unintended forfeiture of a surviving spouse's property rights.

Effect of Proposed Changes: The legislation clarifies existing Florida law and reduces the risk of unintended forfeitures of the property rights the Act is intended to preserve by amending the text of section 732.219, *Florida Statutes*, by adding the new underlined text below:

#### **732.219 Disposition upon death; waiver.—**

(1) Upon the death of a married person, one-half of the property to which ss. 732.216-732.228 apply is the property of the surviving spouse, and is not property of the decedent's probate estate, and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent's probate estate and is subject to testamentary disposition or distribution under the laws of succession of this state. The decedent's one-half of that property is not in the elective estate. For purposes of this section, the term "probate estate" means all property wherever located that is subject to estate administration in any state of the United States or in the District of Columbia.

(2) If not previously waived pursuant to s. 732.702, subsequent to the decedent's death a surviving spouse or any person acting on behalf of a surviving spouse, including, but not limited to, an attorney in fact, agent, guardian of the property, or personal representative of the surviving spouse, may at any time waive the surviving spouse's right to assert a claim to any right, title or interest in any property held by the decedent at the time of the decedent's death arising under ss. 732.216-732.228, wholly or partly, by a written contract, agreement, or waiver, signed by the waiving party, if the following or substantially similar language is included in the contract, agreement, or waiver:

"By executing this contract, agreement, or waiver, I intend to waive my right as a surviving spouse to assert a claim to any right, title or interest in property held by the decedent at the time of the decedent's death arising under

the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228), wholly or partly, as provided herein.”

#### **D. Section 732.221**

Current Situation: The effectiveness of the Act is diminished by the uncertainties created by the *Johnson* court’s ruling, which resulted in the unintended forfeiture of a surviving spouse’s property rights.

Effect of Proposed Changes: The legislation clarifies existing Florida law by exempting title disputes arising under the Act from the term “claim,” as defined in section 731.201(4), *Florida Statutes*, the limitations period applicable to probate creditor claims found in section 733.702(1), *Florida Statutes*, and the 2-year statute of repose applicable to probate creditor claims found in section 733.710(1), *Florida Statutes*. The legislation also creates a new dispute resolution mechanism and 2-year statute of repose specifically designed for title disputes arising under the Act,<sup>20</sup> by deleting the existing text of section 732.221, *Florida Statutes*, and replacing it with the new underlined text below. The new statute of repose comports with the “announced public policy of this state which requires that estates of decedents be speedily and finally determined.”<sup>21</sup> Finally, in new subsection (b) below, the legislation preserves the existing protections for personal representatives under the Act.

#### **732.221 Demands or disputes; 2-year statute of repose.—**

(1) Demands or disputes regarding any right, title or interest in any property held by the decedent or the decedent’s surviving spouse at the time of the decedent’s death arising under ss. 732.216-732.228, wholly or partly, shall be determined in a declaratory action commenced within 2 years after the decedent’s death, or be forever barred. A declaratory action instituted pursuant to this section shall be commenced by filing a complaint and shall be governed by the rules of civil procedure. A declaratory action instituted pursuant to this section is not a claim, as such term is defined in s. 731.201. Nothing in s. 733.702 shall require the filing of a statement of claim in the estate of the decedent as a condition precedent to instituting a declaratory action pursuant to this section. Section 733.710 shall not apply to a declaratory action instituted pursuant to this section.

(2) The personal representative or curator has no duty to discover whether any property held by the decedent or the decedent’s surviving spouse at the time of the decedent’s death is property to which ss. 732.216-732.228 apply, or may apply, unless a written demand is made by the surviving spouse or a beneficiary

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<sup>20</sup> A statute of repose “bar[s] actions by setting a time limit within which an action must be filed as measured from a specified act, after which time the cause of action is extinguished.” *Hess v. Philip Morris USA, Inc.*, 175 So.3d 687, 695 (Fla. 2015).

<sup>21</sup> *In re Estate of Gay*, 294 So.2d 668, 670 (Fla. 4th DCA 1974).

within 6 months after service of a copy of the notice of administration on the surviving spouse or beneficiary, or by a creditor on or before the later of the date that is 3 months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor.

(3) The declaratory action authorized by this section is extinguished if not commenced prior to expiration of the 2-year statute of repose period set forth in subsection (1). The rights of any person interested as or through a party that fails to commence a timely declaratory action pursuant to this section are forfeit, and the decedent's surviving spouse, personal representative or curator and any other person or entity that at any time is in possession of any property to which ss. 732.216-732.228 apply, or may apply, shall not be subject to liability for any such forfeit rights, and the decedent's personal representative or curator may distribute the assets of the decedent's estate without liability for any such forfeit rights.

(4) Nothing in this section shall restrict the bringing of a quiet title or declaratory action regarding any right, title or interest in any property held by the decedent or the decedent's surviving spouse at the time of the decedent's death as to issues or matters not arising under ss. 732.216-732.228, wholly or partly.

#### **E. Section 732.223**

Current Situation: The Act is silent regarding protections for third parties transferring property subject to the Act.

Effect of Proposed Changes: The legislation establishes new protections for third parties transferring property subject to the Act by deleting the existing text of section 732.223, *Florida Statutes*, and replacing it with the new underlined text below:

#### **732.223 Protection of payors and other third parties.—**

(1) Although a property interest is subject to property rights under ss. 732.216-732.228, a payor or other third party is not liable for paying, distributing, or transferring the property to a beneficiary designated in a governing instrument, or for taking any other action in good faith reliance on the validity of a governing instrument.

(2) As used in this section the term:

(a) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with payable-on-death designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; an instrument creating or exercising a power of appointment or a



power of attorney; or a dispositive, appointive, or nominative instrument of any similar type.

(b) “Payor” means the decedent’s personal representative, a trustee of a trust created by the decedent, an insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(c) “Person” includes an individual, trust, estate, partnership, association, company, or corporation.

#### **F. Section 732.225**

Current Situation: Property held as tenants by the entirety is not property to which the Act applies.

Effect of Proposed Changes: The legislation clarifies existing Florida law by amending the text of section 732.225, *Florida Statutes*, by adding the new underlined text below:

**732.225 Acts of married persons.**—Sections 732.216-732.228 do not prevent married persons from severing or altering their interests in property to which these sections apply. The reinvestment of any property to which these sections apply in real property located in this state which is or becomes homestead property or real or personal property held as tenants by the entirety creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.

#### **G. Section 732.702**

Current Situation: Section 732.702(1), *Florida Statutes*, is silent regarding the procedures for a spouse, during a spouse’s lifetime, to waive rights to property to which the Act applies.

Effect of Proposed Changes: The legislation clarifies existing Florida law by amending the text of section 732.702(1), *Florida Statutes*, by adding the new underlined text below:

#### **732.702 Waiver of spousal rights.—**

(1) The rights of a surviving spouse to an elective share, intestate share, pretermitted share, homestead, to assert a claim under the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228), exempt property, family allowance, and preference in appointment as personal representative of an intestate estate or any of those rights, may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses. The requirement of witnesses shall be applicable only to contracts,

agreements, or waivers signed by Florida residents after the effective date of this law. Any contract, agreement, or waiver executed by a nonresident of Florida, either before or after this law takes effect, is valid in this state if valid when executed under the laws of the state or country where it was executed, whether or not he or she is a Florida resident at the time of death. Unless the waiver provides to the contrary, a waiver of “all rights,” or equivalent language, in the property or estate of a present or prospective spouse, or a complete property settlement entered into after, or in anticipation of, separation, dissolution of marriage, or divorce, is a waiver of all rights to elective share, intestate share, pretermitted share, homestead, to assert a claim under the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228), exempt property, family allowance, and preference in appointment as personal representative of an intestate estate, by the waiving party in the property of the other and a renunciation by the waiving party of all benefits that would otherwise pass to the waiving party from the other by intestate succession or by the provisions of any will executed before the written contract, agreement, or waiver.

#### H. Section 733.212

Current Situation: A notice of administration currently provides no notice of the deadlines triggered under the Act upon receipt of service of a notice of administration.

Effect of Proposed Changes: The legislation provides notice of the deadlines triggered under the Act upon receipt of service of a notice of administration by adding the new underlined text below:

##### **733.212 Notice of administration; filing of objections.—**

...

(2) The notice shall state:

...

(g) That, the personal representative or curator has no duty to discover whether any property held by the decedent or the decedent’s surviving spouse at the time of the decedent’s death is property to which the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228) applies, or may apply, unless a written demand is made by the surviving spouse or a beneficiary during the time period set forth in s. 732.221.

#### I. Section 733.2121

Current Situation: A notice to creditors currently provides no notice of the deadlines triggered under the Act upon receipt of service of a notice to creditors.

Effect of Proposed Changes: The legislation provides notice of the deadlines triggered under the Act upon receipt of service of a notice to creditors by adding the new underlined text below:

**733.2121 Notice to creditors; filing of claims.—**

(1) Unless creditors' claims are otherwise barred by s. 733.710, the personal representative shall promptly publish a notice to creditors. The notice shall contain the name of the decedent, the file number of the estate, the designation and address of the court in which the proceedings are pending, the name and address of the personal representative, the name and address of the personal representative's attorney, and the date of first publication. The notice shall state that creditors must file claims against the estate with the court during the time periods set forth in s. 733.702, or be forever barred. The notice shall state that a personal representative or curator has no duty to discover whether any property held by the decedent or the decedent's surviving spouse at the time of the decedent's death is property to which the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228) applies, or may apply, unless a written demand is made by a creditor during the time period set forth in s. 732.221.

**J. Section 733.607**

Current Situation: In light of the court's holding in *Johnson v. Townsend*, there is uncertainty regarding whether a surviving spouse's one-half share of property to which the Act applies is subject to administration in the decedent's probate estate. This uncertainty is contrary to the Act's existing statutory scheme, which explicitly states that one-half of the property to which the Act applies does not belong to the decedent but is instead the property of the surviving spouse.<sup>22</sup>

Effect of Proposed Changes: The legislation clarifies existing Florida law by amending the text of section 733.607(1), *Florida Statutes*, by adding the new underlined text below:

**733.607 Possession of estate.—**

(1) Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except the protected homestead, but any real property or tangible personal property may be left with, or surrendered to, the person presumptively entitled to it unless possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by a beneficiary is conclusive evidence that the possession of the property by the personal representative is necessary for the purposes of administration, in any action against the beneficiary for possession of it. The personal representative shall

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<sup>22</sup> See § 732.219, Fla. Stat. (2023) ("Disposition upon death.—Upon the death of a married person, one-half of the property to which ss. 732.216-732.228 apply is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state. The decedent's one-half of that property is not in the elective estate.")

take all steps reasonably necessary for the management, protection, and preservation of the estate until distribution and may maintain an action to recover possession of property or to determine the title to it. Notwithstanding anything in this section to the contrary, the personal representative has no right to, and shall not knowingly take possession or control of, a surviving spouse's one-half share of property to which the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228) applies.

#### IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

None.

#### V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

None.

#### VI. CONSTITUTIONAL ISSUES

The “announced public policy of this state . . . requires that estates of decedents be speedily and finally determined.”<sup>23</sup> To that end this legislation creates a new dispute resolution mechanism and 2-year statute of repose specifically designed for title disputes arising under the Act.<sup>24</sup>

To the extent these changes result in the forfeiture of pre-existing testamentary property rights, they are a valid and constitutional exercise of Florida’s police power in service of a legitimate and reasonably related public policy favoring the speedy and final determination of estate proceedings.<sup>25</sup>

As noted in *Shriners Hospitals for Crippled Children v. Zrillic*, 563 So.2d 64 (Fla.1990), decisions in Florida and in other jurisdictions historically recognized a distinction in the protections to be afforded to property rights versus those afforded to testamentary rights. “The distinction those courts have drawn is that property rights are inalienable rights grounded in natural law, whereas freedom of testation is purely a creation of statute that did not exist at common law.” *Id.* at 67; *see also* Evin Netzer, *Florida Constitutional Law: Demise of the Common Law Distinction Between Testamentary and Property Rights*, 43 Fla. L.Rev. 153, 156 (Jan. 1991) (“[C]ourts historically have viewed

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<sup>23</sup> *In re Estate of Gay*, 294 So.2d 668, 670 (Fla. 4th DCA 1974).

<sup>24</sup> A statute of repose “bar[s] actions by setting a time limit within which an action must be filed as measured from a specified act, after which time the cause of action is extinguished.” *Hess v. Philip Morris USA, Inc.*, 175 So.3d 687, 695 (Fla. 2015).

<sup>25</sup> *See In re Estate of Magee*, 988 So.2d 1 (Fla. 1st DCA 2007) (Elective share statute, in permitting a decedent’s spouse to accept a statutory share, rather than a testamentary share, of decedent’s estate, was rationally related to the legitimate legislative purpose of safeguarding the public welfare, and thus, did not violate the state constitutional provision protecting possession of property.)

testamentary rights as emanating from the legislature, and other real property rights as being fundamental.”).

In *Zrillic*, however, the Florida Supreme Court rejected this dichotomy as arising from “long-abandoned feudal notions of property” and concluded that the testamentary disposition of property was “a specifically expressed [Florida] constitutional property right.” *Zrillic*, 563 So.2d at 67–68. The court thus afforded testamentary rights the same constitutional protections normally provided to other real property rights.

...

Fortunately, the Florida Supreme Court has recently clarified that the test to be applied in evaluating statutes and regulations that infringe on property rights or testamentary rights—at least those that do not require the absolute destruction of property—is not the “least restrictive means” test urged by Judith here, but rather a “reasonable relationship” test. In *Haire v. Florida Department of Agriculture & Consumer Services*, 870 So.2d 774, 783 (Fla.2004), the court explained,

[W]e have held that “[a]ll ... *property rights* are held subject to the fair exercise of the [police] power,” *Golden v. McCarty*, 337 So.2d 388, 390 (Fla.1976) (emphasis supplied), and have used the reasonable relationship test ... to evaluate statutes and regulations that infringe on property rights.

*Id.* (footnotes omitted).

...

As further explained in *Haire*,

Under this standard of review ... a “state statute must be upheld ... if there is any reasonable relationship between the act and the furtherance of a valid governmental objective.” *Lane v. Chiles*, 698 So.2d 260, 262 (Fla.1997) (emphasis supplied). Specifically, with respect to substantive due process, a statute is valid if it “bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare and is not discriminatory, arbitrary, or oppressive.” *Chicago Title Ins. Co. v. Butler*, 770 So.2d 1210, 1215 (Fla.2000).

870 So.2d at 782.<sup>26</sup>

## VII. OTHER INTERESTED PARTIES

None.

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<sup>26</sup> *In re Estate of Magee* at 3 & 5 (emphasis in original).

1 A bill to be entitled

2 An amendment to Section 732.217 (1) and (2) Florida  
3 Statutes clarifying existing law; an amendment to Section  
4 732.218 Florida Statutes clarifying existing law; an  
5 amendment to Section 732.219, Florida Statutes confirming  
6 that the surviving spouse's interest in property subject to  
7 ss. 732.216-732.228, Florida Statutes is not subject to  
8 administration in the decedent's probate estate and  
9 establishing a procedure and deadline for a surviving spouse  
10 to waive rights to property subject to ss. 732.216-732.228,  
11 Florida Statutes; replacement of Section 732.221, Florida  
12 Statutes establishing procedures and deadlines for  
13 determining title to property subject to ss. 732.216-732.228,  
14 Florida Statutes; replacement of Section 732.223, Florida  
15 Statutes establishing protections for third parties  
16 transferring property subject to ss. 732.216-732.228, Florida  
17 Statutes; an amendment to Section 732.225 Florida Statutes  
18 clarifying existing law; an amendment to Section 732.702 (1),  
19 Florida Statutes establishing procedures for a spouse, during  
20 a spouse's lifetime, to waive rights under ss. 732.216-  
21 732.228, Florida Statutes; an amendment to Section 733.212,  
22 Florida Statutes adding language to the notice of  
23 administration regarding the duty of the personal  
24 representative to discover property subject to ss. 732.216-  
25 732.228, Florida Statutes; an amendment to Section 733.2121,  
26 Florida Statutes adding language to the notice to creditors  
27 regarding the duty of the personal representative to discover  
28 property subject to ss. 732.216-732.228, Florida Statutes; an  
29 amendment to Section 733.607, Florida Statutes confirming  
30 that the surviving spouse's interest in property subject to  
31 ss. 732.216-732.228, Florida Statutes is not subject to  
32 administration in the deceased spouse's probate estate.

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

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34 Section 1. Section 732.217 (1) and (2), Florida  
35 Statutes, are revised to read:

36 (1) Personal property, except personal property held  
37 as tenants by the entirety, wherever located, which: (a) Was  
38 acquired as, or became and remained, community property under  
39 the laws of another jurisdiction; (b) Was acquired with the  
40 rents, issues, or income of, or the proceeds from, or in  
41 exchange for, community property; or (c) Is traceable to that  
42 community property.

43 (2) Real property, except homestead and real property  
44 held as tenants by the entirety, which is located in this  
45 state, and which: (a) Was acquired with the rents, issues,  
46 or income of, the proceeds from, or in exchange for, property  
47 acquired as, or which became and remained, community property  
48 under the laws of another jurisdiction; or (b) Is traceable  
49 to that community property.

50 Section 2. Section 732.218(2), Florida Statutes, is  
51 revised to read:

52 (2) Real property located in this state, ~~other than~~  
53 ~~homestead and real property held as tenants by the entirety,~~  
54 and personal property wherever located acquired by a married  
55 person while domiciled in a jurisdiction under whose laws  
56 property could not then be acquired as community property and  
57 title to which was taken in a form which created rights of  
58 survivorship are presumed to be property to which these  
59 sections do not apply.

60 Section 3. Section 732.219, Florida Statutes, is revised  
61 to read:

62 732.219 Disposition upon death; waiver.-

63 (1) Upon the death of a married person, one-half of  
64 the property to which ss. 732.216-732.228 apply is the  
65 property of the surviving spouse, ~~and~~ is not property of the  
66 decedent's probate estate, and is not subject to testamentary

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67 disposition by the decedent or distribution under the laws of  
68 succession of this state. One-half of that property is the  
69 property of the decedent's probate estate and is subject to  
70 testamentary disposition or distribution under the laws of  
71 succession of this state. The decedent's one-half of that  
72 property is not in the elective estate. For purposes of this  
73 section, the term "probate estate" means all property  
74 wherever located that is subject to estate administration in  
75 any state of the United States or in the District of Columbia.

76 (2) If not previously waived pursuant to s. 732.702,  
77 subsequent to the decedent's death a surviving spouse or any  
78 person acting on behalf of a surviving spouse, including, but  
79 not limited to, an attorney in fact, agent, guardian of the  
80 property, or personal representative of the surviving spouse,  
81 may at any time waive the surviving spouse's right to assert  
82 a claim to any right, title or interest in any property held  
83 by the decedent at the time of the decedent's death arising  
84 under ss. 732.216-732.228, wholly or partly, by a written  
85 contract, agreement, or waiver, signed by the waiving party,  
86 if the following or substantially similar language is  
87 included in the contract, agreement, or waiver:

88 "By executing this contract, agreement, or waiver, I  
89 intend to waive my right as a surviving spouse to assert a  
90 claim to any right, title or interest in property held by the  
91 decedent at the time of the decedent's death arising under  
92 the Florida Uniform Disposition of Community Property Rights  
93 at Death Act (ss. 732.216-732.228), wholly or partly, as  
94 provided herein."

95 Section 4. Section 732.221, Florida Statutes, is  
96 repealed and replaced with the following:

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97           732.221 Demands or disputes; 2-year statute of  
98           repose.-

99           (1) Demands or disputes regarding any right, title or  
100           interest in any property held by the decedent or the  
101           decedent's surviving spouse at the time of the decedent's  
102           death arising under ss. 732.216-732.228, wholly or partly,  
103           shall be determined in a declaratory action commenced within  
104           2 years after the decedent's death, or be forever barred. A  
105           declaratory action instituted pursuant to this section shall  
106           be commenced by filing a complaint and shall be governed by  
107           the rules of civil procedure. A declaratory action instituted  
108           pursuant to this section is not a claim, as such term is  
109           defined in s. 731.201. Nothing in s. 733.702 shall require  
110           the filing of a statement of claim in the estate of the  
111           decedent as a condition precedent to instituting a  
112           declaratory action pursuant to this section. Section 733.710  
113           shall not apply to a declaratory action instituted pursuant  
114           to this section.

115           (2) The personal representative or curator has no duty  
116           to discover whether any property held by the decedent or the  
117           decedent's surviving spouse at the time of the decedent's  
118           death is property to which ss. 732.216-732.228 apply, or may  
119           apply, unless a written demand is made by the surviving spouse  
120           or a beneficiary within 6 months after service of a copy of  
121           the notice of administration on the surviving spouse or  
122           beneficiary, or by a creditor on or before the later of the  
123           date that is 3 months after the time of the first publication  
124           of the notice to creditors or, as to any creditor required to  
125           be served with a copy of the notice to creditors, 30 days  
126           after the date of service on the creditor.

127           (3) The declaratory action authorized by this section  
128           is extinguished if not commenced prior to expiration of the  
129           2-year statute of repose period set forth in subsection (1).

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130 The rights of any person interested as or through a party  
 131 that fails to commence a timely declaratory action pursuant  
 132 to this section are forfeit, and the decedent's surviving  
 133 spouse, personal representative or curator and any other  
 134 person or entity that at any time is in possession of any  
 135 property to which ss. 732.216-732.228 apply, or may apply,  
 136 shall not be subject to liability for any such forfeit rights,  
 137 and the decedent's personal representative or curator may  
 138 distribute the assets of the decedent's estate without  
 139 liability for any such forfeit rights.

140 (4) Nothing in this section shall restrict the  
 141 bringing of a quiet title or declaratory action regarding any  
 142 right, title or interest in any property held by the decedent  
 143 or the decedent's surviving spouse at the time of the  
 144 decedent's death as to issues or matters not arising under  
 145 ss. 732.216-732.228, wholly or partly.

146 Section 5. Section 732.223, Florida Statutes, is  
 147 repealed and replaced with the following:

148 732.223 Protection of payors and other third parties.—

149 (1) Although a property interest is subject to  
 150 property rights under ss. 732.216-732.228, a payor or other  
 151 third party is not liable for paying, distributing, or  
 152 transferring the property to a beneficiary designated in a  
 153 governing instrument, or for taking any other action in good  
 154 faith reliance on the validity of a governing instrument.

155 (2) As used in this section the term:

156 (a) "Governing instrument" means a deed; will; trust;  
 157 insurance or annuity policy; account with payable-on-death  
 158 designation; security registered in beneficiary form (TOD);  
 159 pension, profit-sharing, retirement, or similar benefit plan;  
 160 an instrument creating or exercising a power of appointment

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161 or a power of attorney; or a dispositive, appointive, or  
162 nominative instrument of any similar type.

163 (b) "Payor" means the decedent's personal  
164 representative, a trustee of a trust created by the decedent,  
165 an insurer, business entity, employer, government,  
166 governmental agency or subdivision, or any other person  
167 authorized or obligated by law or a governing instrument to  
168 make payments.

169 (c) "Person" includes an individual, trust, estate,  
170 partnership, association, company, or corporation.

171 Section 6. Section 732.225, Florida Statutes, is revised  
172 to read:

173 732.225 Acts of married persons.—Sections 732.216-  
174 732.228 do not prevent married persons from severing or  
175 altering their interests in property to which these sections  
176 apply. The reinvestment of any property to which these  
177 sections apply in real property located in this state which  
178 is or becomes homestead property or real or personal property  
179 held as tenants by the entirety creates a conclusive  
180 presumption that the spouses have agreed to terminate the  
181 community property attribute of the property reinvested.

182 Section 7. Section 732.702 (1), Florida Statutes, is  
183 revised to read:

184 732.702 Waiver of spousal rights.—

185 (1) The rights of a surviving spouse to an elective  
186 share, intestate share, pretermitted share, homestead, to  
187 assert a claim under the Florida Uniform Disposition of  
188 Community Property Rights at Death Act (ss. 732.216-732.228),  
189 exempt property, family allowance, and preference in  
190 appointment as personal representative of an intestate estate  
191 or any of those rights, may be waived, wholly or partly, before  
192 or after marriage, by a written contract, agreement, or  
193 waiver, signed by the waiving party in the presence of two

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194 subscribing witnesses. The requirement of witnesses shall be  
195 applicable only to contracts, agreements, or waivers signed  
196 by Florida residents after the effective date of this law. Any  
197 contract, agreement, or waiver executed by a nonresident of  
198 Florida, either before or after this law takes effect, is  
199 valid in this state if valid when executed under the laws of  
200 the state or country where it was executed, whether or not he  
201 or she is a Florida resident at the time of death. Unless the  
202 waiver provides to the contrary, a waiver of "all rights," or  
203 equivalent language, in the property or estate of a present  
204 or prospective spouse, or a complete property settlement  
205 entered into after, or in anticipation of, separation,  
206 dissolution of marriage, or divorce, is a waiver of all rights  
207 to elective share, intestate share, pretermitted share,  
208 homestead, to assert a claim under the Florida Uniform  
209 Disposition of Community Property Rights at Death Act (ss.  
210 732.216-732.228), exempt property, family allowance, and  
211 preference in appointment as personal representative of an  
212 intestate estate, by the waiving party in the property of the  
213 other and a renunciation by the waiving party of all benefits  
214 that would otherwise pass to the waiving party from the other  
215 by intestate succession or by the provisions of any will  
216 executed before the written contract, agreement, or waiver.

217 Section 8. Section 733.212(2), Florida Statutes, is  
218 revised to add a new subsection (g):

219 (g) That, the personal representative or curator has  
220 no duty to discover whether any property held by the decedent  
221 or the decedent's surviving spouse at the time of the  
222 decedent's death is property to which the Florida Uniform  
223 Disposition of Community Property Rights at Death Act (ss.  
224 732.216-732.228) applies, or may apply, unless a written  
225 demand is made by the surviving spouse or a beneficiary during  
226 the time period set forth in s. 732.221.

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227 Section 9. Section 733.2121(1), Florida Statutes, is  
228 revised to read:

229 (1) Unless creditors' claims are otherwise barred by  
230 s. 733.710, the personal representative shall promptly  
231 publish a notice to creditors. The notice shall contain the  
232 name of the decedent, the file number of the estate, the  
233 designation and address of the court in which the proceedings  
234 are pending, the name and address of the personal  
235 representative, the name and address of the personal  
236 representative's attorney, and the date of first publication.  
237 The notice shall state that creditors must file claims against  
238 the estate with the court during the time periods set forth  
239 in s. 733.702, or be forever barred. The notice shall state  
240 that a personal representative or curator has no duty to  
241 discover whether any property held by the decedent or the  
242 decedent's surviving spouse at the time of the decedent's  
243 death is property to which the Florida Uniform Disposition of  
244 Community Property Rights at Death Act (ss. 732.216-732.228)  
245 applies, or may apply, unless a written demand is made by a  
246 creditor during the time period set forth in s. 732.221.

247 Section 10. Section 733.607(1), Florida Statutes, is  
248 revised to read:

249 (1) Except as otherwise provided by a decedent's will,  
250 every personal representative has a right to, and shall take  
251 possession or control of, the decedent's property, except the  
252 protected homestead, but any real property or tangible  
253 personal property may be left with, or surrendered to, the  
254 person presumptively entitled to it unless possession of the  
255 property by the personal representative will be necessary for  
256 purposes of administration. The request by a personal  
257 representative for delivery of any property possessed by a  
258 beneficiary is conclusive evidence that the possession of the  
259 property by the personal representative is necessary for the

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260 purposes of administration, in any action against the  
261 beneficiary for possession of it. The personal representative  
262 shall take all steps reasonably necessary for the management,  
263 protection, and preservation of the estate until distribution  
264 and may maintain an action to recover possession of property  
265 or to determine the title to it. Notwithstanding anything in  
266 this section to the contrary, the personal representative has  
267 no right to, and shall not knowingly take possession or  
268 control of, a surviving spouse's one-half share of property  
269 to which the Florida Uniform Disposition of Community  
270 Property Rights at Death Act (ss. 732.216-732.228) applies.

271 Section 11. The act shall take effect upon becoming law.

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