

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

Saturday August 31, 2024
Meeting: 9:00 AM – 11:30 AM
Location: Ritz Carlton Naples
Plaza III (subject to change)

Valeria Angelucci, Chair; Kelly Roberts, Vice-Chair; Zachariah Evangelista, Second Vice-Chair; Prof. Stuart Cohn, Academic Chair

AGENDA

1. **Call to Order and Welcome** Valeria Angelucci
2. **Self-Introduction of Members Present** Valeria Angelucci
3. **Approval of Meeting Minutes (June Meeting)** Valeria Angelucci
 - a. *See attached **Schedule 1** for June 2024 meeting minutes.*
4. **UCC Art. 12 – Discussion, comments and approval of Art. 12, new F.S. 669 (Controllable Electronic Records)** Robert Kain
 - a. Presentation by UCC Art. 12 Task Force on proposed amendments and approval of the F.S. 669 and request of our committee for a vote.
 - b. *See attached **Schedules 2 and 3** for White Paper, and Draft Bill, CLE Florida's New UCC Art 12 - F.S. 669 respectively. Our committee will be expected to vote on the Draft Bill attached as Schedule 3. Online Resources can be found at: <https://flabizlaw.org/committees-task-forces/task-forces/article-12-f-s-669-task-force/>. Any comments should be provided to Robert Kain (rkain@conceptlaw.com).*
5. **Service of Process Glitch Bill – Discussion, comments and approval of Service of Process Glitch Bill** Valeria Angelucci/Jim Murphy

*See attached **Schedules 5 and 6** for White Paper, and Draft Bill respectively. Our committee will be expected to vote on the Draft Bill attached as Schedule 6. Any comments should be provided to Jim Murphy (jbmurphyjr@gmail.com).*
6. **Voluntary Trial Resolution Bill – Amendment to Fla. Stat. 44.104 - Discussion, comments and approval of Bill** Allison Leonard

*See attached **Schedules 7 and 8** for White Paper, and Draft Bill respectively. Our committee will be expected to vote on the Draft Bill attached as Schedule 8. Any comments should be provided to Allison Leonard (aleonard@dvlip.com).*

7. **Series LLC Task Force Update** Lou Conti

Discussion regarding amendments to the Uniform Protected Series Act approved at the Uniform Law Commission (ULC) Annual Meeting, and whether such amendments should be included in the Series LLC Task Force Legislation.

8. **Chapter 617 Task Force Update** Toni Tsvetanova/Professor Stu Cohn

9. **Chapter 607 Task Force Update** Phil Schwartz/Gary Teblum

10. **Chapter 517 Task Force Update** Professor Stu Cohn/Willard Blair

11. **Opinion Standards Committee Update** Robert C. Brighton/Stefan Rubin

12. **Decentralized Autonomous Organizations Study Group** Robert C. Brighton

13. **Report regarding the Uniform Law Commission Annual Meeting and Amendments approved by the ULC** Lou Conti

a. Discussion regarding the amendments to the revised Uniform Limited Liability Company Act (ULLCA), the revised Uniform Partnership Act (UPA), and the revised Uniform Limited Partnership Act (ULPA).

b. Discussion regarding creation of new task force(s) to address potential comparable amendments to Florida Statutes.

14. **Recent changes, caselaw and legal issues:**

15. **Direct vs Derivative Actions** Gary Teblum

Discussion regarding experience of the committee's practitioners with the direct versus derivative action provisions under Chapters 607 and 605. A Task Force was previously set up to deal with this issue, but it needs to be reengaged as it appears judges are having trouble dealing with the statutory changes and need more guidance.

16. **Moelis & Activision cases and Amendments to the DGCL** Gary Teblum/Stefan Rubin

Discussion regarding the recent changes to the DGCL in response to the Moelis and Activision cases and considerations regarding whether similar changes should be up for consideration in Florida.

Moelis (West Palm Beach Firefighters' Pension Fund v. Moelis & Co.)- The case involved a challenge to various provisions of a Stockholder Agreement between a company and its CEO, founder and then-controlling stockholder, and whether such provisions violated DGCL § 141(a), which provides that "the business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation." The Court found that

a number of those provisions were indeed facially invalid, as they constrained the board's ability to use its judgment.

The Court found that courts analyzing such challenges must conduct a two-part inquiry: (1) Is the challenged provision part of an arrangement that “seek[s] to govern the corporation’s internal affairs,” as opposed to a purely “external commercial agreement”? and (2) If the provision involves an “internal governance arrangement,” does the provision have “the effect of removing from the directors in a very substantial way their duty to use their own best judgment on management matters” or “tends to limit in a substantial way the freedom of director decisions on matters of management policy.”

Activision (*Sjunde AP-fonden v. Activision Blizzard, Inc., et al.*) – the Court of Chancery held that the draft merger agreement approved by the Activision board of directors was not “essentially complete,” as required by § 251(b) of the DGCL, as it was missing certain relevant sections necessary for execution, and deemed the approval insufficient.

Amendment to the Delaware General Corporation Law: These cases led the Delaware Bar to work to propose changes to the DCGL to address the issues. SB 313, which passed and became effective on August 1, 2024, creates a new subsection (18) to Section 122 of the Delaware General Corporation Law that will give corporations the authority to enter into stockholder agreements including a nonexclusive list of provisions (similar to those invalidated in Moelis) – provided corporations receive some form of consideration - such as (i) restricting or prohibiting a corporation from taking actions specified in a contract; (ii) requiring the approval or consent of one or more persons or bodies before the corporation may take actions specified in the contract (including directors, stockholders or beneficial owners); (iii) requiring the corporation or one or more persons or bodies to take, or refrain from taking, actions specified in the contract (including directors, stockholders or beneficial owners).

It also include a new § 147 to the DGCL, which provides that any agreement, instrument, or other document that requires board approval or other action under the DGCL may instead be approved by the board of directors in final form or in “substantially final” form.

17. **Other Important Caselaw**

Gary Teblum/Stefan Rubin

- a. Cantor Fitzgerald (*Cantor Fitzgerald, L.P. v. Ainslie*) - The DE Supreme Court ruled that, under Delaware law, courts should enforce agreements absent unconscionability, bad faith, or other extraordinary circumstances, and found the partnership's contractual provisions that allowed it to withhold distributions otherwise owed to a partner who leaves the partnership and then competes with the partnership to be enforceable. The court emphasized the importance of freedom of contract, particularly in the context of sophisticated parties entering into a limited partnership agreement. It argued that public policy considerations favored enforcing the agreement, particularly as the parties had voluntarily agreed to the terms. Commentators suggested that the case was limited to the facts, but speculated that because it's not a prohibition on competition, but merely a financial deal about competition, similar logic might support a contract that pays someone for not competing (they can compete if they want, but they will get extra money if they don't).

- b. *Labyrinth* (*Labyrinth, Inc. v. Urich*)– DE Court of Chancery dealt with a post-closing dispute between a buyer and seller, and the core issue centered around whether the seller had made fraudulent representations to the buyer outside of the stock purchase agreement. The court found that a non-reliance clause alone in a purchase contract is not an absolute barrier to fraud claims, and courts will scrutinize the specific language of the clause and the circumstances surrounding the alleged fraud. (See also attached as **Schedule 4** a Practical Law chart on non-reliance provisions).
- c. *EpicentRx* (*EpicentRx, Inc. v. Superior Court of San Diego*) - In a case involving internal affairs of a DE company, with a Delaware forum selection clause, a California Court of Appeal refused to transfer venue to Delaware because the clause said that a Delaware Chancery court (i.e. judge not jury) was to handle, and the CA court claimed that it would be against CA’s public policy of requiring jury trials for such issues.

18. **Dissolution Buy Out Provisions** Stefan Rubin

Discussion regarding issues in trying to implement dissolution buy out rights under Chapter 607 and 605 that might require a statutory fix.

19. **CLEs Ideas and Planning** Valeria Angelucci/Kelly Roberts

- a. **CLE on Operating Agreements moved to early 2025**
- b. **Status and coordination on Chapter 517, and Chapter 607 CLEs**
- c. **Opinion Standards potential CLE**
- d. **Basic CLE on Purchase Agreement**

20. **Other Matters for Discussion/Good Order** Valeria Angelucci/Members

Antitrust and Trade Regulation Subcommittee was disbanded, dialogue regarding Antitrust and Trade Regulation issues/comments.

21. **CLE Presentation** Sponsored by Berkowitz Pollack Brant Advisors + CPAs

“M&A Trends and Post-Transition Disputes”

22. **Adjourn** Valeria Angelucci

SCHEDULE 1

June 2024 Minutes

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

Thursday, June 20, 2024
Meeting: 1:00 PM – 3:00 PM
Location: Signia by Hilton Orlando Bonnet Creek & Waldorf Astoria
Taylor room (subject to change)

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

MEETING MINUTES

1. **Call to Order at 1:07 p.m. by Chair, Toni Tsvetanova**
2. **Welcome and Introductions**
3. **Approval of Meeting Minutes from January 18th, 2024.** Valeria Angelucci made a motion to approve the prior meeting minutes, which were attached as **Schedule 1** of the **agenda** for the meeting. Robert Brighton seconded the motion. The motion was approved unanimously.
4. **Series LLC Task Force-** Lou Conti was not present for a report, so Toni **provided** a brief update that there will be continued efforts to move forward to pass the legislation.
5. **Biz. Lit. Task Force, Voluntary Trial Resolution Statute**
 - a. Alan Fine gave a report to present section 44.104, Florida Statutes, which section provides for selecting a private judge and participating in out of court trial with ability to appeal versus arbitration. In the out of court trial, the civil and evidentiary rules apply. This resolution is faster than a traditional trial. Cost may be the same or less than arbitration, less in the scenario with three arbitrators.
 - b. The Task Force is currently working on a rewrite of section 44.104, Florida Statutes. They aim to present a completed draft and white paper at the Labor Day Retreat, and will provide more information during the meeting.
 - c. Contact Alan at alan.fine@privateresolutions.com to help and participate in the work of the task force.
6. **UCC Art. 12 – the New F.S. 669 and related UCC Amendments**
 - a. Robert Kain presented on the addition of UCC Art. 12 (F.S. 669) and changes to Art. 9. Amendment to Florida Judgment Lien Statute to provide for the lien attaching to intangibles (controllable electronic records).
 - b. Governor wants to change Article 8 and change the choice of law to the local law of the entitlement holder's jurisdiction. Information available states this is not advisable. The strong recommendation of the task force is for a vote in the affirmative for UCC Article 12, but to take a negative position with respect to the choice of law issue; Fla. Stat 678.1101 Choice of Law respectively. Our committee will be expected to vote on Issue 4, discussed on CLE pdf attached as Schedule 4, pg. 10 of such schedule, re: F.S.

678.1101, Choice of Law. Online Resources can be found at: <https://flabizlaw.org/committees-task-forces/task-forces/article-12-f-s-669-task-force/>.

- c. For any interest in the task force or comments to the White Paper, please contact Robert Kain (rkain@conceptlaw.com).
7. **Chapter 617 Task Force.** Toni Tsvetanova provided a report on Chapter 617 Task Force (FL's Not-For Profit Statute). Finished going through different memoranda of the different subgroups. The proposed redlines are being compiled all together to **write** the White Paper with the redlines with the goal of finishing by August 1, 2024 to be ready for the next legislative session.
- a. Issue of discussion: Can not for profit entity merge with a for profit entity with the for profit entity being the only survivor? Right now, this cannot be done in Florida. In the proposal to allow for this, the limitation would be that it could not be done if the entity is holding charitable assets.
 - b. Discussion of not rushing to try to be ready for 2025, but to be first in line and ready for 2026. Considerations for the amount of work, length of bill, other BLS legislation being pushed in 2025.
 - c. Renaming the “Not for Profit” references in the statute to “NonProfit:
 - i. Cross references to other statutes and the forms for the Division.
 - ii. How much needs to be amended and changed?
 - iii. Include in definitions that Not for Profit and Non-Profit mean the same thing.
 - iv. This does mean that the title of the statute will change.
8. **Chapter 607 Task Force Update.** Gary Teblum provided a brief recap of the Chapter 607 bill and an update regarding the status of the bill.
- a. Passed and went to Governor on 6-17-24. If no response in 14 days, then will be effective retroactively to July 1st.
 - b. Once signed then Phil and Gary plan to write an article to describe what is happening and do a CLE regarding the same.
9. **Chapter 517 Task Force (FL's Securities Statute).** Will Blair gave a report that the Bill passed and is effective October 1, 2024. There are glitches to fix, but will be looked at for 2026. The task force is writing article and will put on a CLE.
10. **SB 882, Decentralized Autonomous Organizations.** Robert Brighton to lead study group. Will solicit folks to help with the study group. Florida currently leads the states in these efforts.
11. **List of Sunsetting Provisions**
See attached **Schedule 6** for current list of sunseting positions and provide input on which positions should be retained for the next 2-year period.
12. **CLE's:** Valeria Angelucci gave report:
- a. Good feedback from the May CLE.
 - b. Transactional CLE training discussed as an idea in the works.

- c. Reinaldo agreed to present a CLE on operating agreements.
- d. As previously stated, CLE's for 517 and 607 will be forthcoming.
- e. Federal Securities Institute: Looking at Feb 20th and 21st dates. Good attendance at the Tampa event, so likely will look to have in Tampa again.

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

Opinions Standard Committee: Gary Teblum gave report. Committee is looking for new leadership and will have meeting at Labor Day Retreat.

14. **Meeting adjourned at 3:01 p.m.**

SCHEDULE 2

7.14 White Paper ver 20240812 + Legislation Chart

Florida's New UCC Article 12 – Fla. Stat. 669 [ver 20240812]

Controllable Electronic Records (“CERs”) Supporting Secured Transactions for Digital Assets and the Associated UCC Amendments¹

The Uniform Law Commission (“ULC”) proposed new UCC Article 12 (“Art. 12”), new Fla. Stat. § 669, as an expansion of the Uniform Commercial Code (“UCC”), Fla. Stat. §§ 661 - 680, which establishes a baseline framework allowing creditors to secure liens on digital assets owned by debtors. This White Paper consists of a ten (10) page summary and a 21 page summary comparison of Florida’s UCC and proposed Art. 12 changes to Fla. Stat. §§ 661 – 680.^{2,3}

Art. 12 defines a “controllable electronic record” (CER), § 669.102(1), to be part of or logically attached to, a digital asset.⁴ The foundation of Art. 12 is UCC Article 9, Secured Transactions, § 679.1011, and many Art. 12 amendments effect § 679. Art. 12 updates and clarifies debtor-creditor relationships for emerging technology transactions involving cryptocurrencies, smart contracts, blockchains, non-fungible tokens (NFTs), and distributed ledger technologies (DLTs). Florida should adopt § 669, titled “Uniform Commercial Code—

¹ This White Paper was prepared by a Joint Task Force between the Business Law Section’s (“BLS”) Blockchain and Digital Assets Committee and BLS’ UCC/Bankruptcy Committee. Given the scope and breadth of the Art. 12 Amendments, the Task Force interacted with Florida’s Office of Financial Regulation (OFR), BLS’ Corporate and Securities Committee, the Business Litigation Committee, the Bar’s Real Property Probate and Trust Law Section (RPPTL), the Florida Bankers Assn., and the Florida Blockchain Business Assn.

² The UCC is codified at F.S. §§668- 688 (2022). Art. 12 and its related amendments effect Florida’s Article 1, F.S. §671 (general provisions); Article 2, F.S. §672 (sales); Article 2a, F.S. §680 (leases); Article 3, F.S. §673 (negotiable instruments (e.g., bank checks)); Article 4a, F.S. §670, (funds transfers); Article 5, F.S. §675 (letters of credit); Article 7, F.S. §677 (documents of title); Article 8, F.S. §678 (investment securities); and Article 9, F.S. §679 (secured transactions). See attached addendum, Summary Comparison of Florida’s UCC and Proposed Art. 12 Amendments.

³ A proposal has been made to change the ULC’s amendment to Art. 8, F.S. §678.1101(7) (Choice of Law), and amend Art. 8, F.S. §678.1101(2) and (6) (Choice of Law), as follows: (2) The local law of the ~~securities intermediary’s entitlement holder’s jurisdiction, as specified in subsection (5), governs: (a) Acquisition of a security entitlement from the securities intermediary. (b) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement. (c) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement. (d) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder. ... [(3) and (4) unchanged] (6) A securities intermediary’s jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account. The ULC proposed adding to the choice of law section, F.S. §678.1101(7), “The local law of the issuer’s jurisdiction or the securities intermediary’s jurisdiction governs a matter or transaction specified in subsection (1) or subsection (2) even if the matter or transaction does not bear any relation to the jurisdiction.” The Art. 12 Task Force and BLS’ UCC/Bankruptcy Committee objected to these changes to F.S. §679.1101(2) and (6) on June 20, 2024 mainly because in such amendment would make Florida UCC non-uniform among the many other states who uniformly apply the securities intermediary’s jurisdiction to investment disputes.~~

⁴ The Act and F.S. §669 does not define an “electronic record” nor does it refer to “digital assets.” The Act amends Art. 1, § 671.201, and adds a definition for “electronic” as a “means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.” § 671.201(18).

Controllable Electronic Records,” to reduce transaction costs while providing protections for market participants and traditional market players. The ULC reports that as of August 2024, twenty-four (24) states have adopted Art. 12, including the District of Columbia.⁵ Florida’s Office of Financial Regulation (OFR) wrote about the advantages of passing this legislation this fiscal year, 2024-2025.⁶

Florida law currently does not have provisions specifically addressing digital assets. A *traditional, common approach*, based on Art. 8, § 678 (investments), applies general intangible principles to the transaction, namely: (i) digital assets are transferred to a securities intermediary, (ii) 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, (iii) 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 (secured transactions), by filing a financing statement in the debtor’s state registry per § 679.3011. The traditional approach does not address technologic issues associated with easily transferrable digital assets. A *technologic approach* obtains technical control of assets with the debtor giving private key or password control to the lender or its designee. The resulting secured party’s interest is not perfected under the current UCC. This creates legal doubt in the transaction.

Art. 12, § 669, and the associated amendments to §§ 670 - 680, provide: (a) assurance to securities intermediaries and secured party creditors that they acquire their interests free of the property claims of others (the take-free rule), and (b) the security interests created thereby confer upon the intermediary and creditor a super-priority, secured party status.

UCC Article 12 and Related Amendments - Summary. New § 669.102(1)(a) defines a “controllable electronic record” (CER) and provides 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 “qualifying purchaser” (“QP”), §§ 669.102(1)(b) and 669.104(1) and (2). Additionally, a secured party that obtains control of a CER will have non-temporal priority, superior to 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 of Asset Classes. The following are generally *included*: (a) Electronic accounts (generally, accounts receivable) and electronic payment intangibles

⁵ Further information about adoption of Art. 12 is provided on the ULC’s website at <https://www.uniformlaws.org/committees/community-home?communitykey=1457c422-ddb7-40b0-8c76-39a1991651ac>.

⁶ The OFR indicated that “Blockchain technology created a new asset class or type of property in the form of digital assets. Digital assets, as a type of property, are not easily incorporated into Florida’s commercial laws without some change. Amendments to Florida’s Uniform Commercial Code, Florida’s Business Organization Code, and Florida’s Unclaimed Property Act are needed to accommodate digital assets in Florida’s commercial laws and to facilitate commerce and the development of the blockchain technology industry in Florida. Further, as new technologies are developed additional amendments are likely.” OFR, “Assessment of Commerce and Regulatory Issues Presented by Blockchain Technology and Virtual Currency,” p. 25, Dec. 2022. The OFR explains a foundational principle of Art. 12 by recognizing that “to enable a lender to secure a lien with a digital asset represented on a blockchain, the lender must possess an exclusive right of access to the electronic code that uniquely represents the digital asset. The amendment to the UCC recognizes that control of a controllable electronic record equals possession, and thereby, the traditional rights, privileges, and remedies associated with possession of collateral and transactions in fungible mediums of exchange apply in the realm of digital assets.” *Id.*, p. 27.

(including electronic promises to pay akin to notes and electronic loan agreements); (b) Cryptocurrencies other than central bank digital currency⁷; (c) NFTs that qualify as CERs and other tethered digital 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, § 678.1011.⁸ 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 accounts⁹ and controllable payment intangibles¹⁰ 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 and lender data, which may an identifiable account), § 669.105(1)(b). The record must be “electronic,” § 671.201(17). The electronic record must be “controllable,” § 669.105. An 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). “Control” also requires that the person having control must have the power to avail itself of substantially all the benefits of the electronic record or the power to prevent others from having such benefits CER. *See* § 669.105(1)(a)(1).

⁷ Florida’s Central Bank Digital Currency Act (the “CBDC Act”), enacted July 2023, added a definition of central bank digital currency, § 671.201(10), which excludes CBDC from the UCC’s definition of money. Hence, all CBDC issued by central banks are not subject to Florida’s version of Art. 12 and the related UCC amendments.

⁸ 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. The comments following the definition of “uncertified security,” section 8-102(9), provide further examples of Article 8 transactions.

⁹ In addition to being “controllable”, these controllable accounts and controllable payment intangibles must also have a provision that the “debtor undertakes to pay the person that has control.” §§ 679.1021(cc) and (dd). This feature is discussed later.

¹⁰ *Id.*

Amended Art. 9: Controllable Accounts and Controllable Payment Intangibles:^{11,12}

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 is: (a) evidenced by a CER, §§ 679.1021(1)(dd) and (cc); and (b) requires that the debtor is obligated “to pay the person that has control” of the CER that evidences the controllable account or controllable payment intangible, §§ 679.1021(1)(dd) and (cc). If the payment intangible or account does not have this “pay person in control” feature (this is the so-called “opt-out” provision in Art. 12 and Art. 9, F.S. § 679), the payment/account intangible is not a controllable payment intangible or a controllable payment account. A security interest in a CER, a controllable account, or a controllable payment intangible can be perfected by either a filing, § 679.3121(1), or the secured party obtaining “control” of the CER, § 679.3141(1). However, 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), § 679.3251. This is the non-temporal, super-priority security interest in § 669.^{13, 14}

Control Defined. “Control” means that a person has each of the following powers:¹⁵ (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,

¹¹ Controllable accounts and controllable payment accounts are discussed in more detail in the later section, Perfection of Security Interests: CERs, Controllable Accounts, and Controllable Payment Intangibles.

¹² [SUBJECT TO UCC/Bkry Input and Approval] **Florida’s new Judgment Lien Improvement Act** amended Fla. Stat. 55.061 to provide that a judgment lien attaches to the judgment debtor’s “payment intangibles and accounts.” § 55.202(2)(a). Judgment liens on personal property are recorded with Florida’s Division of Corporations. §§ 55.201 and 202. The Act “makes it clear that a judgment lien certificate does not prime the existing rights of prior perfected secured parties under art. 9.” M. Wolfson, “Florida’s New Judgment Lien Improvement Act,” Fla Bar J., 24, 27 (Nov. 2023) (citing §55.202(2)(a)(1)). One solution to conform Art. 12 with the amended Judgment Liens Act is to exclude controllable payment intangibles and controllable accounts because CERs (i) are not subject to state recording statutes and (ii) controllable payment intangibles and controllable accounts are more akin to money since such CER intangibles and accounts require payment the person who has control. §§ 679.1021(1)(dd) and (cc), as amended by Art. 12. The Judgment Lien Act, currently excludes “money, negotiable instruments, and mortgages.” § 55.202(2). The Judgment Lien Act should be amended concurrent with other Art. 12 amendments to exclude controllable payment intangibles and controllable accounts similar to the Act’s current exclusion of “money, negotiable instruments, and mortgages.” § 55.202(2). A security interest in a CER, a controllable payment intangible, or a controllable account can be perfected by the filing of a financing statement under the Art. 12 amendments, § 679.3121(1), or by control of the CER or an acknowledgement of control, § 679.3141(1).

¹³ 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.

¹⁴ An example of a post-transitional period, non-temporal event is: 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.

¹⁵ The use of the word “power” is distinguished from “right.” See UCC § 12-105, Comment 2.

or digital asset or be “logically associated” via a program on the platform or the wallet permitting access to the CER or asset, § 669.105(1).¹⁶ “The goal is to embrace 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.”¹⁷

Exclusive Defined. “Exclusive” may allow one or more persons to have the relevant power, for example, when the asset is subject to multi-signature (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)¹⁸ and § 679.1053 (controllable accounts and controllable payment intangibles by reference to § 669.105(5)).

Take Free Rule and Qualified Purchasers (QP). Art. 12 applies to outright transfers of and security interests in CERs, controllable accounts, and controllable payment intangibles and provides many of the characteristics of negotiability for these types of assets.¹⁹ A QP, defined at § 669.102(1)(b), is similar to a bona fide purchaser, and acquires all rights in 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).²⁰

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.²¹

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.

¹⁶ Owners of cryptocurrencies typically have an electronic wallet permitting access to the currency and cryptocurrencies are oftentimes sold or exchanged on electronic platforms such as Coinbase.

¹⁷ UCC 12-105, comment 2.

¹⁸ For example, a cryptocurrency exchange platform may acknowledge that a secured party has control over cryptocurrency owned by a debtor when that platform associates the currency with the debtor.

¹⁹ 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.

²⁰ See also § 671.201(20) (good faith); and § 671.201(25) (notice).

²¹ 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.”

Revisions to Art. 9, § 679, Secured Transactions.

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 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)(cc); 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.²²

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 control of the CER or an acknowledgement of control, § 679.3141(1). The controllable payment intangible or controllable account as a CER must provide that the debtor is obligated “to pay the person that has control,” §§ 679.1021(1)(dd) and (cc). 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. Amended § 679 incorporates the Art. 12 definition of “control” for CERs, controllable accounts, and controllable payment intangibles.²³ As discussed below, a security interest in “money” (amended and defined at § 679.1021(fff) as not being “subject[] to control”), other than electronic money (defined at § 679.1021(hh)), cannot be perfected by the filing of a financing statement, § 679.3121(2)(c). Security interests in CERs, controllable accounts, and controllable payment intangibles can be perfected by filing, § 679.3121(1), but super-priority is established by control.

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 super-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.²⁴ Unlike the QP provisions of § 669.102(1)(b), amended Art. 9 priority does not require that the secured party not have notice of someone else’s property claim to the collateral. *See* § 679.331.

Choice of Law for CERs. The choice-of-law rule, as applied 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

²² 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/>.

²³ *See* definitions §§ 679.1021(1)(cc) and (dd) referring to control in Art. 12, § 669.105.

²⁴ *See* examples in “Explaining the 2022 UCC Amendments through Illustrations,” Transactional Lawyer, S. Sepinuck, vol. 12, Oct. 2022.

existing rule applying the “location” of the debtor, § 679.3063(2). Even for a security interest in a CER perfected by filing a financing statement, the priority of the security interest is governed by the CER’s jurisdiction, rather than location of the debtor, § 679.3063(1).

Revisions to § 679 - Money

General Meaning of “money.” The definition of “money” is amended, Art. 1, § 671.201(26), and money must be authorized by a government. In a nonuniform manner, Florida law defines central bank digital currency (CBDC) and then excludes CBDC from the scope of the UCC.²⁵ For the purposes of secured transactions under Art. 9, § 679, the definition of “money” is further limited as described in next section of this paper. The current UCC definition of money already accommodates money in intangible form. Under the new definition of money: (a) the item must be a “medium of exchange”; and (b) the “medium of exchange” must have been adopted or authorized by a government, § 671.201(26).²⁶ 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.²⁷

“Money” under § 679. The new definition of money in Art. 12, § 679.1021(fff), places limits on the Art. 1, § 671.201(26), definition of money for purposes of § Art. 9, § 679. Money “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,” § 679.1021(fff). Hence, (a) in connection with money in a deposit account for purposes of § 679, such money will be a “deposit account;” and (b) an electronic record that would be “money” under § 671.201(26) will not be “money” under Art. 9, § 679.1021(fff), if it is not “controllable,” per § 679.1052. “Electronic money,” defined in § 679.1021(hh), that is controllable under § 679.1052, is subject to the same control features as applied to CERs in § 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,” § 679.1021(hh). Instead, money in electronic form that is not controllable will be a “general intangible,” § 679.1031(ss), as amended.

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 679.3141.²⁸ 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).

²⁵ Florida’s Central Bank Digital Currency Act (the “CBDC Act”), enacted July 2023, added a definition of central bank digital currency, § 671.201(10) and then excluded CBDC from the UCC’s definition of money. Hence, all CBDC “issued by” central banks are not subject to Florida’s version of Art. 12 and the related amendments.

²⁶ The ULC’s Art. 12 definition of money excluded an electronic record that “existed” before it was adopted or authorized by a government as a medium of exchange.

²⁷ An existing cryptocurrency can be a CER if it is configured as a CER under § 669. Cryptocurrency, without the Art. 12 control features, is “money” under § 671.201(26).

²⁸ 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.

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 § 679.332(3)(electronic money). The effect of this is that a security interest in electronic money that is perfected by control has super-priority over a security interest that is not perfected by control because (i) the electronic money is subject to control, § 679.1052, and (ii) electronic record must readily identify the person or persons in control, § 669.105(1)(b), or be logically associated with a system having such identifying data.

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.”²⁹

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.³⁰

Perfection of Security Interest in Chattel Paper by Control. An additional method for perfection of a security interest in chattel paper in electronic form has been added to Art. 9, § 679.3101(2)(h) wherein filing of a financing statement is not necessary.³¹ 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 constituters 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. That section provides “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.” *Id.*

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

²⁹ For a 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 an 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*.

³⁰ F.S. § 680.1031 defines a hybrid lease.

³¹ The Art. 12 UCC amendments preserve the existing method of perfecting a security interest in the electronic record evidencing chattel paper. UCC § 9-105(b), § 679.1051(2). Comment 4 to amended UCC § 9-105(b), § 679.1051(2), states “Subsection (b) would not be applicable when the relevant record is maintained on a blockchain or another distributed ledger” because of the “single authoritative copy” requirement in § 679.1051(2)(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 Art. 12, § 669.105(5). In providing examples of CERs perfecting security interests, commentators often refer to acknowledgement by the system or platform holding the CER.³²

Revisions to Definitions in § 671

“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).³³ The word “signed”³⁴ 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, 2025. 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(1)(a) (the Art. 12 “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 (a super priority perfection). The goal is to have the adjustment date be the same in a critical mass of states.

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 (modified): 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

³² Several examples describing perfecting a security interest in digital assets with CERs is provided in “Explaining the 2022 UCC Amendments through Illustrations,” S. Sepinuck, 12 Transactional Lawyer 1, 2 (Oct. 2022).

³³ Statutory examples are mentioned in the comments for UCC § 1-201(b)(10).

³⁴ The word “authenticate” has been replaced by “signed.” See, e.g., UCC § 9-203(b)(3)(A); § 679.2031(2)(c). Also, “record” replaces “writing” in some instances in reference to electronic records. See, e.g., UCC § 1-201(b)(36), § 671.201(39) (definition of “send”). Some instances of “writing” remain. See, e.g., UCC § 9-102(a)(47), § 679.1021(1)(uu) (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 amended UCC. See UCC § 1-201, Comment 37 (“The definition of ‘signed’ adopted in the 2022 Amendment is broad – it encompasses the authentication or adoption of all records, not just writings.”).

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 (further modified): 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
Robert Kain, Chair (rkain@conceptlaw.com)
Concept Law Group, P.A. (Ft. Lauderdale)

Acknowledgments: The Joint Task Force’s chairs, Robert Kain, Michael Dunn and Jaime Leggett, would like to recognize significant contributors: Josh Lida, BLS fellow Adam Gilbert, and BLS scholars Zachary Hunt, Devin Gobin, Chris Cabrera, and Jen Shiner, Task Force member Diane Wells, and notable invaluable contributions by Drew Hinkes, for his work as an Advisor for the Uniform Law Commission, Prof. Zachary Catanzaro, for his academic guidance, and the Honorable Judge Mindy Mora, US Bankr. Ct, SDFL.

**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)		UCC Article 12: UNIFORM COMMERCIAL CODE: CONTROLLABLE ELECTRONIC RECORDS
§ 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, Definitions.</p> <p>§ 669.102(1)(a): “controllable electronic record” (here, “CER”) [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): “qualifying purchaser” (here, “QP”) [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): “transferable record” [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): “value” [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, Relation to Article 9 and Consumer Laws.</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, Rights in Controllable Account, Controllable Electronic Record, Controllable Payment Intangible.</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) is not notice of claim of a property right in a CER.</p>
§ 12-105	§ 669.105	pp. 14-16, lines 407-469.	<p>creating § 669.105, Control of Controllable Electronic Record.</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, Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible.

			<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, Governing Law.</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.
			PART II OF CH. 669 – TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE AMENDMENTS (2022) – UCC ARTICLES 9 AND 12.
Am. (2022) § A-101	Part II of Ch. 669	p. 21, lines 610-613.	creating Part II of Ch. 669, “ Transitional Provisions for Chapter 669 and 2024 Amendments to Chapter 679. ” [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, Definitions for Part II. § 669.502(1)(a): defines “adjustment date” as July 1, 2025. § 669.502(2): defines “ Article 12 ”; “ Article 12 property ” (means a CER or a controllable account/payment intangible); and adopts the definitions from § 679.1021 for the terms, “ Controllable account ”; “ Controllable electronic record ”; “ Controllable payment intangible ”; “ Electronic money ”; and “ Financing statement. ” § 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, Savings Clause for Existing Transactions Covered under Articles 9 and 12. § 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, Security Interest Perfected Before Effective Date (of July 1, 2024).</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, Security Interest Unperfected Before Effective Date (of July 1, 2024). 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, Effectiveness of Actions Taken Before Effective Date (of July 1, 2024). 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, Priority. 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, Priority of Claims When Priority rules of Article 9 Do Not Apply . Determines priority of conflicting claims to collateral when Art. 9 rules do not apply on July 1, 2024, and on the adjustment date.
Art 4A	670		UNIFORM COMMERCIAL CODE: FUNDS TRANSFERS ... 670.101 et seq.
§ 4A-103	§ 670.103	p. 27, lines 766-781.	amending § 670.103, Payment Order – Definitions . 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, Security Procedure . 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, Authorized and Verified Payment Orders . 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, Unenforceability of Certain Verified Payment Orders . 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, Savings clause for 2024 Amendments . 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), Short title; scope of chapter , 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), Territorial applicable of the code; parties’ power to choose applicable law , 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, General Definitions. * 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, Value , 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, Savings clause for 2024 Amendments . General savings clause for existing Ch. 671 transactions.

Art 2	672		UCC Article 2: UNIFORM COMMERCIAL CODE: SALES ... 672.101 et seq.
§ 2-102	§ 672.102	pp. 38-39, lines 1105-1133.	amending § 672.102, Scope; certain security and other transactions excluded from this chapter. 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, Definitions. Defining new term “ hybrid transaction ”; 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, Transitional Provisions , and § 671.401, Savings clause for 2024 Amendments. General savings clause for existing Ch. 672 transactions.
Art 3	673		UCC Article 3: UNIFORM COMMERCIAL CODE: NEGOTIABLE INSTRUMENTS .. 673.1011 et seq.
§ 3-104	§ 673.1041	pp. 43-44, lines 1239-1260.	amending § 673.1041, Negotiable instrument , 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, Issue of instrument , and expanding terms to include an electronic check under federal law.

§ 3-401	§ 673.4011	pp. 44-45, lines 1273-1285.	amending § 673.4011, Signature , 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, Discharge by cancellation or renunciation . 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, Transitional Provisions , and § 673.701, Savings clause for 2024 Amendments . General savings clause for existing Ch. 673 transactions.
Art 4	674	N/A	UCC Article 4: UNIFORM COMMERCIAL CODE: BANK DEPOSITS AND COLLECTIONS: No amendments.
Art 5	675		UCC Article 5: UNIFORM COMMERCIAL CODE: LETTERS OF CREDIT
§ 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, Choice of law and forum . 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, Savings clause for 2024 Amendments . General savings clause for existing Ch. 675 transactions.
Art 6	676	N/A	UCC Article 6: Bulk Sales REPEALED

Art 7	677		UCC Article 7: UNIFORM COMMERCIAL CODE: DOCUMENTS OF TITLE
§ 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, Control of electronic document of title . 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, Savings clause for 2024 Amendments . General savings clause for existing Ch. 677 transactions.
Art 8	678		UCC Article 8: UNIFORM COMMERCIAL CODE: INVESTMENT SECURITIES
§ 8-102	§ 678.1021	pp. 52-53, lines 1500-1521.	Amending § 678.1021, Definitions . 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, Rules for determining whether certain obligations and interest are securities or financial assets . 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, Control . 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, Applicability; choice of law . 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, Protected Purchaser . 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, Transitional Provisions , and § 678.601, Savings clause for 2024 Amendments . General savings clause for existing Ch. 678 transactions.
Art 9	679		UCC Article 9: UNIFORM COMMERCIAL CODE: SECURED TRANSACTIONS .. 679.1011 et seq.
§ 9-102	§ 679.1021	pp.55-62, lines 1584-1788.	amending § 679.1021, Definitions and index of definitions . amending § 679.1021(1)(b), to eliminate the terms, “ Authenticate ” and “ Send .” amending existing definitions in § 679.1021(1)(b): “ Account ,” “ Account debtor ,” “ Accounting ,” “ Chattel paper ” “ sign/signed/signature ,” “ General intangible ” [to include controllable electronic records § 679.1021(1)(ss)], “ Instrument ,” “ Payment intangible ” [to include a controllable payment intangible], “ Proposal .” amending § 679.1021(1)(b) to add new definitions: “ Assignee ,” “ Assignor ,” “ Controllable account ” [§ 679.1021(1)(w)], “ Controllable payment intangible ” [§ 679.1021(1)(x)], “ Electronic money ” [§ 679.1021(1)(hh)], “ Money ” [now excluding “deposit account or money in an electronic form that cannot be subjected to control under § 679.1052” § 679.1021(1)(fff)]; “ Tangible money ” [§ 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, Control of deposit account . 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, Control of electronic chattel paper . 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, Control of electronic money . 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, “Control of controllable electronic record, controllable account, or controllable payment intangible . 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, “No requirement to acknowledge or confirm; no duties.” 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, Attachment and enforceability of security interest, proceeds, supporting obligations; formal requisites. 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, After-acquired property; future advances. 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, Additional duties of secured party having control of collateral. 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, Duties of secured party if account debtor has been notified of assignment. 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, Law governing perfection and priority of security interests. 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, Law governing perfection and priority of security interests in deposit accounts. 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, Law governing perfection and priority of security interests in investment accounts. 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, Law governing perfection and priority of security interests in chattel paper. 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, Law governing perfection and priority of security interests in controllable accounts, controllable electronic records, and controllable payment intangibles. 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, When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply. 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, Perfection....: 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, Perfection by control. 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, “ Perfection by possession and control of chattel paper. ” 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, Continued perfection of security interest following change in governing law. 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, Interests that take priority over or take free of security interest or agricultural lien. 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, Future Advances. 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, “ Priority of security interest in controllable account, controllable electronic record, and controllable payment intangible. ” 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, Priority of purchaser of chattel paper or instrument. 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, 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. 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, Transfer of money; transfer of funds from deposit account; transfer of electronic money. 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, 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. 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, Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective. 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, Unknown Debtor or secondary obligor . 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, Contents and form of notification before disposition of collateral; general . 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, Contents and form of notification before disposition of collateral; consumer-goods transaction . 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, Nonliability and limitation on liability of secured party. 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, Transitional Provisions for 2024 Amendments , § 679.901, Savings clause for 2024 Amendments , and § 679.90, General savings clause for existing Ch. 679 transactions, and adopting by reference the transitional provisions in Part II of Chapter 669.
Art 2A	680		UCC Article 8 - UNIFORM COMMERCIAL CODE: LEASES ... 680.1011 et seq.
§ 2A-102	§ 680.1021	p. 122, lines 3511-3531.	amending § 680.1021, Scope. 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, Definitions and Index of Definitions. amending § 680.1031(1) to add new definition: “Hybrid lease.” 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, Transitional Provisions , and § 680.601, Savings clause for 2024 Amendments. General savings clause for existing Ch. 680 transactions.

			Miscellaneous Conforming Cross-Reference Changes
	§ 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.	REENACTED Provisions – per Senate procedure. These sections have no additions nor deletions
		p. 146, line 4231.	Effective date of law, July 1, 2024.

SCHEDULE 3

13.2 Draft Fla Art 12 Bill (Aug 4 2024 ver.)

16-00478-23

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

16-00478-23

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.

16-00478-23

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.;

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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),

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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.

16-00478-23

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.

16-00478-23

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.

16-00478-23

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

16-00478-23

- 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

16-00478-23

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,

16-00478-23

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

16-00478-23

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 wave 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.—

16-00478-23

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

16-00478-23

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.

16-00478-23

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.-

16-00478-23

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

16-00478-23

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

16-00478-23

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,

16-00478-23

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.

16-00478-23

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:

16-00478-23

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

16-00478-23

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

16-00478-23

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.—

16-00478-23

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, ~~or~~
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

16-00478-23

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

16-00478-23

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

16-00478-23

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:~~

16-00478-23

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

16-00478-23

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.

16-00478-23

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~~

16-00478-23

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

16-00478-23

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 ~~670~~does 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~~

16-00478-23

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

16-00478-23

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

16-00478-23

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:

16-00478-23

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

16-00478-23

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:

16-00478-23

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

16-00478-23

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

16-00478-23

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)

16-00478-23

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~~

16-00478-23

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

16-00478-23

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:

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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:

16-00478-23

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

16-00478-23

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.

16-00478-23

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~~

16-00478-23

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~~

16-00478-23

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

16-00478-23

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 (cccc) ~~(zzz)~~ "Tangible money ~~chattel paper"~~ means money in

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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~~

16-00478-23

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

16-00478-23

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.

16-00478-23

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

16-00478-23

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.

16-00478-23

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

16-00478-23

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

16-00478-23

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~~

16-00478-23

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 ~~an 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 ~~an 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

16-00478-23

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~~

16-00478-23

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:

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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.

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.

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

16-00478-23

2292 interest in the chattel paper, even if the transaction does not
2293 bear any relation to the chattel paper's jurisdiction.

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.

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.

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.

16-00478-23

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:

16-00478-23

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

16-00478-23

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,

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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.

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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.

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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:

16-00478-23

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

16-00478-23

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,

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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
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:

16-00478-23

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 ~~for 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 ~~for 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

16-00478-23

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:

16-00478-23

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

16-00478-23

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:

16-00478-23

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.

16-00478-23

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

16-00478-23

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;

16-00478-23

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

16-00478-23

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.

16-00478-23

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

16-00478-23

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~~

16-00478-23

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.

16-00478-23

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

16-00478-23

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

16-00478-23

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-

16-00478-23

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.—

16-00478-23

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)(eee)~~.

3553 (m) "Pursuant to a commitment," s. 679.1021 ~~s.~~

3554 ~~679.1021(1)(ppp)~~.

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:

16-00478-23

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

16-00478-23

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.

16-00478-23

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

16-00478-23

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. 679.1021s.
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. 679.1021s. ~~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

16-00478-23

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. 679.1021~~s.~~
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. 680.1031~~s. 680.1031(1)(j)~~.

3705 (h) "Lessor" as defined in s. 680.1031~~s. 680.1031(1)(p)~~.

3706 (j) "Representative" as defined in s. 671.201~~s.~~
3707 ~~671.201(37)~~.

3708 (l) "Security agreement" as defined in s. 679.1021~~s.~~
3709 ~~679.1021(1)(uuu)~~.

3710 (n) "Send" as defined in s. 671.201~~s. 671.201(40)~~.

3711 Section 133. Paragraph (f) of subsection (2) of section
3712 559.9232, Florida Statutes, is amended to read:

16-00478-23

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,

16-00478-23

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

16-00478-23

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

16-00478-23

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

16-00478-23

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.—

16-00478-23

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.

16-00478-23

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

16-00478-23

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.

16-00478-23

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

16-00478-23

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:

16-00478-23

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

16-00478-23

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;

16-00478-23

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

16-00478-23

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

16-00478-23

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:

16-00478-23

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.—

16-00478-23

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

16-00478-23

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 4

Practical Law chart on non-reliance provisions

Disclaimers of Reliance in Private M&A Deals Chart

by Wilson Chu, McDermott Will & Emery LLP, Jessica Pearlman, [K&L Gates LLP](#), and Stephanie Norman, [Richards, Layton & Finger, P.A.](#), with Practical Law Corporate & Securities

Maintained • Delaware, New York, Texas

A chart containing sample disclaimers of reliance typically seen in acquisition agreements and discussions of their adequacy under Delaware, Texas, and New York law. It discusses the effectiveness of explicit non-reliance statements, no other representations provisions, integration clauses, “as is, where is” provisions, and independent investigation provisions.

In M&A contracts, the seller ideally wants the buyer to contractually promise that it did not rely on statements outside the four corners of the contract in deciding to do the deal. If agreed to, this promise is given by the buyer’s disclaimer of reliance on any extra-contractual statements that the seller may have made during the negotiation and due diligence process.

A disclaimer of reliance on extra-contractual statements is relevant because, if drafted correctly, it limits the representations a fraud claim may be based on to representations within the four corners of the contract. As reliance is an essential element of a fraud claim in many states, an effective disclaimer of reliance may allow a seller to have fraud claims dismissed at the pleading stage if the fraud claims are based on the seller’s extra-contractual statements.

The courts in some jurisdictions will not enforce a contract provision that bars fraud claims against a contract party (see, for example, *Danzig v. Jack Grynberg & Assoc.*, 161 Cal. App. 3d 1128, 1138 (1984), *Sweeney v. DeLuca*, 2006 WL 936688, at *5-6 (Mass. Super. Mar. 16, 2006), and *Blanchard v. Blanchard*, 839 P.2d 1320, 1322-23 (Nev. 1992)).

Among jurisdictions that allow contractual disclaimers, the language required for a disclaimer varies and the circumstances in which a disclaimer will be given effect differ. The chart below provides examples of contract language that directly or indirectly addresses extra-contractual representations made by the seller and describes whether each of these provisions, on its own, is sufficient to disclaim reliance under Delaware, Texas, and New York law.

Purchase Agreement Provision	Delaware	Texas	New York
<p>Non-Reliance Disclaimer:</p> <p>Except for the specific representations and warranties expressly made by Seller in Article [NUMBER] of this Agreement, Buyer specifically disclaims that it is relying upon or has relied upon any other representations or warranties that may have been made by Seller or any other Person, and acknowledges and agrees that Seller has specifically disclaimed and does hereby specifically disclaim any such other representation or warranty made by Seller or any other Person.</p>	<p>Yes</p> <p>See Explicit Statement of Non-Reliance.</p>	<p>Yes</p> <p>See Forest Oil Factors.</p>	<p>Yes</p> <p>But see Omnibus vs. Specific Disclaimers.</p>
<p>Generic Merger/Integration:</p>	<p>No</p>	<p>No</p>	<p>No</p>

Disclaimers of Reliance in Private M&A Deals Chart, Practical Law Checklist 2-562-5850

<p>This Agreement and the Exhibits and Schedules hereto, including the Company Disclosure Schedule and the Ancillary Agreements, constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.</p>	<p>See Generic Integration Provisions.</p>	<p>See Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am., 341 S.W.3d 323, 334 (Tex. 2011) and Int'l Bus. Machs. Corp. v. Lufkin Indus., LLC, 573 S.W.3d 224, 229 (Tex. 2019).</p>	<p>See Sabo v. Delman, 164 N.Y.S.2d 714, 717-718 (1957).</p>
<p>No Other Representations:</p> <p>Seller represents and warrants that except for the representations and warranties contained in this Article [NUMBER] (including the related portions of the Disclosure Schedules), none of Seller, the Company, or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller or the Company.</p>	<p>No</p> <p>See FdG Logistics LLC v. A&R Logistics Hldgs., Inc., 131 A.3d 842, 860 (Del. Ch. 2016).</p>	<p>No</p> <p>See Italian Cowboy Partners, 341 S.W.3d at 335 and IBM, 573 S.W.3d 224 at 229.</p>	<p>No</p> <p>But see Omnibus vs. Specific Disclaimers.</p>
<p>Standalone Independent Investigation:</p> <p>Buyer has conducted its own independent investigation, review, and analysis of the business, results of operations, prospects, condition (financial or otherwise), or assets of the Company, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Seller and the Company for such purpose.</p>	<p>No</p> <p>See Investigation Provisions.</p>	<p>No</p> <p>See Investigation Provision Alone Insufficient.</p>	<p>No</p>
<p>AS IS:</p> <p>Buyer hereby acknowledges and agrees that, except to the extent specifically set forth in Article [NUMBER] of this Agreement, the Buyer is acquiring the Company on an "AS IS, WHERE IS" basis.</p>	<p>No</p> <p>See "AS IS, WHERE IS" Basis.</p>	<p>No</p> <p>See Upheld AS IS Clauses.</p>	<p>No</p> <p>See Schooley v. Mannion, 659 N.Y.S.2d 374, 375 (3d Dept. 1997).</p>
<p>Accuracy or Completeness:</p> <p>Buyer has conducted and is relying on its own investigation of Sellers and acknowledges that, except for the representations and warranties set out in the purchase agreement, Sellers make no representations and warranties as to the accuracy or completeness of any information provided to Buyer, including with respect to projections.</p>	<p>Uncertain Whether Necessary</p> <p>See Accuracy or Completeness.</p>	<p>Probably Not Necessary</p> <p>See Schlumberger Technology Corp. v. Swanson, 959 S.W.2d 171, 181-182 (Tex. 1997) and Stabilis Fund II, LLC v. Compass Bank, 2020 WL 487497, at *5 (N.D. Tex. Jan. 20, 2020).</p>	<p>N/A</p>

		See also Forest Oil Factors .	
--	--	---	--

Delaware

Explicit Statement of Non-Reliance

Boilerplate integration clauses and disclaimers by the seller are not effective to waive a buyer's fraud claims for extra-contractual representations under Delaware law. To waive its right to bring fraud claims for statements made outside the four corners of the contract, the buyer must explicitly disclaim reliance on any representations and warranties not in the purchase agreement (*Abry Partners V, L.P. v. F & W Acquisition LLC*, 891 A.2d 1032, 1058-59 (Del. Ch. 2006); *Great Lakes Chem. Corp. v. Pharmacia Corp.*, 788 A.2d 544, 555-56 (Del. Ch. 2001)).

More recent decisions have reaffirmed that for the buyer to waive its right to bring fraud claims with respect to extra-contractual information provided during due diligence, it must make a clear statement that it did not rely on any extra-contractual statements made to it when it decided to enter into the agreement, over and above a standard integration clause or a mere disclaimer by the seller of extra-contractual representations (see *Anschutz Corp. v. Brown Robin Cap., LLC*, 2020 WL 3096744, at *14 (Del. Ch. June 11, 2020); *Infomedia Grp., Inc. v. Orange Health Solutions, Inc.*, 2020 WL 4384087, at *4-5 (Del. Super. July 31, 2020); *Anvil Holding Corp. v. Iron Acquisition Co.*, 2013 WL 2249655, at *8 (Del. Ch. May 17, 2013)).

The Delaware Court of Chancery in *FdG Logistics* reemphasized that a statement by the seller that it makes no additional representations does not function as a disclaimer of reliance by the buyer. **The buyer itself must disclaim reliance** on extra-contractual representations. (131 A.3d at 860.)

Delaware courts do not require a specific formula or "magic words" to disclaim reliance (*Prairie Capital, III, L.P. v. Double E Holding. Corp.*, 132 A.3d 35, 51 (Del. Ch. 2015)). To be effective, however, the language must "add up to a clear anti-reliance clause by which the plaintiff has contractually promised that it did not rely upon statements outside of the contract's four corners in deciding to sign the contract" (*Abry Partners*, 891 A.2d 1032 at 1059 (quoting *Kronenberg v. Katz*, 872 A.2d 568, 593 (Del. Ch. 2004))).

Although the buyer's statement of non-reliance is usually worded in the negative (buyer is not relying), negative wording is not necessary for the disclaimer to be effective. A statement worded in the affirmative (buyer is relying on its own investigation) may also function as a disclaimer of reliance (*IAC Search, LLC v. Conversant LLC (f/k/a ValueClick, Inc.)*, 2016 WL 6995363, at *6 (Del. Ch. Nov. 30, 2016); *Prairie Capital*, 132 A.3d 35 at 51; and *Investigation Provisions*).

An explicit statement of non-reliance from the buyer is the clearest way to adequately disclaim reliance, but Delaware cases provide some guidance on other combinations of language that add up to clear anti-reliance language. For example, Delaware courts have found the following adequate to disclaim reliance:

- **A buyer acknowledgement of no seller representations outside of the agreement and a buyer acknowledgement of no seller liability for the buyer's reliance.** In *Abry Partners*, the court found a clear non-reliance statement, where the buyer acknowledged that:
 - the seller was not making any representations except as set forth in the agreement; and
 - the seller had no liability to the buyer for the buyer's reliance on any information outside of the agreement.
- (*Abry Partners*, 891 A.2d 1032 at 1041).

- **A buyer statement that it is making or relying on own investigation, when combined with other language.**

For example:

- a statement by the buyer that it made its own investigation, an acknowledgement by buyer that the seller is not making representations outside of the agreement, and a standard integration clause. However, the court noted that this language was a closer call than *Abry Partners* because the buyer did not acknowledge that the seller would not be liable for the buyer's reliance on information made available to it in connection with the transaction that was not included in representations and warranties expressly made in the agreement. (*IAC Search*, 2016 WL 6995363, at *6-7); and
- a statement by the buyer that it is relying on its own independent investigation and the representations set out in the agreement, a statement that the representations in the agreement are the sole representations of the sellers, an acknowledgement by the buyer that the sellers disclaim all other representations, and a standard integration clause (*Prairie Capital*, 132 A.3d 35 at 50-51).
- (See also, [Investigation Provisions](#).)

If the parties intend to bar fraud claims based on extra-contractual representations, they must do so using an effective disclaimer of reliance provision. An attempt to bar fraud claims for extra-contractual statements through other means, such as an exclusive remedy provision, has been found to be ineffective in the absence of an explicit disclaimer of reliance on extra-contractual representations. For example, in *Fortis Advisors LLC v. Johnson & Johnson*, even though the exclusive remedy provision limited the remedies to indemnification (except for fraud based on contractual representations), the court found that because there was not an effective disclaimer of reliance on extra-contractual statements, the fraud claims for the extra-contractual statements were not barred. (2021 WL 5893997, at *12 (Del. Ch. Dec. 13, 2021).)

Carve-Out for Fraud Claims

An effective disclaimer of reliance prevents fraud claims based on statements made outside the four corners of the agreement. However, many acquisition agreements that contain valid disclaimers of reliance also include an express fraud carve-out that provides that the buyer still retains the right to bring fraud claims against the seller. Because of the inherent tension between a non-reliance provision and a fraud carve-out, the parties must ensure that the provisions work together as intended.

This general carve-out for fraud claims is frequently included in the agreement's "Exclusive Remedies" provision because an exclusive remedies provision typically limits the parties remedies to the indemnification provisions (with its applicable limits, such as an indemnity **cap**) or to representation and warranty insurance, subject to certain exceptions. For an example of such a provision, see [Standard Document, Stock Purchase Agreement \(Pro-Buyer Long Form\): Section 8.09](#).

If a fraud carve-out in an exclusive remedies provision refers to undefined fraud, but there is an effective disclaimer of reliance, Delaware courts have generally found that the fraud carve-out allows a party to bring tort-based fraud claims outside of the indemnification provisions, but that those fraud claims must be based on contractual fraud and not on extra-contractual statements that have been effectively disclaimed (see *Prairie Capital*, 132 A.3d 35 at 55; *Novipax Holdings LLC v. Sealed Air Corp.*, 2017 WL 5713307, at *12 (Del. Super. Nov. 28, 2017)). However, a seller still concerned about the risk of a fraud carve-out can clarify in the agreement that the fraud carve-out applies only to claims based on representations and warranties made in the agreement itself.

The Delaware courts have distinguished between extra-contractual fraud and fraud made within the four corners of the agreement for public policy purposes. A party may validly limit its liability for false extra-contractual representations and warranties but not for a knowingly false contractual representation (see *Abry Partners*, 891 A.2d at 1059). A party may always seek unlimited damages in a tort-based fraud claim (despite any limitations such as a capped indemnity) against a person committing fraud with respect to a knowingly false contractual representation, even if there is not an express fraud carve-out because precluding or limiting these fraud claims is against Delaware public policy (*Abry Partners*, 891 A.2d at 1064).

In some agreements, the disclaimer of reliance also may contain a carve-out for fraud, as in the following example:

"Holdings and the Buyer agree that neither the Company, any Seller nor any of their respective Affiliates or advisors have made and shall not be deemed to have made any representation, warranty, covenant or agreement, express or implied, with respect to the Company, its business or the transactions contemplated by this Agreement, other than those representations, warranties, covenants and agreements explicitly set forth in this Agreement [...]; provided, however, that this [SECTION] shall not preclude the Buyer Indemnified Parties from asserting claims for Fraud or indemnification in accordance with Article VII."

(*ChyronHego Corp. v. Wight*, 2018 WL 3642132, at *5 (Del. Ch. July 31, 2018).)

In *ChyronHego*, the parties tied the fraud carve-out in the non-reliance clause to the section of the agreement addressing indemnification (Article VII) and the Delaware Court of Chancery found that the buyer was precluded from bringing extra-contractual fraud claims. The court explained that the fraud carve-out tied to the section of the agreement addressing indemnification simply confirms that nothing in the non-reliance clause affects the buyer's right to seek indemnification and fraud damages for contractual misrepresentations and omissions. (2018 WL 3642132, at *5.) Sellers, however, should be mindful of including a fraud carve-out in a non-reliance provision, particularly if fraud is undefined or is defined broader than the public policy fraud carve-out based on knowingly false contractual misrepresentations. For example, in one case, the Chancery Court found at the pleading stage, that a fraud carve-out to a no representations clause rendered the clause ineffective as a disclaimer of reliance because the fraud carve-out stated that fraud claims were not subject to the no other representations clause (*In re P3 Health Grp. Hldgs., LLC*, 2022 WL 15035833, at *7 (Del. Ch. Oct. 26, 2022)).

For a more detailed discussion of fraud carve-outs in M&A agreements, see [Practice Note, Fraud Carve-Outs in Private M&A Agreements](#). For examples of fraud carve-outs in recent private M&A agreements, see [Practice Note, What's Market: Fraud Carve-Outs in Private M&A Agreements](#).

Generic Integration Provisions

When a buyer alleges that it was fraudulently induced by the seller's material misstatements of fact to enter into the agreement, its claim is barred only if the agreement contains explicit language of non-reliance on extra-contractual statements (see *Kronenberg*, 872 A.2d 568 at 593; [Explicit Statement of Non-Reliance](#)). A generic integration clause by itself is insufficient to disclaim reliance on all extra-contractual statements because a generic integration clause only operates to establish the parameters of the agreement (*Humanigen, Inc. v. Savant Neglected Diseases, LLC*, 2021 WL 4344172, at *19 (Del. Super. Sept. 23, 2021)).

However, generic integration clauses without non-reliance language are still useful when the plaintiff alleges that it had a separate agreement or understanding with the defendant. A generic integration provision will bar the plaintiff's claim that it had a side agreement, but will generally not bar claims that the plaintiff was fraudulently induced to enter into the agreement by extra-contractual statements in the absence of non-reliance language (see *Black Horse Capital, LP v. Xstelos Hldgs., Inc.*, 2014 WL 5025926, at *22-24 (Del. Ch. Sept. 30, 2014), discussing *H-M Wexford LLC v. Encorp. Inc.*, 832 A.2d 129 (Del. Ch. 2003)).

Integration clauses, when combined with other language may collectively result in a valid anti-reliance clause (see [Explicit Statement of Non-Reliance](#)).

Investigation Provisions

A provision that merely states that the buyer has conducted its own investigation is unlikely to be sufficient as a disclaimer of reliance. However, a provision stating that the buyer has **relied** on its own investigation, when combined with other language, may constitute adequate disclaimer language. In *Prairie Capital*, the Delaware Court of Chancery held that a provision in which the buyer states that it has relied on both its own investigation and the seller's representations in the agreement and acknowledges that the seller has disclaimed all other representations, when combined with a customary integration clause, functions as a clear anti-reliance clause, even if the buyer has not stated that it is not relying on any extra-contractual statements by the seller. The court held that the enforceability of the provision does not turn on whether

the statement is framed negatively (buyer does not rely) or positively (buyer only relies), as long as the intention is clear. (132 A.3d 35 at 51.)

”AS IS, WHERE IS” Basis

”As Is, Where Is” clauses have been held to fall short of an explicit disclaimer of reliance on extra-contractual representations by a buyer (see *Humanigen*, 2021 WL 4344172, at *18-20).

Accuracy or Completeness

Even if the agreement contains adequate disclaimers of reliance, the buyer may still be able to bring a fraud claim under Delaware law on a theory of omission or active concealment of material information. A disclaimer of reliance by the buyer that includes a disclaimer as to the accuracy or completeness of information is enforceable against a buyer bringing this type of fraud claim because it demonstrates total self-reliance on the part of the buyer, with no expectation that the seller has provided it with complete information (see *RAA Mgmt., LLC v. Savage Sports Hldgs., Inc.*, 45 A.3d 107, 115 (Del. 2012); *Pilot Air Freight, LLC v. Manna Freight Systems, Inc.*, 2020 WL 5588671, at *22-23 (Del. Ch. Sept. 18, 2020)). A failure to include a reference to the accuracy or completeness of information may expose the seller to claims of fraudulent omission and fraudulent concealment of material facts, despite otherwise robust disclaimers of extra-contractual representations and warranties and reliance (see *TransDigm, Inc. v. Alcoa Global Fasteners, Inc.*, 2013 WL 2326881, at *7-9 (Del. Ch. May 29, 2013)).

However, the Delaware courts are split on this issue, following the ruling in *Prairie Capital* (see *Infomedia Grp., Inc.*, 2020 WL 4384087, at *8 (citing *Prairie Capital*)). The *Prairie Capital* court held that the exclusive representations and integration clauses worked together to constitute a clear anti-reliance clause where the agreement clearly set out the universe of information on which the aggrieved party had relied (which was limited to information contained within the four corners of the agreement), even though it had not explicitly disclaimed reliance on extra-contractual omissions. The court held that a standard demonstration of anti-reliance intent is sufficient to disclaim reliance on omissions in the same way that it functions as a disclaimer of reliance on extra-contractual misstatements, in that any claim of a misstatement can be recast as a claim of omission. (132 A.3d at 53-55.) This split will most likely need to be resolved by the Delaware Supreme Court. For further discussion of the *Prairie Capital* decision and whether it can be reconciled with *TransDigm*, see [Legal Update, Delaware Court of Chancery Broadens Scope of Language and Effect of Disclaimers of Reliance](#).

Texas

Forest Oil Factors

Under *Forest Oil Corp. v. McAllen*, the non-reliance disclaimer provision is enforceable if, in addition to the language of non-reliance, the court’s review of the following five factors weighs in favor of enforcement:

- The terms of the contract, and in particular, the disputed provision, were negotiated rather than boilerplate.
- The complaining party was represented by counsel.
- The parties dealt with each other at arm’s length.
- The parties were knowledgeable in business matters.
- The release language is clear.

(268 S.W.3d 51, 60 (Tex. 2008).)

Investigation Provision Alone Insufficient

Without satisfaction of the *Forest Oil* factors, an independent investigation provision has been found to be insufficient by itself to disclaim reliance under Texas law. If the *Forest Oil* factors are satisfied, however, an independent investigation provision may be an effective disclaimer. In *Allen v. Devon Energy Holdings, LLC*, a Texas Court of Appeals held that a provision that only makes reference to a party's investigation does not manifest a clear intent to disclaim reliance if it does not make clear that the party has relied "only," "exclusively," or "solely" on its own investigation (367 S.W.3d 355, 379 (Tex. App.—Houston 2012) (remand by agreement, 2013 WL 273026 (Tex. App.—Houston [1st Dist.] Jan. 24, 2013))). By contrast, a provision that includes language such as "rely solely on its own investigation" has been upheld as a valid disclaimer, assuming satisfaction of the *Forest Oil* factors (*Matlock Place Apartments, L.P. v. Druce*, 369 S.W.3d 355, 371 (Tex. App.—Fort Worth 2012)).

Upheld AS IS Clauses

In *Prudential Insurance Company of America v. Jefferson Associates, Ltd.*, the Texas Supreme Court upheld a contractual AS IS clause as enforceable against the buyer's fraud claim (896 S.W.2d 156, 161-162 (Tex. 1995)). The provision at issue stated:

"As a material part of the consideration for this Agreement, Seller and Purchaser agree that Purchaser is taking the Property "AS IS" with any and all latent and patent defects and that there is no warranty by Seller that the Property is fit for a particular purpose. Purchaser acknowledges that it is not relying upon any representation, statement or other assertion with respect to the Property condition, but is relying upon its examination of the Property. Purchase takes the Property under the express understanding there are no express or implied warranties (except for limited warranties of title set forth in the closing documents)."

(*Prudential*, 896 S.W.2d at 160.)

Although this provision also contains language of non-reliance, which might cloud the conclusion that the "as is" clause was solely effective to bar the fraud claim, the court added that "it should not be necessary in every 'as is' provision to go into this much detail."

However, the court noted that an "as is" agreement will not be upheld in every circumstance, such as where the buyer was induced to purchase something as is because of a fraudulent representation or concealment of information by the seller. The court also appeared to apply the *Forest Oil* factors in making its determination that the as is provision was enforceable. Therefore, an as-is provision such as the one in *Prudential* may be upheld only if it meets the requirements under *Forest Oil* and there was no fraud by the seller to induce the buyer to make the purchase as is. (*Prudential*, 896 S.W.2d at 161-162.)

New York

Omnibus vs. Specific Disclaimers

Parties can contract to bar fraud claims under New York law, provided that the contract contains sufficient specificity as to the representations being disclaimed and the alleged misrepresentation or omission does not concern facts that are peculiarly within the nonmoving party's knowledge (see *Danann Realty Corp. v. Harris*, 5 N.Y.2d 317, 323 (1959); *Grumman Allied Indus., Inc. v. Rohr Indus., Inc.*, 748 F.2d 729, 735 (2nd Cir. 1984); *Basis Yield Alpha Fund (Master) v. Goldman Sachs Group, Inc.*, 980 N.Y.S.2d 21, 28 (1st Dep't 2014)).

In contrast to Delaware's allowance of an omnibus disclaimer (as long as the language of the disclaimer is clear), New York courts will attempt to match the buyer's fraud claims with the representations that have been disclaimed. There does

not need to be a precise match between the misrepresentation and disclaimer, but the substance of the disclaimer must track the substance of the misrepresentation (*Grumman*, 748 F.2d 729 at 735). At the same time, New York law does not require additional language of non-reliance as long as the disclaimer was sufficiently specific and can be matched to the buyer's particular claim.

The peculiar knowledge exception applies when the facts are in the exclusive knowledge of the defendant or could only be discovered by the plaintiff with extraordinary effort or great difficulty (*DIMON Inc. v. Folium, Inc.*, 48 F.Supp.2d 359, 368 (S.D.N.Y. 1999)). Facts are not peculiarly within the seller's knowledge if the buyer has the ability to determine whether the representation is true by exercising ordinary intelligence (*ACA Fin. Guar. Corp. v. Goldman, Sachs & Co.* 10 N.Y.S.3d 486, 487 (2015)). In making a determination New York courts consider the buyer's level of sophistication and its access to information relevant to the representation (*DIMON*, 48 F.Supp.2d 359 at 368).

SCHEDULE 5

White Paper BLS Service of Process

ANALYSIS OF PROPOSED “GLITCH” LEGISLATION TO AMEND STATUTORY PROVISIONS REGARDING SERVICE OF PROCESS IN FLORIDA

White Paper

Submission by the Business Law Section of The Florida Bar

AUGUST __, 2024

Background and Introduction

During the 2022 legislative session, resulting largely from an initiative of the Business Law Section of The Florida Bar (the “Florida BLS”), the Florida legislature passed Chapter 2022-190, Laws of Florida (the “2022 Legislation”), which overhauled the law regarding service of original process in civil litigation. The 2022 Legislation has largely been successfully applied by practitioners and by courts without significant problems; however, The Florida BLS proposes to further clarify and simplify service of process in Florida by:

- Addressing a conflict in the case law interpreting the applicability of the 2022 Legislation to service of process taking place after its effective date by providing a “safe harbor” that would validate service of process made in conformity with the 2022 Legislation or under prior law, thereby ensuring the validity of default judgments based on service under either statutory regime;
- Expanding the hours registered offices of business entities are required to be open for service of process on registered agents;
- Allowing individual registered agents to be served anywhere they can be found, not just at the registered office.

- Clarifying the methods and procedures regarding substitute service of process on the Secretary of State and addressing certain problems experienced by the Secretary of State’s office in the implementation of the 2022 Legislation;
- Clarifying language in the long arm statute, F.S. § 48.181 and adding language to ensure its consistency with prior law.
- Ensuring that there is a simple and effective way to serve process on entities in receivership.

The 2022 Legislation

A principal goal of the 2022 Legislation was to simplify, clarify, and modernize the manner of service of original process¹ on business entities by eliminating duplicative and sometimes conflicting provisions regarding service of original process on for-profit and not-for-profit corporations, limited liability companies, and partnerships, limited partnerships, and limited liability partnerships in the statutes that address the formation, governance, and operations of these business entities and to consolidate them under Chapter 48, the general statutory regime addressing service of process in Florida courts. It further facilitated service of process on business entities through a simplified “waterfall” or hierarchical approach by directing personal service of process on

¹ “Original process” is considered to be a writ or summons issued by the authority of the court as the first step in a lawsuit, including a notice to the party being served about when to appear and make a defense. Contrastingly, “mesne process” is process issued during the course of a legal proceeding, while “final process” is considered to be a writ of execution pursuant to a judgment at the conclusion of a legal proceeding. Service of “original process” is frequently referred simply in the statutes and caselaw as service of process and, for simplicity, will be referred to in that fashion hereafter in this White Paper.

the respective entity's registered agent in the first instance, and then, after a single "good faith" attempt to effectuate service on the registered agent, to effectuate service of process by serving other specified representatives of the business entities.

Borrowing on statutes or rules of procedure enacted by some other states, the 2022 Legislation also included a new provision, F.S. §48.102, that authorized courts to order service of process on business entities through other methods, such as by certified mail, email, or other electronic means, if traditional methods of service had proven ineffective. Furthermore, the 2022 Legislation clarified certain arcane and antiquated language in existing provisions allowing substituted service of process on businesses or individuals through the Florida Secretary of State under certain circumstances, including adding the ability to effectuate substituted service electronically through a portal created by the office of the Florida Secretary of State.

In recognition of the increasing role of this state as a center for international business transactions, and the consequent increase in litigation involving international parties in Florida courts, with the cooperation of the International Law Section of The Florida Bar, as part of the 2022 Legislation, the Florida BLS developed another new statute, F.S. §48.197, that expanded and

clarified the methods for service of process on business entities in foreign countries and individuals in foreign countries.

Through an initiative of the Real Estate, Probate and Trust Law Section and the Family Law Section of The Florida Bar, additional provisions were added by the 2022 Legislation that provided for constructive service of process on unknown tenants or other parties in possession in eviction and unlawful detainer actions under F.S. §48.184, and service by publication on absent mothers in paternity actions under F.S. 49.011. Finally, amendments to F.S. §766.106 developed by the Florida Justice Association were included in the 2022 Legislation that expanded the methods of service of pre-suit notices in medical malpractice actions and clarified the effect of service of such notices on the statutes of limitation. See Giacomo Bossa and James B. Murphy, Jr., *Recent Legislative Changes to Service of Process: A New Ball Game?*, 97 Fla. B. J. 39 (May/June 2023) (providing more complete summary of the background and scope of the 2022 Legislation).

Implementation of the 2022 Legislation

Chapter 2022-190 became effective on January 2, 2023. Since that time, Chapter 48 Task Force of the Florida Business Law Section (the “Task Force”), which was largely responsible for developing the text of the 2022 Legislation, has monitored reported judicial decisions that have addressed or interpreted the

2022 Legislation and has consulted with legal practitioners and with the Florida Association of Professional Process Servers (FAPPS), who have had experience in applying these provisions, to identify any issues or problems that have arisen in implementing the 2022 Legislation.

Divergent Judicial Interpretations Regarding Applicability of the 2022 Legislation in Existing Cases

For the most part, courts have routinely applied the amendments contained in the 2022 Legislation to situations in cases where service of process has taken place after the 2022 Legislation's effective date. *See, e.g., KMG Prop., LLC v. Owl Construction*, 2024 Fla. App. LEXIS 3116*; 49 Fla. L. Weekly D 893 (Fla. 2d DCA April 24, 2024); *Medina v. Bulldog Logistics*, 2023 U.S. Dist. LEXIS 129434*; ____ WL ____, (S.D. Fla. July 26, 2023); *Vega v. PBS Constr., LLC*, 2023 U.S. Dist. LEXIS 185039*; 2023 WL 6809633 (M.D. Fla. October 16, 2023). In a few instances, however, trial courts have held that the amendments contained in the 2022 Legislation do not apply to service of process which took place after January 2, 2023, the effective date of the 2022 Legislation, if the cause or causes of action alleged in the lawsuit accrued prior to January 2, 2023. *See, Eugene v. Goodleap, LLC*, 2023 U. S. Dist. LEXIS 169469*; 2023 WL 6609357 (S.D. Fla. Mar. 1, 2024), *report and recommendation adopted by* 2024 WL 1174174 (S.D. Fla. Mar. 18,

2024); *Angarita v. Hypertoyz*, 2023 U.S. Dist. LEXIS 143568 *; 2023 WL 5289260 (S.D. Fla. Aug. 26, 2023) *Baxter v. Miscavige*, 2023 U.S. Dist. LEXIS 25024*; 2023 WL 1993969 (M.D. Fla. Feb. 14, 2023). These decisions have been issued by Florida federal magistrate judges applying Florida law to service of process in their cases, based upon application of Federal Rule 4(h). Although the Task Force is unaware of any decisions by Florida state courts that have to date declined to apply the amendments in the 2022 Legislation to service of original process falling within the scope of the amendments and taking place after the effective date, there may well be such instances given that most decisions by trial courts in this state are not reported. Moreover, practitioners wishing to avail themselves of the holdings in these federal cases may seek to rely upon, and judges in both Florida state and federal courts may follow, these reported federal court decisions and invalidate service of process made in accordance with the amendments in the 2022 Legislation in future cases when they determine that the causes of action accrued prior to January 2, 2023. Given the fact that statute of limitations in cases can allow some cases to be filed five years or more after the cause or causes of action accrued, this divergence presents a substantial risk of creating lingering uncertainty among practitioners and courts in determining how service of process should be properly effectuated. Moreover, the fact that

decisions regarding how to effectuate service of process or determinations of the validity of that service often, as in the cited cases decided by the federal magistrate judges, take place in the context of default or default judgments, raises the disquieting specter that any resulting judgments may be set aside months or even years later when a party seeks to enforce or collect upon the judgment and another court (or possibly the same court after further consideration) determines that the service of process was made under the wrong statutory regime.

The Task Force has accordingly developed language in this new “glitch” bill to address this situation by creating a “safe harbor” for any service of process made between January 2, 2023, and the effective date of the glitch bill. Pursuant to these provisions, so long as the service was properly made under either the amendments in the 2022 Legislation or under the prior law that otherwise would have applied when the cause of action accrued, the service of process will be considered valid.

Service of Process on Registered Agents of Business Entities

As noted above, under the 2022 Legislation, service of process on a business entity, regardless of its form, is generally to be effectuated, in the first

instance, by service on its registered agent.² Only if, following one good faith attempt, the service cannot be made on the registered agent may service be effectuated by serving other designated representatives of the entity.

Fla. Stat. § 48.091 addresses the designation of an entity's registered agent as well as the designation of the entity's registered office where service of process may be made. This statutory section also describes how to serve process on the registered agent, including specifying the minimum time when the designated registered office is required to be open so that there is a window of time during which the person seeking to serve process can expect the registered agent to be present and available to accept such service. The 2022 Legislation broadened the provisions of this statutory section to expressly apply to partnerships and limited liability companies as well as to corporations that were referenced under the prior statute, but it did not change the provisions relating to the minimum two-hour time period from 10 a.m. to 12 p.m. that the designated office was required to be open for service of process. Following the adoption of the 2022 Legislation, FAPPS approached the Task Force and requested that that

² The sole exception to this general rule is with respect to general partnerships, owing to their history as business associations comprised of their general partners and to the longstanding tradition of effectuating service of process by serving one or more of their general partners. Most general partners do not have registered agents; however, recently domestic general partnerships have been permitted, though not required, to designate an agent with the Florida Secretary of State. Amended F.S. §48.061(1)(b) permits, but does not require, that service on a general partner with a designated agent to be effectuated, in the first instance, by service on that designated agent.

such minimum hours be extended to make it easier to serve process on registered agents. After consulting with practitioners representing business entities and companies and practitioners who tend to serve as registered agents, the Task Force determined that lengthening the minimum time period that registered offices were required to be open for service of process by an additional two hours – from 2 p.m. to 4 p.m. as well as from 10 a.m. to 12:00 -- would not cause undue hardship to their interests and would make it easier to serve process on the registered agents.

Regardless of the requirements of the statute, however, and even with an increase in the minimum hours to be open, sometimes registered agents are not present at the designated registered offices or process cannot be effectuated on them when the designated office is required to be open. Under prior law, this concern was addressed by generally allowing a registered agent, including a registered agent who was an individual, to be served wherever the registered agent could be found. With respect to serving registered agents who were individuals, the prior law thus allowed service of process to be effectuated at such individual's principal place of abode, as provided under F.S. § 48.031(1)(a). However, after the 2022 Legislation was enacted, a federal magistrate judge, in construing a separate statutory provision, F.S. §48.062(5), relating to service of

process on limited liability companies, held that service of process on a registered agent of a limited liability company who is an individual was not permitted at an address other than at the designated registered office. *Campbell v. ADW Consult., LLC*, 2024 U.S. Dist. LEXIS 11402*; 2024 WL 245802 (M.D. Fla. Jan. 23, 2024). The same language that the court relied upon is found in F.S. §48.081((3)(b) relating to service of process on corporations. The Task Force believes that limiting service of process on individual registered agents to the designated registered office is too restrictive and would unduly impede the ability to serve process on business entities. A party should be able to serve a registered agent who is an individual in the same manner as one is allowed to serve an individual who is a defendant in the litigation. The Task Force therefore proposes to amend F.S. §48.091, which addresses service of process on registered agents of all types of business entities, to expressly allow service on registered agents who are individuals by following the provisions of F.S. §48.031, including by personally serving the individual or leaving copies at his or her usual place of abode with any person residing therein over 15 years of age.

With respect to registered agents that are corporations, LLC's or other business entities, the language of F.S. §48.091 would also be revised to specify

that those registered agents may be served in the same manner as service of process on such business entities generally.

Furthermore, to alleviate additional concerns expressed by practitioners about problems in serving registered agents who are not present at the registered office when the process server appears, the language of F.S. §48.091 would allow service of process on an employee of the registered agent at the designated registered office.

Substituted Service on the Florida Secretary of State under F.S. §48.161

F. S. § 48.161 provides the method for substituted service on the Florida Secretary of State with respect to nonresidents in litigation arising from business activities they conduct in this state or with respect to persons who conceal themselves to evade service of process. The 2022 Legislation made several revisions to this statute to clarify its provisions, and to facilitate the ability of practitioners and courts to apply them, by including in the statute various definitions or interpretations applied by courts over the years in construing the statute. After the 2022 Legislation became effective, the Task Force reached out to the Secretary of State's office to determine how, from its perspective, the provisions were operating in practice and to ascertain any problems.

One problem identified was that many of the summons received by the Secretary of State, particularly through its electronic portal, incorrectly designated the Secretary of State as the party being served whereas, in fact, given that the Secretary of State is merely set up to be a limited statutory agent of the named party in the lawsuit, it is the actual party that should be designated in the summons, with that party being served “in care of” the Secretary of State. In addition, the Secretary of State’s office informed the Task Force that it has been deluged by copies of electronic filings of papers in many lawsuits after the substituted service of process has been effectuated, as if the Secretary of State were a party to those proceedings. The Task Force has proposed adding language to subsection (1) and (8) of F.S. § 48.161 to remedy these issues.

The wording of subsection (3), which addresses the substantive requirement of due diligence in previously attempting to locate and personally serve the opposing party, has been revised to clarify that due diligence is a condition precedent whenever substituted service is sought to be made under the section, and, to further emphasize the importance of this requirement, the placement of the subsection has been transposed with subsection (2) that addresses the methods and manner of service of notice on the opposing party and the contents of the affidavit of compliance demonstrating due diligence. In

addition, some of the specific wording in subsection (2) has been slightly reworded and clarified to avoid any inconsistency with prior case law, which the Task Force did not intend to change, and other minor revisions of this subsection have also been made.

Fla. Stat. §48.181

Fla. Stat. §48.181 addresses the jurisdictional basis for substituted service on the Secretary of State when nonresidents have engaged in business in this state and are being sued with respect to a transaction or operation connected to such business, and to persons concealing their whereabouts to avoid service of process. The proposed revisions to F.S. §48.181 restores language expressly referencing a particular type of nonresident to be within the scope of the statute - that is, a current nonresident who was formerly a resident at the time of the alleged breach or wrongdoing alleged in the lawsuit. In revising the language of the statute through the 2022 Legislation, specific reference to a nonresident, but former resident of this state, was inadvertently omitted. The express reference to nonresidents who are former residents of this state is to ensure that these persons are not excluded from the operation of this statute. There is no reason to differentiate this type of non-resident from other non-residents; indeed, it would seem obvious that non-residents being sued for activities arising from business

that they conducted in this state while living in the State of Florida could even more easily anticipate being called to answer a lawsuit in this state than a non-resident who never resided here.

The Task Force has also proposed some other minor changes in the wording of F.S. §48.181 to clarify its intent.

Service of Process on Entities in Receivership

The 2022 Legislation expanded F.S. § 48.101, which by its terms had previously applied to only to corporations, to also expressly set forth the methods of service of process on dissolved limited liability companies, limited partnerships, and limited liability partnerships, as well as on corporations that have been dissolved. A practitioner raised the question with the Task Force about how one would go about serving a business organization that was not dissolved, but was in receivership, an issue not specifically addressed in this statutory section or elsewhere in the Florida Statutes. Especially given the volume of litigation involving business organizations in receivership in recent years, the Task Force agreed that this issue needed to be addressed. Therefore, in the proposed “glitch” bill, language has been added to F.S. § 48.101 to specify that a party attempting to serve process on a domestic business organization in receivership may effect service by personal service on the receiver of the business organization.

Conclusion

Chapter 2022-190, Laws of Florida, was a lengthy and important legislative initiative that was intended to simplify, clarify, and modernize the law regarding service of process. Through its post-enactment research and investigation regarding the implementation of this legislation, the Task Force has identified certain issues regarding the 2022 Legislation that need to be clarified or fixed to better achieve these goals and to avoid potential obstacles to the fair and just administration of civil lawsuits in this state. We believe that this proposed “glitch bill” will achieve these results.

SCHEDULE 6

Service of Process Glitch Bill

WHEREAS, during the 2022 session, the Legislature adopted Ch. 2022-190 Laws of Florida, which sought to simplify, clarify, and modernize the manner of service of process with respect to business entities and in certain other respects;

WHEREAS, Ch. 2022-190 provided for an effective date of January 2, 2023, except as otherwise specifically set forth therein;

WHEREAS, there has nevertheless been a conflict among judicial decisions with regard to the applicability of the amendments to service of process made or effectuated after the effective date of the legislation with respect to causes of action accruing prior to the effective date;

WHEREAS, while it was the intent of the Legislature that the amendments relating to service of process in Ch. 2022-190 would be applicable to all service of process falling within its scope and made or effectuated on or after its effective date, and the Legislature desires to clarify and reaffirm that intent, the Legislature does not desire or intend that any such service of process that was effectuated on or after January 2, 2023, and on or prior to the effective date of this legislation in accordance with the law in effect when the cause or causes of action accrued be invalidated, so long as such process was made or effectuated pursuant to the requirements of due process;

NOW THEREFORE, by the enactment of this legislation, in addition to the changes set forth in this legislation, the Legislature expresses its intent that Ch. 2022-190 Laws of Florida shall henceforth be applied to all service of process made or effectuated hereafter falling within the scope thereof; and that, furthermore, with respect to service of process falling within the scope of Ch. 2022-190, which was

made or effectuated on or after January 2, 2023, and on or prior to the effective date of this legislation, such process shall be valid if made or effectuated either in accordance with the provisions of Ch. 2022-190 or in accordance with prior law which would have applied to such service of process in the absence of Ch.2022-190, so long as such process was made in accordance with the requirements of due process; with this preamble intending to clarify existing law and to be remedial in nature.

48.091 Partnerships, corporations, and limited liability companies; designation of registered agent and registered office.—

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

(a) “Registered foreign corporation” and “registered foreign limited liability company” have the same meanings as in ss. 48.081 and 48.062, respectively.

(b) “Registered foreign limited liability partnership” or “registered foreign limited partnership” means a foreign limited liability partnership or foreign limited partnership that has an active certificate of authority to transact business in this state pursuant to a record filed with the Department of State.

(2) Every domestic limited liability partnership; domestic limited partnership, including limited liability limited partnerships; domestic corporation; domestic limited liability company; registered foreign limited liability partnership; registered foreign limited partnership, including limited liability limited partnerships; registered foreign corporation; and registered foreign limited liability company shall designate a registered agent and registered office in accordance with chapter 605, chapter 607, chapter 617, or chapter 620, as applicable.

(3) Every domestic limited liability partnership; domestic limited partnership, including limited liability limited partnerships; domestic corporation; domestic limited liability company; registered foreign limited liability partnership; registered foreign limited partnership, including limited liability limited partnerships; registered foreign corporation; registered foreign limited liability company; and domestic or foreign general partnership that elects to designate a registered agent, shall cause the designated registered agent to keep the designated registered office open from at least 10 a.m. to 12 noon and 2 p.m. to 4 p.m. each day except Saturdays, Sundays, and legal holidays, and shall cause the designated registered agent to keep one or more individuals who are, or are representatives of, the designated registered agent on whom process may be served at the office during these hours.

(4)

(a) A registered agent who is a natural person may be served with process in accordance with s. 48.031.

(b) A person attempting to serve process at the registered office, designated pursuant to subsection (2) of this section, on a registered agent who is a natural person, if the natural person is not present at the designated registered office at the time of service may serve the process, including during the first attempt at service, on any employee of such natural person who is present at the designated registered office at the time of the service.

(c) A person attempting to serve process at the registered office, designated pursuant to ~~this~~ subsection (2) of this section, on a registered agent that is other than a natural person may serve the process in accordance with the provisions of applicable law

relating to service of process on that type of entity or on any employee of the registered agent who is present at the designated registered office at the time of the service.

(5) The registered agent shall promptly forward copies of the process and any other papers received in connection with the service to a responsible person in charge of the business entity. Failure to comply with this subsection does not invalidate the service of process.

48.101 Service on domestic dissolved corporations, dissolved limited liability companies, dissolved limited partnerships, and dissolved limited liability partnerships, and business organizations in receivership.—

(1) Process against the directors of any corporation that was dissolved before July 1, 1990, as trustees of the dissolved corporation must be served on one or more of the directors of the dissolved corporation as trustees thereof and binds all of the directors of the dissolved corporation as trustees thereof.

(2)(a) Process against any other dissolved domestic corporation must be served in accordance with s. 48.081.

(b) In addition, provided that service was first properly attempted on the registered agent pursuant to s. 48.081(2), but was not successful, service may then be attempted as required under s. 48.081(3). In addition to the persons listed in s. 48.081(3), service may then be attempted on the person appointed by the circuit court as the trustee, custodian, or receiver under s. 607.1405(6).

(c) A party attempting to serve a dissolved domestic for-profit corporation under this section may petition the court to appoint one of the persons specified in s. 607.1405(6) to receive service of process on behalf of the corporation.

(3)(a) Process against any dissolved domestic limited liability company must be served in accordance with s. 48.062.

(b) In addition, provided that service was first properly attempted on the registered agent pursuant to s. 48.062(2), but was not successful, service may then be attempted as required under s. 48.062(3). In addition to the persons listed in s. 48.062(3), service on a dissolved domestic limited liability company may be made on the person appointed as the liquidator, trustee, or receiver under s. 605.0709.

(c) A party attempting to serve a dissolved domestic limited liability company under this section may petition the court to appoint one of the persons specified in s. 605.0709(5) to receive service of process on behalf of the limited liability company.

(4) Process against any dissolved domestic limited partnership must be served in accordance with s. 48.061.

(5) Notwithstanding any other provision of this section, a party attempting to serve process on a domestic business entity, business trust, of sole proprietorship in receivership may effect service by personal service on receiver during the pendency of the receivership.

(6) For purposes of this section, "business organization" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, business trust, or sole proprietorship.

48.161 Method of substituted service on ~~nonresident~~ certain parties in care of the Secretary of State .—

(1) When authorized by law, substituted service of process on a nonresident individual or a corporation or other business entity incorporated or formed under the laws of this state or any other state, territory, or commonwealth, or the laws of any foreign country, may be made by sending a copy of the process to the office of the Secretary of State. Such process shall be issued in the name of the party to be served, in care of the Secretary of State. Such service shall be made by personal delivery, by registered mail, by certified mail, return receipt requested, by use of a commercial firm regularly engaged in the business of document or package delivery, or by electronic transmission. SuchThe service is sufficient service on a party that has appointed or is deemed to have appointed the Secretary of State as such party's agent for service of process. ~~The Secretary of State shall keep a record of all process served on the Secretary of State showing the date and the hour of service.~~

(2) When an individual or a business entity is a nonresident, or conceals his, her, or its whereabouts, the party seeking to effectuate service, after exercising due diligence to locate and effectuate personal service, may use the substituted service method set forth in subsection (1) in connection with any action in which the court has jurisdiction over such individual or business entity.

(3)(2) Whenever a party is using substituted service pursuant to subsection (1),
nNotice of service and a copy of the process must also be ~~served~~ sent forthwith to the party being served by the party effectuating service or by such party's attorney by

registered mail; by certified mail, return receipt requested; or by use of a commercial firm regularly engaged in the business of document or package delivery. In addition, if the parties have recently and regularly used e-mail or other electronic means to communicate between themselves, the notice of service and a copy of the process must be sent to the party being served by such electronic means ~~or if the party is being served by substituted service~~. The notice of service and a copy of the process must be sent to the ~~at such party's~~ last known physical address and, if applicable, last known electronic address, of the party being served. The party effectuating service shall file proof of service or return receipts showing delivery to the other party by mail or courier and by electronic means, if electronic means ~~was~~ used, unless the party is actively refusing or rejecting the delivery of the notice or the party is concealing himself, herself, or itself. An affidavit of compliance of the party effectuating service or such party's attorney must be filed within 40 days after the date of service on the Secretary of State or within such additional time as the court allows. The affidavit of compliance must set forth the facts that justify substituted service under this section and ~~that show~~ must contain sufficient facts demonstrating (i) that due diligence was exercised in attempting to locate and effectuate personal service on the party and (ii) the party's non-residence, the party's concealment, or that the party is a business entity as to which substituted service is otherwise authorized by law, before using substituted service under this section. The party effectuating service does not need to allege in its original or amended complaint the facts required to be set forth in the affidavit of compliance.

(4) The party effectuating service is considered to have used due diligence if that party:

(a) Made diligent inquiry and exerted an honest and conscientious effort appropriate to the circumstances to acquire the information necessary to effectuate personal service;

(b) In seeking to effectuate personal service, reasonably employed the knowledge at the party's command, including knowledge obtained pursuant to paragraph (a); and

(c) Made an appropriate number of attempts to serve such party, taking into account the particular circumstances, during such times when and where such party is reasonably likely to be found, as determined through resources reasonably available to the party seeking to secure service of process.

(5) If any individual on whom service of process is authorized under subsection (1) dies, service may be made in the same manner on his or her administrator, executor, curator, or personal representative.

(6) The Secretary of State may designate an individual in his or her office to accept service of process under this section.

(7) Service of process is effectuated under this section as of the date the process is received by the Department of State.

(8) The Department of State shall maintain a record of each process served in accordance with the requirements of this section and record the time of and the action taken regarding the receipt of the substituted service. Neither the Secretary of

State nor the Department of State shall be a party to the lawsuit by reason of substituted service under this section, and additional court filings regarding such lawsuit shall not be served upon or sent to the Secretary of State or the Department of State after the substituted service is effectuated.

(9) This section does not apply to persons on whom service is authorized under s. 48.151.

48.181 Substituted service on nonresidents and foreign business entities engaging in business in state or concealing their whereabouts.—

(1) As used in this section, the term “foreign business entity” means any corporation or other business entity that is incorporated, formed, or existing under the laws of any other state, territory, or commonwealth, or the laws of any foreign country.

(2) The acceptance by any individual who is a resident of any other state, territory, or commonwealth, or of any foreign country, or by any foreign business entity of the privilege extended by law to nonresidents to operate, conduct, engage in, or carry on a business or business venture in this state, or to have an office or agency in this state, is deemed to constitute an appointment by the individual or foreign business entity of the Secretary of State of this state as its agent on whom process in any action or proceeding against the individual or foreign business entity, or any combination thereof, arising out of any transaction or operation connected with or incidental to the business or business venture may be served as substituted service in accordance with this chapter. The acceptance of the privilege is signification of the agreement of the respective individual or foreign business entity that the process served against it in

accordance with this chapter is of the same validity as if served personally on the individual or foreign business entity.

(3) If a foreign business entity has registered to do business in this state and has maintained its registration in an active status or otherwise continued to have a registered agent designated in accordance with s. 48.091 , personal service of process must first be attempted on the foreign business entity in the manner and order of priority described in this chapter as applicable to the foreign business entity. If, after due diligence, the party seeking to effectuate service of process is unable to effectuate service of process on the ~~registered agent or other official as~~ foreign business entity in the manner and order of priority provided in this chapter, the party may use substituted service of process on the Secretary of State.

(4) Any individual or foreign business entity that conceals its whereabouts is deemed to have appointed the Secretary of State as its agent on whom all process may be served, in any action or proceeding against it, ~~or any combination thereof, such individual or foreign business entity~~, arising out of any transaction or operation connected with or incidental to any business or business venture carried on in this state by such individual or foreign business entity.

(5) Any individual who was a resident of this state and who subsequently becomes a nonresident is deemed to have appointed the Secretary of State as its agent on whom all process may be served in any action or proceeding against such individual arising out of any transaction or operation connected with or incidental to any business or business venture carried on in this state by such individual.

(6) ~~(5)~~ Any individual or foreign business entity that sells, consigns, or leases by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers, or distributors to any individual, corporation, or other business entity in this state is conclusively presumed to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business or business venture in this state.

(6) Service pursuant to this section must be effectuated in the manner prescribed by s. 48.161.

Section ____. **Effective Dates and Applicability.**

(1) Section ____ of this act shall take effect upon this act becoming a law.

(2) The remainder of this act shall take effect on October 1, 2025, and shall be applicable to all service of process made or effectuated thereunder on or after October 1, 2025, whether the cause of action accrued prior to or on or after such effective date.

SCHEDULE 7

White Paper F.S. 44.104

**WHITE PAPER CONCERNING PROPOSED AMENDMENTS TO
F.S. §44.104 CONCERNING VOLUNTARY TRIAL RESOLUTION**

AUGUST 23, 2024

I. INTRODUCTION

In September 2023, at the request of retired Eleventh Circuit Court Judge Alan Fine, Brian Barakat, Chair of the Business Litigation Committee of the Business Law Section, appointed a study group to examine possible amendments to the provisions of Section 44.104, Florida Statutes, providing for voluntary trial resolution and the appointment of voluntary trial resolution judges, often referred to as private judges. In January of this year, the Business Law Section created a formal Task Force, comprised of distinguished practitioners as well as active and retired members of the judiciary, to further study the issue and, if it considered it to be appropriate, to draft proposed legislation.

The Task Force held numerous meetings to review and analyze the existing Florida statute and pertinent Florida case law, as well as the statutes and case law of other jurisdictions concerning and providing for the appointment of private judges in civil actions. As a result of its review of applicable law and discussions among the group, the Task Force concluded that amendments to section.44.104 would clarify and enhance the ability of civil litigants in this state to use private judges to resolve their disputes and could provide significant benefits to the administration of justice by, among other things, enabling complex or specialized cases to be decided by private judges with relevant experience and knowledge about the applicable subject matter and the ability to devote additional time to the issues when needed. The increased use of private judges will expedite the resolution of civil cases and reduce the congestion and backlogs in our courts while enhancing the overall administration of justice.

II. BACKGROUND

Section 44.104, Florida Statutes, enacted in 1999, addresses two distinct subjects: (1) arbitration and (2) appointment of private judges in civil cases by consent of the parties. The statutory provisions addressing arbitration have been superseded by the Revised Florida Arbitration Code, Chapter 82, Florida Statutes, adopted in 2013. Statutes and/or rules providing for the appointment of private judges, upon consent of the parties, to resolve civil disputes exist in many other jurisdictions. Unfortunately, however, the statutory provisions for the appointment of private judges in Florida are not well known by Florida practitioners and have been seldomly used over the years.¹ See Richard E. Brodsky, *Private Judging in Florida: Useful in Business Cases*, 90 Fla. B. J. 51 (Apr. 2016).

¹ Few appellate court cases have addressed appeals from decisions rendered by private judges under the statute, and only one appellate opinion, *Merritt v. OLMHP, LLC*, 112 So.3d 559 (Fla. 2d DCA 2013), has analyzed the statute in any depth.

III. REVIEW OF OTHER JURISDICTIONS' STATUTES RELATING TO THE APPOINTMENT OF PRIVATE JUDGES.

The Task Force identified 30 states, apart from Florida, that have enacted statutes or rules of varying specificity concerning private judging (or similar methods of voluntary trial resolution) – Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Indiana, Kansas, Maine, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Virginia, Washington, Wisconsin, and Wyoming.

The Task Force reviewed the applicable statutes of these jurisdictions, including (1) the nomenclature and terminology; (2) whether the statute provides immunity for actions taken by the private judge; (3) whether the statute allows for public access; (4) whether the statute contemplates the use of public facilities and personnel; (5) whether the statute allows for jury trials; (6) whether the private judge must take an oath of office; (7) the types of cases that are expressly not referable to a private judge; (8) the scope of the private judge's authority; (9) the mechanisms to disqualify a private judge; (10) whether the parties may withdraw an agreement to proceed with a private judge; (11) the qualifications of a private judge; (12) the appointment process; (13) the applicable provisions concerning compensation of the private judge; (14) whether all parties must consent to the appointment of a private judge; and (15) the appealability of an order or judgment rendered by a private judge.

IV. DISCUSSION

The current provisions of Section 44.104 provide that parties may voluntarily agree to submit a civil dispute (subject to certain exceptions)² to “voluntary trial resolution”³ before or after a lawsuit has been filed. *See* § 44.104(1), Fla. Stat. The statute further provides that the “trial resolution judge” may administer oaths or affirmations, issue subpoenas for the attendance of witnesses and the production of documents, and may conduct a trial and render a final decision,

² The statute provides that disputes involving constitutional issues may not be referred to private judges. F.S. § 44.104(1). Furthermore, the statute expressly excludes any dispute involving child custody, visitation, or child support, or any dispute involving the rights of a third party not a party to the voluntary trial resolution when the third party would be an indispensable party if the dispute were resolved in court or when the third party notifies the trial resolution judge that the third party would be a proper party if the dispute were resolved in court, that the third party intends to intervene in the action in court, and that the third party does not agree to proceed under this section. *Id.*, § 48.104(14).

³ The current statute uses the terms “voluntary trial resolution” and “trial resolution judge” in lieu of proceedings before a “private judge.” In the proposed amendments to F. S. § 44.104, the Task Force proposes to maintain the use of “voluntary trial resolution” and “voluntary trial resolution judge” in referring to the proceedings and the judge who is appointed with the agreement of the parties to decide the case. These terms are preferable in that they emphasize the voluntary and consensual nature of such proceedings. Those terms will therefore be used throughout the remainder of this White Paper.

which the parties may “enforce” by filing a petition for final judgment with the circuit court. *See* F.S. §44.104(7), (8), and (11). Thereafter, any party may appeal the judgment to the appropriate appellate court, except that factual findings determined by the voluntary trial resolution judge are not subject to appeal. *See* §44.104(11). The statute is unclear or fails to address, however, many other issues, that arise in the context of proceedings before voluntary trial resolution judges.

Although no empirical studies exist, anecdotal evidence strongly suggests that these ambiguities and the differences, perceived or actual, in procedure and remedies between proceedings before a court and a voluntary trial resolution judge, have caused many attorneys to be reluctant to use voluntary trial resolution judges under the statute. The Task Force believes that amending the statute to provide greater clarity, explication of the details of the process, and greater consistency with the procedures in civil, family, and probate cases would greatly enhance the use of voluntary trial resolution judges in this state.

To that end, the Task Force proposes that F. S. §44.104 be substantially amended to:

1. Eliminate provisions relating to binding arbitration, which are no longer necessary in light of the adoption of the Revised Florida Arbitration Code, Chapter 82, Florida Statutes, and cause unnecessary confusion and uncertainty in the application of the provisions relating to voluntary trial resolution.
2. Clarify the limited exceptions regarding cases that may be referred to resolution before voluntary trial resolution judges.
3. Clarify the methods and procedures for appointment of voluntary trial resolution judges.
4. Specially address the role to be played by the presiding judge in cases referred to voluntary trial resolution.
5. Specify that voluntary trial resolution judges are subject to applicable provisions of the Florida Code of Judicial Conduct.
6. Provide for recusal and disqualification generally under the same circumstances as circuit judges and providing that, under such circumstances, the proceedings go back before the circuit court.
7. Specify that, absent disqualification or inability of the voluntary trial resolution judge to serve, the parties may not “opt out” of proceeding before a voluntary trial resolution judge if, for example, they are disappointed with his or her rulings.
8. Provide that the presiding judge has jurisdiction to enforce terms of the agreement of the parties to refer a case to voluntary trial resolution, including issuing orders compelling payment of compensation to the voluntary trial resolution judge.

9. Provide that the voluntary trial resolution judge shall perform all judicial functions, except in limited enumerated situations, such as imposition of orders of contempt, enforcement of subpoenas to third parties, and proceedings supplementary.
10. Explicitly provide that the Florida Rules of Civil Procedure, the Family Law Rules of Procedure, or the Probate Rules, as applicable, as well as the Florida Evidence Code, apply to all proceedings before a voluntary trial resolution judge.
11. Provide that interlocutory rulings of the presiding judge shall be subject to review or reconsideration by the voluntary trial resolution judge to the same extent as if the case had remained before the presiding judge.
12. Provide for review or appeal of nonfinal orders and final judgments of voluntary trial resolution judges to the same extent and in the same manner as reviews and appeals of nonfinal orders and final judgments entered by circuit judges, including appellate review of findings of fact and further review and appeals to the Florida Supreme Court.
13. Provide that voluntary trial resolution judges may conduct jury trials to the same extent as in cases before the court and that the clerk of court shall make public facilities, jurors, and other resources available for such purposes, , or the parties may agree to use private facilities and alternative methods to try non-jury cases at their own expense.
14. Provide that voluntary trial resolution proceedings shall be noticed and opened to the public to the same extent as proceedings before a court.

In addition, the Task Force recommends that Section 44.107, Florida Statutes, which affords judicial immunity to arbitrations, mediators, and mediator trainees be amended to likewise provide immunity to voluntary trial resolution judges.

V. CONCLUSION

Although it has been on the books for 25 years, the provisions of Section 44.104, Florida Statutes, authorizing the appointment of voluntary trial resolution judges have been underutilized, likely due to the statute's many gaps and ambiguities. The proposed amendments to the statute will provide much more certainty and encourage litigants, where appropriate, to utilize this powerful alternative dispute resolution mechanism to resolve cases more expeditiously, relieve the congestion of the court dockets, and enhance the administration of justice.

We, therefore, respectfully request that the Executive Council of the Business Law Section approve a bill containing these amendments to F.S. §44.104 by triple motion.

SCHEDULE 8

Fla. Stat. 44.104 – Voluntary Trial Resolution – Draft Legislation

44.104 Voluntary Trial Resolution

(1) (a) All of the parties to a civil, family, or probate case may by written agreement or stipulation agree to the appointment of a designated person to serve as a voluntary trial resolution judge and adjudicate all remaining issues in the case, subject to the exceptions set forth in subsection (10) of this section.

(b) All parties to the action must file the agreement or stipulation with the clerk of the court in which the action is pending, at any time after the action is filed, together with a joint motion requesting appointment of a voluntary trial resolution judge and naming the person whom the parties wish to have appointed as voluntary trial resolution judge. The motion shall be accompanied by a form signed by the voluntary trial resolution judge selected consenting to the appointment. In addition to filing with the clerk of the court in which the case has been filed, the parties shall promptly serve a copy of the joint motion and accompanying form on the presiding judge. "Presiding judge" as used in this section shall mean the judge assigned to the action.

(c) Within 10 days after the submission of the request for voluntary trial resolution, the presiding judge shall appoint the voluntary trial resolution judge selected by the parties. The order designating the voluntary trial resolution judge must be signed by the presiding judge, refer to the parties' written agreement or stipulation, and provide that the voluntary trial resolution judge shall be compensated by the parties in accordance with the terms of the parties' agreement or stipulation.

(d) The voluntary trial resolution judge must take and subscribe to an oath of office swearing or affirming that he or she is aware of and will conform with Canons 1, 2A, and 3, and such other provisions of the Florida Code of Judicial Conduct that might reasonably be applicable depending on the nature of the judicial function performed, except as expressly set forth herein as to disqualification and recusal.

(e) If the person designated by the parties as the voluntary trial resolution judge cannot serve in that capacity for any reason, absent further agreement by the parties to the appointment of a different person to serve as a voluntary trial resolution judge, the case shall be returned to the presiding judge.

(f) To be eligible to serve as a voluntary trial resolution judge, the person designated by the parties must be a member of The Florida Bar in good standing for more than 5 years.

(g) Upon appointment, the voluntary trial resolution judge shall adjudicate the case unless disqualification or recusal is required.

(2) Where circumstances exist that would require disqualification of a judge under Canon 3E of The Florida Code of Judicial Conduct, a voluntary trial resolution judge shall immediately disclose to the parties on the record the basis of the voluntary trial judge's disqualification. The parties may waive the disqualification by filing a written waiver with the court within 10 days. Nothing in this section limits the authority of the voluntary trial resolution judge to enter an order of recusal. The provisions of sections 38.02 and 38.10, Florida Statutes, and Florida Rules of General Practice and Judicial Administration 2.330 shall apply to any motions to disqualify a voluntary trial resolution judge. In the event of recusal or if a motion to disqualify is granted, the case shall be returned to the presiding judge.

(3) A voluntary trial resolution judge shall be compensated by the parties in such amount and subject to such terms and conditions provided by the parties pursuant to their written agreement. A contract for the services of a voluntary trial judge must provide for the payment of the voluntary trial judge's compensation by the parties. The presiding judge in the case may enforce the terms of written agreement against the parties, and shall retain jurisdiction to enforce such agreement

following the conclusion of the voluntary trial resolution or the entry of any judgment arising therefrom.

(4) The clerk of the court shall treat cases referred to voluntary trial resolution the same as any other comparable action except that the clerk of court shall keep separate the records of the applications for voluntary trial resolution from all other comparable actions and shall provide for the use of the public facilities and personnel the same as for any other comparable action. For jury matters, the clerk of court shall coordinate the provision of jurors with the voluntary trial resolution judge. For non-jury matters, the parties may agree to the use of off-site facilities and shall be responsible for the compensation of all personnel, and costs, if applicable, and the costs of all facilities and materials that will be used in relation to the case, which are not provided by the court.

(5) The voluntary trial resolution judge shall perform all judicial functions from appointment by the presiding judge through entry of the final judgment (and any post-trial motions or request for attorney's fees thereon), save and except for disposition of any request that a party be held in contempt and entry of any orders with respect to non-parties. The presiding judge shall maintain exclusive judicial authority to exercise contempt power and to enforce subpoenas issued to non-parties. Subject to the contempt and subpoena enforcement limitations herein, rulings of the presiding judge or the voluntary trial resolution judge shall be subject to review or reconsideration by the voluntary trial resolution judge to the same extent as if the case had remained before the presiding judge. The presiding judge shall have exclusive jurisdiction over enforcement of any judgment and any proceedings supplementary filed in the same action.

(6) The voluntary trial resolution judge shall conduct the proceedings pursuant to the Florida Rules of Civil Procedure, the Family Law Rules of Procedure or the Probate Rules, as applicable. The Florida Evidence Code shall apply to all proceedings under this section.

(7) Voluntary trial resolution proceedings shall be noticed and open to the public to the same extent as if it were before a presiding judge.

(8) Any party may seek review or appeal a non-final order or a final judgment rendered by a voluntary trial resolution judge in the same manner as a non-final order or a final judgment entered by a presiding judge. The harmless error doctrine shall apply in all appeals.

(9) Except as provided in subsection (10), voluntary trial resolution shall be available in all jury and non-jury civil, family, and probate cases.

(10) This section shall not apply to any dispute involving the constitutionality of a statute, child custody, visitation, or child support, or to any dispute which involves the rights of a third party not a party to the voluntary trial resolution when the third party would be an indispensable party if the dispute were resolved in court or when the third party notifies the voluntary trial resolution judge that the third party would be a proper party if the dispute were resolved in court, that the third party intends to intervene in the action in court, and that the third party does not agree to proceed under this section.

44.107 Immunity for arbitrators, voluntary trial resolution judges, mediators, and mediator trainees.—

(1) Arbitrators serving under s. 44.103, voluntary trial resolution judges serving under s. 44.104, mediators serving under s. 44.102, and trainees fulfilling the mentorship requirements for certification by the Supreme Court as a mediator shall have judicial immunity in the same manner and to the same extent as a judge.

(2) A person serving as a mediator in any noncourt-ordered mediation shall have immunity from liability arising from the performance of that person's duties while acting within the scope of the mediation function if such mediation is:

(a) Required by statute or agency rule or order;

(b) Conducted under ss. 44.401-44.406 by express agreement of the mediation parties;

or

(c) Facilitated by a mediator certified by the Supreme Court, unless the mediation parties expressly agree not to be bound by ss. 44.401-44.406.

The mediator does not have immunity if he or she acts in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(3) A person serving under s. 44.106 to assist the Supreme Court in performing its disciplinary function shall have absolute immunity from liability arising from the performance of that person's duties while acting within the scope of that person's appointed function.