WHITE PAPER REGARDING MERCHANT CASH ADVANCE ENTITIES

Presented by the Business Law Section of the Florida Bar
Bankruptcy/UCC Committee
Merchant Cash Advance Study Group

Daniel Etlinger, Study Group Chair
Underwood Murray, P.A., Tampa, FL

Study Group Members

Adina Pollan
Hakimian Holdings, Inc., Jacksonville, FL

Andrew Wit
Millennial Law, Inc., Tampa, FL

Brian Barakat
Barakat + Bossa, Coral Gables, FL

Christian Haman
Dal Lago Law, Naples, FL

Daniel Halperin
Sequor Law, Miami, FL

Elena Ketchum
Stichter Riedel Blain Postler, P.A., Tampa, FL

Eugene "Gene" Johnson, Jr.
Johnson Law Firm, P.A., Jacksonville, FL

Jeffrey Ainsworth
Branson Law, PLLC, Orlando, FL

Jennifer Morando
Branson Law, PLLC, Orlando, FL

Jessey Krehl
Pack Law, P.A., Miami, FL

Jodi Dubose
Stichter Riedel Blain Postler, P.A., Pensacola, FL

Katelyn Garciga
U.S. Bankruptcy Court – S.D. of Florida,
Fort Lauderdale, FL

Lynn Sherman
Lynn Welter Sherman, PLLC, St. Petersburg, FL

Mariane Dorris
Shuker & Dorris P.A., Orlando, FL

Mark Wolfson
Foley & Lardner LLP, Tampa, FL

Patricia Redmond
Stearns Weaver Miller, Miami, FL

Zachary Hyman
Millennial Law, Inc., Fort Lauderdale, FL

Bankruptcy/UCC Committee Members

Honorable Mindy Mora, Judicial Chair
U.S. Bankruptcy Court – S.D. of Florida,
West Palm Beach, FL

Matt Hale, Chair
Stichter Riedel Blain Postler, P.A., Tampa, FL

Andrew Layden, Vice Chair
Baker & Hostetler LLP, Orlando, FL

Kathleen DiSanto, Second Vice Chair
Bush Ross, P.A., Tampa, FL

EXHIBIT C

I. Brief Introduction and Summary of Proposals

This Merchant Cash Advance Study Group (the "**Study Group**") was originally formed in connection with the then proposed Florida Commercial Financing Disclosure Law, which eventually went into effect in July 2023. At its inception, the Study Group's primary focus concerned Florida Statute § 559.9613, which regulates a number of disclosures required in commercial financing transactions.

At the June 2025 meeting of the Bankruptcy/UCC Committee (the "**Committee**"), the Study Group was reconstituted to investigate a particular definition found in the Florida Commercial Financing Disclosure Law. Then, at the June 2025 meeting of the Bankruptcy Judicial Liaison Committee, the Study Group's mandate was further expanded to investigate a corollary issue present in the Florida Secured Transaction Registry.

Between June and December 2025, the Study Group organized numerous discussions, analyzed legislative history, Shephardized relevant statutes, and researched comparative language from other jurisdictions. The Study Group, whose members span across the entire state and whose practices involve representation of both debtor and creditor bodies, ultimately proposes that the Business Law Section of the Florida Bar (the "**Section**") advance three amendments to the Florida Statutes. Specifically, for the reasons set forth herein, the Study Group recommends the following:

1) **Florida Statute § 559.9611(1):** As used in this part, the term: (1) "Accounts receivable purchase transaction" means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business's accounts or payment intangibles as those terms are defined in s. 679.1021(1) at a discount to the expected value of the account or payment intangibles. ~~For purposes of this part, the provider's characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money.~~

2) **Florida Statute § 679.210(1)(a):** (1) In this section, the term: (a) "Request" means a record of a type described in paragraph (b), paragraph (c), or paragraph (d). <u>All requests served on an agent or representative of a secured party shall require the agent or representative to identify in its response the name and mailing address of the secured party.</u>

3) **Florida Statute § 679.625(7):** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under s. 679.210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person who is reasonably misled by the failure. <u>If an agent or representative of a secured party fails to include with its response to a request under s. 679.210 the name and mailing address of the secured party, then the secured party is deemed to have authorized and consented to notice to and service on the agent or representative of the secured party at the address identified in the financing statement for all matters concerning the debtor and the transaction identified in the financing statement.</u>

II. General Background to Merchant Cash Advance ("MCA") Entities

"The mechanics behind these [MCA] transactions are relatively simple, with a merchant receiving funds within days – and sometimes hours – of beginning the application process."[1] In essence, "[i]n exchange for cash up front, the merchant pledges its future business income to the funder, and the funder is repaid through daily or weekly ACH transfers from the merchant's bank account."[2] "Proponents argue that they fill a void in small business lending, providing a financial lifeline to businesses that are not eligible for traditional financing sources. MCAs are also advertised as being more flexible and adaptable than traditional bank loans."[3] However, others view MCAs "as a form of predatory lending, tantamount to fraudulent and usurious loans."[4]

Whether an MCA relationship is a true sale or a disguised loan turns on the economic substance of the transaction.[5] Ultimately, the critical factor in the loan versus sale characterization is the transfer of risk – if the "buyer" is absolutely entitled to repayment under all circumstances then the risk remains with the "seller" and the transaction should be classified as a loan.[6] "Usually, courts weigh three factors when determining whether repayment is absolute or contingent: (1) whether there is a reconciliation provision in the agreement; (2) whether the agreement has a finite term; and (3) whether there is any recourse should the [seller] declare bankruptcy."[7] Either way, "[t]he role and impact of MCAs cannot be ignored. This is an ever-growing industry that is increasing in sophistication."[8] One relatively recent study "concluded that the global MCA market was valued at $17.9 billion in 2023 and is projected to reach $32.7 billion by 2032, reflecting a projected compound annual growth rate of 7.2 percent during that period."[9]

III. Florida Commercial Financing Disclosure Law

A. Legislative History. The Florida Commercial Financing Disclosure Law was enacted primarily to **(i)** require disclosures by commercial financing transaction providers, **(ii)** prohibit certain activities by brokers, and **(iii)** grant the Attorney General exclusive oversight.[10] The legislative history notes that the "bill provides that a provider's characterization of accounts receivable purchase transaction as a purchase is conclusive that the transaction is not a loan or a transaction for the use, forbearance, or detention of money."[11]

---

[1] Scott J. Bogucki, *How "Ordinary" Are Merchant Cash Advance Transactions?*, 43-DEC AM. BANKR. INST. J. 18, 18 (2024).
[2] Kara J. Bruce, *Revenue-Based Finance in Bankruptcy and Beyond*, 45 No. 4 BANKR. LAW LETTER NL 1 (Apr., 2025).
[3] *Id.*
[4] Kathleen L. DiSanto & Luis E. Rivera, II, *Know When to Hold 'Em, Know When to Fold 'Em: The Differences Between a Loan and Merchant Cash Advance*, 42-JAN AM. BANKR. INST. J. 78, 78 (2023).
[5] *In re GMI Group, Inc.*, 606 B.R. 467, 485 (Bankr. N.D. Ga. 2019).
[6] *LG Funding, LLC v. United Senior Properties of Olathe, LLC*, 122 N.Y.S.3d 309, 312 (App. Div. 2020).
[7] *Id.* (internal citations omitted).
[8] Hannah W. Hutman, Understanding and Addressing Merchant Cash Advances in Bankruptcy, (unpublished memorandum) (on file with author).
[9] Bogucki, *supra* note 1 (citing *Merchant Cash Advance Market Size, Share, Competitive Landscape and Trend Analysis Report, by Repayment Method, by Application: Global Opportunity Analysis and Industry Forecast, 2023-2032*, Allied Merchant Research (Apr. 2024), alliedmarketresearch.com/merchant-cash-advance-market-A323338).
[10] Fla. H.R. Comm. on Commerce, CS/HB 1353 (2023) Post-Meeting Staff Analysis (Apr. 19, 2023).
[11] Fla. S. Comm. on Fiscal Policy, CS/CS/SB 1624 (2023) Pre-Meeting Staff Analysis (Apr. 24, 2023).

Upon information and belief, the language is intended to protect a good faith creditor in the event of a reclassification. This means that if a creditor reasonably believes the transaction is an accounts receivable purchase transaction and makes those necessary disclosures, but, ultimately a court deems it a disguised loan, the creditor would otherwise face the risk of liability for failing to provide loan-specific disclosures.

B. Relevant Statutes. The Florida Commercial Financing Disclosure Law's definitions currently read: As used in this part, the term: (1) "Accounts receivable purchase transaction" means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business's accounts or payment intangibles as those terms are defined in s. 679.1021(1) at a discount to the expected value of the account or payment intangibles. *For purposes of this part*, the provider's characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money.[12]

In turn, this definition is only used once in the remaining statute. Specifically, in the definition of a "Commercial Financing Facility" which reads in pertinent part: [A] commercial loan, *an accounts receivable purchase transaction*, or a commercial open-end credit plan to the extent the transaction is also a business purpose transaction. . . . [13]

C. Interpretation and Comparative Language. There are no reported decisions as to Florida Statutes §§ 559.9611(1) or (6). However, there are at least two known instances of parties utilizing the definition for "accounts receivable purchase transaction". First, in a state court matter, an MCA argued that this definition precluded any argument that the subject transaction was a loan.[14] Second, in a bankruptcy case, the MCA attached the statutes to its proof of claim, in support of its characterization of the transaction as binding on the court.[15] Thus, in at least two cases, a party meant to do away with the prefatory language "for the purposes of this part" and sought to expand the import of the definition.

Upon information and belief, this is why the majority of other jurisdictions who have enacted similar laws have avoided that language. A survey of nine other jurisdictions reflects seven do not have conclusive language, while only two (Kansas and Missouri) have conclusive language:[16]

[12] Fla. Stat. § 559.9611(1) (emphasis added).
[13] *Id.* at § 559.9611(6) (emphasis added).
[14] Order Granting Motion for Summary Judgment (Doc. No. 39), *Funding Experts Inc v. Rush Masonry Inc et al*, 2024-008317-CA-01 (Fla. 11th Cir. Ct. Feb 24, 2025).
[15] *In re IVF Orlando, Inc.*, No. 6:24-BK-05475-TPG, 2025 WL 2831400 (Bankr. M.D. Fla. Oct. 3, 2025).
[16] Dustin C. Alonzo & Adair L. Kingsmill, *State Survey of the Standard Commercial Financing Disclosure Laws*, 80 BUS. LAW. 2 (June 2025).

State	Statute Citation	Definition
California	Cal. Fin. Code § 22800(b)	For purposes of this division: . . . "Accounts receivable purchase transaction" means a transaction as part of an agreement requiring a recipient to forward or otherwise sell to the provider all or a portion of accounts, payment intangibles, or cash receipts that are owed to the recipient or are collected by the recipient during a specified period or in a specified amount.
Connecticut	Conn. Gen. Stat. § 36a-861(8)	As used in this section and sections 36a-862 to 36a-872, inclusive: . . ."Sales-based financing" means a transaction that is repaid by the recipient to the provider over time (A) as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient, or (B) according to a fixed payment mechanism that provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue[.]
Georgia	Ga. Code Ann. § 10-1-393.18(a)(1)	As used in this Code section, the term: . . . "Accounts receivable purchase transaction" means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business's accounts, as defined in Code Section 11-9-102, or payment intangibles, as defined in Code Section 11-9-102, at a discount to the accounts' or payment intangibles' expected value.
Kansas	Kan. Stat. Ann. § 75-783(b)(2)	As used in the commercial financing disclosure act: . . . "Accounts receivable purchase transaction" means any transaction in which a business forwards or otherwise sells to a provider all or a portion of accounts of such business, cash receipts or payment intangibles at a discount to the expected value of such accounts or payment intangibles. The provider's characterization of an accounts receivable purchase transaction as a purchase shall be conclusive that such accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance or detention of money.
Missouri	Mo. Rev. Stat. § 427.300(2)(2)	For purposes of this section, the following terms mean: . . . "Accounts receivable purchase transaction", any transaction in which the business forwards or otherwise sells to the provider all or a portion of the business's accounts or payment intangibles at a discount to their expected value. The provider's characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money[.]
New York	N.Y. Fin. Serv. § 801(j)	For purposes of this article: . . . "Sales-based financing" means a transaction that is repaid by the recipient to the provider, over time, as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient. Sales-based financing also includes a true-up mechanism where the financing is repaid as a fixed payment but provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue.
Texas	Tex. Fin. Code § 398.001(8)[17]	In this chapter: . . . "Sale-based financing" means a transaction that is repaid by the recipient to the provider of the financing: (A) as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient; or (B) according to a fixed payment mechanism that provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue.

[17] Daniel B. Pearson & Eric T. Mitzenmacher, *Texas Commercial Financing Disclosure and Registration Law Threatens Sales-Based Financing Industry*, Mayer Brown (June 30, 2025), https://www.mayerbrown.com/en/insights/publications/2025/06/texas-commercial-financing-disclosure-and-registration-law-threatens-sales-based-financing-industry ("While the Act stops short of declaring sales-based financing to be a *per se* loan or credit transaction, sales-based financing transactions will no longer benefit from the conclusive presumption that they are not loans . . . .").

State	Statute Citation	Definition
Utah	Utah Code Ann. § 7-27-101(1)	As used in this chapter: "Accounts receivable purchase transaction" means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business's accounts, as defined in Section 70A-9a-102, or payment intangibles, as defined in Section 70A-9a-102, at a discount to the accounts' or payment intangibles' expected value.
Virginia	Va. Code Ann. § 6.2-2228	As used in this chapter, unless the context requires a different meaning: . . . "Sales-based financing" means a transaction that is repaid by the recipient to the provider, over time, as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient. Sales-based financing also includes a true-up mechanism where the financing is repaid as a fixed payment but provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue.

D. Conclusion. Because the language at issue would change neither the fundamental definition nor the requirements to comply with the Florida Commercial Financing Disclosure Law coupled with the potential abuse of this definition beyond its intended relief, the Study Group recommends revisions to the statutory language as identified herein.

IV. Florida Secured Transaction Registry

A. Relevant Statutes. Florida Statutes specify a financing statement is sufficient if it "[p]rovides the name of the secured party *or a representative of the secured party*…."[18] However, the "[f]ailure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement."[19]

In practice, when these statutes are applied to MCAs, they become troublesome for two reasons. First, many debtors stack their MCA obligations. This means that one debtor will have multiple MCAs in second, third, fourth, etc., position. This complicates the identification of creditors to specific obligations. Second, recognizing stacking and other territorial concerns, many MCAs will identify an agent or representative as opposed to identifying the secured party. And, MCAs will often collateralize and sell their portfolios providing another reason to have an agent identified on the financing statement. These considerations result in a single debtor having multiple financing statements without being able to identify the secured party.

But knowing the identity of the secured party is important, particularly with respect to a bankruptcy proceeding. There, assuring proper notice is important for a variety of aspects in a proceeding, including, but not limited to the use of cash collateral, determination of secured positions and avoidance of liens, stay relief, declaratory relief, claims objections, and actions to avoid preferences and fraudulent transfers.[20]

[18] Fla. Stat. § 679.5021(1)(b) (emphasis added).
[19] *Id.* at § 679.5031(4); *see also id.* at § 679.5061(2) (marking the insufficiency of the debtor's name as seriously misleading but no such statement for the creditor's name).
[20] DiSanto, *supra* note 4, at 99-100; Hutman, *supra* note 8, at 11-13.

B. Proposals. How then is a debtor to ascertain the secured party information? Currently, the Florida Statutes entitle a debtor to "request" various information from the creditor.[21]

First, a debtor may request an accounting of the unpaid obligations.[22] Second, a debtor can request a list of collateral securing the obligation.[23] Third, a debtor can request a statement of account whereby "the recipient must approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date."[24] In all three instances, if the secured party claims no interest, they must disclaim any interest and provide the name and contact information for any assignee or successor.[25]

The Study Group proposes to expand the requirement set forth in Florida Statute § 679.210 such that all requests served on an agent or representative shall require the agent or representative to identify in their response the name and mailing address of the secured party. This language represents a compromise between the competing interests of the parties. The debtor has a statutory tool to ascertain the true creditor behind a financing statement while simultaneously preserving the creditor's right to publicly utilize an agent or representative.[26]

The proposal, however, would be hollow without a sufficient enforcement mechanism to ensure compliance. Therefore, the Study Group likewise proposes to expand the language of Florida Statute § 679.625 to state if a secured party fails to comply with a request to identify the secured party, then it consents to notice on the agent or representative identified in the financing statement for all matters concerning the debtor identified on that financing statement. Again, this language attempts to strike a balance between the competing interests. The debtor is assured it will have a party upon which to serve, either the agent or representative identified on the statement, or, the secured party identified in the response to a request. And, the creditor is not substantively deprived of any rights, it has merely consented to a notice process.

Two points of clarification as to "all matters concerning the debtor identified on that financing statement."

---

[21] The Uniform Commercial Code Comment provides the following rationale:

> 3. Requests by Debtors Only. A financing statement filed under Part 5 may disclose only that a secured party may have a security interest in specified types of collateral. In most cases the financing statement will contain no indication of the obligation (if any) secured, whether any security interest actually exists, or the particular property subject to a security interest. Because creditors of and prospective purchasers from a debtor may have legitimate needs for more detailed information, it is necessary to provide a procedure under which the secured party will be required to provide information. On the other hand, the secured party should not be under a duty to disclose any details of the debtor's financial affairs to any casual inquirer or competitor who may inquire. For this reason, this section gives the right to request information to the debtor only. The debtor may submit a request in connection with negotiations with subsequent creditors and purchasers, as well as for the purpose of determining the status of its credit relationship or demonstrating which of its assets are free of a security interest.

U.C.C. § 9-210 cmt. 3.

[22] Fla. Stat. § 679.210(1)(b).

[23] *Id.* at § 679.210(1)(c).

[24] *Id.* at § 679.210(1)(d).

[25] *Id.* at §§ 679.210(4)(a), (5)(a).

[26] And, because the remedy is only available to the UCC debtor, a rival MCA cannot use the proposed revision to circumvent the MCA's right to publicly name an agent or representative.

First, the proposal contemplates that only the party seeking the request can avail himself of the remedies. Thus, if there is both a borrower and guarantor on an obligation, and only the borrower makes the request, then only the borrower can utilize the enforcement mechanism. Second, the proposal contemplates that the debtor can utilize the enforcement mechanism only for those transactions subject to the request. For instance, if a single borrower has multiple obligations with the same MCA, but only makes a request as to one UCC, then the borrower can avail himself of the enforcement mechanism only as to the one UCC identified in the request.

C. Comparative Language. The Study Group concedes that the Florida Statutes currently adopt in large part the model language from the Uniform Commercial Code:

UCC Section	Title	Language
§ 9-210(a)(1)	Request for Accounting; Request Regarding List of Collateral or Statement of Account	In this section: "Request" means a record of a type described in paragraph (2), (3), or (4).
§ 9-502(a)(2)	Contents of Financing Statement; Record of Mortgage as Financing Statement; Time of Filing Financing Statement	Subject to subsection (b), a financing statement is sufficient only if it: . . . provides the name of the secured party or a representative of the secured party; . . .
§ 9-625(g)	Remedies for Secured Party's Failure to Comply with Article	If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

However, both the Florida Statutes and the model Uniform Commercial Code provide that, if a party receiving a request disclaims any interest in the obligation, the responding party must provide the last known name and mailing address of the assignee or successor.[27] Thus, the proposed language is an extension of this concept to provide the name and mailing address when requesting information from an agent or representative.

D. Conclusion. Because the suggested language is an extension of existing concepts and the "teeth" does not substantively change the parties' rights, the Study Group recommends revisions to the statutory language as identified herein.

V. Request for Approval by Triple Motion

The Study Group respectfully requests the Executive Council of the Section approve a bill containing these amendments by triple motion, substantially in the form attached hereto as **Appendix A.**

[27] Fla. Stat. §§ 679.210(4)(b), (5)(b); U.C.C. §§ 9-210(d)(2), (e)(2).

A bill to be entitled

An act relating to merchant cash advance and other accounts receivable purchase transactions and the rights and obligations of secured parties; amending ss. 559.9611(1), 679.210(1)(a), 679.625(7).111, F.S.; removing substantive text from the definition of "Accounts receivable purchase transaction"; amending obligations in connection with requests to agents or representatives of a secured party; providing for consent of a secured party to receive notice by service on the agent or representative of the secured party; providing an effective date.

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

Section 1. Subsection (1) of section 559.9661, Florida Statutes, is amended to read:

"Accounts receivable purchase transaction" means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business's accounts or payment intangibles as those terms are defined in s. 679.1021(1) at a discount to the expected value of the account or payment intangibles. ~~For purposes of this part, the provider's characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money.~~

EXHIBIT C - APPX. A-1

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

Section 2. Subsection (a) of subsection (1) of section 679.210, Florida Statutes is amended to read:

"Request" means a record of a type described in paragraph (b), paragraph (c), or paragraph (d). All requests served on an agent or representative of a secured party shall require the agent or representative to identify in its response the name and mailing address of the secured party.

Section 3. Subsection (7) of section 679.625, Florida Statutes is amended to read:

If a secured party fails to comply with a request regarding a list of collateral or a statement of account under s. 679.210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person who is reasonably misled by the failure. If an agent or representative of a secured party fails to include with its response to a request under s. 679.210 the name and mailing address of the secured party, then the secured party is deemed to have authorized and consented to notice to and service on the agent or representative of the secured party at the address identified in the financing statement for all matters concerning the debtor and the transaction identified in the financing statement.

Section 4. This act shall take effect July 1, 2027.

Section 5. This act shall be referred to as the Commercial Financing, Funding, and Secured Transactions Amendments Act of 2027.

The following triple motion was made by _____ and seconded by _____:

RESOLVED, that the Florida Bar Business Law Section (the "Section") supports proposed legislation (the "Proposed Legislation") relating to merchant cash advance and other accounts receivable purchase transactions and the rights and obligations of secured parties; amending ss. 559.9611(1), 679.210(1)(a), 679.625.(7).111, F.S.; removing substantive text from the definition of "accounts receivable purchase transaction"; amending obligations in connection with requests to agents or representatives of a secured party; and providing for consent of a secured party to receive notice by service on the agent or representative of the secured party; with such Proposed Legislation substantially in the draft form presented to the Executive Council of the Section on __ _____ by _____.

RESOLVED, that the Proposed Legislation: (1) is within the Section's subject matter jurisdiction as described in the Section's bylaws; (2) is within the bar's permissible legislative or political activity and the proposed Section position is not inconsistent with any official bar position on that issue; and (3) does not have the potential for deep philosophical or emotional division among a substantive segment of the bar's membership.