eral definitions and principles of construction and interpretation applicable throughout this chapter.

History.— §1, ch. 65-254. Note.— §5-103, U.C.C.; superseded 676.00.

675.5-104 Formal requirements; signing.— (1) Except as otherwise required in §675.5-102(1) and as otherwise provided in §675.5-102(3) (a) on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized signature and includes the authorized naming of the issuer in an advice of credit is a sufficient signing.

History.— §1, ch. 65-254. Note.— §5-104, U.C.C.

675.5-105 Consideration.— No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

History.— §1, ch. 65-254. Note.— §5-105, U.C.C.; superseded 674.27, 674.31.

675.5-106 Time and effect of establishment of credit.— (1) Unless otherwise agreed a credit is established: (a) As regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and (b) As regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed after an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed a credit is established as regards the customer it can be modified or revoked only with his consent.

(4) Notwithstanding any modification or revocation of a revolving credit or any right to honor or negotiate under the terms of the original credit is entitled to reimbursement for honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.

History.— §1, ch. 65-254. Note.— §5-106, U.C.C.

675.5-107 Advice of credit; confirmation; error in statement of terms.— (1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

History.— §1, ch. 65-254. Note.— §5-107, U.C.C.

675.5-108 “Notation Credit”; exhaustion of credit.— (1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a “notation credit”.

(2) Under a notation credit: (a) A person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and (b) Unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence.

(3) If the credit is not a notation credit: (a) The issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand; (b) As between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored.

History.— §1, ch. 65-254. Note.— §5-108, U.C.C.

675.5-109 Issuer’s obligation to its customer.— (1) An issuer’s obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility:

(a) For performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) For any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) Based on knowledge or lack of knowl-
edge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A non-bank issuer is not bound by any banking usage of which it has no knowledge.

675.5-110 Availability of credit in portions; presenter's reservation of lien or claim.—

(1) Unless otherwise specified a person by presentment authorizes such presentment to be used in portions in the discretion of the beneficiary.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank or other correspondent which presents or transfers a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand non-complying.

675.5-111 Warranties on transfer and presentation.—

(1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under chapters 673, 674, 677 and 678.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presented or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under chapter 674 and any such bank transferring a document warrants only the matters warranted by an intermediary under chapters 677 and 678.

675.5-112 Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter".—

(1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit:

(a) Defer honor until the close of the third banking day following receipt of the documents; and

(b) Further defer honor if the presenter has expressly or impliedly consented thereto. Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization.

675.5-113 Indemnities.—

(1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement:

(a) Unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) Unless a longer time is explicitly agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.
675.5-115 Remedy for improper dishonor or anticipatory repudiation.—
(1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit, the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (§672.2-707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under §672.2-710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.
(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentation of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under §672.2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

675.5-116 Transfer and assignment.—
(1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.
(2) Even though the credit specifically states that it is non-transferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of a contract right under chapter 679 on secured transactions and is governed by that chapter except that:
(a) The assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under chapter 679; and
(b) The issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and
(c) After what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.
(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

675.5-117 Insolvency of bank holding funds for documentary credit.—
(1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this chapter is made applicable by §675.5-102-(1) (a) or (b) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:
(a) To the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and
(b) On expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and
(c) A change to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.
(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved.
ARTICLE 6 BULK TRANSFERS

676.6-101 Short title.-Chapter 676 shall be known and may be cited as the uniform commercial code—bulk transfers.

676.6-102 "Bulk Transfers"; transfers of equipment; enterprises subject to this chapter; bulk transfers subject to this chapter.

(1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferee's business of a major part of the materials, supplies, merchandise or other inventory (§679.9-109) of an enterprise subject to this chapter.

(2) A transfer of a substantial part of the equipment (§679.9-109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this chapter are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this chapter.

676.6-103 Transfers excepted from this chapter.-The following transfers are not subject to this chapter:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interest;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation, and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

676.6-104 Schedule of property, list of creditors.—

(1) Except as provided with respect to auction sales (§676.6-108), a bulk transfer subject to this chapter is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in (a public office to be here identified).

(2) The list of creditors must be signed and sworn to or affirmed by the transferee or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferee to assert claims against him even though such claims are disputed. If the transferee is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need in
clude only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

(4) Any transferee who shall, concerning the list of creditors prescribed in subsection (1) of this section, knowingly or willfully make or deliver or cause to be made or delivered any statement of which any portion is false, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months.

History. — §1, ch. 65-254.

Note. — §6-104, U.C.C.; supersedes §726.06.

676.6-105 Notice to creditors.—In addition to the requirements of the preceding section, any bulk transfer subject to this chapter except one made by auction sale (§676.6-108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (§676.6-107).

History. — §1, ch. 65-254.

Note. — §6-105, U.C.C.; supersedes §726.03.

676.6-106 Application of the proceeds.—In addition to the requirements of the two preceding sections:

(1) Upon every bulk transfer subject to this chapter for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (§676.6-104) or filed in writing in the place stated in the notice (§676.6-107) within thirty days after the mailing of such notice. This duty of the transferee runs to all holders of such debts, and may be enforced by any of them for the benefit of all.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

(3) If the consideration payable is not enough to pay all of the said debts in full distribution shall be made pro rata.

(4) A transferee may within ten days after taking possession of the goods, discharge his obligations under this section by an action in the circuit court for the county where the transferor had his principal place of business in this state interpleading all creditors in the list of creditors required by §676.6-104. In such event the court shall require the consideration to be deposited into the registry of the court and thereupon shall decree the goods to be free and clear of the claims of such creditors and that such creditors should file their claims with the court.

History. — §1, ch. 65-254.

Note. — §6-106, U.C.C.

676.6-107 The notice.—

(1) The notice to creditors (§676.6-105) shall state:

(a) That a bulk transfer is about to be made; and

(b) The names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and

(c) Whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) The location and general description of the property to be transferred and the estimated total of the transferor’s debts;

(b) The address where the schedule of property and list of creditors (§676.6-104) may be inspected;

(c) Whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) Whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and

(e) If for new consideration the time and place where creditors of the transferor are to file their claims.

(3) The notice in any case shall be to all persons shown on the list of creditors furnished by the transferor (§676.6-104) and to all other persons who are known by the transferee to hold or assert claims against the transferor, and shall be:

(a) Delivered personally or by registered or certified mail,* or

(b) If the county in which the transferor resides has a population in excess of two hundred thousand persons according to the latest statewide decennial census, published one time in a daily newspaper of general circulation in such county.

History. — §1, ch. 65-254.

Note. — Available evidence indicates that the use of the word “or” instead of the word “and” was inadvertent and that the proponents of chapter 65-254 did not intend to make notice by publication an alternative to notice delivered personally or by registered or certified mail in the larger counties. Substitution of the word “and” will be recommended in the 1969 reviser’s bill.

Note. — §6-107, U.C.C.; supersedes §726.03.

676.6-108 Auction sales; “Auctioneer”.—

(1) A bulk transfer is subject to this chapter even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (§676.6-104).

(3) The person or persons other than the transferor who direct, control or are responsi-
ble for the auction are collectively called the "auctioneer." The auctioneer shall:

(a) Receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this chapter (§676.6-104);

(b) Give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and

(c) Assure that the net proceeds of the auction are applied as provided in this chapter (§676.6-106).

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction.

If the auctioneer consists of several persons their liability is joint and several.

History.—§1, ch. 65-254.

Note.—§6-108, U.C.C.; supersedes §726.05.

676.6-109 What creditors protected; credit for payment to particular creditors.—

(1) The creditors of the transferor mentioned in this chapter are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (§§676.6-105 and 676.6-107) are not entitled to notice.

(2) Against the aggregate obligation imposed by the provisions of this chapter concerning the application of the proceeds (§§676.6-106 and 676.6-108(3)(c)) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the transferor, not exceeding the sums believed in good faith at the time of the payment to be properly payable to such creditors.

History.—§1, ch. 65-254.

Note.—§6-109, U.C.C.

676.6-110 Subsequent transfers.—When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this chapter, then:

(1) A purchaser of any of such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but

(2) A purchaser for value in good faith and without such notice takes free of such defect.

History.—§1, ch. 65-254.

Note.—§6-110, U.C.C.

676.6-111 Limitation of actions and levies.—No action under this chapter shall be brought nor levy made more than one year after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within one year after its discovery.

History.—§1, ch. 65-254.

Note.—§6-111, U.C.C.
CHAPTER 677

UNIFORM COMMERCIAL CODE—DOCUMENTS OF TITLE

ARTICLE 7 WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

PART I GENERAL (§§677.7-101—677.7-105)

PART II WAREHOUSE RECEIPTS: SPECIAL PROVISIONS (§§677.7-201—677.7-210)

PART III BILLS OF LADING: SPECIAL PROVISIONS (§§677.7-301—677.7-309)

PART IV WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

PART V WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER (§§677.7-501—677.7-509)

PART VI WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS (§§677.7-601—677.7-603)

ARTICLE 7

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

PART I

GENERAL

677.7-101 Short title.
677.7-102 Definitions and index of definitions.
677.7-103 Relation of chapter to treaty, statute, tariff, classification or regulation.

677.7-101 Short title.—Chapter 677 shall be known and may be cited as the uniform commercial code—documents of title.

History.—§1, ch. 65-254.

Note.—17-101, U.C.C.

677.7-102 Definitions and index of definitions.­

(1) In this chapter, unless the context otherwise requires:
(a) “Bailee” means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.
(b) “Consignee” means the person named in a bill to whom or to whose order the bill promises delivery.
(c) “Consignor” means the person named in a bill as the person from whom the goods have been received for shipment.
(d) “Delivery order” means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.
(e) “Document” means document of title as defined in the general definitions in chapter 671 (§671.1-201).
(f) “Goods” means all things which are treated as movable for the purposes of a contract of storage or transportation.
(g) “Issuer” means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.
(h) “Warehouseman” is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:
“Duly negotiate”. §677.7-501.
“Person entitled under the document”. §677.7-403(4).

(3) Definitions in other chapters applying to this chapter and the sections in which they appear are:
“Contract for sale”. §672.2-106.
“Overseas”. §672.2-323.
“Receipt” of goods. §672.2-103.

(4) In addition chapter 671 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History.—§1, ch. 65-254.

Note.—§1-103, U.C.C.; supersedes §678.54.

677.7-103 Relation of chapter to treaty, statute, tariff, classification or regulation.—To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this chapter are subject thereto.

History.—§1, ch. 65-254.

Note.—§1-103, U.C.C.
677.7-104 Negotiable and non-negotiable
warehouse receipt, bill of lading or other docu-
ment of title.—

(1) A warehouse receipt, bill of lading or
other document of title is negotiable:
(a) If by its terms the goods are to be de-
livered to bearer or to the order of a named
person; or
(b) Where recognized in overseas trade, if
it runs to a named person or assigns.
(2) Any other document is non-negotiable.

A bill of lading in which it is stated that the
goods are consigned to a named person is not
made negotiable by a provision that the goods
are to be delivered only against a written order
signed by the same or another named person.

History.—§1, ch. 65-254.
Note.—§7-104, U.C.C.; superseded §678.02-678.05.

677.7-105 Construction against negative im-
plication.—The omission from either part II or
part III of this chapter of a provision corre-
sponding to a provision made in the other part
does not imply that a corresponding rule of law
is not applicable.

History.—§1, ch. 65-254.
Note.—§7-105, U.C.C.

PART II
WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

677.7-201 Who may issue a warehouse re-
ceipt; storage under government bond.

(1) A warehouse receipt may be issued by
any warehouseman.
(2) Where goods including distilled spirits
and agricultural commodities are stored under
a statute requiring a bond against withdrawal
or a license for the issuance of receipts in the
nature of warehouse receipts, a receipt issued
for the goods has like effect as a warehouse re-
ceipt even though issued by a person who is
the owner of the goods and is not a warehouse-
man.

History.—§1, ch. 65-254.
Note.—§7-201, U.C.C.; supersedes §678.01.

677.7-202 Form of warehouse receipt; es-
sential terms; optional terms.—

(1) A warehouse receipt need not be in any
particular form.
(2) Unless a warehouse receipt embodies
within its written or printed terms each of the
following, the warehouseman is liable for dam-
ages caused by the omission to a person injured
thereby:
(a) The location of the warehouse where
the goods are stored;
(b) The date of issue of the receipt;
(c) The consecutive number of the receipt;
(d) A statement whether the goods received
will be delivered to the bearer, to a specified
person, or to a specified person or his order;
(e) The rate of storage and handling
charges, except that where goods are stored
under a field warehousing arrangement a state-
ment of that fact is sufficient on a non-negoti-
able receipt;
(f) A description of the goods or of the
packages containing them;
(g) The signature of the warehouseman,
which may be made by his authorized agent;
(h) If the receipt is issued for goods of
which the warehouseman is owner, either solely
or jointly or in common with others, the fact
of such ownership; and
(i) A statement of the amount of advances
made and of liabilities incurred for which the
warehouseman claims a lien or security interest
§677.7-209. If the precise amount of such ad-
varces made of such liabilities incurred is, at
the time of the issue of the receipt, unknown to
the warehouseman or to his agent who issues
it, a statement of the fact that advances have
been made or liabilities incurred and the pur-
pose thereof is sufficient.

677.7-203 Liability for non-receipt or misde-
scription.—A party to or purchaser for value
in good faith of a document of title other than
a bill of lading relying in either case upon the
description therein of the goods may recover
from the issuer damages caused by the non-
receipt or misdescription of the goods, except
to the extent that the document conspicuously
indicates that the issuer does not know whether
any part or all of the goods in fact were re-
ceived or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

677.7-204 Duty of care; contractual limitation of warehouseman's liability.—

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may be increased on part or all of the goods received or conform to the description, as where the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notice to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section, to persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(6) The warehouseman must deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(7) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section, to persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

677.7-206 Termination of storage at warehouseman's option.—

(1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (677.7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notice to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section, to persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

677.7-207 Goods must be kept separate; fungible goods.—

(1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

677.7-208 Altered warehouse receipts.—

Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of whom the want of authority may treat the insertion as authorized. Any other unauthorized alteration
A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under §677.7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

History—51, ch. 63-204. Note.—§17-208, U.C.C.; superseded §678.27-678.32.

677.7-210 Enforcement of warehouseman's lien.—

(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the last publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the
goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

PART III

BILLS OF LADING: SPECIAL PROVISIONS

677.7-301 Liability for non-receipt or misdescription; "Said to Contain"; "Shipper's Load and Count"; improper handling.

677.7-302 Through bills of lading and similar documents.

677.7-303 Diversion; reconsignment; change of instructions.

677.7-301 Liability for non-receipt or misdescription; "Said to Contain"; "Shipper's Load and Count"; improper handling.—

(1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may be inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

677.7-302 Through bills of lading and similar documents.—

(1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such
677.7-303 Diversion; reconsignment; change of instructions.—
(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person other than that stated in the bill or may otherwise dispose of the goods on instructions from:
(a) The holder of a negotiable bill; or
(b) The consignee on a non-negotiable bill notwithstanding contrary instructions from the consignor; or
(c) The consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or
(d) The consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.
(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

677.7-304 Bills of lading in a set.—
(1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.
(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

677.7-305 Destination bills.—
(1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.
(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

677.7-306 Altered bills of lading.—An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

677.7-307 Lien of carrier.—
(1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.
(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier has notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

677.7-308 Enforcement of carrier's lien.—
(1) A carrier's lien may be enforced by public or private sale of the goods, in block or in parcels, at any time or place and on any terms
which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this chapter.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier’s lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier’s lien may be enforced in accordance with either subsection (1) or the procedure set forth in §677.7-210(2).

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

History.—41, ch. 65-354.
Note.—§7-309, U.C.C.; supersedes §678.33.

677.7-309 Duty of care; contractual limitation of carrier’s liability.—

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier’s liability shall not exceed a value stated in the document if the carrier’s rates are dependent upon value and the consignor by the carrier’s tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective unless as a commercially reasonable manner.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

History.—11, ch. 65-354.
Note.—§7-209, U.C.C.; supersedes §678.03, 678.30.

PART IV

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

677.7-401 Irregularities in issue of receipt or bill or conduct of issuer.—The obligations imposed by this chapter on an issuer apply to a document of title regardless of the fact that:

(1) The document may not comply with the requirements of this chapter or of any other law or regulation regarding its issue, form or content; or

(2) The issuer may have violated laws regulating the conduct of his business; or

(3) The goods covered by the document were owned by the bailee at the time the document was issued; or

(4) The person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

History.—11, ch. 65-354.
Note.—§17-401, U.C.C.; supersedes §678.20.

677.7-402 Duplicate receipt or bill; overissue.—Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a
duplicate document as such by conspicuous notation on its face.

History—51, ch. 65-254.
Note.—7T-302, U.C.C.; superseded §678.09.

677.7-403 Obligation of warehouseman or carrier to deliver; excuse.—

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) Delivery of the goods to a person whose receipt was rightful as against the claimant;
(b) Damage to or delay, loss or destruction of the goods for which the bailee is not liable;
(c) Previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;
(d) The exercise by a seller of his right to stop delivery pursuant to the provisions of the chapter on sales (§672.2-705);
(e) A diversion, reconsignment or other disposition pursuant to the provisions of this chapter (§677.7-303) or tariff regulating such right;
(f) Release, satisfaction or any other fact affording a personal defense against the claimant;
(g) Any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under §677.7-503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) “Person entitled under the document” means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document.

History.—§1, ch. 65-254.
Note.—§7-403, U.C.C.; supersedes §678.08-678.12, 678.16, 678.18.

677.7-404 No liability for good faith delivery pursuant to receipt or bill.—A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this chapter is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

History.—§1, ch. 65-254.
Note.—§7-404, U.C.C.; supersedes §678.10.

PART V

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

677.7-501 Form of negotiation and requirements of “Due Negotiation”.—

(1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.
(b) When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is “duly negotiated” when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to
the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

History.—§1, ch. 65-254.

Note.—§7-501, U.C.C.; superseded §678.39-678.42, 678.49.

677.7-502 Rights acquired by due negotiation.—

(1) Subject to the following section and to the provisions of §677.7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) Title to the document;

(b) Title to the goods;

(c) Rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this chapter. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

History.—§1, ch. 65-254.

Note.—§7-503, U.C.C.; superseded §678.43, 678.49-678.51.

677.7-503 Document of title to goods defeated in certain cases.—

(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) Delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this chapter (§§677.7-403) or with power of disposition under this code (§§672.2-403 and 679.9-307) or other statute or rule of law; nor

(b) Acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part IV of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver.

History.—§1, ch. 65-254.

Note.—§7-504, U.C.C.; superseded §678.43.

677.7-504 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.—

(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferee had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(a) By those creditors of the transferee who could treat the sale as void under §672.2-402; or

(b) By a buyer from the transferee in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) As against the bailee by good faith dealings of the bailee with the transferee.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under §672.2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

History.—§1, ch. 65-254.

Note.—§7-504, U.C.C.; superseded §678.43, 678.44.

677.7-505 Indorser not a guarantor for other parties.—The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

History.—§1, ch. 65-254.

Note.—§7-505, U.C.C.; superseded §678.47.

677.7-506 Delivery without indorsement; right to compel indorsement.—The transferee of a negotiable document of title has a specifically enforceable right to have his transferee supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied.

History.—§1, ch. 65-254.

Note.—§7-506, U.C.C.; superseded §678.45.
677.7-507 Warranties on negotiation or transfer of receipt or bill.—Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods:

(1) That the document is genuine; and
(2) That he has no knowledge of any fact which would impair its validity or worth; and
(3) That his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

History.—11, ch. 65-254.
Note.—§7-507, U.C.C.; supersedes §678.48.

677.7-508 Warranties of collecting bank as to documents.—A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

History.—11, ch. 65-254.
Note.—§7-508, U.C.C.; supersedes §685.01.

677.7-509 Receipt or bill; when adequate compliance with commercial contract.—The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the chapters on sales (chapter 672) and on letters of credit (chapter 675).

History.—11, ch. 65-254.
Note.—§7-509, U.C.C.

PART VI
WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

677.7-601 Lost and missing documents.

677.7-602 Attachment of goods covered by a negotiable document.

677.7-601 Lost and missing documents.—

(1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee’s reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery.

History.—11, ch. 65-254.

677.7-602 Attachment of goods covered by a negotiable document.—Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

History.—11, ch. 65-254.
Note.—§7-602, U.C.C.; supersedes §678.25.

677.7-603 Conflicting claims; interpleader.—If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate.

History.—11, ch. 65-254.
Note.—§7-603, U.C.C.; superseded §§678.16, 678.17.
CHAPTER 678
UNIFORM COMMERCIAL CODE—INVESTMENT SECURITIES
ARTICLE 8 INVESTMENT SECURITIES
PART I SHORT TITLE AND GENERAL MATTERS (§§678.8-101—678.8-107)
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ARTICLE 8
INVESTMENT SECURITIES
PART I
SHORT TITLE AND GENERAL MATTERS

678.8-101 Short title.
678.8-102 Definitions and index of definitions.
678.8-103 Issuer's lien.
678.8-104 Effect of overissue; “Overissue.”

678.8-101 Short title.—Chapter 678 shall be known and may be cited as uniform commercial code—investment securities.

678.8-102 Definitions and index of definitions.—
(1) In this chapter unless the context otherwise requires:
(a) A “security” is an instrument which:
1. Is issued in bearer or registered form; and
2. Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
3. Is either one of a class or series or by its terms is divisible into a class or series of instruments; and
4. Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(b) A writing which is a security is governed by this chapter and not by uniform commercial code-commercial paper even though it also meets the requirements of that chapter.

(c) A security is in “registered form” when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(d) A security is in “bearer form” when it runs to bearer according to its terms and not by reason of any indorsement.

(2) A “subsequent purchaser” is a person who takes other than by original issue.

(3) A “clearing corporation” is a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the securities exchange act of 1934.

(4) A “custodian bank” is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(5) Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:

“Adverse claim”. §678.8-301.
“Bona fide purchaser”. §678.8-302.
“Broked”. §678.8-303.
“Guarantee of the signature”. §678.8-402.
“Intermediary bank”. §678.4-105.
“Issuer”. §678.8-201.
“Overissue”. §678.8-104.

(6) In addition chapter 671 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

678.8-103 Issuer's lien.—A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security.

678.8-104 Effect of overissue; “Overissue.”—
(1) The provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but:
(a) If an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or
(b) If a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

History.—§ 1, ch. 65-254.
Note. — § 8-104, U.C.C.

678.8-105 Securities negotiable; presumptions.—
(1) Securities governed by this chapter are negotiable instruments.

(2) In any action on a security:
(a) Unless specifically denied in the pleadings, each signature on the security or in a necessary indorsement is admitted;
(b) When the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;
(c) When signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and
(d) After it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (§ 678.8-202).

History.—§ 1, ch. 65-254.
Note.— § 8-105, U.C.C.

678.8-106 Applicability.—The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

History.—§ 1, ch. 65-254.
Note.— § 8-106, U.C.C.

678.8-107 Securities deliverable; action for price.—
(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sale, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.

(2) When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price:
(a) Of securities accepted by the buyer; and
(b) Of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

History.—§ 1, ch. 65-254.
Note.— §§ 1674.32, 674.62-674.64. USSR. 02(9) Definitions.
referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(2) (a) A security other than one issued by a government or governmental agency or unit, even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

(b) The rule of (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (§678.8-205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(4) All other defenses of the issuer including nondelivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed.

History.—§1, ch. 65-254.

Note.—§18-203, U.C.C.; superseded §§674.18, 674.25, 674.31, 674.32, 674.34, 674.45, 674.52—674.64.

678.8-203 Staleness as notice of defects or defenses.—

(1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer:

(a) If the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) If the act or event is not covered by paragraph (a) and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1).

History.—§1, ch. 65-254.

Note.—§18-203, U.C.C.; superseded §§674.54(2), 674.55.

678.8-204 Effect of issuer's restrictions on transfer.—Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

History.—§1, ch. 65-254.

Note.—§18-204, U.C.C.; superseded §614.17.

678.8-205 Effect of unauthorized signature on issue.—An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(2) An employee of the issuer or of any of the foregoing entrusted with responsible handling of the security.

History.—§1, ch. 65-254.

Note.—§18-205, U.C.C.; superseded §674.25.

678.8-206 Completion or alteration of instrument.—

(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) Any person may complete it by filling in the blanks as authorized; and

(b) Even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

History.—§1, ch. 65-254.

Note.—§18-206, U.C.C.; superseded §§674.18, 674.17, 673.32, 614.18.

678.8-207 Rights of issuer with respect to registered owners.—

(1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(2) Nothing in this chapter shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like.

History.—§1, ch. 65-254.

Note.—§18-207, U.C.C.; superseded §614.56.

678.8-208 Effect of signature of authenticating trustee, registrar or transfer agent.—

(1) A person placing his signature upon a
security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that:

(a) The security is genuine; and

(b) His own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and

(c) He has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

PART III

PURCHASE

678.8-301 Rights acquired by purchaser; "Adverse Claim"; title acquired by bona fide purchaser.

678.8-302 "Bona Fide Purchaser."

678.8-303 "Broker."

678.8-304 Notice to purchaser of adverse claims.

678.8-305 Staleness as notice of adverse claims.

678.8-306 Warranties on presentation and transfer.

678.8-307 Effect of delivery without indorsement; right to compel indorsement.

678.8-308 Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.

678.8-309 Effect of indorsement without delivery.

678.8-310 Indorsement of security in bearer form.

678.8-311 Effect of unauthorized indorsement.

678.8-312 Effect of guaranteeing signature or indorsement.

678.8-313 When delivery to the purchaser occurs; purchaser's broker as holder.

678.8-314 Duty to deliver, when completed.

678.8-315 Action against purchaser based upon wrongful transfer.

678.8-316 Purchaser's rights to requisites for registration of transfer on books.

678.8-317 Attachment or levy upon security.

678.8-318 No conversion by good faith delivery.

678.8-319 Statute of frauds.

678.8-320 Transfer or pledge within a central depository system.

678.8-301 Rights acquired by purchaser; "Adverse Claim"; title acquired by bona fide purchaser.—

(1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

History.—§1, ch. 65-254.

Note.—§8-301, U.C.C.; supersedes §674.54, 674.59-674.61, 614.09.

678.8-302 "Bona Fide Purchaser."—A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.

History.—§1, ch. 65-254.

Note.—§8-302, U.C.C.; supersedes §674.54.

678.8-303 "Broker."—"Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this chapter determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject.

History.—§1, ch. 65-254.

Note.—§710.03(3) Manner of making gifts.
chaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

History.—§1, ch. 65-254.

678.8-305 Staleness as notice of adverse claims.—An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase:

(1) After one year from any date set for such presentment or surrender for redemption or exchange; or

(2) After six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

History.—§1, ch. 65-254.

678.8-306 Warranties on presentment and transfer.—

(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or re-registered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (§678.8-311) in a necessary indorsement.

(2) A person by transferring a security to a purchaser for value warrants only that:

(a) His transfer is effective and rightful; and

(b) The security is genuine and has not been materially altered; and

(c) He knows no fact which might impair the validity of the security.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3).

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

History.—§1, ch. 65-254.

678.8-307 Effect of delivery without indorsement—right to compel indorsement.—Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

History.—§1, ch. 65-254.
Note.—§8-307, U.C.C.; superseded §§674.51, 614.11.

678.8-308 Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.—

(1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) "An appropriate person" in subsection (1) means:

(a) The person specified by the security or by special indorsement to be entitled to the security; or

(b) Where the person so specified is described as a fiduciary but is no longer serving in the described capacity,—either that person or his successor; or

(c) Where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(d) Where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

(e) Where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors; or

(f) A person having power to sign under applicable law or controlling instrument; or

(g) To the extent that any of the foregoing persons may act through an agent,—his authorized agent.

(4) Unless otherwise agreed the indorser by
his indorsement assumes no obligation that the security will be honored by the issuer.

(5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this chapter by virtue of any subsequent change of circumstances.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his Indorsement unauthorized for the purposes of this chapter.

History.—§ 1, ch. 65-254.
Note.—§ 8-304, U.C.C.; superseded 1§ 674.33, 614.03, 614.12.

678.8-309 Effect of indorsement without delivery.—An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.

History.—§ 1, ch. 65-254.
Note.—§ 8-309, U.C.C.; superseded 1§ 674.33, 614.03, 614.12.

678.8-310 Indorsement of security in bearer form.—An indorsement of a security in bearer form may give notice of adverse claims (§ 678.8-304) but does not otherwise affect any right to registration the holder may possess.

History.—§ 1, ch. 65-254.
Note.—§ 8-310, U.C.C.; superseded 1§ 674.03.

678.8-311 Effect of unauthorized indorsement.—Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness:

(1) He may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or re-registered security on registration of transfer; and

(2) An issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (§ 678.8-404).

History.—§ 1, ch. 65-254.
Note.—§ 8-311, U.C.C.; superseded 1§ 674.03.

678.8-312 Effect of guaranteeing signature or indorsement.—

(1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing:

(a) The signature was genuine; and

(b) The signer was an appropriate person to indorse (§ 678.8-308); and

(c) The signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection (1)) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

History.—§ 1, ch. 65-254.
Note.—§ 8-312, U.C.C.

678.8-313 When delivery to the purchaser occurs; purchaser’s broker as holder.—

(1) Delivery to a purchaser occurs when:

(a) He or a person designated by him acquires possession of a security; or

(b) His broker acquires possession of a security especially indorsed to or issued in the name of the purchaser; or

(c) His broker sends him confirmation of the purchase and also by book entry otherwise identifies a specific security in the broker’s possession as belonging to the purchaser; or

(d) With respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) Appropriate entries on the books of a clearing corporation are made under § 678.8-320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subsection (1) (b)-(e). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.

History.—§ 1, ch. 65-254.
Note.—§ 8-313, U.C.C.; superseded 1§ 674.01, 614.02(2).

678.8-314 Duty to deliver, when completed.—

(1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers:

(a) The selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) The selling broker by including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in ac-
678.8-315 Action against purchaser based upon wrongful transfer.—
(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this chapter on unauthorized indorsements (§678.8-311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.

History.--11, ch. 65-254.
Note.--§8-314, U.C.C.

678.8-316 Purchaser's right to requisites for registration of transfer on books.—Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expense. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer.

History.--11, ch. 65-254.
Note.--§8-315, U.C.C.; superseded 614.60.

678.8-317 Attachment or levy upon security.—
(1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

History.--11, ch. 65-254.
Note.--§8-317, U.C.C.; superseded 614.15, 614.16.
cf.--§56.061 Property subject to execution.

678.8-318 No conversion by good faith delivery.—An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them.

History.--11, ch. 65-254.
Note.--§8-318, U.C.C.

678.8-319 Statute of frauds.—A contract for the sale of securities is not enforceable by way of action or defense unless:

(1) There is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(2) Delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(3) Within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under subsection (1) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or

(4) The party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

History.--11, ch. 65-254.
Note.--§8-319, U.C.C.

678.8-320 Transfer or pledge within a central depository system.—
(1) If a security:

(a) Is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) Is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) Is shown on the account of a transferor or pledgor on the books of the clearing corporation;

then, in addition to other methods, a transfer or pledge of the security or any interest therein
may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (§678.8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (§§679.9-304 and 679.9-305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under part IV of this chapter.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

History.—§ 1, ch. 65-254.
Note.—§8-320, U.C.C.

PART IV
REGISTRATION

678.8-401 Duty of issuer to register transfer.—
(1) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the account as requested if:
(a) The security is indorsed by the appropriate person or persons (§678.8-308); and
(b) Reasonable assurance is given that those indorsements are genuine and effective (§678.8-402); and
(c) The issuer has no duty to inquire into adverse claims or has discharged any such duty (§678.8-403); and
(d) Any applicable law relating to the collection of taxes has been complied with; and
(e) The transfer is in fact rightful or is to a bonâ fide purchaser.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

History.—§1, ch. 65-254.
Note.—§8-401, U.C.C.

678.8-402 Assurance that indorsements are effective.—
(1) The issuer may require the following assurance that each necessary indorsement (§678.8-308) is genuine and effective:
(a) In all cases, a guarantee of the signature (§678.8-312(1)) of the person indorsing; and
issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subsection (3)(b) both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, by-laws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer.

History.--11, ch. 65-254.
Note.--§8-403, U.C.C. cf.--§610.031 Evidence of appointment or incumbency.

678.8-403 Limited duty of inquiry.—
(1) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if:
(a) A written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or
(b) The issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under §678.8-402(4).

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either:
(a) An appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or
(b) An indemnity bond sufficient in the issuer's judgement to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under §678.8-402(4) or receives notification of an adverse claim under subsection (1) of this section, where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims or has discharged any such duty.

(4) The issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(5) An issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with any law requiring the fiduciary to obtain court approval of the transfer; and

(6) The issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

History.--11, ch. 65-254.
Note.--§8-404, U.C.C. cf.--§610.031 Assignment in the name of a fiduciary. §610.041 Assignment by a fiduciary. §610.061 Nonliability of third persons.

678.8-404 Liability and non-liability for registration.—
(1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if:
(a) There were on or with the security the necessary indorsements (§678.8-308); and
(b) The issuer had no duty to inquire into adverse claims or has discharged any such duty.

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless:
(a) The registration was pursuant to subsection (1); or
(b) The owner is precluded from asserting any claim for registering the transfer under §678.8-405(1); or
(c) Such delivery would result in overissue, in which case the issuer's liability is governed by §678.8-104.

History.--11, ch. 65-254.
Note.--§6-404, U.C.C. cf.--§610.071 Nonliability of corporation or transfer agent.

678.8-405 Lost, destroyed and stolen securities.—
(1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under the preceding section or any claim to a new security under this section.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new
security in place of the original security if the owner:
(a) So requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and
(b) Files with the issuer a sufficient indemnity bond; and
(c) Satisfies any other reasonable requirements imposed by the issuer.
(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by §678.8-104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser.

678.8-406 Duty of authenticating trustee, transfer agent or registrar.—
(1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities:
(a) He is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and
(b) He has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.
(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent.
ARTICLE 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

PART I SHORT TITLE, APPLICABILITY AND DEFINITIONS (§§679.9-101—679.9-113)

PART II VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO (§§679.9-201—679.9-208)

PART III RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY (§§679.9-301—679.9-318)

PART IV FILING (§§679.9-401—679.9-407)

PART V DEFAULT (§§679.9-501—679.9-507)

Chapter 679 shall be known and may be cited as uniform commercial code—secured transactions.

679.9-101 Short title.—Chapter 679 shall be known and may be cited as uniform commercial code—secured transactions.

679.9-102 Policy and scope of chapter.—
(1) Except as otherwise provided in §§679.9-103 on multiple state transactions and in §§679.9-104 on excluded transactions, this chapter applies so far as concerns any personal property and fixtures within the jurisdiction of this state:
   (a) To any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including, but not limited to, goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also
   (b) To any sale of accounts, contract rights or chattel paper.
(2) This chapter applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor’s lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This chapter does not apply to statutory liens except as provided in §679.9-310.

679.9-103 Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest.—
(1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this chapter; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.
(2) If the chief place of business of a debtor is in this state, this chapter governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive

679.9-104 Transactions excluded from chapter.

679.9-105 Definitions and index of definitions.

679.9-106 Definitions: “Account”; “Contract Right”; “General Intangibles”.

679.9-107 Definitions: “Purchase Money Security Interest”.

679.9-108 When after-acquired collateral not security for antecedent debt.

679.9-109 Classification of goods; “Consumer Goods”; “Equipment”; “Farm Products”; “Inventory”.

679.9-110 Sufficiency of description.

679.9-111 Applicability of bulk transfer laws.

679.9-112 Where collateral is not owned by debtor.

679.9-113 Security interests arising under article on sales.
equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate of title of any security interest otherwise bears an appropriate relation to this state, this chapter governs the validity and perfection of the security interest and the security interest may only be perfected by notification to the account debtor.

History.--§1, ch. 65-254.
Note.--§9-103, U.C.C.

679.9-104 Transactions excluded from chapter.—This chapter does not apply:

(1) To a security interest subject to any statute of the United States such as the ship mortgage act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(2) To a landlord's lien; or

(3) To a lien given by statute or other rule of law for services or materials except as provided in §679.9-310 on priority of such liens; or

(4) To a transfer of a claim for wages, salary or other compensation of an employee; or

(5) To an equipment trust or other security device covering railroad rolling stock or equipment which is a part of the United States, its territories or possessions, and the accounts or contract rights are within the jurisdiction of this state or the transaction which creates the security interest otherwise bears an appropriate relation to this state, this chapter governs the validity and perfection of the security interest and the security interest may only be perfected by notification to the account debtor.

History.--§1, ch. 65-254.
Note.--§9-103, U.C.C.

679.9-105 Definitions and index of definitions.—

(1) In this chapter unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;
(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, chattel rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Document" means document of title as defined in the general definitions of chapter 671 (§671.1-201);

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (§679.9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also include the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (defined in §673.3-104), or a security (defined in §678.8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account". §679.9-106.
"Consumer goods". §679.9-109(1).
"Contract right". §679.9-109(2).
"Equipment". §679.9-109(3).
"Farm products". §679.9-109(4).
"General intangibles". §679.9-106.
"Inventory". §679.9-109(5).
"Lien creditor". §679.9-301(3).
"Proceeds". §679.9-306(1).
"Purchase money security interest." §679.9-107.

(3) The following definitions in other chapters of this code apply to this chapter:

"Check". §672.2-104.
"Contract for sale". §672.2-106.
"Holder in due course". §673.3-302.
"Note". §673.3-104.
"Sale". §672.2-106.

(4) In addition chapter 671 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

679.9-106 Definitions: "Account"; "Contract Right"; "General Intangibles"—"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments.

History.—§1, ch . 65-254. 
Note.—§49-106, U.C.C.

679.9-107 Definitions: "Purchase Money Security Interest"—A security interest is a "purchase money security interest" to the extent that it is:

(1) Taken or retained by the seller of the collateral to secure all or part of its price; or

(2) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

History.—§1, ch . 65-254. 
Note.—§49-106, U.C.C.

679.9-108 When after-acquired collateral not security for antecedent debt.—Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract or purchase made pursuant to the security agreement within a reasonable time after new value is given.

History.—§1, ch . 65-254. 
Note.—§49-106, U.C.C.; superseded §85.30.

679.9-109 Classification of goods; "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory".—"Goods" are:

(1) "Consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "Equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental sub-division or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "Farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening,
granting or other farming operations. If goods are farm products they are neither equipment nor inventory.

(4) “Inventory” if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

History.—11, ch. 65-254. Note.—11, U.C.C.

679.9-110 Sufficiency of description.—For the purposes of this chapter any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described; except that a description of real estate in an instrument filed to perfect a security interest in crops growing or to be grown or goods which are or are to become fixtures shall be sufficient only if the filing or recording of the same constitutes constructive notice under the laws of this state, other than this chapter, which are applicable to the filing or recording of real estate mortgages, and a mailing or street address alone shall not be sufficient.

History.—11, ch. 65-254; 11, ch. 57-264. Note.—11-110, U.C.C.; superseded §1700.01, 63.30(1)(c), 609.08, 673.10.

679.9-111 Applicability of bulk transfer laws.—The creation of a security interest is not a bulk transfer under chapter 676 (see §676.6-103).

History.—11, ch. 65-254. Note.—11-11, U.C.C.; superseded Ch. 726.

679.9-112 Where collateral is not owned by debtor.—Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under §679.9-502(2) or under §679.9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor:

1. To receive statements under §679.9-208;
2. To receive notice of and to object to a secured party’s proposal to retain the collateral in satisfaction of the indebtedness under §679.9-506;
3. To redeem the collateral under §679.9-506;
4. To obtain injunctive or other relief under §679.9-507(1); and
5. To recover losses caused to him under §679.9-208(2).

History.—11, ch. 65-254. Note.—11-12, U.C.C.

679.9-113 Security interests arising under article on sales.—A security interest arising solely under the chapter on sales (chapter 672) is subject to the provisions of this chapter except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

1. No security agreement is necessary to make the security interest enforceable; and
2. No filing is required to perfect the security interest; and
3. The rights of the secured party on default by the debtor are governed by the chapter on sales (chapter 672).

History.—11, ch. 65-254. Note.—11-13, U.C.C.

PART II

VALIDITY OF SECURITY AGREEMENT

679.9-201 General validity of security agreement.—Except as otherwise provided by this code a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this chapter validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

History.—11, ch. 65-254. Note.—11-201, U.C.C.; superseded §672.03.

679.9-202 Title to collateral immaterial.—
(b) The debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of any character.

(2) A transaction, although subject to this chapter, is also subject to Chs. 516, 619, 620, F. S., and in the case of conflict between the provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

History.—41 ch. 65-254.


679.9-204 When security interest attaches; after-acquired property; future advances.—

(1) A security interest cannot attach until there is agreement (§671.1-201(3)) that it attaches and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights:
(a) In crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;
(b) In fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;
(c) In a contract right until the contract has been made;
(d) In an account until it comes into existence.

(3) Except as provided in subsection (4), a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

(4) No security interest attaches under an after-acquired property clause:
(a) To crops which become such more than seven years after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;
(b) To consumer goods other than accessions (§679.9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

History.—Art. 10, §1, ch. 63-254.

Note.—19-204, U.C.C.; superseded §1697.04, 699.05, 700.01. cf.—1973.04. Future advances may be secured.

679.9-205 Use or disposition of collateral without accounting permissible.—A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect on or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

History.—41 ch. 65-254.

Note.—19-203, U.C.C.

679.9-206 Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.—

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the chapter on commercial paper (chapter 673). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement:

(2) When a seller retains a purchase money security interest in goods the chapter on sales (chapter 672) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

History.—41 ch. 65-254.

Note.—19-203, U.C.C.

679.9-207 Rights and duties when collateral is in secured party's possession.—

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession:
(a) Reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;
(b) The risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;
(c) The secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;
(d) The secured party must keep the col-
lateral identifiable but fungible collateral may be commingled;
(3) The secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.
(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction, or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

History.—§1, ch. 65-254.
Note.—§9-207, U.C.C.; superseded §9-308.04; Revises §9-308.04 to delete collateral security before debt due.
679.9-208 Request for statement of account or list of collateral.—
(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

679.9-301 Persons who take priority over unperfected security interests; "Lien Creditor".—
(a) Persons entitled to priority under §679.9-312;
(b) A person who becomes a lien creditor without knowledge of the security interest and before it is perfected;
(c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) In the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of appointment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented have knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest.

679.9-302 When filing is required to perfect security interest; security interests to which filing provisions of this chapter do not apply.—

(1) A financing statement must be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under §679.9-305;

(b) A security interest temporarily perfected in instruments or documents without delivery under §679.9-304 or in proceeds for a 10 day period under §679.9-306;

(c) A purchase money security interest in farm equipment having a purchase price not in excess of $2500; but filing is required for a fixture under §679.9-313;

(d) A purchase money security interest in consumer goods; but filing is required for a fixture under §679.9-313;

(e) An assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) A security interest of a collecting bank ($674.4-208) or arising under the chapter on sales (see §679.9-113) or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing provisions of this chapter do not apply to a security interest in property subject to a statute:

(a) Of the United States which provides for a national registration or filing of all security interests in such property; or

(b) Of this state which provides for central filing of security interest in such property, or in a motor vehicle which is not inventory held for sale for which a certificate of title is required under the statutes of this state if a notation of such a security interest can be indicated by a public official on a certificate or a duplicate thereof.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

History—41, ch. 65-254.
Note.—§9-302, U.C.C.; superseded §679.08, 28.22.

679.9-303 When security interest is perfected; continuity of perfection.—

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in §§679.9-302, 679.9-303-679.9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this chapter and is subsequently perfected in some other way under this chapter, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this chapter.

History.—41, ch. 65-254.
Note.—§9-303, U.C.C.; superseded §1685.01, 85.30, 700.03, 688.07, 672.08, 28.321, 698.09.

679.9-304 Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.—

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a baillee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt.
of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this chapter.

History.—§1, ch. 65-254.

Note.—§9-305, U.C.C. supersedes §§698.01, 678.44.

679.9-305 When possession by secured party perfects security interest without filing.—A security interest in letters of credit and advices of credit (§675.5-116 (2) (a)), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as the person in possession of the collateral retains possession, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

History.—§1, ch. 65-254.

Note.—§9-305, U.C.C.; supersedes §§679.9-306, 678.44.

679.9-306 "Proceeds"; secured party's rights on disposition of collateral.—

(1) "Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks and the like are "cash proceeds." All other proceeds are "non-cash proceeds".

(2) Except where this chapter otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor or the secured party.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless:

(a) A filed financing statement covering the original collateral also covers proceeds; or

(b) The security interest in the proceeds is perfected before the expiration of the ten day period.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest:

(a) In identifiable non-cash proceeds;

(b) In identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) In all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is:

1. Subject to any right of set-off; and

2. Limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the ten day period.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper has a security interest in the goods.
of the chattel paper was entitled to priority under §679.9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

679.9-307 Protection of buyers of goods.—

(1) A buyer in ordinary course of business (§671.1-201(9)) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of $2500 (other than fixtures, see §679.9-313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.

679.9-308 Purchase of chattel paper and non-negotiable instruments.—A purchaser of chattel paper or a non-negotiable instrument who gives new value and takes possession of it in the ordinary course of his business has no priority over a security interest which is perfected under §679.9-304 (permissive filing and temporary perfection). A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (§679.9-306), even though he knows that the specific paper is subject to the security interest.

679.9-309 Protection of purchasers of instruments and documents.—Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (§673.3-302) or a holder to whom a negotiable document of title has been duly negotiated (§677.7-501) or a bona fide purchaser of a security (§678.8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to such holders or purchasers.

679.9-310 Priority of certain liens arising by operation of law.—When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

679.9-311 Alienability of debtor's rights: judicial process.—The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

679.9-312 Priorities among conflicting security interests in the same collateral.—

(1) The rules of priority stated in the following sections shall govern where applicable: section 674.4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; section 679.9-301 on certain priorities; section 679.9-304 on goods covered by documents; section 679.9-306 on proceeds and repossessions; section 679.9-307 on buyers of goods; section 679.9-308 on possessory against non-possessory interests in chattel paper or non-negotiable instruments; section 679.9-309 on security interests in negotiable instruments, documents or securities; section 679.9-310 on priorities between perfected security interests and liens by operation of law; section 679.9-313 on security interests in fixtures as against interests in real estate; section 679.9-314 on security interests in accessions as against interest in goods; section 679.9-315 on conflicting security interests where goods lose their identity or become part of a product; and section 679.9-316 on contractual subordination.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier security interest, for purposes of the operation of law, of the security agreement prohibiting any transfer or making the transfer constitute a default.
(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if:
(a) The purchase money security interest is perfected at the time the debtor receives possession of the collateral; and
(b) Any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, has filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and
(c) Such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify as perfected security interests as stated in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:
(a) In the order of filing if both are perfected by filing, regardless of which security interest attaches first under §679.9-204(1) and whether it attached before or after filing;
(b) In the order of perfection unless both are perfected by filing, regardless of which security interest attached first under §679.9-204(1) and, in the case of a filed security interest, whether it attached before or after filing; and
(c) In the order of attachment under §679.9-204(1) so long as neither is perfected.

(6) For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing.

679.9-313 Priority of security interests in fixtures.—
(1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this chapter unless the structure remains personal property under applicable law. The law of this state other than this code determines whether and when other goods become fixtures. This code does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(2) (a) A security interest which attaches to goods which are or become fixtures is invalid against any person with an interest in the real estate at the time the security interest in the goods is perfected or at the time the goods are affixed to the real estate, whichever occurs later, who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.
(b) A security interest in goods which are or become fixtures takes priority as to the goods over the claims of all persons acquiring interests in the real estate subsequent to the perfection of such security interest or the affixing of the goods to the real estate, whichever occurs later.

(3) (a) When under subsections (2) or (3) a secured party has priority over the claims of all persons who have interests in the real estate, he may, on default, subject to the provisions of part V, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repairing any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.
(b) The secured party shall give reasonable notification of his intention to remove the collateral to all persons entitled to reimbursement.

679.9-314 Accessions.—
(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section “accessions”) over the claims of all persons to the whole except as stated in subsection (3) and subject to §679.9-315(1).
(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over:
(a) A subsequent purchaser for value of any interest in the whole; or
679.9-316 Priority subject to subordination.—Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

History.—11, ch. 65-254.

Note.—§9-316, U.C.C.

679.9-317 Secured party not obligated on contract of debtor.—The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

History.—11, ch. 65-254.


679.9-318 Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.—

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in §679.9-206 the rights of an assignee are subject to:

(a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignee until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective.

History.—11, ch. 65-254.

Note.—§9-318, U.C.C.; superseded §773.09(3).

cf.—§314.01 Rights between account debtor and assignee.

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PART IV
FILING

679.9-401 Place of filing; erroneous filing; removal of collateral.—
(1) The proper place to file in order to perfect a security interest is as follows:
(a) When the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then by recording in the office of the clerk of the circuit court in the county where the goods are kept, and in addition when the collateral is crops by recording in the office of the clerk of the circuit court in the county where the crops growing or to be grown are, or thereafter become fixtures, the land on which the crops are growing or to be grown is located;
(b) When the collateral is goods which at the time the security interest attaches are or are to become fixtures, then by recording in the office and in the record where a mortgage on the real estate concerned would be recorded;
(c) In all other cases, by filing in the office of the secretary of state.
(2) Except as provided in §679.9-313(2), a filing which is made in good faith in an improper place or in fewer than all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter, and such filing is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.
(3) Except as provided in §679.9-313(2), a filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or location of the collateral or its use, whichever controlled the original filing, is thereafter changed.
(4) If collateral is brought into this state from another jurisdiction, the rules stated in §679.9-103 determine whether filing is necessary in this state.

679.9-4011 Filing and recording with clerk of circuit court in Florida.—
(1) The filing of a writing in the office of a clerk of the circuit court under this chapter shall be complete and sufficient only if the writing is recorded in the office of the appropriate clerk of the circuit court, in the official records book of such office or in such record book as shall be designated by the clerk of the circuit court for such purpose. Any writing required or permitted to be filed in such office by any provisions of this chapter shall be entitled to be recorded without oath, acknowledgment or proof of its execution. In all other respects such recording shall be in the manner provided in chapter 695, F. S., for recording of conveyances of real property, and in the manner and upon payment of fees as provided in chapter 28, F. S. The record of such writing shall be held for public inspection in lieu of the original. No writing under this chapter shall be deemed filed in the office of the clerk of the circuit court unless such writing shall be recorded as provided in this section.

679.9-402 Formal requisites of financing statement; amendments.—
(1) (a) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.
(b) When the financing statement covers crops growing or to be grown or goods which are, are to, or thereafter become fixtures, the statement must also contain a sufficient legal description of the real estate concerned (a mailing or street address not being sufficient) and the name of the record owner or record lessee thereof. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.
(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in:
(a) Collateral already subject to a security interest in another jurisdiction when it is brought into this state. Such a financing statement must state that the collateral was brought into this state under such circumstances.
(b) Proceeds under §679.9-306 if the security interest in the original collateral was per-
fected. Such a financing statement must de-
scribe the original collateral.
(3) A form substantially as follows is suffi-
cient to comply with subsection (1):
Name of debtor (or assignor) ____________________________
Address ______________________________________________
Name of secured party (or assignee) __________________________
Address ____________________________
(a) This financing statement covers the fol-
lowing types (or items) of property:
(Describe) ____________________________
(b) (If collateral is crops) The above-de-
scribed crops are growing or are to be grown on:
(Describe real estate by legal description; a
mailing or street address is not sufficient.) Rec-
ord owner (or record lessee) of said real estate:
(c) (If collateral is goods which are, are
to, or thereafter become fixtures) The above-de-
scribed goods are affixed, or are to be affixed, to:
(Describe real estate by legal description; a
mailing or street address is not sufficient.) Rec-
ord owner (or record lessee) of said real estate:
(d) (If proceeds or products of collateral
are claimed) Proceeds—products of the collat-
eral are also covered.
Signature of debtor (or assignor) __________________________
Signature of secured party (or assignee) __________________________
(4) The term “financing statement” as used
in this chapter means the original financing
statement and any amendments but if any
amendment adds collateral, it is effective as to
the added collateral only from the filing date of
the amendment.
(5) A financing statement substantially com-
plying with the requirements of this section is
effective even though it contains minor errors
which are not seriously misleading.
(6) The secretary of state may promulgate
approved and uniform forms of financing state-
ments and other instruments to be filed in the
office of the secretary of state pursuant to this
chapter. Any person filing any instrument per-
mitted or required to be filed under this chap-
ter in the office of the secretary of state on a
form other than the approved or uniform form
required to be filed under this chapter.
(2) A filed financing statement which states
a maturity date of the obligation secured of
five years or less is effective until such ma-
turity date and thereafter for a period of sixty
days. Any other filed financing statement is ef-
effective for a period of five years from the date
of filing. The effectiveness of a filed financ-
ing statement lapses on the expiration of such sixty
day period after a stated maturity date or on
the expiration of such five year period, as the
case may be, unless a continuation statement is
filed prior to the lapse. Upon such lapse the se-
curity interest becomes unperfected. A filed
financing statement which states that the obli-
gation secured is payable on demand is effec-
tive for five years from the date of filing.
(3) A continuation statement may be filed by
the secured party (a) within six months before
and sixty days after a stated maturity date of
five years or less, and (b) otherwise within six
months prior to the expiration of the five year
period specified in subsection (2). Any such
continuation statement must be signed by the
secured party, identify the original statement
by file number and state that the original state-
ment is still effective. Upon timely filing of the
continuation statement, the effectiveness of the
original statement is continued for five years
after the last date to which the filing was
effective whereupon it lapses in the same man-
er as provided in subsection (2) unless an-
other continuation statement is filed prior to
such lapse. Succeeding continuation statements
may be filed in the same manner to continue
the effectiveness of the original statement.
(4) A filing officer shall have a financing state-
ment with a file number and with the date and hour
of filing and shall hold the record for public
inspection. In addition the filing officer shall
index the statements according to the name of
the debtor in the index for official records or
in a separate index for recordings made under
this chapter designated by the filing officer and
shall note in the index the file number and the
address of the debtor given in the statement.
(5) The uniform fee for filing, indexing and
furnishing certified copy of an original or a
continuation statement shall be as provided in
chapters 15 or 28, F. S.
History.—51, ch. 63-354.
Note.—49-403, U.C.C.
679.9-404 Termination statement.—
(1) Whenever there is no outstanding se-
cured obligation and no commitment to make
advances, incur obligations or otherwise give
value, the secured party must on written de-
mand by the debtor send the debtor a state-
ment that he no longer claims a security inter-
est under the financing statement, which shall
be identified by file number. A termination
statement signed by a person other than the
secured party of record must include or be
accompanied by the assignment or a statement
by the secured party of record that he has as-
signed the security interest to the signer of the
termination statement. The uniform fee for fil-
ing and indexing such an assignment or state-
679.9-405 Assignment of security interest; duties of filing officer; fees.—
(1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in §679.9-405(4). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be as provided in chapters 15 or 28, F. S.

(2) A secured party may assign all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral being assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing, and shall file and index same. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be as provided in chapters 15 or 28, F. S.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

679.9-406 Release of collateral; duties of filing officer; fees.—A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall file and index such statement. The uniform fee for filing and indexing such a statement of release shall be as provided in chapters 15 or 28, F. S.

679.9-407 Information from filing officer.—
(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy thereof, the filing officer shall note upon the copy the file number and date and hour of filing of the original. The secretary of state shall charge no additional fee for such service. The fee to be charged by a clerk of the circuit court shall be as provided in chapter 28, F. S.

(2) Upon request of any person, the filing officer shall provide a certified copy of any filed instrument under this chapter. The fee for such service shall be as provided in chapters 15 or 28, F. S.

PART V
DEFAULT

679.9-501 Default; procedure when security agreement covers both real and personal property.—
(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part, and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any avail-
able judicial procedure. If the collateral is documents the secured party may proceed either to the documents or to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in §679.9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement and those provided in §679.9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to collateral disposition of §679.9-506(1) and with respect to redemption of collateral ($679.9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured in such standards are not manifestly unreasonable:

(a) Sections 679.9-502(2) and 679.9-504(2)
(b) Sections 679.9-504(3) and 679.9-505(1)
(c) Section 679.9-505(2)
(d) Section 679.9-506
(e) Section 679.9-507(1)

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to both the real and personal property in accordance with his rights and remedies in respect of the real property, and in such case the provisions of this part, do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

History.—51, ch. 65-254.

Note.—49-503, U.C.C.; superseded §673.06.

679.9-502 Collection rights of secured party.—

(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the anticipatory taking of collaterals makes collections on the collateral, and also to take control of any proceeds to which he is entitled under §679.9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

History.—41, ch. 65-254.

Note.—49-503, U.C.C.; superseded §689.03.

679.9-503 Secured party's right to take possession after default.—Unless otherwise agreed a secured party on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under §679.9-504.

History.—41, ch. 65-254.

Note.—49-503, U.C.C.; superseded §689.03, §673.06.

679.9-504 Secured party's right to dispose of collateral after default; effect of disposition.—

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to chapter 672. The proceeds of disposition shall be applied in the order following to:

(a) The reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;
(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;
(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.
(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or declines in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party in possession to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest therein or which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings:

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this chapter.

History.—11, ch. 65-254.
Note.—19-506. U.C.C.

679.9-505 Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.—

(1) If the debtor has paid sixty per cent of the cash price in the case of a purchase money security interest in consumer goods or sixty per cent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this part, a secured party who has taken possession of collateral must dispose of it under §679.9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under §879.9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and creditors and to any person entitled to possess the collateral. If the secured party objects in writing within thirty days from the receipt of the notice, the collateral must be held and any person entitled to possess the collateral at the secured party's option may recover in conversion or under §679.9-507(1) on secured party's liability.

History.—11, ch. 65-254.
Note.—19-506. U.C.C.
with the provisions of this part. If the collateral is consumer goods the debtor has a right to recover in any event an amount not less than the credit service charge plus ten per cent of the principal amount of the debt or the time price differential plus ten per cent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

History.—§1, ch. 65-254.
Note.—49-507, U.C.C.
ARTICLE 10 EFFECTIVE DATE AND REPEALER

680.10-101 Effective date; provision for transition; presigning and prefiling of financing statements.

(1) This code shall become effective at 12:01 A.M. on January 1, 1967. It applies to transactions entered into and events occurring after that date.

(2) Transactions validly entered into before the effective date specified in this section and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this code as though such repeal or amendment had not occurred.

(3) Although signed prior to the effective date of this code, a security agreement and a financing statement shall have the same effect on and after such effective date as if signed thereafter. A financing statement may be filed and the appropriate filing officer shall accept the same for filing on or after October 1, 1966. The provisions of this code and all other laws relating to financing statements and the filing of financing statements apply to the financing statements so filed notwithstanding the fact that this code or such other laws shall not then have taken effect. Each financing statement so filed shall be deemed to have been filed on the date at and the hour when the office of the filing officer is first open for the transaction of business on or after the effective date of this code, notwithstanding the date and hour of filing marked on such financing statement.

680.10-102 Laws specifically repealed or modified.

(1) The following laws or parts of laws are repealed:

- Chapters 674, 675, and 676.—The uniform negotiable instruments law.
- Chapter 678.—Warehousemen and warehouse receipts (The uniform warehouse receipts act).
- Chapter 614.—The uniform stock transfer law.
- Chapter 673.—The uniform trust receipts act.
- Chapter 524.—Accounts receivable.
- Chapter 699.—Livestock mortgages.

680.10-104 Laws not repealed; precedence where code provisions in conflict therewith; certain statutory remedies retained.

680.10-105 Severability.

680.10-106 Amendment to §674.4-403 of code.

680.10-107 Amendment to §679.9-204 of code.

Chapter 700.—Crop mortgages.
Chapter 85.—Part II—Factors’ liens—(§§85.29-85.35).
Section 725.02.—Contracts to sell personally (Statute of frauds).
Section 351.10.—Contracts for sale of railroad.
Section 520.11.—Repossession of motor vehicles.
Chapter 685.—Collateral securities.

The following sections in chapter 659, the Florida banking code, second part:

- 659.26—Payment of items.
- 659.31—Payment of stale checks.
- 659.32—Revocation, countermand of stop-payment orders.
- 659.33—Nonpayment of check through error.
- 659.34—Rights on improper payment of item.
- 659.37—Liability of bank for amount paid on forged or raised checks or endorsements.
- 659.39—Death or incompetency of depositor.
- 659.40—Powers of attorney.

The following sections in chapter 726, fraudulent conveyances, sales and loans, such sections comprising the Florida bulk sales law:

- 726.02—Vendee of stock of goods in bulk to demand from vendor statement of creditors.
- 726.03—Notice to creditors by vendee.
- 726.04—Sale without notice to creditors presumed fraudulent.
- 726.05—What sales deemed fraudulent; proviso.
- 726.06—Punishment for making false statements to vendee of stock of goods in bulk.

The following sections of chapter 55, judgments and executions:

- 55.25—Executions against corporate stock.
- 55.26—Execution against corporate stock; manner of levy.
- 55.27—Executions against corporate stock; requiring statement of stock; penalty.
- 55.28—Executions against corporate stock; ascertaining amount of stock owned by execution debtor; penalty.
- 55.29—Execution against corporate stock; creditor may furnish description of stock.
- 55.30—Execution against corporate stock; effect of levy of writ; penalty.
55.31 Executions against corporate stock; manner of sale of stock.

(2) The following laws or parts of laws are modified as indicated:

Chapter 695.—Record of conveyance of real property, is amended by adding the following section:

695.032 Provisions not applicable to transactions under chapter 673, uniform commercial code.—Section 695.03, shall not apply to any of the transactions within the scope of chapter 679 of the uniform commercial code.

Chapter 201.—Excise tax on documents, is amended by adding the following section:

201.22 Financing statements under chapter 679 of the uniform commercial code.—The excise tax on documents provided by this chapter shall be applicable to transactions covered by the uniform commercial code to the same extent that it would be if the code had not been enacted. The clerk or filing officer shall not accept for filing or filing and recording any financing statement under chapter 679, unless there appears thereon the notation that the stamps required by this chapter have been placed on the promissory instruments secured by said financing statement and will be placed on any additional promissory instruments, advances or similar instrument that may be secured by said financing statement. The failure to pay the tax required by this chapter as so stated, shall be subject to the penalties provided by this chapter.

Chapter 15.—Secretary of state, is amended by adding the following section:

15.091 Fees; filing under chapter 679, uniform commercial code.—The fees for filing of any financing statement or other writing required or permitted to be filed by any provisions of chapter 679 of the uniform commercial code are two dollars for the first page of each financing statement or other writing and one dollar for each additional page thereof.

Chapter 698.—Chattel mortgages, is amended by adding the following section:

698.12 Chapter not applicable to transactions under uniform commercial code.—The provisions of this chapter shall not apply to transactions governed by any of the provisions of the uniform commercial code, but shall remain applicable to transactions to which that code does not apply.

History.—s. 1, ch. 65-254.

680.10-103 General repealer.—Except as provided in §680.10-104, all laws and parts of laws inconsistent with this code are repealed.

History.—s. 1, ch. 65-254.

680.10-104 Laws not repealed; precedence where code provisions in conflict therewith; certain statutory remedies retained.—

(1) The article on documents of title (Art. 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (§671.1-201).

(2) The following laws and parts of laws are specifically not repealed and shall take precedence over any provisions of this code which may be inconsistent or in conflict therewith:

Chapter 517.—Uniform sale of securities law.

Chapter 516.—Small loan business.

Chapter 519.—Discount consumer financing (Florida consumer finance law).

Chapter 657, 666, 667.—Building and loan associations.

Chapter 319.—Title certificates (motor vehicle).

Section 205.51.—Pawnbrokers; records, inspection.

Section 205.511.—Reports to sheriffs (Pawnbrokers).

Section 715.04.—Pawnbrokers, disposition of pledged property for nonpayment of principal or interest.

Sections 658, 659, 660 and 661.—Florida banking code, except those sections in chapter 659 enumerated in §680.10-102.

(3) The following laws or parts of laws, although not repealed, shall yield to and be superseded by any provisions of the code which may be inconsistent or in conflict therewith:

Chapter 697.—Instruments deemed mortgages and the nature of a mortgage.

Chapter 701.—Assignment and cancellation of mortgages.

Chapter 702.—Foreclosure of mortgages.

Section 28.22.—Record book to be kept.

Chapter 727.—General assignments.

(4) Notwithstanding any provisions to the contrary in any of the following Florida Statutes, the remedies provided by such statutes shall not restrict the remedies otherwise available to a secured party under this code, but all such remedies shall be cumulatively available in accordance with their respective terms to a secured party under this code:
Chapter 680—Uniform Commercial Code—Effective Date and Repealer

680.10-105 Severability. If any provision of this code or the application of such provision to any circumstance is held invalid for any reason whatsoever, the remainder of the code or the application of the provision to other circumstances, shall not be affected thereby.

680.10-106 Amendment to §674.4-403 of code. Section 674.4-403 of this code is amended as follows:

674.4-403 Customer's right to stop payment; burden of proof of loss. (1) A customer, or any customer if there is more than one, or any person authorized to sign checks or make withdrawals on or from an account, may stop payment of any item payable, for or drawn against such customer's or customers' account but the same shall not be effective and the bank may disregard the same unless the order is in writing, is signed by such customer or authorized person, describes with certainty the item on which payment is to be stopped, and is served upon and received by an officer of the bank at the banking house during regular banking hours and in such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to the happening of any of the events described in §674.4-303, and in any event no bank shall be responsible or liable for failure to comply with any such order on the day the same is served upon or received by such bank unless such omission or failure to comply with the same on the day received result from the willful and intentional disregard of such order.

(2) An order may be disregarded by the bank six months after its receipt unless renewed in writing.

(3) The bank may be liable to its customer for the actual loss incurred by the customer resulting from the wrongful payment of an item contrary to a valid and binding stop payment order, not exceeding the amount of the item unless the bank is guilty of gross negligence or unless such wrongful payment was made as a result of the willful and intentional disregard by the bank of such order. The burden of establishing the fact and amount of loss resulting from the wrongful payment of an item contrary to a binding stop payment order is on the customer.

680.10-107 Amendment to §679.9-204 of code. Paragraph (a) of subsection (4) of §679.9-204 is amended as follows:

679.9-204 When security interest attaches; after-acquired property; future advances. (4) No security interest attaches under an after-acquired property clause:

(a) To crops which become such more than seven years after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;
CHAPTER 682

FLORIDA ARBITRATION CODE

682.01 Florida arbitration code.—Sections 682.01-682.22 may be cited as the “Florida Arbitration Code.”

682.02 Arbitration agreements made valid, irrevocable and enforceable; scope.—Two or more parties may agree in writing to submit to arbitration any controversy existing between them at the time of the agreement, or they may include in a written contract a provision for the settlement by arbitration of any controversy thereafter arising between them relating to such contract or the failure or refusal to perform the whole or any part thereof. Such agreement or provision shall be valid, irrevocable and enforceable without regard to the justiciable character of the controversy; provided that this act shall not apply to any such agreement or provision to arbitrate in which it is stipulated that this law shall not apply or to any arbitration or award thereunder.

682.03 Proceedings to compel and to stay arbitration.—
(1) A party to an agreement or provision for arbitration subject to this law claiming the neglect or refusal of another party thereto to comply therewith may make application to the court for an order directing the parties to proceed with arbitration in accordance with the terms thereof. If the court is satisfied that no substantial issue exists as to the making of the agreement or provision, it shall grant the application. If the court shall find that a substantial issue is raised as to the making of the agreement or provision, it shall summarily hear and determine the issue and, according to its determination, shall grant or deny the application.

(2) If an issue referable to arbitration under an agreement or provision for arbitration subject to this law becomes involved in an action or proceeding pending in a court having jurisdiction to hear an application under subsection (1) of this section, such application shall be made in said court. Otherwise and subject to §682.19, such application may be made in any court of competent jurisdiction.

682.04 Appointment of arbitrators by court.—If an agreement or provision for arbitration subject to this law provides a method for the appointment of arbitrators or an umpire, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or if an arbitrator or umpire who has been appointed fails to act and his successor has not been duly appointed, the court, on application of a party to such agreement or provision shall appoint one or more arbitrators or an umpire. An arbitrator or umpire so appointed shall have like powers as if named or provided for in the agreement or provision.

682.05 Majority action by arbitrators.—The powers of the arbitrators may be exercised by a majority of their number unless otherwise provided in the agreement or provision for arbitration.

682.11 Fees and expenses of arbitration.

682.12 Confirmation of an award.

682.13 Vacating an award.

682.14 Modification or correction of award.

682.15 Judgment or decree on award.

682.16 Judgment roll, docketing.

682.17 Application to court.

682.18 Court, jurisdiction.

682.19 Venue.

682.20 Appeals.

682.21 Law not retroactive.

682.22 Severability.
682.06 Hearing.—Unless otherwise provided by the agreement or provision for arbitration:
(1) (a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail not less than five days before the hearing. Appearance at the hearing gives a party’s right to such notice. The arbitrators may adjourn their hearing from time to time upon their own motion and shall do so upon the request of any party to the arbitration for good cause shown, provided that no adjournment or postponement of their hearing shall extend beyond the date fixed in the agreement or provision for making the award unless the parties consent to a later date. An umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award shall, in the course of his jurisdiction, have like powers and be subject to like limitations thereon.
(b) The arbitrators, or umpire in the course of his jurisdiction, may hear and decide the controversy upon the evidence produced notwithstanding the failure or refusal of a party duly notified of the time and place of the hearing to appear. The court on application may direct the arbitrators, or the umpire in the course of his jurisdiction, to proceed promptly with the hearing and making of the award.
(2) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.
(3) The hearing shall be conducted by all of the arbitrators but a majority may determine any question and render a final award. An umpire authorized to hear and decide the cause upon the failure of the arbitrators to agree upon an award shall sit with the arbitrators throughout their hearing but shall not be counted as a part of their quorum or in the making of their award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator, arbitrators or umpire appointed to act as neutrals may continue with the hearing and determination of the controversy.
History.—ch. 57-402; 112, ch. 67-254.
Note.—See former §57.15.

682.07 Representation by attorney.—A party has the right to be represented by an attorney at any arbitration proceeding or hearing under this law. A waiver thereof prior to the proceeding or hearing is ineffective.
History.—ch. 57-402; 112, ch. 67-254.
Note.—See former §57.16.

682.08 Witnesses, subpoenas, depositions.—
(1) Arbitrators, or an umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award, in the course of his jurisdiction, may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party to the arbitration or the arbitrators, or the umpire, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.
(2) On application of a party to the arbitration and for use as evidence, the arbitrators, or the umpire in the course of his jurisdiction, may permit a deposition to be taken, in the manner and upon the terms designated by them or him of a witness who cannot be subpoenaed or is unable to attend the hearing.
(3) All provisions of law compelling a person under subpoena to testify are applicable.
(4) Fees for attendance as a witness shall be the same as for a witness in the circuit court.
History.—ch. 57-402; 112, ch. 67-254.
Note.—See former §57.17.

682.09 Award.—
(1) The award shall be in writing and shall be signed by the arbitrators joining in the award or by the umpire in the course of his jurisdiction. They or he shall deliver a copy to each party to the arbitration either personally or by registered or certified mail, or as provided in the agreement or provision.
(2) An award shall be made within the time fixed therefor by the agreement or provision for arbitration or, if not so fixed, within such time as the court may order on application of a party to the arbitration. The parties may, by written agreement, extend the time either before or after the expiration thereof. Any objection that an award was not made within the time required is waived unless the objecting party notifies the arbitrators or umpire in writing of his objection prior to the delivery of the award to him.
History.—ch. 57-402; 112, ch. 67-254.
Note.—See former §57.18.

682.10 Change of award by arbitrators or umpire.—On application of a party to the arbitration, or if an application to the court is pending under §§682.12, 682.13 or 682.14, on submission to the arbitrators, or to the umpire in the case of an umpire’s award, by the court under such conditions as the court may order, the arbitrators or umpire may modify or correct the award upon the grounds stated in §§682.14 (1) (a) and (c) or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the other party to the arbitration, stating that he must serve his objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of §§682.12-682.14.
History.—ch. 57-402; 112, ch. 67-254.
Note.—See former §57.19.

682.11 Fees and expenses of arbitration.—
Unless otherwise provided in the agreement or provision for arbitration, the arbitrators’ and umpire’s expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.
History.—ch. 57-402; 112, ch. 67-254.
Note.—See former §57.20.
682.12 Confirmation of an award.—Upon application of a party to the arbitration, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§682.13 and 682.14.

682.13 Vacating an award.—
(1) Upon application of a party, the court shall vacate an award when:
(a) The award was procured by corruption, fraud or other undue means;
(b) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party;
(c) The arbitrators or the umpire in the course of his jurisdiction exceeded their powers;
(d) The arbitrators or the umpire in the course of his jurisdiction refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing as contrary to the provisions of §682.06, as to prejudice substantially the rights of a party; or
(e) There was no agreement or provision for arbitration subject to this law, unless the matter was determined in proceedings under §682.06 and unless the party participated in the arbitration hearing without raising the objection;

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(2) An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(3) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or provision for arbitration or by the court in accordance with §682.04, or, if the award is vacated on grounds set forth in subsection (1)(e) and (d), the court may order a rehearing before the arbitrators or umpire who made the award or their successors appointed in accordance with §682.04. The time within which the agreement or provision for arbitration requires the award to be made is applicable to the rehearing and commences from the date of the order therefor.

(4) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

682.14 Modification or correction of award.—
(1) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award when:
(a) There is an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
(b) The arbitrators or umpire have awarded upon a matter not submitted to them or him and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
(c) The award is imperfect as a matter of form, not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

History.—§11, ch. 57-402; §12, ch. 67-254.
Note.—See former §57.21.

682.15 Judgment or decree on award.—
Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

History.—§114, ch. 57-402; §12, ch. 67-254.
Note.—See former §57.24.

682.16 Judgment roll, docketing.—
(1) On entry of judgment or decree, the clerk shall prepare the judgment roll consisting of the following:
(a) The agreement or provision for arbitration and each written extension of the time within which to make the award;
(b) The award;
(c) A copy of the order confirming, modifying or correcting the award; and
(d) A copy of the judgment or decree.

(2) The judgment or decree may be docketed as if rendered in a civil action.

History.—§115, ch. 57-402; §12, ch. 67-254.
Note.—See former §57.25.

682.17 Application to court.—Except as otherwise provided, an application to the court under this law shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

History.—§116, ch. 57-402; §12, ch. 67-254.
Note.—See former §57.26.

682.18 Court, jurisdiction.—
(1) The term "court" means any court of
competent jurisdiction of this state. The making of an agreement or provision for arbitration subject to this law and providing for arbitration in this state shall, whether made within or outside this state, confer jurisdiction on the court to enforce the agreement or provision under this law, to enter judgment on an award duly rendered in an arbitration thereunder and to vacate, modify or correct an award rendered thereunder for such cause and in the manner provided in this law.

(2) Any judgment entered upon an award by a court of competent jurisdiction of any state, territory, the Commonwealth of Puerto Rico or foreign country shall be enforceable by application as provided in §682.17 and regardless of the time when said award may have been made.

History.—§17, ch. 57-402; §12, ch. 67-254.

Note.—See former §57.27.

682.19 Venue.—Any application under this law may be made to the court of the county in which the other party to the agreement or provision for arbitration resides or has a place of business, or, if he has no residence or place of business in this state, then to the court of any county. All applications under this law subsequent to an initial application shall be made to the court hearing the initial application unless it shall order otherwise.

History.—§18, ch. 57-402; §12, ch. 67-254.

Note.—See former §57.28.

682.20 Appeals.—

(a) An order denying an application to compel arbitration made under §682.08;

(b) An order granting an application to stay arbitration made under §682.08(2)-(4);

(c) An order confirming or denying confirmation of an award;

(d) An order modifying or correcting an award;

(e) An order vacating an award without directing a rehearing; or

(f) A judgment or decree entered pursuant to the provisions of this law.

(2) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

History.—§19, ch. 57-402; §12, ch. 67-254.

Note.—See former §57.29.

682.21 Law not retroactive.—This law applies only to agreements and provisions for arbitration made subsequent to the taking effect of this law.

History.—§20, ch. 57-402; §12, ch. 67-254.

Note.—See former §57.30.

682.22 Severability.—If any provision of this chapter or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this chapter. In any action or proceeding in any state or territory of the United States, the Commonwealth of Puerto Rico, or any foreign country, this chapter and any agreement or provision to arbitrate made thereunder shall be classified as substantive within the meaning of that term in the conflict of laws; provided, however, that such substantive classification shall never be intended to derogate the public policy of such other jurisdiction.

History.—§21, ch. 57-402; §12, ch. 67-254.

Note.—See former §57.31.