

By the Committee on Commerce and Economic Opportunities; and
 Senator Campbell

310-2215-98

1 A bill to be entitled
 2 An act revising the "Uniform Commercial
 3 Code--Letters of Credit"; creating ss.
 4 675.5101-675.5117, F.S.; revising provisions of
 5 the code relating to letters of credit;
 6 defining terms; providing formal requirements;
 7 providing consideration; providing time and
 8 effect of establishment of credit; providing
 9 advice of credit, confirmation, error in
 10 statement of terms; providing "notation
 11 credit"; prescribing issuer's obligation to its
 12 customers; providing availability of credit in
 13 portions; providing warranties on transfer and
 14 presentment; prescribing time allowed for honor
 15 or rejection; providing indemnities; providing
 16 issuer's duty and privilege to honor; providing
 17 a right to reimbursement; providing remedy for
 18 dishonor or anticipatory repudiation; providing
 19 transfer and assignment; providing insolvency
 20 of bank holding funds for documentary credit;
 21 amending ss. 671.105, 672.512, 679.103,
 22 679.104, 679.105, 679.106, 679.304, 679.305,
 23 F.S.; conforming provisions to changes made by
 24 the act; repealing ss. 675.101, 675.102,
 25 675.103, 675.104, 675.105, 675.106, 675.107,
 26 675.108, 675.109, 675.110, 675.111, 675.112,
 27 675.113, 675.114, 675.115, 675.116, 675.117,
 28 F.S., relating to letters of credit; repealing
 29 95.11(5)(c), F.S., relating to the statute of
 30 limitations with respect to bulk transfers;
 31 providing an effective date.

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

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3 Section 1. Section 675.5101, Florida Statutes, is
4 created to read:

5 675.5101 Short title.--This article may be cited as
6 the "Uniform Commercial Code--Letters of Credit."

7 Section 2. Section 675.5102, Florida Statutes, is
8 created to read:

9 675.5102 Definitions.--

10 (1) In this chapter:

11 (a) "Adviser" means a person who, at the request of
12 the issuer, a confirmer, or another adviser, notifies or
13 requests another adviser to notify the beneficiary that a
14 letter of credit has been issued, confirmed, or amended.

15 (b) "Applicant" means a person at whose request or for
16 whose account a letter of credit is issued. The term includes
17 a person who requests an issuer to issue a letter of credit on
18 behalf of another if the person making the request undertakes
19 an obligation to reimburse the issuer.

20 (c) "Beneficiary" means a person who under the terms
21 of a letter of credit is entitled to have its complying
22 presentation honored. The term includes a person to whom
23 drawing rights have been transferred under a transferable
24 letter of credit.

25 (d) "Confirmer" means a nominated person who
26 undertakes, at the request or with the consent of the issuer,
27 to honor a presentation under a letter of credit issued by
28 another.

29 (e) "Dishonor" of a letter of credit means failure
30 timely to honor or to take an interim action, such as

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1 acceptance of a draft, that may be required by the letter of
2 credit.

3 (f) "Document" means a draft or other demand, document
4 of title, investment security, certificate, invoice, or other
5 record, statement, or representation of fact, law, right, or
6 opinion which is presented in a written or other medium
7 permitted by the letter of credit or, unless prohibited by the
8 letter of credit, by the standard practice referred to in s.
9 675.5108(5) and which is capable of being examined for
10 compliance with the terms and conditions of the letter of
11 credit. A document may not be oral.

12 (g) "Good faith" means honesty in fact in the conduct
13 or transaction concerned.

14 (h) "Honor" of a letter of credit means performance of
15 the issuer's undertaking in the letter of credit to pay or
16 deliver an item of value. Unless the letter of credit
17 otherwise provides, "honor" occurs:

- 18 1. Upon payment;
- 19 2. If the letter of credit provides for acceptance,
20 upon acceptance of a draft and, at maturity, its payment; or
- 21 3. If the letter of credit provides for incurring a
22 deferred obligation, upon incurring the obligation and, at
23 maturity, its performance.

24 (i) "Issuer" means a bank or other person that issues
25 a letter of credit, but does not include an individual who
26 makes an engagement for personal, family, or household
27 purposes.

28 (j) "Letter of credit" means a definite undertaking
29 that satisfies the requirements of s. 675.5104 by an issuer to
30 a beneficiary at the request or for the account of an
31 applicant or, in the case of a financial institution, to

1 itself or for its own account, to honor a documentary
2 presentation by payment or delivery of an item of value.

3 (k) "Nominated person" means a person whom the issuer:

4 1. Designates or authorizes to pay, accept, negotiate,
5 or otherwise give value under a letter of credit; and

6 2. Undertakes by agreement or custom and practice to
7 reimburse.

8 (l) "Presentation" means delivery of a document to an
9 issuer or nominated person for honor or giving of value under
10 a letter of credit.

11 (m) "Presenter" means a person making a presentation
12 as or on behalf of a beneficiary or nominated person.

13 (n) "Record" means information that is inscribed on a
14 tangible medium, or that is stored in an electronic or other
15 medium and is retrievable in perceivable form.

16 (o) "Successor of a beneficiary" means a person who
17 succeeds to substantially all of the rights of a beneficiary
18 by operation of law, including a corporation with or into
19 which the beneficiary has been merged or consolidated, an
20 administrator, executor, personal representative, trustee in
21 bankruptcy, debtor in possession, liquidator, and receiver.

22 (2) Definitions in other chapters applying to this
23 chapter and the sections in which they appear are:

24 (a) "Accept" or "Acceptance," s. 673.4091; and

25 (b) "Value," ss. 673.3031 and 674.2111.

26 (3) Chapter 671 contains certain additional general
27 definitions and principles of construction and interpretation
28 applicable throughout this article.

29 Section 3. Section 675.5103, Florida Statutes, is
30 created to read:

31 675.5103 Scope.--

1 (1) This article applies to letters of credit and to
2 certain rights and obligations arising out of transactions
3 involving letters of credit.

4 (2) The statement of a rule in this article does not
5 by itself require, imply, or negate application of the same or
6 a different rule to a situation not provided for, or to a
7 person not specified, in this article.

8 (3) With the exception of this subsection, subsections
9 (1) and (4), ss. 675.5102(1)(i) and (j), 675.5106(4), and
10 675.5114(4), and except to the extent prohibited in ss.
11 671.102(3) and 675.5117(4), the effect of this article may be
12 varied by agreement or by a provision stated or incorporated
13 by reference in an undertaking. A term in an agreement or
14 undertaking generally excusing liability or generally limiting
15 remedies for failure to perform obligations is not sufficient
16 to vary obligations prescribed by this article.

17 (4) Rights and obligations of an issuer to a
18 beneficiary or a nominated person under a letter of credit are
19 independent of the existence, performance, or nonperformance
20 of a contract or arrangement out of which the letter of credit
21 arises or which underlies it, including contracts or
22 arrangements between the issuer and the applicant and between
23 the applicant and the beneficiary.

24 Section 4. Section 675.5104, Florida Statutes, is
25 created to read:

26 675.5104 Formal requirements.--A letter of credit,
27 confirmation, advice, transfer, amendment, or cancellation may
28 be issued in any form that is a record and is authenticated by
29 a signature or in accordance with the agreement of the parties
30 or the standard practice referred to in s. 675.5108(5).

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1 Section 5. Section 675.5105, Florida Statutes, is
2 created to read:

3 675.5105 Consideration.--Consideration is not required
4 to issue, amend, transfer, or cancel a letter of credit,
5 advice, or confirmation.

6 Section 6. Section 675.5106, Florida Statutes, is
7 created to read:

8 675.5106 Issuance, amendment, cancellation, and
9 duration.--

10 (1) A letter of credit is issued and becomes
11 enforceable according to its terms against the issuer when the
12 issuer sends or otherwise transmits it to the person requested
13 to advise or to the beneficiary. A letter of credit is
14 revocable only if it so provides.

15 (2) After a letter of credit is issued, rights and
16 obligations of a beneficiary, applicant, confirmer, and issuer
17 are not affected by an amendment or cancellation to which that
18 person has not consented except to the extent the letter of
19 credit provides that it is revocable or that the issuer may
20 amend or cancel the letter of credit without that consent.

21 (3) If there is no stated expiration date or other
22 provision that determines its duration, a letter of credit
23 expires 1 year after its stated date of issuance or, if none
24 is stated, after the date on which it is issued.

25 (4) A letter of credit that states that it is
26 perpetual expires 5 years after its stated date of issuance,
27 or if none is stated, after the date on which it is issued.

28 Section 7. Section 675.5107, Florida Statutes, is
29 created to read:

30 675.5107 Confirmer, nominated person, and adviser.--
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1 (1) A confirmer is directly obligated on a letter of
2 credit and has the rights and obligations of an issuer to the
3 extent of its confirmation. The confirmer also has rights
4 against and obligations to the issuer as if the issuer were an
5 applicant and the confirmer had issued the letter of credit at
6 the request and for the account of the issuer.

7 (2) A nominated person who is not a confirmer is not
8 obligated to honor or otherwise give value for a presentation.

9 (3) A person requested to advise may decline to act as
10 an adviser. An adviser that is not a confirmer is not
11 obligated to honor or give value for a presentation. An
12 adviser undertakes to the issuer and to the beneficiary
13 accurately to advise the terms of the letter of credit,
14 confirmation, amendment, or advice received by that person and
15 undertakes to the beneficiary to check the apparent
16 authenticity of the request to advise. Even if the advice is
17 inaccurate, the letter of credit, confirmation, or amendment
18 is enforceable as issued.

19 (4) A person who notifies a transferee beneficiary of
20 the terms of a letter of credit, confirmation, amendment, or
21 advice has the rights and obligations of an adviser under
22 subsection (3). The terms in the notice to the transferee
23 beneficiary may differ from the terms in any notice to the
24 transferor beneficiary to the extent permitted by the letter
25 of credit, confirmation, amendment, or advice received by the
26 person who so notifies.

27 Section 8. Section 675.5108, Florida Statutes, is
28 created to read:

29 675.5108 Issuer's rights and obligations.--

30 (1) Except as otherwise provided in s. 675.5109, an
31 issuer shall honor a presentation that, as determined by the

1 standard practice referred to in subsection (5), appears on
2 its face strictly to comply with the terms and conditions of
3 the letter of credit. Except as otherwise provided in s.
4 675.5113 and unless otherwise agreed with the applicant, an
5 issuer shall dishonor a presentation that does not appear so
6 to comply.

7 (2) An issuer has a reasonable time after
8 presentation, but not beyond the end of the seventh business
9 day of the issuer after the day of its receipt of documents:

10 (a) To honor;

11 (b) If the letter of credit provides for honor to be
12 completed more than seven business days after presentation, to
13 accept a draft or incur a deferred obligation; or

14 (c) To give notice to the presenter of discrepancies
15 in the presentation.

16 (3) Except as otherwise provided in subsection (4), an
17 issuer is precluded from asserting as a basis for dishonor any
18 discrepancy if timely notice is not given, or any discrepancy
19 not stated in the notice if timely notice is given.

20 (4) Failure to give the notice specified in subsection
21 (2) or to mention fraud, forgery, or expiration in the notice
22 does not preclude the issuer from asserting as a basis for
23 dishonor fraud or forgery as described in s. 675.5109(1) or
24 expiration of the letter of credit before presentation.

25 (5) An issuer shall observe standard practice of
26 financial institutions that regularly issue letters of credit.
27 Determination of the issuer's observance of the standard
28 practice is a matter of interpretation for the court. The
29 court shall offer the parties a reasonable opportunity to
30 present evidence of the standard practice.

31 (6) An issuer is not responsible for:

1 (a) The performance or nonperformance of the
2 underlying contract, arrangement, or transaction,

3 (b) An act or omission of others, or

4 (c) Observance or knowledge of the usage of a
5 particular trade other than the standard practice referred to
6 in subsection (5).

7 (7) If an undertaking constituting a letter of credit
8 under s. 675.5102(1)(j) contains nondocumentary conditions, an
9 issuer shall disregard the nondocumentary conditions and treat
10 them as if they were not stated.

11 (8) An issuer that has dishonored a presentation shall
12 return the documents or hold them at the disposal of, and send
13 advice to that effect to, the presenter.

14 (9) An issuer that has honored a presentation as
15 permitted or required by this article:

16 (a) Is entitled to be reimbursed by the applicant in
17 immediately available funds not later than the date of its
18 payment of funds;

19 (b) Takes the documents free of claims of the
20 beneficiary or presenter;

21 (c) Is precluded from asserting a right of recourse on
22 a draft under ss. 673.4141 and 673.4151;

23 (d) Except as otherwise provided in ss. 675.5110 and
24 675.5117, is precluded from restitution of money paid or other
25 value given by mistake to the extent the mistake concerns
26 discrepancies in the documents or tender which are apparent on
27 the face of the presentation; and

28 (e) Is discharged to the extent of its performance
29 under the letter of credit unless the issuer honored a
30 presentation in which a required signature of a beneficiary
31 was forged.

1 Section 9. Section 675.5109, Florida Statutes, is
2 created to read:

3 675.5109 Fraud and forgery.--

4 (1) If a presentation is made which appears on its
5 face strictly to comply with the terms and conditions of the
6 letter of credit, but a required document is forged or
7 materially fraudulent, or honor of the presentation would
8 facilitate a material fraud by the beneficiary on the issuer
9 or applicant:

10 (a) The issuer shall honor the presentation if honor
11 is demanded by:

12 1. A nominated person who has given value in good
13 faith and without notice of forgery or material fraud;

14 2. A confirmer who has honored its confirmation in
15 good faith;

16 3. A holder in due course of a draft drawn under the
17 letter of credit which was taken after acceptance by the
18 issuer or nominated person; or

19 4. An assignee of the issuer's or nominated person's
20 deferred obligation that was taken for value and without
21 notice of forgery or material fraud after the obligation was
22 incurred by the issuer or nominated person; and

23 (b) The issuer, acting in good faith, may honor or
24 dishonor the presentation in any other case.

25 (2) If an applicant claims that a required document is
26 forged or materially fraudulent or that honor of the
27 presentation would facilitate a material fraud by the
28 beneficiary on the issuer or applicant, a court of competent
29 jurisdiction may temporarily or permanently enjoin the issuer
30 from honoring a presentation or grant similar relief against
31 the issuer or other persons only if the court finds that:

1 (a) The relief is not prohibited under the law
2 applicable to an accepted draft or deferred obligation
3 incurred by the issuer;

4 (b) A beneficiary, issuer, or nominated person who may
5 be adversely affected is adequately protected against loss
6 that it may suffer because the relief is granted;

7 (c) All of the conditions to entitle a person to the
8 relief under the law of this state have been met; and

9 (d) On the basis of the information submitted to the
10 court, the applicant is more likely than not to succeed under
11 its claim of forgery or material fraud and the person
12 demanding honor does not qualify for protection under
13 paragraph (1)(a).

14 Section 10. Section 675.5110, Florida Statutes, is
15 created to read:

16 675.5110 Warranties.--

17 (1) If its presentation is honored, the beneficiary
18 warrants:

19 (a) To the issuer, any other person to whom
20 presentation is made, and the applicant that there is no fraud
21 or forgery of the kind described in s. 675.5109(1); and

22 (b) To the applicant that the drawing does not violate
23 any agreement between the applicant and beneficiary or any
24 other agreement intended by them to be augmented by the letter
25 of credit.

26 (2) The warranties in subsection (1) are in addition
27 to warranties arising under chapters 673, 674, 677, and 678
28 because of the presentation or transfer of documents covered
29 by any of those chapters.

30 Section 11. Section 675.5111, Florida Statutes, is
31 created to read:

1 675.5111 Remedies.--
2 (1) If an issuer wrongfully dishonors or repudiates
3 its obligation to pay money under a letter of credit before
4 presentation, the beneficiary, successor, or nominated person
5 presenting on its own behalf may recover from the issuer the
6 amount that is the subject of the dishonor or repudiation. If
7 the issuer's obligation under the letter of credit is not for
8 the payment of money, the claimant may obtain specific
9 performance or, at the claimant's election, recover an amount
10 equal to the value of performance from the issuer. In either
11 case, the claimant may also recover incidental but not
12 consequential damages. The claimant is not obligated to take
13 action to avoid damages that might be due from the issuer
14 under this subsection. If, although not obligated to do so,
15 the claimant avoids damages, the claimant's recovery from the
16 issuer must be reduced by the amount of damages avoided. The
17 issuer has the burden of proving the amount of damages
18 avoided. In the case of repudiation the claimant need not
19 present any document.
20 (2) If an issuer wrongfully dishonors a draft or
21 demand presented under a letter of credit or honors a draft or
22 demand in breach of its obligation to the applicant, the
23 applicant may recover damages resulting from the breach,
24 including incidental but not consequential damages, less any
25 amount saved as a result of the breach.
26 (3) If an adviser or nominated person other than a
27 confirmer breaches an obligation under this article or an
28 issuer breaches an obligation not covered in subsection (1) or
29 subsection (2), a person to whom the obligation is owed may
30 recover damages resulting from the breach, including
31 incidental but not consequential damages, less any amount

1 saved as a result of the breach. To the extent of the
2 confirmation, a confirmer has the liability of an issuer
3 specified in this subsection and subsections (1) and (2).

4 (4) An issuer, nominated person, or adviser who is
5 found liable under subsection (1), subsection (2), or
6 subsection (3) shall pay interest on the amount owed
7 thereunder from the date of wrongful dishonor or other
8 appropriate date.

9 (5) Reasonable attorney's fees and other expenses of
10 litigation must be awarded to the prevailing party in an
11 action in which a remedy is sought under this article.

12 (6) Damages that would otherwise be payable by a party
13 for breach of an obligation under this article may be
14 liquidated by agreement or undertaking, but only in an amount
15 or by a formula that is reasonable in light of the harm
16 anticipated.

17 Section 12. Section 675.5112, Florida Statutes, is
18 created to read:

19 675.5112 Transfer of letter of credit.--

20 (1) Except as otherwise provided in s. 675.5113,
21 unless a letter of credit provides that it is transferable,
22 the right of a beneficiary to draw or otherwise demand
23 performance under a letter of credit may not be transferred.

24 (2) Even if a letter of credit provides that it is
25 transferable, the issuer may refuse to recognize or carry out
26 a transfer if:

27 (a) The transfer would violate applicable law; or

28 (b) The transferor or transferee has failed to comply
29 with any requirement stated in the letter of credit or any
30 other requirement relating to transfer imposed by the issuer
31 which is within the standard practice referred to in s.

1 675.5108(5) or is otherwise reasonable under the
2 circumstances.

3 Section 13. Section 675.5113, Florida Statutes, is
4 created to read:

5 675.5113 Transfer by operation of law.--

6 (1) A successor of a beneficiary may consent to
7 amendments, sign and present documents, and receive payment or
8 other items of value in the name of the beneficiary without
9 disclosing its status as a successor.

10 (2) A successor of a beneficiary may consent to
11 amendments, sign and present documents, and receive payment or
12 other items of value in its own name as the disclosed
13 successor of the beneficiary. Except as otherwise provided in
14 subsection (5), an issuer shall recognize a disclosed
15 successor of a beneficiary as beneficiary in full substitution
16 for its predecessor upon compliance with the requirements for
17 recognition by the issuer of a transfer of drawing rights by
18 operation of law under the standard practice referred to in s.
19 675.5108(5) or, in the absence of such a practice, compliance
20 with other reasonable procedures sufficient to protect the
21 issuer.

22 (3) An issuer is not obliged to determine whether a
23 purported successor is a successor of a beneficiary or whether
24 the signature of a purported successor is genuine or
25 authorized.

26 (4) Honor of a purported successor's apparently
27 complying presentation under subsection (1) or subsection (2)
28 has the consequences specified in s. 675.5108(9) even if the
29 purported successor is not the successor of a beneficiary.
30 Documents signed in the name of the beneficiary or of a
31 disclosed successor by a person who is neither the beneficiary

1 nor the successor of the beneficiary are forged documents for
2 the purposes of s. 675.5109.

3 (5) An issuer whose rights of reimbursement are not
4 covered by subsection (4) or substantially similar law and any
5 confirmer or nominated person may decline to recognize a
6 presentation under subsection (2).

7 (6) A beneficiary whose name is changed after the
8 issuance of a letter of credit has the same rights and
9 obligations as a successor of a beneficiary under this
10 section.

11 Section 14. Section 675.5114, Florida Statutes, is
12 created to read:

13 675.5114 Assignment of proceeds.--

14 (1) In this section, "proceeds of a letter of credit"
15 means the cash, check, accepted draft, or other item of value
16 paid or delivered upon honor or giving of value by the issuer
17 or any nominated person under the letter of credit. The term
18 does not include a beneficiary's drawing rights or documents
19 presented by the beneficiary.

20 (2) A beneficiary may assign its right to part or all
21 of the proceeds of a letter of credit. The beneficiary may do
22 so before presentation as a present assignment of its right to
23 receive proceeds contingent upon its compliance with the terms
24 and conditions of the letter of credit.

25 (3) An issuer or nominated person need not recognize
26 an assignment of proceeds of a letter of credit until it
27 consents to the assignment.

28 (4) An issuer or nominated person has no obligation to
29 give or withhold its consent to an assignment of proceeds of a
30 letter of credit, but consent may not be unreasonably withheld
31 if the assignee possesses and exhibits the letter of credit

1 and presentation of the letter of credit is a condition to
2 honor.

3 (5) Rights of a transferee beneficiary or nominated
4 person are independent of the beneficiary's assignment of the
5 proceeds of a letter of credit and are superior to the
6 assignee's right to the proceeds.

7 (6) Neither the rights recognized by this section
8 between an assignee and an issuer, transferee beneficiary, or
9 nominated person nor the issuer's or nominated person's
10 payment of proceeds to an assignee or a third person affect
11 the rights between the assignee and any person other than the
12 issuer, transferee beneficiary, or nominated person. The mode
13 of creating and perfecting a security interest in or granting
14 an assignment of a beneficiary's rights to proceeds is
15 governed by chapter 679 or other law. Against persons other
16 than the issuer, transferee beneficiary, or nominated person,
17 the rights and obligations arising upon the creation of a
18 security interest or other assignment of a beneficiary's right
19 to proceeds and its perfection are governed by chapter 679 or
20 other law.

21 Section 15. Section 675.5115, Florida Statutes, is
22 created to read:

23 675.5115 Statute of limitations.--An action to enforce
24 a right or obligation arising under this article must be
25 commenced within 1 year after the expiration date of the
26 relevant letter of credit or 1 year after the cause of action
27 accrues, whichever occurs later. A cause of action accrues
28 when the breach occurs, regardless of the aggrieved party's
29 lack of knowledge of the breach.

30 Section 16. Section 675.5116, Florida Statutes, is
31 created to read:

1 675.5116 Choice of law and forum.--

2 (1) The liability of an issuer, nominated person, or
3 adviser for action or omission is governed by the law of the
4 jurisdiction chosen by an agreement in the form of a record
5 signed or otherwise authenticated by the affected parties in
6 the manner provided in s. 675.5104 or by a provision in the
7 person's letter of credit, confirmation, or other undertaking.
8 The jurisdiction whose law is chosen need not bear any
9 relation to the transaction.

10 (2) Unless subsection (1) applies, the liability of an
11 issuer, nominated person, or adviser for action or omission is
12 governed by the law of the jurisdiction in which the person is
13 located. The person is considered to be located at the
14 address indicated in the person's undertaking. If more than
15 one address is indicated, the person is considered to be
16 located at the address from which the person's undertaking was
17 issued. For the purpose of jurisdiction, choice of law, and
18 recognition of interbranch letters of credit, but not
19 enforcement of a judgment, all branches of a bank are
20 considered separate juridical entities and a bank is
21 considered to be located at the place where its relevant
22 branch is considered to be located under this subsection.

23 (3) Except as otherwise provided in this subsection,
24 the liability of an issuer, nominated person, or adviser is
25 governed by any rules of custom or practice, such as the
26 Uniform Customs and Practice for Documentary Credits, to which
27 the letter of credit, confirmation, or other undertaking is
28 expressly made subject. If this chapter would govern the
29 liability of an issuer, nominated person, or adviser under
30 subsection (1) or subsection (2); the relevant undertaking
31 incorporates rules of custom or practice; and there is

1 conflict between this chapter and those rules as applied to
2 that undertaking, those rules govern except to the extent of
3 any conflict with the nonvariable provisions specified in s.
4 675.5103(3).

5 (4) If there is conflict between this chapter and
6 chapter 673, chapter 674, or chapter 679, this chapter
7 governs.

8 (5) The forum for settling disputes arising out of an
9 undertaking within this article may be chosen in the manner
10 and with the binding effect that governing law may be chosen
11 in accordance with subsection (1).

12 Section 17. Section 675.5117, Florida Statutes, is
13 created to read:

14 675.5117 Subrogation of issuer, applicant, and
15 nominated person.--

16 (1) An issuer that honors a beneficiary's presentation
17 is subrogated to the rights of the beneficiary to the same
18 extent as if the issuer were a secondary obligor of the
19 underlying obligation owed to the beneficiary and of the
20 applicant to the same extent as if the issuer were the
21 secondary obligor of the underlying obligation owed to the
22 applicant.

23 (2) An applicant that reimburses an issuer is
24 subrogated to the rights of the issuer against any
25 beneficiary, presenter, or nominated person to the same extent
26 as if the applicant were the secondary obligor of the
27 obligations owed to the issuer and has the rights of
28 subrogation of the issuer to the rights of the beneficiary
29 stated in subsection (1).

30
31

1 (3) A nominated person who pays or gives value against
2 a draft or demand presented under a letter of credit is
3 subrogated to the rights of:

4 (a) The issuer against the applicant to the same
5 extent as if the nominated person were a secondary obligor of
6 the obligation owed to the issuer by the applicant;

7 (b) The beneficiary to the same extent as if the
8 nominated person were a secondary obligor of the underlying
9 obligation owed to the beneficiary; and

10 (c) The applicant to the same extent as if the
11 nominated person were a secondary obligor of the underlying
12 obligation owed to the applicant.

13 (4) Notwithstanding any agreement or term to the
14 contrary, the rights of subrogation stated in subsections (1)
15 and (2) do not arise until the issuer honors the letter of
16 credit or otherwise pays and the rights in subsection (3) do
17 not arise until the nominated person pays or otherwise gives
18 value. Until then, the issuer, nominated person, and the
19 applicant do not derive under this section present or
20 prospective rights forming the basis of a claim, defense, or
21 excuse.

22 Section 18. Subsection (2) of section 671.105, Florida
23 Statutes, is amended to read:

24 671.105 Territorial application of the code; parties'
25 power to choose applicable law.--

26 (2) When one of the following provisions of this code
27 specifies the applicable law, that provision governs; and a
28 contrary agreement is effective only to the extent permitted
29 by the law (including the conflict-of-laws rules) so
30 specified:

31

1 (a) Governing law in the chapter on funds transfers.

2 (s. 670.507)

3 (b) Rights of sellers' creditors against sold goods.

4 (s. 672.402)

5 (c) Applicability of the chapter on bank deposits and

6 collections. (s. 674.102)

7 (d) Letters of credit. (s. 675.5116)

8 (e)~~(d)~~ Applicability of the chapter on investment

9 securities. (s. 678.106)

10 (f)~~(e)~~ Perfection provisions of the chapter on secured

11 transactions. (s. 679.103)

12 (g)~~(f)~~ Applicability of the chapter on leases. (ss.

13 680.1051 and 680.1061)

14 Section 19. Section 672.512, Florida Statutes, is

15 amended to read:

16 672.512 Payment by buyer before inspection.--

17 (1) Where the contract requires payment before

18 inspection nonconformity of the goods does not excuse the

19 buyer from so making payment unless:

20 (a) The nonconformity appears without inspection; or

21 (b) Despite tender of the required documents the

22 circumstances would justify injunction against honor under ~~the~~

23 ~~provisions of this code (s. 675.5109(2)s. 675.114).~~

24 (2) Payment pursuant to subsection (1) does not

25 constitute an acceptance of goods or impair the buyer's right

26 to inspect or any of her or his remedies.

27 Section 20. Subsection (13) is added to section

28 679.104, Florida Statutes, to read:

29 679.104 Transactions excluded from chapter.--This

30 chapter does not apply:

31

1 (13) To a transfer of an interest in a letter of
2 credit other than the rights to proceeds of a written letter
3 of credit.

4 Section 21. Subsection (3) of section 679.105, Florida
5 Statutes, is amended to read:

6 679.105 Definitions and index of definitions.--

7 (3) The following definitions in other chapters apply
8 to this chapter:

9 (a) "Check," s. 673.1041.

10 (b) "Contract for sale," s. 672.106.

11 (c) "Holder in due course," s. 673.3021.

12 (d) "Letter of credit," s. 675.5102.

13 (e) "Note," s. 673.1041.

14 (f) "Proceeds of a letter of credit," s. 675.5114(1).

15 (g) "Sale," s. 672.106.

16 Section 22. Subsection (1) of section 679.103, Florida
17 Statutes, is amended to read:

18 679.103 Perfection of security interests in multiple
19 state transactions.--

20 (1) DOCUMENTS, INSTRUMENTS, LETTERS OF CREDIT, AND
21 ORDINARY GOODS.--

22 (a) This subsection applies to documents, ~~and~~
23 instruments, rights to proceeds of written letters of credit,
24 ~~and to~~ goods other than those covered by a certificate of
25 title described in subsection (2), mobile goods described in
26 subsection (3), and minerals described in subsection (5).

27 (b) Except as otherwise provided in this subsection,
28 perfection and the effect of perfection or nonperfection of a
29 security interest in collateral are governed by the law of the
30 jurisdiction where the collateral is when the last event
31

1 occurs on which is based the assertion that the security
2 interest is perfected or unperfected.

3 (c) If the parties to a transaction creating a
4 purchase money security interest in goods in one jurisdiction
5 understand at the time that the security interest attaches
6 that the goods will be kept in another jurisdiction, then the
7 law of the other jurisdiction governs the perfection and the
8 effect of perfection or nonperfection of the security interest
9 from the time it attaches until 30 days after the debtor
10 receives possession of the goods and thereafter if the goods
11 are taken to the other jurisdiction before the end of the
12 30-day period.

13 (d) When collateral is brought into and kept in this
14 state while subject to a security interest perfected under the
15 law of the jurisdiction from which the collateral was removed,
16 the security interest remains perfected, but if action is
17 required by part III of this chapter to perfect the security
18 interest:

19 1. If the action is not taken before the expiration of
20 the period of perfection in the other jurisdiction or the end
21 of 4 months after the collateral is brought into this state,
22 whichever period first expires, the security interest becomes
23 unperfected at the end of that period and is thereafter deemed
24 to have been unperfected as against a person who became a
25 purchaser after removal; or

26 2. If the action is taken before the expiration of the
27 period specified in subparagraph 1., the security interest
28 continues perfected thereafter;

29 3. For the purpose of priority over a buyer of
30 consumer goods (subsection (2) of s. 679.307), the period of
31 the effectiveness of a filing in the jurisdiction from which

1 the collateral is removed is governed by the rules with
2 respect to perfection in subparagraphs 1. and 2.

3 Section 23. Section 679.106, Florida Statutes, is
4 amended to read:

5 679.106 Definitions: "account"; "general
6 intangibles."--"Account" means any right to payment for goods
7 sold or leased or for services rendered which is not evidenced
8 by an instrument or chattel paper whether or not it has been
9 earned by performance. "General intangibles" means any
10 personal property (including things in action) other than
11 goods, accounts, chattel paper, documents, instruments, rights
12 to proceeds of written letters of credit, and money. All
13 rights to payment earned or unearned under a charter or other
14 contract involving the use or hire of a vessel and all rights
15 incident to the charter or contract are accounts.

16 Section 24. Section 679.304, Florida Statutes, is
17 amended to read:

18 679.304 Perfection of security interest in
19 instruments, documents, and goods covered by documents;
20 proceeds of a written letter of credit; perfection by
21 permissive filing; temporary perfection without filing or
22 transfer of possession.--

23 (1) A security interest in chattel paper or negotiable
24 documents may be perfected by filing. A security interest in
25 the rights to proceeds of a written letter of credit can be
26 perfected only by the secured party's taking possession of the
27 letter of credit.A security interest in money or instruments
28 (other than certificated securities or instruments which
29 constitute part of chattel paper) can be perfected only by the
30 secured party's taking possession, except as provided in
31

1 subsections (4) and (5) of this section and subsections (2)
2 and (3) of s. 679.306 on proceeds.

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

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

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

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

25 (a) Makes available to the debtor the goods or
26 documents representing the goods for the purpose of ultimate
27 sale or exchange or for the purpose of loading, unloading,
28 storing, shipping, transshipping, manufacturing, processing,
29 or otherwise dealing with them in a manner preliminary to
30 their sale or exchange but priority between conflicting
31

1 security interests in the goods is subject to s. 679.312(3);
2 or

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

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

9 Section 25. Section 679.305, Florida Statutes, is
10 amended to read:

11 679.305 When possession by secured party perfects
12 security interest without filing.--A security interest in
13 ~~letters of credit and advices of credit (s. 675.116(2)(a)),~~
14 goods, negotiable documents, or chattel paper may be perfected
15 by the secured party's taking possession of the collateral. A
16 security interest in the right to proceeds of a written letter
17 of credit may be perfected by the secured party's taking
18 possession of the letter of credit.If such collateral other
19 than goods covered by a negotiable document is held by a
20 bailee, the secured party is deemed to have possession from
21 the time the bailee receives notification of the secured
22 party's interest. A security interest is perfected by
23 possession from the time possession is taken without relation
24 back and continues only so long as possession is retained,
25 unless otherwise specified in this chapter. The security
26 interest may be otherwise perfected as provided in this
27 chapter before or after the period of possession by the
28 secured party.

29 Section 26. This act applies to a letter of credit
30 that is issued on or after the effective date of this act,
31 including any amendment to the letter of credit that was made

1 after the effective date of this act, unless the amendment
2 provides otherwise. This act does not apply to a transaction,
3 event, obligation, or duty arising out of or associated with a
4 letter of credit that was issued before the effective date of
5 this act.

6 Section 27. A transaction arising out of or associated
7 with a letter of credit that was issued before the effective
8 date of this act and the rights, obligations, and interests
9 flowing from that transaction are governed by any statute or
10 other law amended or repealed by this act as if repeal or
11 amendment had not occurred and may be terminated, completed,
12 consummated, or enforced under that statute or other law.

13 Section 28. Sections 95.11(5)(c), 675.101, 675.102,
14 675.103, 675.104, 675.105, 675.106, 675.107, 675.108, 675.109,
15 675.110, 675.111, 675.112, 675.113, 675.114, 675.115, 675.116,
16 and 675.117, Florida Statutes, are repealed.

17 Section 29. This act shall take effect July 1, 1998.

18
19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
20 COMMITTEE SUBSTITUTE FOR
21 Senate Bill 2230

22 This committee substitute provides that this act applies to
23 amendments to a letter of credit made after the effective date
24 of the act, unless otherwise provided in the amendment. This
committee substitute also repeals s. 95.11(5)(c), F.S.,
relating to bulk transfers.