

By Representative Lawson

1 A bill to be entitled
2 An act relating to letters of credit under the
3 Uniform Commercial Code; amending ss. 675.101,
4 675.102, 675.103, 675.104, 675.105, 675.106,
5 675.107, 675.108, 675.109, 675.110, 675.111,
6 675.112, 675.113, 675.114, 675.115, 675.116,
7 and 675.117, F.S.; revising article 5 of the
8 Uniform Commercial Code relating to letters of
9 credit; providing scope, application, effect;
10 providing definitions; providing formal
11 requirements; providing that consideration of
12 unnecessary; providing for issuance, amendment,
13 cancellation, and duration; specifying rights
14 and obligations of confirmers, nominated
15 persons, and advisers; providing issuer's
16 rights and obligations; providing procedures
17 for counteracting fraud and forgery; specifying
18 certain warranties; providing remedies;
19 providing for transfers of letters of credit;
20 providing for transfers by operation of law;
21 providing for assignment of proceeds of letters
22 of credit; providing a statute of limitations;
23 providing for a choice of law and forum;
24 providing for subrogation of issuers,
25 applicants, and nominated persons; providing
26 applications; amending ss. 671.105, 672.512,
27 679.103, 679.104, 679.105, 679.106, 679.304,
28 and 679.305, F.S., to conform; providing an
29 effective date.

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

1 Section 1. Sections 675.101, 675.102, 675.103,
2 675.104, 675.105, 675.106, 675.107, 675.108, 675.109, 675.110,
3 675.111, 675.112, 675.113, 675.114, 675.115, 675.116, and
4 675.117, Florida Statutes, are amended to read:
5 (Substantial rewording of Sections. See
6 ss. 675.101, 675.102, 675.103, 675.104, 675.105,
7 675.106, 675.107, 675.108, 675.109, 675.110,
8 675.111, 675.112, 675.113, 675.114, 675.115,
9 675.116, and 675.117, F.S., for present text.)
10 675.101 Short title.--This chapter may be cited as the
11 "Uniform Commercial Code--Letters of Credit."
12 675.102 Scope.--
13 (1) This chapter applies to letters of credit and to
14 certain rights and obligations arising out of transactions
15 involving letters of credit.
16 (2) The statement of a rule in this chapter does not
17 by itself require, imply, or negate application of the same or
18 a different rule to a situation not provided for, or to a
19 person not specified, in this chapter.
20 (3) With the exception of this subsection, subsections
21 (1) and (4), s. 675.103(1)(i) and (j), s. 675.106(4), and s.
22 675.114(4), and except to the extent prohibited in ss.
23 671.102(3) and 675.117(4), the effect of this chapter may be
24 varied by agreement or by a provision stated or incorporated
25 by reference in an undertaking. A term in an agreement or
26 undertaking generally excusing liability or generally limiting
27 remedies for failure to perform obligations is not sufficient
28 to vary obligations prescribed by this chapter.
29 (4) Rights and obligations of an issuer to a
30 beneficiary or a nominated person under a letter of credit are
31 independent of the existence, performance, or nonperformance

1 of a contract or arrangement out of which the letter of credit
2 arises or which underlies it, including contracts or
3 arrangements between the issuer and the applicant and between
4 the applicant and the beneficiary.

5 675.103 Definitions.--

6 (1) For purposes of this chapter:

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

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

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

21 (d) "Confirmer" means a nominated person who
22 undertakes, at the request or with the consent of the issuer,
23 to honor a presentation under a letter of credit issued by
24 another.

25 (e) "Dishonor" of a letter of credit means failure
26 timely to honor or to take an interim action, such as
27 acceptance of a draft, that may be required by the letter of
28 credit.

29 (f) "Document" means a draft or other demand, document
30 of title, investment security, certificate, invoice, or other
31 record, statement, or representation of fact, law, right, or

1 opinion which is presented in a written or other medium
2 permitted by the letter of credit or, unless prohibited by the
3 letter of credit, by the standard practice referred to in s.
4 675.108(5) and which is capable of being examined for
5 compliance with the terms and conditions of the letter of
6 credit. A document may not be oral.

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

9 (h) "Honor" of a letter of credit means performance of
10 the issuer's undertaking in the letter of credit to pay or
11 deliver an item of value. Unless the letter of credit
12 otherwise provides, "honor" occurs

13 1. Upon payment;

14 2. If the letter of credit provides for acceptance,
15 upon acceptance of a draft and paying the draft maturity; or

16 3. If the letter of credit provides for incurring a
17 deferred obligation, upon incurring the obligation and
18 performing the obligation at maturity.

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

23 (j) "Letter of credit" means a definite undertaking
24 that satisfies the requirements of s. 675.104 by an issuer to
25 a beneficiary at the request or for the account of an
26 applicant or, in the case of a financial institution, to
27 itself or for its own account, to honor a documentary
28 presentation by payment or delivery of an item of value.

29 (k) "Nominated person" means a person whom the issuer
30 designates or authorizes to pay, accept, negotiate, or

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1 otherwise give value under a letter of credit and undertakes
2 by agreement or custom and practice to reimburse.

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

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

8 (n) "Record" means information that is inscribed on a
9 tangible medium or that is stored in an electronic or other
10 medium and is retrievable in perceivable form.

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

17 (2) The following definitions and the sections in
18 which they appear in other chapters apply to this chapter:

19 "Acceptance," s. 673.4091.

20 "Value," s. 673.3031.

21 (3) The provisions of part II of chapter 671 apply to
22 this chapter.

23 675.104 Formal requirements.--A letter of credit,
24 confirmation, advice, transfer, amendment, or cancellation may
25 be issued in any form that is a record and is authenticated by
26 a signature or in accordance with the agreement of the parties
27 or the standard practice referred to in s. 675.108(5).

28 675.105 Consideration.--Consideration is not required
29 to issue, amend, transfer, or cancel a letter of credit,
30 advice, or confirmation.

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1 675.106 Issuance, amendment, cancellation, and
2 duration.--

3 (1) A letter of credit is issued and becomes
4 enforceable according to its terms against the issuer when the
5 issuer sends or otherwise transmits it to the person requested
6 to advise or to the beneficiary. A letter of credit is
7 revocable only if it so provides.

8 (2) After a letter of credit is issued, rights and
9 obligations of a beneficiary, applicant, confirmer, and issuer
10 are not affected by an amendment or cancellation to which that
11 person has not consented except to the extent the letter of
12 credit provides that it is revocable or that the issuer may
13 amend or cancel the letter of credit without that consent.

14 (3) If there is no stated expiration date or other
15 provision that determines its duration, a letter of credit
16 expires one year after its stated date of issuance or, if none
17 is stated, after the date on which it is issued.

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

21 675.107 Confirmer, nominated person, and adviser.--

22 (1) A confirmer is directly obligated on a letter of
23 credit and has the rights and obligations of an issuer to the
24 extent of its confirmation. The confirmer also has rights
25 against and obligations to the issuer as if the issuer were an
26 applicant and the confirmer had issued the letter of credit at
27 the request and for the account of the issuer.

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

30 (3) A person requested to advise may decline to act as
31 an adviser. An adviser that is not a confirmer is not

1 obligated to honor or give value for a presentation. An
2 adviser undertakes to the issuer and to the beneficiary
3 accurately to advise the terms of the letter of credit,
4 confirmation, amendment, or advice received by that person and
5 undertakes to the beneficiary to check the apparent
6 authenticity of the request to advise. Even if the advice is
7 inaccurate, the letter of credit, confirmation, or amendment
8 is enforceable as issued.

9 (4) A person who notifies a transferee beneficiary of
10 the terms of a letter of credit, confirmation, amendment, or
11 advice has the rights and obligations of an adviser under
12 subsection (3). The terms in the notice to the transferee
13 beneficiary may differ from the terms in any notice to the
14 transferor or beneficiary to the extent permitted by the letter of
15 credit, confirmation, amendment, or advice received by the
16 person who so notifies.

17 675.108 Issuer's rights and obligations.--

18 (1) Except as otherwise provided in s. 675.109, an
19 issuer shall honor a presentation that, as determined by the
20 standard practice referred to in subsection (5), appears on
21 its face strictly to comply with the terms and conditions of
22 the letter of credit. Except as otherwise provided in s.
23 675.113 and unless otherwise agreed with the applicant, an
24 issuer shall dishonor a presentation that does not appear so
25 to comply.

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

29 (a) To honor;
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1 (b) If the letter of credit provides for honor to be
2 completed more than 7 business days after presentation, to
3 accept a draft or incur a deferred obligation; or

4 (c) To give notice to the presenter of discrepancies
5 in the presentation.

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

10 (4) Failure to give the notice specified in subsection
11 (2) or to mention fraud, forgery, or expiration in the notice
12 does not preclude the issuer from asserting as a basis for
13 dishonor fraud or forgery as described in s. 675.109(1) or
14 expiration of the letter of credit before presentation.

15 (5) An issuer shall observe standard practice of
16 financial institutions that regularly issue letters of credit.
17 Determination of the issuer's observance of the standard
18 practice is a matter of interpretation for the court. The
19 court shall offer the parties a reasonable opportunity to
20 present evidence of the standard practice.

21 (6) An issuer is not responsible for:

22 (a) The performance or nonperformance of the
23 underlying contract, arrangement, or transaction;

24 (b) An act or omission of others; or

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

28 (7) If an undertaking constituting a letter of credit
29 under s. 675.103(1)(j) contains nondocumentary conditions, an
30 issuer shall disregard the nondocumentary conditions and treat
31 such conditions as if unstated.

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

4 (9) An issuer that has honored a presentation as
5 permitted or required by this chapter:

6 (a) Is entitled to be reimbursed by the applicant in
7 immediately available funds not later than the date of its
8 payment of funds.

9 (b) Takes the documents free of claims of the
10 beneficiary or presenter.

11 (c) Is precluded from asserting a right of recourse on
12 a draft under ss. 673.4141 and 673.4151.

13 (d) Except as otherwise provided in ss. 675.110 and
14 675.117, is precluded from restitution of money paid or other
15 value given by mistake to the extent the mistake concerns
16 discrepancies in the documents or tender which are apparent on
17 the face of the presentation.

18 (e) Is discharged to the extent of its performance
19 under the letter of credit unless the issuer honored a
20 presentation in which a required signature of a beneficiary
21 was forged.

22 675.109 Fraud and forgery.--

23 (1) If a presentation is made that appears on its face
24 strictly to comply with the terms and conditions of the letter
25 of credit, but a required document is forged or materially
26 fraudulent, or honor of the presentation would facilitate a
27 material fraud by the beneficiary on the issuer or applicant:

28 (a) The issuer shall honor the presentation, if honor
29 is demanded by:

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

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

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

6 4. An assignee of the issuer's or nominated person's
7 deferred obligation that was taken for value and without
8 notice of forgery or material fraud after the obligation was
9 incurred by the issuer or nominated person.

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

12 (2) If an applicant claims that a required document is
13 forged or materially fraudulent or that honor of the
14 presentation would facilitate a material fraud by the
15 beneficiary on the issuer or applicant, a court of competent
16 jurisdiction may temporarily or permanently enjoin the issuer
17 from honoring a presentation or grant similar relief against
18 the issuer or other persons only if the court finds that:

19 (a) The relief is not prohibited under the law
20 applicable to an accepted draft or deferred obligation
21 incurred by the issuer.

22 (b) A beneficiary, issuer, or nominated person who may
23 be adversely affected is adequately protected against loss
24 that it may suffer because the relief is granted.

25 (c) All of the conditions to entitle a person to the
26 relief under the laws of this state have been met.

27 (d) On the basis of the information submitted to the
28 court, the applicant is more likely than not to succeed under
29 its claim of forgery or material fraud and the person
30 demanding honor does not qualify for protection under
31 paragraph (1)(a).

1 675.110 Warranties.--
2 (1) If a beneficiary's presentation is honored, the
3 beneficiary warrants:
4 (a) To the issuer, any other person to whom
5 presentation is made, and the applicant that there is no fraud
6 or forgery of the kind described in s. 675.109(1).
7 (b) To the applicant that the drawing does not violate
8 any agreement between the applicant and beneficiary or any
9 other agreement intended by them to be augmented by the letter
10 of credit.
11 (2) The warranties in subsection (1) are in addition
12 to warranties arising under chapters 673, 674, 677, and 678
13 because of the presentation or transfer of documents covered
14 by any of those chapters.
15 675.111 Remedies.--
16 (1) If an issuer wrongfully dishonors or repudiates
17 its obligation to pay money under a letter of credit before
18 presentation, the beneficiary, successor, or nominated person
19 presenting on its own behalf may recover from the issuer the
20 amount that is the subject of the dishonor or repudiation. If
21 the issuer's obligation under the letter of credit is not for
22 the payment of money, the claimant may obtain specific
23 performance or, at the claimant's election, recover an amount
24 equal to the value of performance from the issuer. In either
25 case, the claimant may also recover incidental but not
26 consequential damages. The claimant is not obligated to take
27 action to avoid damages that might be due from the issuer
28 under this subsection. If, although not obligated to do so,
29 the claimant avoids damages, the claimant's recovery from the
30 issuer must be reduced by the amount of damages avoided. The
31 issuer has the burden of proving the amount of damages

1 avoided. In the case of repudiation the claimant need not
2 present any document.

3 (2) If an issuer wrongfully dishonors a draft or
4 demand presented under a letter of credit or honors a draft or
5 demand in breach of its obligation to the applicant, the
6 applicant may recover damages resulting from the breach,
7 including incidental but not consequential damages, less any
8 amount saved as a result of the breach.

9 (3) If an adviser or nominated person other than a
10 confirmer breaches an obligation under this chapter or an
11 issuer breaches an obligation not covered in subsection (1) or
12 subsection (2), a person to whom the obligation is owed may
13 recover damages resulting from the breach, including
14 incidental but not consequential damages, less any amount
15 saved as a result of the breach. To the extent of the
16 confirmation, a confirmer has the liability of an issuer
17 specified in this subsection and subsections (1) and (2).

18 (4) An issuer, nominated person, or adviser who is
19 found liable under subsection (1), subsection (2), or
20 subsection (3) shall pay interest on the amount owed
21 thereunder from the date of wrongful dishonor or other
22 appropriate date.

23 (5) Reasonable attorney's fees and other expenses of
24 litigation must be awarded to the prevailing party in an
25 action in which a remedy is sought under this chapter.

26 (6) Damages that would otherwise be payable by a party
27 for breach of an obligation under this chapter may be
28 liquidated by agreement or undertaking, but only in an amount
29 or by a formula that is reasonable in light of the harm
30 anticipated.

31 675.112 Transfer of letter of credit.--

1 (1) Except as otherwise provided in s. 675.113, unless
2 a letter of credit provides that it is transferable, the right
3 of a beneficiary to draw or otherwise demand performance under
4 a letter of credit may not be transferred.

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

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

9 (b) The transferor or transferee has failed to comply
10 with any requirement stated in the letter of credit or any
11 other requirement relating to transfer imposed by the issuer
12 which is within the standard practice referred to in s.
13 675.108(5) or is otherwise reasonable under the circumstances.

14 675.113 Transfer by operation of law.--

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

19 (2) A successor of a beneficiary may consent to
20 amendments, sign and present documents, and receive payment or
21 other items of value in its own name as the disclosed
22 successor of the beneficiary. Except as otherwise provided in
23 subsection (5), an issuer shall recognize a disclosed
24 successor of a beneficiary as beneficiary in full substitution
25 for its predecessor upon compliance with the requirements for
26 recognition by the issuer of a transfer of drawing rights by
27 operation of law under the standard practice referred to in s.
28 675.108(5) or, in the absence of such a practice, compliance
29 with other reasonable procedures sufficient to protect the
30 issuer.

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1 (3) An issuer is not obliged to determine whether a
2 purported successor is a successor of a beneficiary or whether
3 the signature of a purported successor is genuine or
4 authorized.

5 (4) Honor of a purported successor's apparently
6 complying presentation under subsection (1) or (2) has the
7 consequences specified in s. 675.108(9) even if the purported
8 successor is not the successor of a beneficiary. Documents
9 signed in the name of the beneficiary or of a disclosed
10 successor by a person who is neither the beneficiary nor the
11 successor of the beneficiary are forged documents for the
12 purposes of s. 675.109.

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

17 (6) A beneficiary whose name is changed after the
18 issuance of a letter of credit has the same rights and
19 obligations as a successor of a beneficiary under this
20 section.

21 675.114 Assignment of proceeds.--

22 (1) For purposes of this section, the term "proceeds
23 of a letter of credit" means the cash, check, accepted draft,
24 or other item of value paid or delivered upon honor or giving
25 of value by the issuer or any nominated person under the
26 letter of credit. The term does not include a beneficiary's
27 drawing rights or documents presented by the beneficiary.

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

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

6 (4) An issuer or nominated person has no obligation to
7 give or withhold its consent to an assignment of proceeds of a
8 letter of credit, but consent may not be unreasonably withheld
9 if the assignee possesses and exhibits the letter of credit
10 and presentation of the letter of credit is a condition to
11 honor.

12 (5) Rights of a transferee beneficiary or nominated
13 person are independent of the beneficiary's assignment of the
14 proceeds of a letter of credit and are superior to the
15 assignee's right to the proceeds.

16 (6) Neither the rights recognized by this section
17 between an assignee and an issuer, transferee beneficiary, or
18 nominated person nor the issuer's or nominated person's
19 payment of proceeds to an assignee or a third person affect
20 the rights between the assignee and any person other than the
21 issuer, transferee beneficiary, or nominated person. The mode
22 of creating and perfecting a security interest in or granting
23 an assignment of a beneficiary's rights to proceeds is
24 governed by chapter 679 or any other law. Against persons
25 other than the issuer, transferee beneficiary, or nominated
26 person, the rights and obligations arising upon the creation
27 of a security interest or other assignment of a beneficiary's
28 right to proceeds and its perfection are governed by chapter
29 679 or any other law.

30 675.115 Statute of limitations.--An action to enforce
31 a right or obligation arising under this chapter must be

1 commenced within 1 year after the expiration date of the
2 relevant letter of credit or 1 year after the claim for relief
3 or cause of action accrues, whichever occurs later. A claim
4 for relief or cause of action accrues when the breach occurs,
5 regardless of the aggrieved party's lack of knowledge of the
6 breach.

7 675.116 Choice of law and forum.--

8 (1) The liability of an issuer, nominated person, or
9 adviser for action or omission is governed by the law of the
10 jurisdiction chosen by an agreement in the form of a record
11 signed or otherwise authenticated by the affected parties in
12 the manner provided in s. 675.104 or by a provision in the
13 person's letter of credit, confirmation, or other undertaking.
14 The jurisdiction whose law is chosen need not bear any
15 relation to the transaction.

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

29 (3) Except as otherwise provided in this subsection,
30 the liability of an issuer, nominated person, or adviser is
31 governed by any rules of custom or practice, such as the

1 Uniform Customs and Practice for Documentary Credits, to which
2 the letter of credit, confirmation, or other undertaking is
3 expressly made subject. If this chapter governs the liability
4 of an issuer, nominated person, or adviser under subsection
5 (1) or (2), the relevant undertaking incorporates rules of
6 custom or practice, and there is conflict between this chapter
7 and such rules as applied to that undertaking, such rules
8 govern except to the extent of any conflict with the
9 nonvariable provisions specified in s. 675.102(3).

10 (4) This chapter governs to the extent of any conflict
11 between this chapter and chapter 673, chapter 674, or chapter
12 789.

13 (5) The forum for settling disputes arising out of an
14 undertaking within this chapter may be chosen in the manner
15 and with the binding effect that governing law may be chosen
16 in accordance with subsection (1).

17 675.117 Subrogation of issuer, applicant, and
18 nominated person.--

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

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

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

6 (a) The issuer against the applicant to the same
7 extent as if the nominated person were a secondary obligor of
8 the obligation owed to the issuer by the applicant.

9 (b) The beneficiary to the same extent as if the
10 nominated person were a secondary obligor of the underlying
11 obligation owed to the beneficiary.

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

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

24 Section 2. Subsection (2) of section 671.105, Florida
25 Statutes, is amended to read:

26 671.105 Territorial application of the code; parties'
27 power to choose applicable law.--

28 (2) When one of the following provisions of this code
29 specifies the applicable law, that provision governs; and a
30 contrary agreement is effective only to the extent permitted

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1 by the law (including the conflict-of-laws rules) so
2 specified:
3 (a) Governing law in the chapter on funds transfers.
4 (s. 670.507)
5 (b) Rights of sellers' creditors against sold goods.
6 (s. 672.402)
7 (c) Applicability of the chapter on bank deposits and
8 collections. (s. 674.102)
9 (d) Applicability of the chapter on letters of credit.
10 (s. 675.116)
11 (e)~~(d)~~ Applicability of the chapter on investment
12 securities. (s. 678.106)
13 (f)~~(e)~~ Perfection provisions of the chapter on secured
14 transactions. (s. 679.103)
15 (g)~~(f)~~ Applicability of the chapter on leases. (ss.
16 680.1051 and 680.1061)
17 Section 3. Paragraph (b) of subsection (1) of section
18 672.512, Florida Statutes, is amended to read:
19 672.512 Payment by buyer before inspection.--
20 (1) Where the contract requires payment before
21 inspection nonconformity of the goods does not excuse the
22 buyer from so making payment unless:
23 (b) Despite tender of the required documents the
24 circumstances would justify injunction against honor under the
25 provisions of ~~this code~~(s. 675.109(2)675.114).
26 Section 4. Paragraph (a) of subsection (1) of section
27 679.103, Florida Statutes, is amended to read:
28 679.103 Perfection of security interests in multiple
29 state transactions.--
30 (1) DOCUMENTS, INSTRUMENTS, AND ORDINARY GOODS.--
31

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

6 Section 5. Subsections (11) and (12) of section
7 679.104, Florida Statutes, are amended, and subsection (13) is
8 added to said section, to read:

9 679.104 Transactions excluded from chapter.--This
10 chapter does not apply:

11 (11) To a transfer in whole or in part of any claim
12 arising out of tort; ~~or~~

13 (12) To a transfer of any interest in any deposit
14 account (s. 679.105(1)), except as provided with respect to
15 proceeds (s. 679.306) and priorities on proceeds (s. 679.312);
16 ~~or-~~

17 (13) To a transfer of an interest in a letter of
18 credit other than the rights to proceeds of a written letter
19 of credit.

20 Section 6. Subsection (3) of section 679.105, Florida
21 Statutes, is amended to read:

22 679.105 Definitions and index of definitions.--

23 (3) The following definitions in other chapters apply
24 to this chapter:

25 "Check," s. 673.1041.

26 "Contract for sale," s. 672.106.

27 "Holder in due course," s. 673.3021.

28 "Letter of credit," s. 675.103.

29 "Note," s. 673.1041.

30 "Proceeds of a letter of credit," s. 675.114(1).

31 "Sale," s. 672.106.

1 Section 7. Section 679.106, Florida Statutes, is
2 amended to read:

3 679.106 Definitions: "account"; "general
4 intangibles."--"Account" means any right to payment for goods
5 sold or leased or for services rendered which is not evidenced
6 by an instrument or chattel paper whether or not it has been
7 earned by performance. "General intangibles" means any
8 personal property (including things in action) other than
9 goods, accounts, chattel paper, documents, instruments, rights
10 to proceeds of written letters of credit,and money. All
11 rights to payment earned or unearned under a charter or other
12 contract involving the use or hire of a vessel and all rights
13 incident to the charter or contract are accounts.

14 Section 8. Section 679.304, Florida Statutes, is
15 amended to read:

16 679.304 Perfection of security interest in
17 instruments, documents, proceeds of written letters of credit,
18 and goods covered by documents; perfection by permissive
19 filing; temporary perfection without filing or transfer of
20 possession.--

21 (1) A security interest in chattel paper or negotiable
22 documents may be perfected by filing. A security interest in
23 the rights to proceeds of a written letter of credit an be
24 perfected only by the secured party's taking possession of the
25 letter of credit.A security interest in money or instruments
26 (other than certificated securities or instruments which
27 constitute part of chattel paper) can be perfected only by the
28 secured party's taking possession, except as provided in
29 subsections (4) and (5) of this section and subsections (2)
30 and (3) of s. 679.306 on proceeds.

31

1 Section 9. Section 679.305, Florida Statutes, is
2 amended to read:

3 679.305 When possession by secured party perfects
4 security interest without filing.--A security interest in
5 ~~letters of credit and advices of credit (s. 675.116(2)(a)),~~
6 goods, negotiable documents, or chattel paper may be perfected
7 by the secured party's taking possession of the collateral. A
8 security interest in the right to proceeds of a written letter
9 of credit may be perfected by the secured party's taking
10 possession of the letter of credit. If such collateral other
11 than goods covered by a negotiable document is held by a
12 bailee, the secured party is deemed to have possession from
13 the time the bailee receives notification of the secured
14 party's interest. A security interest is perfected by
15 possession from the time possession is taken without relation
16 back and continues only so long as possession is retained,
17 unless otherwise specified in this chapter. The security
18 interest may be otherwise perfected as provided in this
19 chapter before or after the period of possession by the
20 secured party.

21 Section 10. This act applies to any letter of credit
22 that is issued on or after July 1, 1998. This act does not
23 apply to any transaction, event, obligation, or duty arising
24 out of or associated with a letter of credit issued before
25 July 1, 1998.

26 Section 11. A transaction arising out of or associated
27 with a letter of credit issued before July 1, 1998, and the
28 rights, obligations, and interests created by that transaction
29 are governed by any law amended or repealed by this act to the
30 same extent as if such amendment or repeal had not occurred
31 and such transaction may be terminated, completed,

1 consummated, or enforced under such law prior to its amendment
2 or repeal.

3 Section 12. This act shall take effect July 1 of the
4 year in which enacted.

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HOUSE SUMMARY

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9 Revises article 5 of the Uniform Commercial Code relating
10 to letters of credit to conform the provisions to
11 revisions to the model code adopted at the federal level.
12 See bill for details.

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