

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

310-1633-99

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 is
 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, 675.115, 675.116, and 675.117,
4 Florida Statutes, and section 675.114, Florida Statutes, 1998
5 Supplement, are amended to read:

6 (Substantial rewording of sections. See

7 ss. 675.101, 675.102, 675.103, 675.104, 675.105,

8 675.106, 675.107, 675.108, 675.109, 675.110,

9 675.111, 675.112, 675.113, 675.115, 675.116,

10 and 675.117, F.S., and s. 675.114, F.S.,

11 1998 Supp., for present text.)

12 675.101 Short title.--This chapter may be cited as the

13 "Uniform Commercial Code--Letters of Credit."

14 675.102 Scope.--

15 (1) This chapter applies to letters of credit and to
16 certain rights and obligations arising out of transactions
17 involving letters of credit.

18 (2) The statement of a rule in this chapter does not
19 by itself require, imply, or negate application of the same or
20 a different rule to a situation not provided for, or to a
21 person not specified, in this chapter.

22 (3) With the exception of this subsection, subsections
23 (1) and (4), s. 675.103(1)(i) and (j), s. 675.106(4), and s.
24 675.114(4), and except to the extent prohibited in ss.
25 675.102(3) and 675.117(4), the effect of this chapter may be
26 varied by agreement or by a provision stated or incorporated
27 by reference in an undertaking. A term in an agreement or
28 undertaking generally excusing liability or generally limiting
29 remedies for failure to perform obligations is not sufficient
30 to vary obligations prescribed by this chapter.

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1 (4) Rights and obligations of an issuer to a
2 beneficiary or a nominated person under a letter of credit are
3 independent of the existence, performance, or nonperformance
4 of a contract or arrangement out of which the letter of credit
5 arises or which underlies it, including contracts or
6 arrangements between the issuer and the applicant and between
7 the applicant and the beneficiary.

8 675.103 Definitions.--

9 (1) For purposes of this chapter:

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

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

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

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

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

1 (f) "Document" means a draft or other demand, document
2 of title, investment security, certificate, invoice, or other
3 record, statement, or representation of fact, law, right, or
4 opinion which is presented in a written or other medium
5 permitted by the letter of credit or, unless prohibited by the
6 letter of credit, by the standard practice referred to in s.
7 675.108(5) and which is capable of being examined for
8 compliance with the terms and conditions of the letter of
9 credit. A document may not be oral.

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

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

16 1. Upon payment;

17 2. If the letter of credit provides for acceptance,
18 upon acceptance of a draft and paying the draft at maturity;
19 or

20 3. If the letter of credit provides for incurring a
21 deferred obligation, upon incurring the obligation and
22 performing the obligation at maturity.

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

27 (j) "Letter of credit" means a definite undertaking
28 that satisfies the requirements of s. 675.104 by an issuer to
29 a beneficiary at the request or for the account of an
30 applicant or, in the case of a financial institution, to
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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 designates or authorizes to pay, accept, negotiate, or
5 otherwise give value under a letter of credit and undertakes
6 by agreement or custom and practice to reimburse.

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

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

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

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

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

23 "Acceptance," s. 673.4091.

24 "Value," s. 673.3031 and s. 674.2111.

25 (3) The provisions of part II of chapter 671 apply to
26 this chapter.

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

1 675.105 Consideration.--Consideration is not required
2 to issue, amend, transfer, or cancel a letter of credit,
3 advice, or confirmation.

4 675.106 Issuance, amendment, cancellation, and
5 duration.--

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

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

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

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

24 675.107 Confirmer, nominated person, and adviser.--

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

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

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

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

21 675.108 Issuer's rights and obligations.--

22 (1) Except as otherwise provided in s. 675.109, an
23 issuer shall honor a presentation that, as determined by the
24 standard practice referred to in subsection (5), appears on
25 its face strictly to comply with the terms and conditions of
26 the letter of credit. Except as otherwise provided in s.
27 675.113 and unless otherwise agreed with the applicant, an
28 issuer shall dishonor a presentation that does not appear so
29 to comply.

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

4 (a) To honor;

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

8 (c) To give notice to the presenter of discrepancies
9 in the presentation.

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

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

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

25 (6) An issuer is not responsible for:

26 (a) The performance or nonperformance of the
27 underlying contract, arrangement, or transaction;

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

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

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

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

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

10 (a) Is entitled to be reimbursed by the applicant in
11 immediately available funds not later than the date of its
12 payment of funds.

13 (b) Takes the documents free of claims of the
14 beneficiary or presenter.

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

17 (d) Except as otherwise provided in ss. 675.110 and
18 675.117, is precluded from restitution of money paid or other
19 value given by mistake to the extent the mistake concerns
20 discrepancies in the documents or tender which are apparent on
21 the face of the presentation.

22 (e) Is discharged to the extent of its performance
23 under the letter of credit unless the issuer honored a
24 presentation in which a required signature of a beneficiary
25 was forged.

26 675.109 Fraud and forgery.--

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

1 (a) The issuer shall honor the presentation, if honor
2 is demanded by:

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

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

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

10 4. An assignee of the issuer's or nominated person's
11 deferred obligation that was taken for value and without
12 notice of forgery or material fraud after the obligation was
13 incurred by the issuer or nominated person.

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

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

23 (a) The relief is not prohibited under the law
24 applicable to an accepted draft or deferred obligation
25 incurred by the issuer;

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

29 (c) All of the conditions to entitle a person to the
30 relief under the laws of this state have been met; and

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

6 675.110 Warranties.--

7 (1) If a beneficiary's presentation is honored, the
8 beneficiary warrants:

9 (a) To the issuer, any other person to whom
10 presentation is made, and the applicant that there is no fraud
11 or forgery of the kind described in s. 675.109(1); and

12 (b) To the applicant that the drawing does not violate
13 any agreement between the applicant and beneficiary or any
14 other agreement intended by them to be augmented by the letter
15 of credit.

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

20 675.111 Remedies.--

21 (1) If an issuer wrongfully dishonors or repudiates
22 its obligation to pay money under a letter of credit before
23 presentation, the beneficiary, successor, or nominated person
24 presenting on its own behalf may recover from the issuer the
25 amount that is the subject of the dishonor or repudiation. If
26 the issuer's obligation under the letter of credit is not for
27 the payment of money, the claimant may obtain specific
28 performance or, at the claimant's election, recover an amount
29 equal to the value of performance from the issuer. In either
30 case, the claimant may also recover incidental but not
31 consequential damages. The claimant is not obligated to take

1 action to avoid damages that might be due from the issuer
2 under this subsection. If, although not obligated to do so,
3 the claimant avoids damages, the claimant's recovery from the
4 issuer must be reduced by the amount of damages avoided. The
5 issuer has the burden of proving the amount of damages
6 avoided. In the case of repudiation the claimant need not
7 present any document.

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

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

23 (4) An issuer, nominated person, or adviser who is
24 found liable under subsection (1), subsection (2), or
25 subsection (3) shall pay interest on the amount owed
26 thereunder from the date of wrongful dishonor or other
27 appropriate date.

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

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1 (6) Damages that would otherwise be payable by a party
2 for breach of an obligation under this chapter may be
3 liquidated by agreement or undertaking, but only in an amount
4 or by a formula that is reasonable in light of the harm
5 anticipated.

6 675.112 Transfer of letter of credit.--

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

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

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

15 (b) The transferor or transferee has failed to comply
16 with any requirement stated in the letter of credit or any
17 other requirement relating to transfer imposed by the issuer
18 which is within the standard practice referred to in s.
19 675.108(5) or is otherwise reasonable under the circumstances.

20 675.113 Transfer by operation of law.--

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

25 (2) A successor of a beneficiary may consent to
26 amendments, sign and present documents, and receive payment or
27 other items of value in its own name as the disclosed
28 successor of the beneficiary. Except as otherwise provided in
29 subsection (5), an issuer shall recognize a disclosed
30 successor of a beneficiary as beneficiary in full substitution
31 for its predecessor upon compliance with the requirements for

1 recognition by the issuer of a transfer of drawing rights by
2 operation of law under the standard practice referred to in s.
3 675.108(5) or, in the absence of such a practice, compliance
4 with other reasonable procedures sufficient to protect the
5 issuer.

6 (3) An issuer is not obliged to determine whether a
7 purported successor is a successor of a beneficiary or whether
8 the signature of a purported successor is genuine or
9 authorized.

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

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

22 (6) A beneficiary whose name is changed after the
23 issuance of a letter of credit has the same rights and
24 obligations as a successor of a beneficiary under this
25 section.

26 675.114 Assignment of proceeds.--

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

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

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

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

17 (5) Rights of a transferee beneficiary or nominated
18 person are independent of the beneficiary's assignment of the
19 proceeds of a letter of credit and are superior to the
20 assignee's right to the proceeds.

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

1 security interest or other assignment of a beneficiary's right
2 to proceeds and its perfection are governed by chapter 679 or
3 other law.

4 675.115 Statute of limitations.--An action to enforce
5 a right or obligation arising under this chapter must be
6 commenced within 1 year after the expiration date of the
7 relevant letter of credit or 1 year after the cause of action
8 accrues, whichever occurs later. A cause of action accrues
9 when the breach occurs, regardless of the aggrieved party's
10 lack of knowledge of the breach.

11 675.116 Choice of law and forum.--

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

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

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1 considered to be located at the place where its relevant
2 branch is considered to be located under this subsection.

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

15 (4) This chapter governs to the extent of any conflict
16 between this chapter and chapter 670, chapter 673, chapter
17 674, or chapter 679.

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

22 675.117 Subrogation of issuer, applicant, and
23 nominated person.--

24 (1) An issuer that honors a beneficiary's presentation
25 is subrogated to the rights of the beneficiary to the same
26 extent as if the issuer were a secondary obligor of the
27 underlying obligation owed to the beneficiary and of the
28 applicant to the same extent as if the issuer were the
29 secondary obligor of the underlying obligation owed to the
30 applicant.

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

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

11 (a) The issuer against the applicant to the same
12 extent as if the nominated person were a secondary obligor of
13 the obligation owed to the issuer by the applicant;

14 (b) The beneficiary to the same extent as if the
15 nominated person were a secondary obligor of the underlying
16 obligation owed to the beneficiary; and

17 (c) The applicant to the same extent as if the
18 nominated person were a secondary obligor of the underlying
19 obligation owed to the applicant.

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

29 Section 2. Subsection (2) of section 671.105, Florida
30 Statutes, 1998 Supplement, is amended to read:

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1 671.105 Territorial application of the code; parties'
2 power to choose applicable law.--

3 (2) When one of the following provisions of this code
4 specifies the applicable law, that provision governs; and a
5 contrary agreement is effective only to the extent permitted
6 by the law (including the conflict-of-laws rules) so
7 specified:

8 (a) Governing law in the chapter on funds transfers.
9 (s. 670.507)

10 (b) Rights of sellers' creditors against sold goods.
11 (s. 672.402)

12 (c) Applicability of the chapter on bank deposits and
13 collections. (s. 674.102)

14 (d) Applicability of the chapter on letters of credit.
15 (s. 675.116)

16 (e)~~(d)~~ Applicability of the chapter on investment
17 securities. (s. 678.1061)

18 (f)~~(e)~~ Perfection provisions of the chapter on secured
19 transactions. (s. 679.103)

20 (g)~~(f)~~ Applicability of the chapter on leases. (ss.
21 680.1051 and 680.1061)

22 Section 3. Paragraph (b) of subsection (1) of section
23 672.512, Florida Statutes, is amended to read:

24 672.512 Payment by buyer before inspection.--

25 (1) Where the contract requires payment before
26 inspection nonconformity of the goods does not excuse the
27 buyer from so making payment unless:

28 (b) Despite tender of the required documents the
29 circumstances would justify injunction against honor under the
30 provisions of ~~this code~~(s. 675.109(2)~~675.114~~).

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1 Section 4. Paragraph (a) of subsection (1) of section
2 679.103, Florida Statutes, 1998 Supplement, is amended to
3 read:

4 679.103 Perfection of security interests in multiple
5 state transactions.--

6 (1) DOCUMENTS, INSTRUMENTS, AND ORDINARY GOODS.--

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

12 Section 5. Section 679.104, Florida Statutes, is
13 amended to read:

14 679.104 Transactions excluded from chapter.--This
15 chapter does not apply:

16 (1) To a security interest subject to any statute of
17 the United States to the extent that such statute governs the
18 rights of parties to and third parties affected by
19 transactions in particular types of property; ~~or~~

20 (2) To a landlord's lien; ~~or~~

21 (3) To a lien given by statute or other rule of law
22 for services or materials except as provided in s. 679.310 on
23 priority of such liens; ~~or~~

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

26 (5) To a transfer by a government or governmental
27 subdivision or agency; ~~or~~

28 (6) To a sale of accounts or chattel paper as part of
29 a sale of the business out of which they arose, or an
30 assignment of accounts or chattel paper which is for the
31 purpose of collection only, or a transfer of a right to

1 payment under a contract to an assignee who is also to do the
2 performance under the contract or a transfer of a single
3 account to an assignee in whole or partial satisfaction of a
4 preexisting indebtedness; ~~or~~

5 (7) To a transfer of an interest or claim in or under
6 any policy of insurance except as provided with respect to
7 proceeds (s. 679.306) and priorities in proceeds (s. 679.312);
8 ~~or~~

9 (8) To a right represented by a judgment (other than a
10 judgment taken on a right to payment which was collateral); ~~or~~

11 (9) To any right of setoff; ~~or~~

12 (10) Except to the extent that provision is made for
13 fixtures in s. 679.313, to the creation or transfer of an
14 interest in or lien on real estate, including a lease or rents
15 thereunder; ~~or~~

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

18 (12) To a transfer of any interest in any deposit
19 account (s. 679.105(1)), except as provided with respect to
20 proceeds (s. 679.306) and priorities on proceeds (s. 679.312);
21 or

22 (13) To a transfer of an interest in a letter of
23 credit other than the rights to proceeds of a written letter
24 of credit.

25 Section 6. Subsection (3) of section 679.105, Florida
26 Statutes, 1998 Supplement, is amended to read:

27 679.105 Definitions and index of definitions.--

28 (3) The following definitions in other chapters apply
29 to this chapter:

30 "Broker," s. 678.1021.

31 "Certificated security," s. 678.1021.

1 "Check," s. 673.1041.
2 "Clearing corporation," s. 678.1021.
3 "Contract for sale," s. 672.106.
4 "Control," s. 678.1061.
5 "Delivery," s. 678.3011.
6 "Entitlement holder," s. 678.1021.
7 "Financial asset," s. 678.1021.
8 "Holder in due course," s. 673.3021.
9 "Letter of credit," s. 675.103.
10 "Note," s. 673.1041.
11 "Proceeds of a letter of credit," s. 675.114(1).
12 "Sale," s. 672.106.
13 "Securities intermediary," s. 678.1021.
14 "Security," s. 678.1021.
15 "Security certificate," s. 678.1021.
16 "Security entitlement," s. 678.1021.
17 "Uncertified security," s. 678.1021.
18 Section 7. Section 679.106, Florida Statutes, 1998
19 Supplement, is amended to read:
20 679.106 Definitions: "account"; "general
21 intangibles."--"Account" means any right to payment for goods
22 sold or leased or for services rendered which is not evidenced
23 by an instrument or chattel paper whether or not it has been
24 earned by performance. "General intangibles" means any
25 personal property (including things in action) other than
26 goods, accounts, chattel paper, documents, instruments,
27 investment property, rights to proceeds of written letters of
28 credit, and money. All rights to payment earned or unearned
29 under a charter or other contract involving the use or hire of
30 a vessel and all rights incident to the charter or contract
31 are accounts.

1 Section 8. Subsection (1) of section 679.304, Florida
2 Statutes, 1998 Supplement, is amended to read:

3 679.304 Perfection of security interest in
4 instruments, documents, and goods covered by documents;
5 perfection by permissive filing; temporary perfection without
6 filing or transfer of possession.--

7 (1) A security interest in chattel paper or negotiable
8 documents may be perfected by filing. A security interest in
9 the rights to proceeds of a written letter of credit may be
10 perfected only by the secured party's taking possession of the
11 letter of credit.A security interest in money or instruments
12 (other than instruments which constitute part of chattel
13 paper) can be perfected only by the secured party's taking
14 possession, except as provided in subsections (4) and (5) of
15 this section and subsections (2) and (3) of s. 679.306 on
16 proceeds.

17 Section 9. Section 679.305, Florida Statutes, 1998
18 Supplement, is amended to read:

19 679.305 When possession by secured party perfects
20 security interest without filing.--~~A security interest in~~
21 ~~letters of credit and advices of credit (s. 675.116(2)(a)),~~
22 goods, instruments, money, negotiable documents, or chattel
23 paper may be perfected by the secured party's taking
24 possession of the collateral. A security interest in the right
25 to proceeds of a written letter of credit may be perfected by
26 the secured party's taking possession of the letter of credit.
27 If such collateral other than goods covered by a negotiable
28 document is held by a bailee, the secured party is deemed to
29 have possession from the time the bailee receives notification
30 of the secured party's interest. A security interest is
31 perfected by possession from the time possession is taken

1 without relation back and continues only so long as possession
2 is retained, unless otherwise specified in this chapter. The
3 security interest may be otherwise perfected as provided in
4 this chapter before or after the period of possession by the
5 secured party.

6 Section 10. This act applies to any letter of credit
7 that is issued on or after July 1, 1999. This act does not
8 apply to any transaction, event, obligation, or duty arising
9 out of or associated with a letter of credit issued before
10 July 1, 1999, including any amendment to the letter of credit
11 that was made after such date, unless the amendment provides
12 otherwise.

13 Section 11. A transaction arising out of or associated
14 with a letter of credit issued before July 1, 1999, and the
15 rights, obligations, and interests created by that transaction
16 are governed by any law amended or repealed by this act to the
17 same extent as if such amendment or repeal had not occurred
18 and such transaction may be terminated, completed,
19 consummated, or enforced under such law prior to its amendment
20 or repeal.

21 Section 12. This act shall take effect July 1, 1999.

22
23 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
24 COMMITTEE SUBSTITUTE FOR
25 Senate Bill 740

26 The committee substitute revises Article 5 (Letters of Credit)
27 of the Uniform Commercial Code by proposing a substantial
28 rewording of the existing sections in ch. 675, F.S., that
29 comprise Article 5 rather than repealing those sections and
30 creating new sections.
31