

1 A bill to be entitled

2 An act relating to the Uniform Commercial Code; amending
3 s. 671.101, F.S.; providing scope of chapter and a short
4 title; amending s. 671.102, F.S.; authorizing certain
5 timeframes to be fixed by agreement; amending s. 671.106,
6 F.S.; making editorial changes; amending s. 671.107, F.S.;
7 providing for the discharge of a claim or right under
8 certain circumstances; amending s. 671.201, F.S.;
9 providing, revising, and deleting definitions; amending
10 ss. 671.202 and 671.203, F.S.; making editorial changes;
11 amending s. 671.204, F.S.; revising criteria determining
12 when an action is taken within a reasonable time and
13 seasonably; amending s. 671.205, F.S.; defining "course of
14 performance"; revising the definition of "course of
15 dealing"; providing that course of performance and course
16 of dealing may be used for certain purposes; revising uses
17 for express terms of an agreement; specifying when course
18 of performance, course of dealing, or usage of trade
19 prevails; providing that course of performance is relevant
20 to show a waiver or modification in certain circumstances;
21 repealing s. 671.206, F.S., relating to statute of frauds
22 for kinds of personal property not otherwise covered;
23 amending s. 671.208, F.S.; making editorial changes;
24 creating s. 671.209, F.S.; providing definitions;
25 specifying when notice, knowledge, or notification becomes
26 effective with the exercise of due diligence; creating s.
27 671.21, F.S.; providing that whenever the code creates
28 certain presumptions, the trier of fact must find the

29 existence of the fact presumed unless evidence is
 30 introduced which supports a finding of its nonexistence;
 31 creating s. 671.211, F.S.; providing in what instances a
 32 person gives value for rights; creating s. 671.212, F.S.;
 33 providing that the code modifies, limits, and supersedes
 34 certain provisions of the federal Electronic Signatures in
 35 Global and National Commerce Act; creating s. 671.213,
 36 F.S.; authorizing the subordination of certain
 37 obligations; amending ss. 559.9232, 563.022, 668.50,
 38 670.106, 670.204, 675.102, 680.518, 680.519, 680.527, and
 39 680.528, F.S.; conforming cross-references; amending s.
 40 713.901, F.S.; specifying fees under the Florida Uniform
 41 Federal Lien Registration Act previously provided through
 42 cross-reference; reducing a fee and deleting a cross-
 43 reference to conform to changes made by the act; providing
 44 an effective date.

45

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

47

48 Section 1. Section 671.101, Florida Statutes, is amended
 49 to read:

50 671.101 Short title; scope of chapter.--

51 (1) Chapters 670-680 may be cited as the "Uniform
 52 Commercial Code."

53 (2) This chapter applies to a transaction to the extent
 54 that it is governed by another chapter of this code and may be
 55 cited as the "Uniform Commercial Code--General Provisions."

56 Section 2. Section 671.102, Florida Statutes, is amended

57 to read:

58 671.102 Purposes; rules of construction; variation by
59 agreement.--

60 (1) This code shall be liberally construed and applied to
61 promote its underlying purposes and policies, which-

62 ~~(2) Underlying purposes and policies of this code are:~~

63 (a) To simplify, clarify, and modernize the law governing
64 commercial transactions.

65 (b) To permit the continued expansion of commercial
66 practices through custom, usage, and agreement of the parties.

67 (c) To make uniform the law among the various
68 jurisdictions.

69 (2) (a) ~~(3)~~ Except as otherwise provided in this code, the
70 effect of provisions of this code may be varied by agreement.
71 ~~except as otherwise provided in this code and except that~~

72 (b) The obligations of good faith, diligence,
73 reasonableness, and care prescribed by this code may not be
74 disclaimed by agreement, but the parties may by agreement
75 determine the standards by which the performance of such
76 obligations is to be measured if such standards are not
77 manifestly unreasonable. Whenever this code requires an action
78 to be taken within a reasonable time, a time that is not
79 manifestly unreasonable may be fixed by agreement.

80 (c) ~~(4)~~ The presence in certain provisions of this code of
81 the words "unless otherwise agreed" or words of similar import
82 does not imply that the effect of other provisions may not be
83 varied by agreement under this subsection ~~(3)~~.

84 (3) ~~(5)~~ In this code, unless the context otherwise

85 requires:

86 (a) Words in the singular ~~number~~ include the plural, and
 87 words in the plural include the singular.⁷

88 (b) ~~Gender-specific language includes the other gender and~~
 89 ~~neuter, and when the sense so indicates~~ Words of either the
 90 ~~neuter~~ gender also may refer to the other any gender.

91 Section 3. Subsection (1) of section 671.106, Florida
 92 Statutes, is amended to read:

93 671.106 Remedies to be liberally administered.--

94 (1) The remedies provided by this code must ~~shall~~ be
 95 liberally administered to the end that the aggrieved party may
 96 be put in as good a position as if the other party had fully
 97 performed, but neither consequential or special nor penal
 98 damages may be had except as specifically provided in this code
 99 or by other rule of law.

100 Section 4. Section 671.107, Florida Statutes, is amended
 101 to read:

102 671.107 Waiver or renunciation of claim or right after
 103 breach.--A Any claim or right arising out of an alleged breach
 104 can be discharged in whole or in part without consideration by
 105 agreement of ~~a written waiver or renunciation signed and~~
 106 ~~delivered by~~ the aggrieved party in an authenticated record.

107 Section 5. Section 671.201, Florida Statutes, is amended
 108 to read:

109 671.201 General definitions.--Unless the context otherwise
 110 requires, words or phrases defined in this section, or in the
 111 additional definitions contained in other chapters of this code
 112 which apply to particular chapters or parts thereof, have the

113 meanings stated. Subject to ~~additional~~ definitions contained in
 114 other the subsequent chapters of this code which apply are
 115 applicable to particular specific chapters or parts thereof, the
 116 term and unless the context otherwise requires, in this code:

117 (1) "Action," in the sense of a judicial proceeding,
 118 includes recoupment, counterclaim, setoff, suit in equity, and
 119 any other proceedings in which rights are determined.

120 (2) "Aggrieved party" means a party entitled to pursue
 121 ~~resort to~~ a remedy.

122 (3) "Agreement," as distinguished from "contract," means
 123 the bargain of the parties in fact, as found in their language
 124 or inferred by implication from other circumstances, including
 125 course of dealing, or usage of trade, or course of performance
 126 as provided in ~~this code~~ (ss. 671.205 and 672.208). ~~Whether an~~
 127 ~~agreement has legal consequences is determined by the provisions~~
 128 ~~of this code, if applicable; otherwise by the law of contracts~~
 129 ~~(s. 671.103). (Compare "contract.")~~

130 (4) "Bank" means a any person engaged in the business of
 131 banking and includes a savings bank, a savings and loan
 132 association, a credit union, and a trust company.

133 (5) "Bearer" means a the person in possession of a
 134 negotiable an instrument, document of title, or certificated
 135 security that is payable to bearer or indorsed in blank.

136 (6) "Bill of lading" means a document evidencing the
 137 receipt of goods for shipment issued by a person engaged in the
 138 business of transporting or forwarding goods, ~~and includes an~~
 139 ~~airbill. "Airbill" means a document serving for air~~
 140 ~~transportation as a bill of lading does for marine or rail~~

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141 ~~transportation, and includes an air consignment note or air~~
142 ~~waybill.~~

143 (7) "Branch" includes a separately incorporated foreign
144 branch of a bank.

145 (8) "Burden of establishing" a fact means the burden of
146 persuading the triers of fact that the existence of the fact is
147 more probable than its nonexistence.

148 (9) "Buyer in ordinary course of business" means a person
149 who, in ordinary course, buys goods in good faith, without
150 knowledge that the sale violates the rights of another person in
151 the goods, ~~and in the ordinary course~~ from a person, other than
152 a pawnbroker, in the business of selling goods of that kind. A
153 person buys goods in ~~the~~ ordinary course if the sale to the
154 person comports with the usual or customary practices in the
155 kind of business in which the seller is engaged or with the
156 seller's own usual or customary practices. A person who sells
157 oil, gas, or other minerals at the wellhead or minehead is a
158 person in the business of selling goods of that kind. A buyer in
159 ~~the~~ ordinary course of business may buy for cash, by exchange of
160 other property, or on secured or unsecured credit and may
161 acquire goods or documents of title under a preexisting contract
162 for sale. Only a buyer who takes possession of the goods or has
163 a right to recover the goods from the seller under chapter 672
164 may be a buyer in ~~the~~ ordinary course of business. "Buyer in
165 ordinary course of business" does not include a person who
166 acquires goods in a transfer in bulk or as security for or in
167 total or partial satisfaction of a money debt ~~is not a buyer in~~
168 ~~the ordinary course of business.~~

169 (10) ~~A term or clause is~~ "Conspicuous," with reference to
 170 a term, means ~~when it is~~ so written, displayed, or presented
 171 that a reasonable person against whom it is to operate ought to
 172 have noticed it. Whether a term is "conspicuous" is a decision
 173 for the court. Conspicuous terms include the following:

174 (a) A printed heading in capitals in a size equal to or
 175 larger than that of the surrounding text or in a ~~(as+~~
 176 ~~NONNEGOTIABLE BILL OF LADING)~~ is conspicuous. Language in the
 177 body of a form is conspicuous if it is in larger or other
 178 entrasting type, font, or color in contrast to the surrounding
 179 text of the same or lesser size.

180 (b) Language in the body of a record or display in type
 181 larger than that of the surrounding text; in a type, font, or
 182 color in contrast to the surrounding text of the same size; or
 183 set off from surrounding text of the same size by symbols or
 184 other marks that call attention to the language. But in a
 185 ~~telegram any stated term is conspicuous. Whether a term or~~
 186 ~~clause is conspicuous or not is for decision by the court.~~

187 (11) "Consumer" means an individual who enters into a
 188 transaction primarily for personal, family, or household
 189 purposes.

190 (12) ~~(11)~~ "Contract," as distinguished from "agreement,"
 191 means the total legal obligation that which results from the
 192 parties' agreement as determined affected by this code and as
 193 supplemented by any other applicable laws ~~rules of law. (Compare~~
 194 ~~"agreement.")~~

195 (13) ~~(12)~~ "Creditor" includes a general creditor, a secured
 196 creditor, a lien creditor, and any representative of creditors,

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197 including an assignee for the benefit of creditors, a trustee in
 198 bankruptcy, a receiver in equity, and an executor or
 199 administrator of an insolvent debtor's or assignor's estate.

200 (14)~~(13)~~ "Defendant" includes a person in the position of
 201 defendant in a ~~cross-action or~~ counterclaim, cross-claim, or
 202 third-party claim.

203 (15)~~(14)~~ "Delivery," with respect to an instrument
 204 ~~instruments, document documents~~ of title, or chattel paper, ~~or~~
 205 ~~eertificated securities~~ means voluntary transfer of possession.

206 (16)~~(15)~~ "Document of title" includes bill of lading, dock
 207 warrant, dock receipt, warehouse receipt or order for the
 208 delivery of goods, and ~~also~~ any other document that ~~which~~ in the
 209 regular course of business or financing is treated as adequately
 210 evidencing that the person in possession of it is entitled to
 211 receive, hold, and dispose of the document and the goods it
 212 covers. To be a document of title, a document must purport to be
 213 issued by or addressed to a bailee and purport to cover goods in
 214 the bailee's possession which are either identified or are
 215 fungible portions of an identified mass.

216 (17)~~(16)~~ "Fault" means a default, breach, or wrongful act
 217 or ~~omission or breach.~~

218 (18)~~(17)~~ "Fungible goods" ~~with respect to goods or~~
 219 ~~securities~~ means:

220 (a) Goods ~~or securities~~ of which any unit ~~is~~, by nature or
 221 usage of trade, is the equivalent of any other like unit; ~~or~~

222 (b) Goods ~~which are not fungible shall be deemed fungible~~
 223 ~~for the purposes of this code to the extent that, by under a~~
 224 ~~particular agreement, or document unlike units~~ are treated as

225 equivalents.

226 ~~(19)~~~~(18)~~ "Genuine" means free of forgery or
 227 counterfeiting.

228 ~~(20)~~~~(19)~~ "Good faith," except as otherwise provided in
 229 this code, means honesty in fact and in the observance of
 230 reasonable commercial standards of fair dealing conduct or
 231 transaction concerned.

232 ~~(21)~~~~(20)~~ "Holder," ~~with respect to a negotiable~~
 233 ~~instrument,~~ means:

234 (a) The person in possession of a negotiable ~~if the~~
 235 ~~instrument that is payable either to bearer or, in the case of~~
 236 ~~an instrument payable to an identified person that is, if the~~
 237 ~~identified person is in possession; or. "Holder," with respect~~
 238 ~~to a document of title, means~~

239 (b) The person in possession of a document of title if the
 240 goods are deliverable either to bearer or to the order of the
 241 person in possession.

242 ~~(21) To "honor" is to pay or to accept and pay, or where a~~
 243 ~~credit so engages to purchase or discount a draft complying with~~
 244 ~~the terms of the credit.~~

245 (22) "Insolvency proceeding ~~proceedings~~" includes an any
 246 assignment for the benefit of creditors or other proceeding
 247 ~~proceedings~~ intended to liquidate or rehabilitate the estate of
 248 the person involved.

249 (23) ~~A person is~~ "Insolvent" means:

250 (a) Having ~~who either has~~ ceased to pay his or her debts
 251 in the ordinary course of business other than as a result of a
 252 bona fide dispute;

253 (b) Being unable to ~~or cannot~~ pay his or her debts as they
 254 become due; or

255 (c) Being ~~is~~ insolvent within the meaning of the Federal
 256 Bankruptcy Law.

257 (24) "Money" means a medium of exchange currently
 258 authorized or adopted by a domestic or foreign government. The
 259 term ~~and~~ includes a monetary unit of account established by an
 260 intergovernmental organization or by agreement between two or
 261 more countries ~~nations~~.

262 ~~(25) A person has "notice" of a fact when~~

263 ~~(a) He or she has actual knowledge of it; or~~

264 ~~(b) He or she has received a notice or notification of it;~~
 265 ~~or~~

266 ~~(c) From all the facts and circumstances known to the~~
 267 ~~person at the time in question he or she has reason to know that~~
 268 ~~it exists.~~

269
 270 ~~A person "knows" or has "knowledge" of a fact when he or she has~~
 271 ~~actual knowledge of it. "Discover" or "learn" or a word or~~
 272 ~~phrase of similar import refers to knowledge rather than to~~
 273 ~~reason to know. The time and circumstances under which a notice~~
 274 ~~or notification may cease to be effective are not determined by~~
 275 ~~this code.~~

276 ~~(26) A person "notifies" or "gives" a notice or~~
 277 ~~notification to another by taking such steps as may be~~
 278 ~~reasonably required to inform the other in ordinary course~~
 279 ~~whether or not such other actually comes to know of it. A person~~
 280 ~~"receives" a notice or notification when~~

281 ~~(a) It comes to his or her attention; or~~
 282 ~~(b) It is duly delivered at the place of business through~~
 283 ~~which the contract was made or at any other place held out by~~
 284 ~~the person as the place for receipt of such communications.~~
 285 ~~(27) Notice, knowledge or a notice or notification~~
 286 ~~received by an organization is effective for a particular~~
 287 ~~transaction from the time when it is brought to the attention of~~
 288 ~~the individual conducting that transaction, and in any event~~
 289 ~~from the time when it would have been brought to his or her~~
 290 ~~attention if the organization had exercised due diligence. An~~
 291 ~~organization exercises due diligence if it maintains reasonable~~
 292 ~~routines for communicating significant information to the person~~
 293 ~~conducting the transaction and there is reasonable compliance~~
 294 ~~with the routines. Due diligence does not require an individual~~
 295 ~~acting for the organization to communicate information unless~~
 296 ~~such communication is part of his or her regular duties or~~
 297 ~~unless the individual has reason to know of the transaction and~~
 298 ~~that the transaction would be materially affected by the~~
 299 ~~information.~~
 300 ~~(25)(28)~~ "Organization" means a person other than an
 301 individual ~~includes a corporation, government or governmental~~
 302 ~~subdivision or agency, business trust, estate, trust,~~
 303 ~~partnership or association, two or more persons having a joint~~
 304 ~~or common interest, or any other legal or commercial entity.~~
 305 ~~(26)(29)~~ "Party," as distinguished ~~distinct~~ from "third
 306 party," means a person who has engaged in a transaction or made
 307 an agreement subject to ~~within~~ this code.
 308 ~~(27)(30)~~ "Person" means ~~includes~~ an individual;

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

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309 corporation; business trust; estate; trust; partnership; limited
310 liability company; association; joint venture; government;
311 governmental subdivision, agency, or instrumentality; public
312 corporation; or any other legal or commercial entity ~~or an~~
313 ~~organization (see s. 671.102).~~

314 (28) "Present value" means the amount as of a date certain
315 of one or more sums payable in the future, discounted to the
316 date certain by use of either an interest rate specified by the
317 parties if that rate is not manifestly unreasonable at the time
318 the transaction is entered into or, if an interest rate is not
319 so specified, a commercially reasonable rate that takes into
320 account the facts and circumstances at the time the transaction
321 is entered into.

322 ~~(31) "Presumption" or "presumed" means that the trier of~~
323 ~~fact must find the existence of the fact presumed unless and~~
324 ~~until evidence is introduced which would support a finding of~~
325 ~~its nonexistence.~~

326 (29)~~(32)~~ "Purchase" means ~~includes~~ taking by sale, lease,
327 discount, negotiation, mortgage, pledge, lien, security
328 interest, issue or reissue, gift, or any other voluntary
329 transaction creating an interest in property.

330 (30)~~(33)~~ "Purchaser" means a person who takes by purchase.

331 (31) "Record" means information that is inscribed on a
332 tangible medium or that is stored in an electronic or other
333 medium and is retrievable in perceivable form.

334 (32)~~(34)~~ "Remedy" means any remedial right to which an
335 aggrieved party is entitled with or without resort to a
336 tribunal.

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337 ~~(33)-(35)~~ "Representative" means a person empowered to act
338 for another, including includes an agent, an officer of a
339 corporation or association, and a trustee, executor, or
340 administrator of an estate, ~~or any other person empowered to act~~
341 ~~for another.~~

342 ~~(34)-(36)~~ "Right Rights" includes "remedy remedies."

343 ~~(35)-(37)~~ "Security interest" means an interest in personal
344 property or fixtures which secures payment or performance of an
345 obligation. "Security interest" ~~The term also~~ includes any
346 interest of a consignor and a buyer of accounts, chattel paper,
347 a payment intangible, or a promissory note in a transaction that
348 ~~which~~ is subject to chapter 679. "Security interest" does not
349 include the special property interest of a buyer of goods on
350 identification of those goods to a contract for sale under s.
351 ~~672.401 is not a security interest~~, but a buyer may also acquire
352 a security interest by complying with chapter 679. Except as
353 otherwise provided in s. 672.505, the right of a seller or
354 lessor of goods under chapter 672 or chapter 680 to retain or
355 acquire possession of the goods is not a security interest, but
356 a seller or lessor may also acquire a security interest by
357 complying with chapter 679. The retention or reservation of
358 title by a seller of goods, notwithstanding shipment or delivery
359 to the buyer under ~~(s. 672.401)~~, is limited in effect to a
360 reservation of a security interest. Whether a transaction in the
361 form of a lease creates a ~~lease or~~ security interest is
362 determined by the facts of each case; however:

363 (a) A transaction in the form of a lease creates a
364 security interest if the consideration that the lessee is to pay

365 the lessor for the right to possession and use of the goods is
 366 an obligation for the term of the lease not subject to
 367 termination by the lessee, and:

368 1. The original term of the lease is equal to or greater
 369 than the remaining economic life of the goods;

370 2. The lessee is bound to renew the lease for the
 371 remaining economic life of the goods or is bound to become the
 372 owner of the goods;

373 3. The lessee has an option to renew the lease for the
 374 remaining economic life of the goods for no additional
 375 consideration or nominal additional consideration upon
 376 compliance with the lease agreement; or

377 4. The lessee has an option to become the owner of the
 378 goods for no additional consideration or nominal additional
 379 consideration upon compliance with the lease agreement.

380 (b) A transaction does not create a security interest
 381 merely because ~~it provides that:~~

382 1. The present value of the consideration the lessee is
 383 obligated to pay the lessor for the right to possession and use
 384 of the goods is substantially equal to or is greater than the
 385 fair market value of the goods at the time the lease is entered
 386 into;

387 2. The lessee assumes the risk of loss of the goods ~~or~~
 388 ~~agrees to pay taxes; insurance; filing, recording, or~~
 389 ~~registration fees; or service or maintenance costs with respect~~
 390 ~~to the goods;~~

391 3. The lessee agrees to pay, with respect to the goods,
 392 taxes; insurance; filing, recording, or registration fees; or

393 service or maintenance costs;

394 ~~4.3-~~ The lessee has an option to renew the lease or to
395 become the owner of the goods;

396 ~~5.4-~~ The lessee has an option to renew the lease for a
397 fixed rent that is equal to or greater than the reasonably
398 predictable fair market rent for the use of the goods for the
399 term of the renewal at the time the option is to be performed;
400 or

401 ~~6.5-~~ The lessee has an option to become the owner of the
402 goods for a fixed price that is equal to or greater than the
403 reasonably predictable fair market value of the goods at the
404 time the option is to be performed.

405 (c) ~~For purposes of this subsection:~~

406 ~~1-~~ Additional consideration is ~~not~~ nominal if it is less
407 than the lessee's reasonably predictable cost of performing
408 under the lease agreement if the option is not exercised.

409 Additional consideration is not nominal if:

410 1. When the option to renew the lease is granted to the
411 lessee, the rent is stated to be the fair market rent for the
412 use of the goods for the term of the renewal determined at the
413 time the option is to be performed; or if,

414 2. When the option to become the owner of the goods is
415 granted to the lessee, the price is stated to be the fair market
416 value of the goods determined at the time the option is to be
417 performed. ~~Additional consideration is nominal if it is less~~
418 ~~than the lessee's reasonably predictable cost of performing~~
419 ~~under the lease agreement if the option is not exercised.~~

420 (d) ~~2-~~ The "Reasonably predictable" and "remaining economic

421 life of the goods" and "reasonably predictable" fair market
 422 rent, fair market value, or cost of performing under the lease
 423 agreement must ~~are to~~ be determined with reference to the facts
 424 and circumstances at the time the transaction is entered into.

425 ~~3. "Present value" means the amount as of a date certain~~
 426 ~~of one or more sums payable in the future, discounted to the~~
 427 ~~date certain. The discount is determined by the interest rate~~
 428 ~~specified by the parties if the rate is not manifestly~~
 429 ~~unreasonable at the time the transaction is entered into;~~
 430 ~~otherwise, the discount is determined by a commercially~~
 431 ~~reasonable rate that takes into account the facts and~~
 432 ~~circumstances of each case at the time the transaction was~~
 433 ~~entered into.~~

434 ~~(36)-(38)~~ "Send," in connection with a any writing, record,
 435 or notice, means:

436 (a) To deposit in the mail or deliver for transmission by
 437 any other usual means of communication with postage or cost of
 438 transmission provided for and properly addressed and, in the
 439 case of an instrument, to an address specified thereon or
 440 otherwise agreed, or, if there be none, to any address
 441 reasonable under the circumstances; or-

442 (b) In any other way to cause to be received ~~The receipt~~
 443 ~~of any record writing~~ or notice within the time at which it
 444 would have arrived if properly sent ~~has the effect of a proper~~
 445 ~~sending.~~

446 ~~(37)-(39)~~ "Signed" means bearing ~~includes~~ any symbol
 447 executed or adopted by a party with present intention to adopt
 448 or accept ~~authenticate~~ a writing.

449 (38) "State" means a state of the United States, the
 450 District of Columbia, Puerto Rico, the United States Virgin
 451 Islands, or any territory or insular possession subject to the
 452 jurisdiction of the United States.

453 ~~(39)(40)~~ "Surety" includes a guarantor or other secondary
 454 obligor.

455 ~~(41)~~ "Telegram" ~~includes a message transmitted by radio,~~
 456 ~~teletype, cable, any mechanical method of transmission, or the~~
 457 ~~like.~~

458 ~~(40)(42)~~ "Term" means a ~~that~~ portion of an agreement which
 459 relates to a particular matter.

460 ~~(41)(43)~~ "Unauthorized" signature" means a signature one
 461 made without actual, implied, or apparent authority. The term
 462 and includes a forgery.

463 ~~(44)~~ "Value." ~~Except as otherwise provided with respect to~~
 464 ~~negotiable instruments and bank collections (ss. 673.3031,~~
 465 ~~674.2101, and 674.2111), a person gives value for rights if he~~
 466 ~~or she acquires them:~~

467 ~~(a) In return for a binding commitment to extend credit or~~
 468 ~~for the extension of immediately available credit whether or not~~
 469 ~~drawn upon and whether or not a charge back is provided for in~~
 470 ~~the event of difficulties in collection;~~

471 ~~(b) As security for or in total or partial satisfaction of~~
 472 ~~a preexisting claim;~~

473 ~~(c) By accepting delivery pursuant to a preexisting~~
 474 ~~contract for purchase; or~~

475 ~~(d) Generally, in return for any consideration sufficient~~
 476 ~~to support a simple contract.~~

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477 ~~(42)-(45)~~ "Warehouse receipt" means a ~~written receipt or an~~
 478 ~~electronic notification of receipt~~ issued by a person engaged in
 479 the business of storing goods for hire.

480 ~~(43)-(46)~~ "Written" ~~or~~ "Writing" includes printing,
 481 typewriting, or any other intentional reduction to tangible
 482 form. "Written" has a corresponding meaning.

483 Section 6. Section 671.202, Florida Statutes, is amended
 484 to read:

485 671.202 Prima facie evidence by third-party documents.--A
 486 document in due form purporting to be a bill of lading, policy
 487 or certificate of insurance, official weigher's or inspector's
 488 certificate, consular invoice, or any other document authorized
 489 or required by the contract to be issued by a third party is
 490 ~~shall be~~ prima facie evidence of its own authenticity and
 491 genuineness and of the facts stated in the document by the third
 492 party.

493 Section 7. Section 671.203, Florida Statutes, is amended
 494 to read:

495 671.203 Obligation of good faith.--Every contract or duty
 496 within this code imposes an obligation of good faith in its
 497 performance and ~~or~~ enforcement.

498 Section 8. Section 671.204, Florida Statutes, is amended
 499 to read:

500 671.204 Actions taken within Time; reasonable time;
 501 "seasonably."--

502 (1) Whether a time for taking an action required by
 503 ~~Whenever this code is requires any action to be taken within a~~
 504 ~~reasonable time, any time which is not manifestly unreasonable~~

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505 ~~may be fixed by agreement.~~

506 ~~(2) What is a reasonable time for taking any action~~
507 depends on the nature, purpose, and circumstances of the ~~such~~
508 action.

509 ~~(2)-(3)~~ An action is taken "seasonably" if ~~when~~ it is taken
510 at or within the time agreed or, if no time is agreed, at or
511 within a reasonable time.

512 Section 9. Section 671.205, Florida Statutes, is amended
513 to read:

514 671.205 Course of performance; course of dealing; and
515 usage of trade.--

516 (1) A "course of performance" is a sequence of conduct
517 between the parties to a particular transaction that exists if:

518 (a) The agreement of the parties with respect to the
519 transaction involves repeated occasions for performance by a
520 party; and

521 (b) The other party, with knowledge of the nature of the
522 performance and opportunity for objection to it, accepts the
523 performance or acquiesces in it without objection.

524 ~~(2)-(1)~~ A "course of dealing" is a sequence of ~~previous~~
525 conduct concerning previous transactions between the parties to
526 a particular transaction which is fairly to be regarded as
527 establishing a common basis of understanding for interpreting
528 their expressions and other conduct.

529 ~~(3)-(2)~~ A "usage of trade" is any practice or method of
530 dealing having such regularity of observance in a place,
531 vocation, or trade as to justify an expectation that it will be
532 observed with respect to the transaction in question. The

533 existence and scope of such a usage are to be proved as facts.
 534 If it is established that such a usage is embodied in a written
 535 trade code or similar record, ~~writing~~ the interpretation of the
 536 record ~~writing~~ is a question of law ~~for the court~~.

537 ~~(4)-(3)~~ A course of performance or a course of dealing
 538 between the parties or ~~and any~~ usage of trade in the vocation or
 539 trade in which they are engaged or of which they are or should
 540 be aware is relevant in ascertaining the ~~give particular~~ meaning
 541 of the parties' to and supplement or qualify terms of an
 542 agreement, may give particular meaning to specific terms of the
 543 agreement, and may supplement or qualify the terms of the
 544 agreement. A usage of trade applicable in the place in which
 545 part of the performance under the agreement is to occur may be
 546 so utilized as to that part of the performance.

547 ~~(5)-(4)~~ Except as otherwise provided in subsection (6), the
 548 express terms of an agreement and any an applicable course of
 549 performance, course of dealing, or usage of trade must shall be
 550 construed whenever ~~wherever~~ reasonable as consistent with each
 551 other. If, but when such a construction is unreasonable:

552 (a) Express terms prevail over ~~control both~~ course of
 553 performance, course of dealing, and usage of trade;

554 (b) Course of performance prevails over course of dealing
 555 and usage of trade; and

556 (c) Course of dealing prevails over ~~controls~~ usage of
 557 trade.

558 (6) A course of performance is relevant to show a waiver
 559 or modification of any term inconsistent with the course of
 560 performance.

561 ~~(5) An applicable usage of trade in the place where any~~
 562 ~~part of performance is to occur shall be used in interpreting~~
 563 ~~the agreement as to that part of the performance.~~

564 (7)~~(6)~~ Evidence of a relevant usage of trade offered by
 565 one party is not admissible unless that party ~~and until he or~~
 566 ~~she~~ has given the other party ~~such~~ notice that ~~as~~ the court
 567 finds sufficient to prevent unfair surprise to the other party
 568 ~~latter.~~

569 Section 10. Section 671.206, Florida Statutes, is
 570 repealed.

571 Section 11. Section 671.208, Florida Statutes, is amended
 572 to read:

573 671.208 Option to accelerate at will.--A term providing
 574 that one party or the party's successor in interest may
 575 accelerate payment or performance or require collateral or
 576 additional collateral "at will" or "when she or he deems herself
 577 or himself insecure" or in words of similar import must ~~shall~~ be
 578 construed to mean that she or he has ~~shall have~~ power to do so
 579 only if she or he in good faith believes that the prospect of
 580 payment or performance is impaired. The burden of establishing
 581 lack of good faith is on the party against whom the power has
 582 been exercised.

583 Section 12. Section 671.209, Florida Statutes, is created
 584 to read:

585 671.209 Notice; knowledge.--

586 (1) Subject to subsection (6), a person has "notice" of a
 587 fact if the person:

588 (a) Has actual knowledge of it;

- 589 (b) Has received a notice or notification of it; or
590 (c) From all the facts and circumstances known to the
591 person at the time in question, has reason to know that it
592 exists.
- 593 (2) "Knowledge" means actual knowledge. "Knows" has a
594 corresponding meaning.
- 595 (3) "Discover," "learn," or words of similar import refer
596 to knowledge rather than to reason to know.
- 597 (4) A person "notifies" or "gives a notice or notification
598 to" another person by taking such steps as may be reasonably
599 required to inform the other person in ordinary course,
600 regardless of whether the other person actually comes to know of
601 it.
- 602 (5) Subject to subsection (6), a person "receives" a
603 notice or notification when:
- 604 (a) It comes to that person's attention; or
605 (b) It is duly delivered in a form reasonable under the
606 circumstances at the place of business through which the
607 contract was made or at another location held out by that person
608 as the place for receipt of such communications.
- 609 (6) Notice, knowledge, or a notice or notification
610 received by an organization is effective for a particular
611 transaction from the time it is brought to the attention of the
612 person conducting that transaction and, in any event, from the
613 time it would have been brought to the person's attention if the
614 organization had exercised due diligence. An organization
615 exercises due diligence if it maintains reasonable routines for
616 communicating significant information to the person conducting

617 the transaction and there is reasonable compliance with the
618 routines. Due diligence does not require an individual acting
619 for the organization to communicate information unless the
620 communication is part of the individual's regular duties or the
621 individual has reason to know of the transaction and that the
622 transaction would be materially affected by the information.

623 Section 13. Section 671.21, Florida Statutes, is created
624 to read:

625 671.21 Presumptions.--Whenever this code creates a
626 "presumption" with respect to a fact or provides that a fact is
627 "presumed," the trier of fact must find the existence of the
628 fact presumed unless evidence is introduced which supports a
629 finding of its nonexistence.

630 Section 14. Section 671.211, Florida Statutes, is created
631 to read:

632 671.211 Value.--Except as otherwise provided with respect
633 to negotiable instruments and bank collections as provided in
634 ss. 673.3031, 674.2101, and 674.2111, a person gives value for
635 rights if the person acquires them:

636 (1) In return for a binding commitment to extend credit or
637 for the extension of immediately available credit whether or not
638 drawn upon and whether or not a charge-back is provided for in
639 the event of difficulties in collection;

640 (2) As security for, or in total or partial satisfaction
641 of, a preexisting claim;

642 (3) By accepting delivery under a preexisting contract for
643 purchase; or

644 (4) In return for any consideration sufficient to support

645 a simple contract.

646 Section 15. Section 671.212, Florida Statutes, is created
647 to read:

648 671.212 Relation to Electronic Signatures in Global and
649 National Commerce Act.--This code modifies, limits, and
650 supersedes the federal Electronic Signatures in Global and
651 National Commerce Act, 15 U.S.C. ss. 7001 et seq., except that
652 nothing in this code modifies, limits, or supersedes s. 7001(c)
653 of that act or authorizes electronic delivery of any of the
654 notices described in s. 7003(b) of that act.

655 Section 16. Section 671.213, Florida Statutes, is created
656 to read:

657 671.213 Subordinated obligations.--An obligation may be
658 issued as subordinated to performance of another obligation of
659 the person obligated, or a creditor may subordinate its right to
660 performance of an obligation by agreement with either the person
661 obligated or another creditor of the person obligated.
662 Subordination does not create a security interest as against
663 either the common debtor or a subordinated creditor.

664 Section 17. Subsection (2) of section 559.9232, Florida
665 Statutes, is amended to read:

666 559.9232 Definitions; exclusion of rental-purchase
667 agreements from certain regulations.--

668 (2) A rental-purchase agreement that complies with this
669 act shall not be construed to be, nor be governed by, any of the
670 following:

671 (a) A lease or agreement that ~~which~~ constitutes a credit
672 sale as defined in 12 C.F.R. s. 226.2(a)(16) and s. 1602(g) of

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673 the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq.;

674 (b) A lease that ~~which~~ constitutes a "consumer lease" as
 675 defined in 12 C.F.R. s. 213.2(a)(6);

676 (c) Any lease for agricultural, business, or commercial
 677 purposes;

678 (d) Any lease made to an organization;

679 (e) A lease or agreement that ~~which~~ constitutes a "retail
 680 installment contract" or "retail installment transaction" as
 681 those terms are defined in s. 520.31; or

682 (f) A security interest as defined in s. 671.201(35) ~~s.~~
 683 ~~671.201(37)~~.

684 Section 18. Paragraph (g) of subsection (2) of section
 685 563.022, Florida Statutes, is amended to read:

686 563.022 Relations between beer distributors and
 687 manufacturers.--

688 (2) DEFINITIONS.--In construing this section, unless the
 689 context otherwise requires, the word, phrase, or term:

690 (g) "Good faith" means honesty in fact in the conduct or
 691 transaction concerned as defined and interpreted under s.
 692 671.201(20) ~~s. 671.201(19)~~.

693 Section 19. Paragraph (b) of subsection (3) and paragraph
 694 (d) of subsection (16) of section 668.50, Florida Statutes, are
 695 amended to read:

696 668.50 Uniform Electronic Transaction Act.--

697 (3) SCOPE.--

698 (b) This section does not apply to a transaction to the
 699 extent the transaction is governed by:

700 1. A provision of law governing the creation and execution

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701 of wills, codicils, or testamentary trusts;

702 2. The Uniform Commercial Code other than s. ~~ss.~~ 671.107
 703 ~~and 671.206~~ and chapters 672 and 680;

704 3. The Uniform Computer Information Transactions Act; or

705 4. Rules relating to judicial procedure.

706 (16) TRANSFERABLE RECORDS.--

707 (d) Except as otherwise agreed, a person having control of
 708 a transferable record is the holder, as defined in s.

709 671.201(21) ~~s. 671.201(20)~~, of the transferable record and has
 710 the same rights and defenses as a holder of an equivalent record
 711 or writing under the Uniform Commercial Code, including, if the
 712 applicable statutory requirements under s. 673.3021, s. 677.501,
 713 or s. 679.308 are satisfied, the rights and defenses of a holder
 714 in due course, a holder to which a negotiable document of title
 715 has been duly negotiated, or a purchaser, respectively.

716 Delivery, possession, and indorsement are not required to obtain
 717 or exercise any of the rights under this paragraph.

718 Section 20. Subsection (1) of section 670.106, Florida
 719 Statutes, is amended to read:

720 670.106 Time payment order is received.--

721 (1) The time of receipt of a payment order or
 722 communication canceling or amending a payment order is
 723 determined by the rules applicable to receipt of a notice stated
 724 in s. 671.209 ~~s. 671.201(27)~~. A receiving bank may fix a cut-off
 725 time or times on a funds-transfer business day for the receipt
 726 and processing of payment orders and communications canceling or
 727 amending payment orders. Different cut-off times may apply to
 728 payment orders, cancellations, or amendments or to different

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729 categories of payment orders, cancellations, or amendments. A
730 cut-off time may apply to senders generally, or different cut-
731 off times may apply to different senders or categories of
732 payment orders. If a payment order or communication canceling or
733 amending a payment order is received after the close of a funds-
734 transfer business day or after the appropriate cut-off time on a
735 funds-transfer business day, the receiving bank may treat the
736 payment order or communication as received at the opening of the
737 next funds-transfer business day.

738 Section 21. Subsection (2) of section 670.204, Florida
739 Statutes, is amended to read:

740 670.204 Refund of payment and duty of customer to report
741 with respect to unauthorized payment order.--

742 (2) Reasonable time under subsection (1) may be fixed by
743 agreement ~~as stated in s. 671.204(1)~~, but the obligation of a
744 receiving bank to refund payment as stated in subsection (1) may
745 not otherwise be varied by agreement.

746 Section 22. Subsection (3) of section 675.102, Florida
747 Statutes, is amended to read:

748 675.102 Scope.--

749 (3) With the exception of this subsection, subsections (1)
750 and (4), ss. 675.103(1)(i) and (j), 675.106(4), and 675.114(4),
751 and except to the extent prohibited in ss. 671.102(2) ~~ss.~~
752 ~~671.102(3)~~ and 675.117(4), the effect of this chapter may be
753 varied by agreement or by a provision stated or incorporated by
754 reference in an undertaking. A term in an agreement or
755 undertaking generally excusing liability or generally limiting
756 remedies for failure to perform obligations is not sufficient to

757 vary obligations prescribed by this chapter.

758 Section 23. Subsection (2) of section 680.518, Florida
759 Statutes, is amended to read:

760 680.518 Cover; substitute goods.--

761 (2) Except as otherwise provided with respect to damages
762 liquidated in the lease agreement (s. 680.504) or otherwise
763 determined pursuant to agreement of the parties (ss. 671.102(2)
764 ~~ss. 671.102(3)~~ and 680.503), if a lessee's cover is by lease
765 agreement substantially similar to the original lease agreement
766 and the new lease agreement is made in good faith and in a
767 commercially reasonable manner, the lessee may recover from the
768 lessor as damages:

769 (a) The present value, as of the date of the commencement
770 of the term of the new lease agreement, of the rent under the
771 new lease agreement and applicable to that period of the new
772 lease term which is comparable to the then remaining term of the
773 original lease agreement minus the present value as of the same
774 date of the total rent for the then remaining lease term of the
775 original lease agreement; and

776 (b) Any incidental or consequential damages, less expenses
777 saved in consequence of the lessor's default.

778 Section 24. Subsection (1) of section 680.519, Florida
779 Statutes, is amended to read:

780 680.519 Lessee's damages for nondelivery, repudiation,
781 default, or breach of warranty in regard to accepted goods.--

782 (1) Except as otherwise provided with respect to damages
783 liquidated in the lease agreement (s. 680.504) or otherwise
784 determined pursuant to agreement of the parties (ss. 671.102(2)

785 ~~ss. 671.102(3)~~ and 680.503), if a lessee elects not to cover or
 786 a lessee elects to cover and the cover is by lease agreement,
 787 whether or not the lease agreement qualifies for treatment under
 788 s. 680.518(2), or is by purchase or otherwise, the measure of
 789 damages for nondelivery or repudiation by the lessor or for
 790 rejection or revocation of acceptance by the lessee is the
 791 present value, as of the date of the default, of the then market
 792 rent minus the present value as of the same date of the original
 793 rent, computed for the remaining lease term of the original
 794 lease agreement, together with incidental and consequential
 795 damages, less expenses saved in consequence of the lessor's
 796 default.

797 Section 25. Subsection (2) of section 680.527, Florida
 798 Statutes, is amended to read:

799 680.527 Lessor's rights to dispose of goods.--

800 (2) Except as otherwise provided with respect to damages
 801 liquidated in the lease agreement (s. 680.504) or otherwise
 802 determined pursuant to agreement of the parties (ss. 671.102(2)
 803 ~~ss. 671.102(3)~~ and 680.503), if the disposition is by lease
 804 agreement substantially similar to the original lease agreement
 805 and the new lease agreement is made in good faith and in a
 806 commercially reasonable manner, the lessor may recover from the
 807 lessee as damages:

808 (a) Accrued and unpaid rent as of the date of the
 809 commencement of the term of the new lease agreement;

810 (b) The present value, as of the same date, of the
 811 commencement of the term of the new lease agreement of the total
 812 rent for the then remaining lease term of the original lease

813 agreement minus the present value, as of the same date, of the
 814 rent under the new lease agreement applicable to that period of
 815 the new lease term which is comparable to the then remaining
 816 term of the original lease agreement; and

817 (c) Any incidental damages allowed under s. 680.53, less
 818 expenses saved in consequence of the lessee's default.

819 Section 26. Subsection (1) of section 680.528, Florida
 820 Statutes, is amended to read:

821 680.528 Lessor's damages for nonacceptance or
 822 repudiation.--

823 (1) Except as otherwise provided with respect to damages
 824 liquidated in the lease agreement (s. 680.504) or otherwise
 825 determined pursuant to agreement of the parties (ss. 671.102(2)
 826 ~~ss. 671.102(3)~~ and 580.503), if a lessor elects to retain the
 827 goods or a lessor elects to dispose of the goods and the
 828 disposition is by lease agreement that for any reason does not
 829 qualify for treatment under s. 680.527(2), or is by sale or
 830 otherwise, the lessor may recover from the lessee as damages a
 831 default of the type described in s. 680.523(1) or (3)(a), or if
 832 agreed, for other default of the lessee:

833 (a) Accrued and unpaid rent as of the date of default if
 834 the lessee has never taken possession of the goods, or, if the
 835 lessee has taken possession of the goods, as of the date the
 836 lessor repossesses the goods or an earlier date on which the
 837 lessee makes a tender of the goods to the lessor.

838 (b) The present value as of the date determined under
 839 paragraph (a) of the total rent for the then remaining lease
 840 term of the original lease agreement minus the present value as

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841 of the same date of the market rent at the place where the goods
842 were located on that date computed for the same lease term.

843 (c) Any incidental damages allowed under s. 680.53, less
844 expenses saved in consequence of the lessee's default.

845 Section 27. Subsection (6) of section 713.901, Florida
846 Statutes, is amended to read:

847 713.901 Florida Uniform Federal Lien Registration Act.--

848 (6) FEES.--The charges or fees of the Secretary of State,
849 with respect to a notice or certificate filed under this
850 section, or for searching records with respect thereto, are:

851 (a) For filing any financing statement, \$25 for the first
852 page, which fee shall include the cost of filing a termination
853 statement for the financing statement.

854 (b) For filing a continuation, release, amendment,
855 assignment, or any other writing permitted by chapter 679, \$12
856 for the first page.

857 (c) For indexing by multiple debtors or secured parties,
858 \$3 for each additional debtor or secured party.

859 (d) For each additional facing page attached to a
860 financing statement, continuation, release, amendment,
861 assignment, or any other writing, \$3.

862 (e) For certifying any record, \$10 for the first 10 file
863 numbers certified and \$10 for each subsequent group of 10 file
864 numbers.

865 (f) For use, pursuant to s. 679.525(1)(d), of a
866 nonapproved form, \$3 shall be the same as prescribed in s.
867 15.091.

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869 The charges or fees of the clerks of the circuit court with
870 respect to a notice or certificate filed under this section
871 shall be the same as prescribed in s. 28.24, relating to
872 instruments recorded in the official records.

873 Section 28. This act shall take effect January 1, 2008.