

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.
40 679.525, F.S.; deleting the filing fees for electronically
41 filing a financing statement or an amendment thereto;
42 amending s. 713.901, F.S.; providing charges and fees of
43 the Secretary of State with respect to notices or
44 certificates filed under the Florida Uniform Federal Lien
45 Registration Act; deleting a cross-reference to conform to
46 changes made by the act; repealing s. 15.091, F.S.,
47 relating to processing fees for filings of financial
48 statements and other written documents under the Uniform
49 Commercial Code; providing an effective date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Section 671.101, Florida Statutes, is amended
54 to read:

55 671.101 Short title; scope of chapter.--

56 (1) Chapters 670-680 may be cited as the "Uniform

57 Commercial Code."

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

61 Section 2. Section 671.102, Florida Statutes, is amended
 62 to read:

63 671.102 Purposes; rules of construction; variation by
 64 agreement.--

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

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

68 (a) To simplify, clarify, and modernize the law governing
 69 commercial transactions.†

70 (b) To permit the continued expansion of commercial
 71 practices through custom, usage, and agreement of the parties.†

72 (c) To make uniform the law among the various
 73 jurisdictions.

74 (2) (a) ~~(3)~~ Except as otherwise provided in this code, the
 75 effect of provisions of this code may be varied by agreement.†
 76 ~~except as otherwise provided in this code and except that~~

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

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

89 ~~(3)(5)~~ In this code, unless the context otherwise
 90 requires:

91 (a) Words in the singular ~~number~~ include the plural, and
 92 words in the plural include the singular.~~†~~

93 ~~(b) Gender specific language includes the other gender and~~
 94 ~~neuter, and when the sense so indicates~~ Words of either the
 95 ~~neuter~~ gender also may refer to the other ~~any~~ gender.

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

98 671.106 Remedies to be liberally administered.--

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

105 Section 4. Section 671.107, Florida Statutes, is amended
 106 to read:

107 671.107 Waiver or renunciation of claim or right after
 108 breach.--~~A~~ Any claim or right arising out of an alleged breach
 109 can be discharged in whole or in part without consideration by
 110 agreement of a written waiver or renunciation signed and
 111 ~~delivered by~~ the aggrieved party in an authenticated record.

112 Section 5. Section 671.201, Florida Statutes, is amended

113 to read:

114 671.201 General definitions.--Unless the context otherwise
 115 requires, words or phrases defined in this section, or in the
 116 additional definitions contained in other chapters of this code
 117 which apply to particular chapters or parts thereof, have the
 118 meanings stated. Subject to ~~additional~~ definitions contained in
 119 ~~other the subsequent~~ chapters of this code which apply are
 120 ~~applicable~~ to particular ~~specific~~ chapters or parts thereof, the
 121 term and ~~unless the context otherwise requires, in this code:~~

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

125 (2) "Aggrieved party" means a party entitled to pursue
 126 ~~resort to~~ a remedy.

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

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

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

141 (6) "Bill of lading" means a document evidencing the
 142 receipt of goods for shipment issued by a person engaged in the
 143 business of transporting or forwarding goods, ~~and includes an~~
 144 ~~airbill. "Airbill" means a document serving for air~~
 145 ~~transportation as a bill of lading does for marine or rail~~
 146 ~~transportation, and includes an air consignment note or air~~
 147 ~~waybill.~~

148 (7) "Branch" includes a separately incorporated foreign
 149 branch of a bank.

150 (8) "Burden of establishing" a fact means the burden of
 151 persuading the triers of fact that the existence of the fact is
 152 more probable than its nonexistence.

153 (9) "Buyer in ordinary course of business" means a person
 154 who, in ordinary course, buys goods in good faith, without
 155 knowledge that the sale violates the rights of another person in
 156 the goods, ~~and in the ordinary course~~ from a person, other than
 157 a pawnbroker, in the business of selling goods of that kind. A
 158 person buys goods in ~~the~~ ordinary course if the sale to the
 159 person comports with the usual or customary practices in the
 160 kind of business in which the seller is engaged or with the
 161 seller's own usual or customary practices. A person who sells
 162 oil, gas, or other minerals at the wellhead or minehead is a
 163 person in the business of selling goods of that kind. A buyer in
 164 ~~the~~ ordinary course of business may buy for cash, by exchange of
 165 other property, or on secured or unsecured credit and may
 166 acquire goods or documents of title under a preexisting contract
 167 for sale. Only a buyer who takes possession of the goods or has
 168 a right to recover the goods from the seller under chapter 672

169 may be a buyer in ~~the~~ ordinary course of business. "Buyer in
 170 ordinary course of business" does not include a person who
 171 acquires goods in a transfer in bulk or as security for or in
 172 total or partial satisfaction of a money debt ~~is not a buyer in~~
 173 ~~the ordinary course of business.~~

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

179 (a) ~~A printed~~ heading in capitals in a size equal to or
 180 larger than that of the surrounding text or in a ~~(as-~~
 181 ~~NONNEGOTIABLE BILL OF LADING)~~ is conspicuous. Language in the
 182 body of a form is conspicuous if it is in larger or other
 183 contrasting type, font, or color in contrast to the surrounding
 184 text of the same or lesser size.

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

192 (11) "Consumer" means an individual who enters into a
 193 transaction primarily for personal, family, or household
 194 purposes.

195 (12) ~~(11)~~ "Contract," as distinguished from "agreement,"
 196 means the total legal obligation that ~~which~~ results from the

197 parties' agreement as determined ~~affected~~ by this code and as
 198 supplemented by any other applicable laws ~~rules of law~~. ~~(Compare~~
 199 ~~"agreement.")~~

200 ~~(13)-(12)~~ "Creditor" includes a general creditor, a secured
 201 creditor, a lien creditor, and any representative of creditors,
 202 including an assignee for the benefit of creditors, a trustee in
 203 bankruptcy, a receiver in equity, and an executor or
 204 administrator of an insolvent debtor's or assignor's estate.

205 ~~(14)-(13)~~ "Defendant" includes a person in the position of
 206 defendant in a ~~cross-action or~~ counterclaim, cross-claim, or
 207 third-party claim.

208 ~~(15)-(14)~~ "Delivery," with respect to an instrument
 209 ~~instruments, document documents~~ of title, or chattel paper, ~~or~~
 210 ~~certificated securities~~ means voluntary transfer of possession.

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

221 ~~(17)-(16)~~ "Fault" means a default, breach, or wrongful act
 222 or omission ~~or breach~~.

223 ~~(18)-(17)~~ "Fungible goods" ~~with respect to goods or~~
 224 ~~securities~~ means:

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

227 (b) Goods ~~which are not fungible shall be deemed fungible~~
 228 ~~for the purposes of this code to the extent that, by~~ under a
 229 particular agreement, ~~or document unlike units~~ are treated as
 230 equivalents.

231 ~~(19)-(18)~~ "Genuine" means free of forgery or
 232 counterfeiting.

233 ~~(20)-(19)~~ "Good faith," except as otherwise provided in
 234 this code, means honesty in fact and in the observance of
 235 reasonable commercial standards of fair dealing ~~conduct or~~
 236 ~~transaction concerned.~~

237 ~~(21)-(20)~~ "Holder," ~~with respect to a negotiable~~
 238 ~~instrument,~~ means:

239 (a) The person in possession of a negotiable ~~if the~~
 240 ~~instrument that~~ is payable either to bearer or, ~~in the case of~~
 241 ~~an instrument payable to an identified person that is,~~ if the
 242 identified person ~~is~~ in possession; or. "Holder," ~~with respect~~
 243 ~~to a document of title,~~ means

244 (b) The person in possession of a document of title if the
 245 goods are deliverable either to bearer or to the order of the
 246 person in possession.

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

250 (22) "Insolvency proceeding ~~proceedings~~" includes an any
 251 assignment for the benefit of creditors or other proceeding
 252 ~~proceedings~~ intended to liquidate or rehabilitate the estate of

253 the person involved.

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

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

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

260 (c) Being ~~is~~ insolvent within the meaning of the Federal
 261 Bankruptcy Law.

262 (24) "Money" means a medium of exchange currently
 263 authorized or adopted by a domestic or foreign government. The
 264 term ~~and~~ includes a monetary unit of account established by an
 265 intergovernmental organization or by agreement between two or
 266 more countries ~~nations~~.

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

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

269 ~~(b) He or she has received a notice or notification of it;~~
 270 ~~or~~

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

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

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

286 ~~(a) It comes to his or her attention, or~~

287 ~~(b) It is duly delivered at the place of business through~~
 288 ~~which the contract was made or at any other place held out by~~
 289 ~~the person as the place for receipt of such communications.~~

290 ~~(27) Notice, knowledge or a notice or notification~~
 291 ~~received by an organization is effective for a particular~~
 292 ~~transaction from the time when it is brought to the attention of~~
 293 ~~the individual conducting that transaction, and in any event~~
 294 ~~from the time when it would have been brought to his or her~~
 295 ~~attention if the organization had exercised due diligence. An~~
 296 ~~organization exercises due diligence if it maintains reasonable~~
 297 ~~routines for communicating significant information to the person~~
 298 ~~conducting the transaction and there is reasonable compliance~~
 299 ~~with the routines. Due diligence does not require an individual~~
 300 ~~acting for the organization to communicate information unless~~
 301 ~~such communication is part of his or her regular duties or~~
 302 ~~unless the individual has reason to know of the transaction and~~
 303 ~~that the transaction would be materially affected by the~~
 304 ~~information.~~

305 ~~(25)-(28)~~ "Organization" means a person other than an
 306 individual includes a corporation, government or governmental
 307 subdivision or agency, business trust, estate, trust,
 308 partnership or association, two or more persons having a joint

309 ~~or common interest, or any other legal or commercial entity.~~

310 (26)-(29) "Party," as distinguished ~~distinct~~ from "third
311 party," means a person who has engaged in a transaction or made
312 an agreement subject to ~~within~~ this code.

313 (27)-(30) "Person" means ~~includes~~ an individual;
314 corporation; business trust; estate; trust; partnership; limited
315 liability company; association; joint venture; government;
316 governmental subdivision, agency, or instrumentality; public
317 corporation; or any other legal or commercial entity ~~or an~~
318 ~~organization (see s. 671.102).~~

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

327 ~~(31) "Presumption" or "presumed" means that the trier of~~
328 ~~fact must find the existence of the fact presumed unless and~~
329 ~~until evidence is introduced which would support a finding of~~
330 ~~its nonexistence.~~

331 (29)-(32) "Purchase" means ~~includes~~ taking by sale, lease,
332 discount, negotiation, mortgage, pledge, lien, security
333 interest, issue or reissue, gift, or any other voluntary
334 transaction creating an interest in property.

335 (30)-(33) "Purchaser" means a person who takes by purchase.

336 (31) "Record" means information that is inscribed on a

337 tangible medium or that is stored in an electronic or other
 338 medium and is retrievable in perceivable form.

339 (32)-(34) "Remedy" means any remedial right to which an
 340 aggrieved party is entitled with or without resort to a
 341 tribunal.

342 (33)-(35) "Representative" means a person empowered to act
 343 for another, including ~~includes~~ an agent, an officer of a
 344 corporation or association, and a trustee, executor, or
 345 administrator of an estate, ~~or any other person empowered to act~~
 346 ~~for another.~~

347 (34)-(36) "Right Rights" includes "remedy remedies."

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

365 reservation of a security interest. Whether a transaction in the
 366 form of a lease creates a ~~lease or~~ security interest is
 367 determined by the facts of each case; however:

368 (a) A transaction in the form of a lease creates a
 369 security interest if the consideration that the lessee is to pay
 370 the lessor for the right to possession and use of the goods is
 371 an obligation for the term of the lease not subject to
 372 termination by the lessee, and:

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

375 2. The lessee is bound to renew the lease for the
 376 remaining economic life of the goods or is bound to become the
 377 owner of the goods;

378 3. The lessee has an option to renew the lease for the
 379 remaining economic life of the goods for no additional
 380 consideration or nominal additional consideration upon
 381 compliance with the lease agreement; or

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

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

387 1. The present value of the consideration the lessee is
 388 obligated to pay the lessor for the right to possession and use
 389 of the goods is substantially equal to or is greater than the
 390 fair market value of the goods at the time the lease is entered
 391 into;

392 2. The lessee assumes the risk of loss of the goods ~~or~~

393 ~~agrees to pay taxes; insurance; filing, recording, or~~
 394 ~~registration fees; or service or maintenance costs with respect~~
 395 ~~to the goods;~~

396 3. The lessee agrees to pay, with respect to the goods,
 397 taxes; insurance; filing, recording, or registration fees; or
 398 service or maintenance costs;

399 ~~4.3.~~ The lessee has an option to renew the lease or to
 400 become the owner of the goods;

401 ~~5.4.~~ The lessee has an option to renew the lease for a
 402 fixed rent that is equal to or greater than the reasonably
 403 predictable fair market rent for the use of the goods for the
 404 term of the renewal at the time the option is to be performed;
 405 or

406 ~~6.5.~~ The lessee has an option to become the owner of the
 407 goods for a fixed price that is equal to or greater than the
 408 reasonably predictable fair market value of the goods at the
 409 time the option is to be performed.

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

411 ~~1.~~ Additional consideration is ~~not~~ nominal if it is less
 412 than the lessee's reasonably predictable cost of performing
 413 under the lease agreement if the option is not exercised.

414 Additional consideration is not nominal if:

415 1. When the option to renew the lease is granted to the
 416 lessee, the rent is stated to be the fair market rent for the
 417 use of the goods for the term of the renewal determined at the
 418 time the option is to be performed; ~~or if,~~

419 2. When the option to become the owner of the goods is
 420 granted to the lessee, the price is stated to be the fair market

421 value of the goods determined at the time the option is to be
 422 performed. ~~Additional consideration is nominal if it is less~~
 423 ~~than the lessee's reasonably predictable cost of performing~~
 424 ~~under the lease agreement if the option is not exercised.~~

425 (d)2. The "Reasonably predictable" and "remaining economic
 426 life of the goods" and "reasonably predictable" fair market
 427 rent, fair market value, or cost of performing under the lease
 428 agreement must ~~are to~~ be determined with reference to the facts
 429 and circumstances at the time the transaction is entered into.

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

439 ~~(36)-(38)~~ "Send," in connection with a any writing, record,
 440 or notice, means:

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

447 (b) In any other way to cause to be received ~~The receipt~~
 448 ~~of any record writing~~ or notice within the time at which it

449 would have arrived if properly sent ~~has the effect of a proper~~
450 ~~sending.~~

451 (37)~~(39)~~ "Signed" means bearing ~~includes~~ any symbol
452 executed or adopted by a party with present intention to adopt
453 or accept authenticate a writing.

454 (38) "State" means a state of the United States, the
455 District of Columbia, Puerto Rico, the United States Virgin
456 Islands, or any territory or insular possession subject to the
457 jurisdiction of the United States.

458 (39)~~(40)~~ "Surety" includes a guarantor or other secondary
459 obligor.

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

463 (40)~~(42)~~ "Term" means a ~~that~~ portion of an agreement which
464 relates to a particular matter.

465 (41)~~(43)~~ "Unauthorized" signature" means a signature ~~one~~
466 made without actual, implied, or apparent authority. The term
467 ~~and~~ includes a forgery.

468 ~~(44)~~ "Value." ~~Except as otherwise provided with respect to~~
469 ~~negotiable instruments and bank collections (ss. 673.3031,~~
470 ~~674.2101, and 674.2111), a person gives value for rights if he~~
471 ~~or she acquires them.~~

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

476 ~~(b)~~ ~~As security for or in total or partial satisfaction of~~

477 ~~a preexisting claim;~~

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

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

482 (42) ~~(45)~~ "Warehouse receipt" means a ~~written~~ receipt ~~or an~~
 483 ~~electronic notification of receipt~~ issued by a person engaged in
 484 the business of storing goods for hire.

485 (43) ~~(46)~~ "~~Written~~" or "Writing" includes printing,
 486 typewriting, or any other intentional reduction to tangible
 487 form. "Written" has a corresponding meaning.

488 Section 6. Section 671.202, Florida Statutes, is amended
 489 to read:

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

498 Section 7. Section 671.203, Florida Statutes, is amended
 499 to read:

500 671.203 Obligation of good faith.--Every contract or duty
 501 within this code imposes an obligation of good faith in its
 502 performance and ~~or~~ enforcement.

503 Section 8. Section 671.204, Florida Statutes, is amended
 504 to read:

505 671.204 Actions taken within Time, reasonable time;
 506 "seasonably."--

507 (1) Whether a time for taking an action required by
 508 ~~Whenever this code is requires any action to be taken within a~~
 509 ~~reasonable time, any time which is not manifestly unreasonable~~
 510 ~~may be fixed by agreement.~~

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

514 ~~(2)(3)~~ An action is taken "seasonably" if when it is taken
 515 at or within the time agreed or, if no time is agreed, at or
 516 within a reasonable time.

517 Section 9. Section 671.205, Florida Statutes, is amended
 518 to read:

519 671.205 Course of performance; course of dealing; and
 520 usage of trade.--

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

523 (a) The agreement of the parties with respect to the
 524 transaction involves repeated occasions for performance by a
 525 party; and

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

529 ~~(2)(1)~~ A "course of dealing" is a sequence of ~~previous~~
 530 conduct concerning previous transactions between the parties to
 531 a particular transaction which is fairly to be regarded as
 532 establishing a common basis of understanding for interpreting

533 their expressions and other conduct.

534 (3)~~(2)~~ A "usage of trade" is any practice or method of
 535 dealing having such regularity of observance in a place,
 536 vocation, or trade as to justify an expectation that it will be
 537 observed with respect to the transaction in question. The
 538 existence and scope of such a usage are to be proved as facts.
 539 If it is established that such a usage is embodied in a written
 540 trade code or similar record, ~~writing~~ the interpretation of the
 541 record ~~writing~~ is a question of law ~~for the court~~.

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

552 (5)~~(4)~~ Except as otherwise provided in subsection (6), the
 553 express terms of an agreement and any ~~an~~ applicable course of
 554 performance, course of dealing, or usage of trade must ~~shall~~ be
 555 construed whenever ~~wherever~~ reasonable as consistent with each
 556 other. If, but when such a construction is unreasonable:

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

559 (b) Course of performance prevails over course of dealing
 560 and usage of trade; and

561 (c) Course of dealing prevails over ~~controls~~ usage of
 562 trade.

563 (6) A course of performance is relevant to show a waiver
 564 or modification of any term inconsistent with the course of
 565 performance.

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

569 (7)~~(6)~~ Evidence of a relevant usage of trade offered by
 570 one party is not admissible unless that party ~~and until he or~~
 571 ~~she~~ has given the other party ~~such~~ notice that ~~as~~ the court
 572 finds sufficient to prevent unfair surprise to the other party
 573 ~~latter.~~

574 Section 10. Section 671.206, Florida Statutes, is
 575 repealed.

576 Section 11. Section 671.208, Florida Statutes, is amended
 577 to read:

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

588 Section 12. Section 671.209, Florida Statutes, is created

589 to read:

590 671.209 Notice; knowledge.--

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

593 (a) Has actual knowledge of it;

594 (b) Has received a notice or notification of it; or

595 (c) From all the facts and circumstances known to the
596 person at the time in question, has reason to know that it
597 exists.

598 (2) "Knowledge" means actual knowledge. "Knows" has a
599 corresponding meaning.

600 (3) "Discover," "learn," or words of similar import refer
601 to knowledge rather than to reason to know.

602 (4) A person "notifies" or "gives a notice or notification
603 to" another person by taking such steps as may be reasonably
604 required to inform the other person in ordinary course,
605 regardless of whether the other person actually comes to know of
606 it.

607 (5) Subject to subsection (6), a person "receives" a
608 notice or notification when:

609 (a) It comes to that person's attention; or

610 (b) It is duly delivered in a form reasonable under the
611 circumstances at the place of business through which the
612 contract was made or at another location held out by that person
613 as the place for receipt of such communications.

614 (6) Notice, knowledge, or a notice or notification
615 received by an organization is effective for a particular
616 transaction from the time it is brought to the attention of the

617 person conducting that transaction and, in any event, from the
618 time it would have been brought to the person's attention if the
619 organization had exercised due diligence. An organization
620 exercises due diligence if it maintains reasonable routines for
621 communicating significant information to the person conducting
622 the transaction and there is reasonable compliance with the
623 routines. Due diligence does not require an individual acting
624 for the organization to communicate information unless the
625 communication is part of the individual's regular duties or the
626 individual has reason to know of the transaction and that the
627 transaction would be materially affected by the information.

628 Section 13. Section 671.21, Florida Statutes, is created
629 to read:

630 671.21 Presumptions.--Whenever this code creates a
631 "presumption" with respect to a fact or provides that a fact is
632 "presumed," the trier of fact must find the existence of the
633 fact presumed unless evidence is introduced which supports a
634 finding of its nonexistence.

635 Section 14. Section 671.211, Florida Statutes, is created
636 to read:

637 671.211 Value.--Except as otherwise provided with respect
638 to negotiable instruments and bank collections as provided in
639 ss. 673.3031, 674.2101, and 674.2111, a person gives value for
640 rights if the person acquires them:

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

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

647 (3) By accepting delivery under a preexisting contract for
648 purchase; or

649 (4) In return for any consideration sufficient to support
650 a simple contract.

651 Section 15. Section 671.212, Florida Statutes, is created
652 to read:

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

660 Section 16. Section 671.213, Florida Statutes, is created
661 to read:

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

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

671 559.9232 Definitions; exclusion of rental-purchase
672 agreements from certain regulations.--

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

676 (a) A lease or agreement that ~~which~~ constitutes a credit
 677 sale as defined in 12 C.F.R. s. 226.2(a)(16) and s. 1602(g) of
 678 the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq.;

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

681 (c) Any lease for agricultural, business, or commercial
 682 purposes;

683 (d) Any lease made to an organization;

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

687 (f) A security interest as defined in s. 671.201(35) ~~s.~~
 688 ~~671.201(37)~~.

689 Section 18. Paragraph (g) of subsection (2) of section
 690 563.022, Florida Statutes, is amended to read:

691 563.022 Relations between beer distributors and
 692 manufacturers.--

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

695 (g) "Good faith" means honesty in fact in the conduct or
 696 transaction concerned as defined and interpreted under s.
 697 671.201(20) ~~s. 671.201(19)~~.

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

701 668.50 Uniform Electronic Transaction Act.--

702 (3) SCOPE.--

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

705 1. A provision of law governing the creation and execution
706 of wills, codicils, or testamentary trusts;

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

709 3. The Uniform Computer Information Transactions Act; or

710 4. Rules relating to judicial procedure.

711 (16) TRANSFERABLE RECORDS.--

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

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

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

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

725 670.106 Time payment order is received.--

726 (1) The time of receipt of a payment order or
727 communication canceling or amending a payment order is
728 determined by the rules applicable to receipt of a notice stated

729 in s. 671.209 ~~s. 671.201(27)~~. A receiving bank may fix a cut-off
 730 time or times on a funds-transfer business day for the receipt
 731 and processing of payment orders and communications canceling or
 732 amending payment orders. Different cut-off times may apply to
 733 payment orders, cancellations, or amendments or to different
 734 categories of payment orders, cancellations, or amendments. A
 735 cut-off time may apply to senders generally, or different cut-
 736 off times may apply to different senders or categories of
 737 payment orders. If a payment order or communication canceling or
 738 amending a payment order is received after the close of a funds-
 739 transfer business day or after the appropriate cut-off time on a
 740 funds-transfer business day, the receiving bank may treat the
 741 payment order or communication as received at the opening of the
 742 next funds-transfer business day.

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

745 670.204 Refund of payment and duty of customer to report
 746 with respect to unauthorized payment order.--

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

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

753 675.102 Scope.--

754 (3) With the exception of this subsection, subsections (1)
 755 and (4), ss. 675.103(1)(i) and (j), 675.106(4), and 675.114(4),
 756 and except to the extent prohibited in ss. 671.102(2) ~~ss.~~

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757 ~~671.102(3)~~ and 675.117(4), the effect of this chapter may be
 758 varied by agreement or by a provision stated or incorporated by
 759 reference in an undertaking. A term in an agreement or
 760 undertaking generally excusing liability or generally limiting
 761 remedies for failure to perform obligations is not sufficient to
 762 vary obligations prescribed by this chapter.

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

765 680.518 Cover; substitute goods.--

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

774 (a) The present value, as of the date of the commencement
 775 of the term of the new lease agreement, of the rent under the
 776 new lease agreement and applicable to that period of the new
 777 lease term which is comparable to the then remaining term of the
 778 original lease agreement minus the present value as of the same
 779 date of the total rent for the then remaining lease term of the
 780 original lease agreement; and

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

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

785 680.519 Lessee's damages for nondelivery, repudiation,
786 default, or breach of warranty in regard to accepted goods.--

787 (1) Except as otherwise provided with respect to damages
788 liquidated in the lease agreement (s. 680.504) or otherwise
789 determined pursuant to agreement of the parties (ss. 671.102(2)
790 ~~ss. 671.102(3)~~ and 680.503), if a lessee elects not to cover or
791 a lessee elects to cover and the cover is by lease agreement,
792 whether or not the lease agreement qualifies for treatment under
793 s. 680.518(2), or is by purchase or otherwise, the measure of
794 damages for nondelivery or repudiation by the lessor or for
795 rejection or revocation of acceptance by the lessee is the
796 present value, as of the date of the default, of the then market
797 rent minus the present value as of the same date of the original
798 rent, computed for the remaining lease term of the original
799 lease agreement, together with incidental and consequential
800 damages, less expenses saved in consequence of the lessor's
801 default.

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

804 680.527 Lessor's rights to dispose of goods.--

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

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

815 (b) The present value, as of the same date, of the
816 commencement of the term of the new lease agreement of the total
817 rent for the then remaining lease term of the original lease
818 agreement minus the present value, as of the same date, of the
819 rent under the new lease agreement applicable to that period of
820 the new lease term which is comparable to the then remaining
821 term of the original lease agreement; and

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

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

826 680.528 Lessor's damages for nonacceptance or
827 repudiation.--

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

838 (a) Accrued and unpaid rent as of the date of default if
839 the lessee has never taken possession of the goods, or, if the
840 lessee has taken possession of the goods, as of the date the

841 lessor repossesses the goods or an earlier date on which the
 842 lessee makes a tender of the goods to the lessor.

843 (b) The present value as of the date determined under
 844 paragraph (a) of the total rent for the then remaining lease
 845 term of the original lease agreement minus the present value as
 846 of the same date of the market rent at the place where the goods
 847 were located on that date computed for the same lease term.

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

850 Section 27. Subsection (1) of section 679.525, Florida
 851 Statutes, is amended to read:

852 679.525 Processing fees.--

853 (1) Except as otherwise provided in subsection (3), the
 854 nonrefundable processing fee for filing and indexing a record
 855 under this part, other than an initial financing statement of
 856 the kind described in s. 679.5021(3), is:

857 (a) For filing an initial financing statement, \$25 for the
 858 first page, which shall include the cost of filing a termination
 859 statement for the financing statement;

860 (b) For filing an amendment, \$12 for the first page;

861 (c) For indexing by additional debtor, secured party, or
 862 assignee, \$3 per additional name indexed;

863 (d) For use of a nonapproved form, \$5;

864 (e) For each additional page attached to a record, \$3;

865 ~~(f) For filing a financing statement communicated by an~~
 866 ~~electronic filing process authorized by the filing office, \$15~~
 867 ~~with no additional fees for multiple names or attached pages;~~

868 ~~(g) For filing an amendment communicated by an electronic~~

869 ~~filing process authorized by the filing office, \$5 with no~~
870 ~~additional fees for multiple names or attached pages;~~

871 ~~(f)-(h)~~ For a certified copy of a financing statement and
872 any and all associated amendments, \$30; and

873 ~~(g)-(i)~~ For a photocopy of a filed record, \$1 per page.

874 Section 28. Subsection (6) of section 713.901, Florida
875 Statutes, is amended to read:

876 713.901 Florida Uniform Federal Lien Registration Act.--

877 (6) FEES.--

878 (a) The charges or fees of the Secretary of State, with
879 respect to a notice or certificate filed under this section, or
880 for searching records with respect thereto, are:

881 1. For filing a notice of lien, which fee shall include
882 the cost of filing a certificate of release or nonattachment for
883 such notice of lien, \$25.

884 2. For indexing of each additional debtor or secured
885 party, \$3.

886 3. For each additional facing page attached to a notice or
887 certificate, \$3.

888 4. For use of a nonapproved form, \$5.

889 5. For filing a certificate of discharge or subordination,
890 \$12.

891 6. For filing a refiled notice of federal lien, \$12.

892 7. For filing any other document required or permitted to
893 be filed under this section, \$12.

894 8. For certifying any record, \$10 ~~shall be the same as~~
895 ~~prescribed in s. 15.091.~~

896 (b) The charges or fees of the clerks of the circuit court

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897 | with respect to a notice or certificate filed under this section
898 | shall be the same as prescribed in s. 28.24, relating to
899 | instruments recorded in the official records.

900 | Section 29. Section 15.091, Florida Statutes, is repealed.

901 | Section 30. This act shall take effect January 1, 2008.