

By the Committee on Commerce; and Senator Aronberg

577-1858-07

1 A bill to be entitled
2 An act relating to the Uniform Commercial Code;
3 repealing s. 15.091, F.S., relating to
4 processing fees for filings of financial
5 statements and other written documents under
6 the Uniform Commerical Code; amending s.
7 671.101, F.S.; providing scope of chapter and a
8 short title; amending s. 671.102, F.S.;
9 authorizing certain timeframes to be fixed by
10 agreement; amending s. 671.106, F.S.; making
11 editorial changes; amending s. 671.107, F.S.;
12 providing for the discharge of a claim or right
13 under certain circumstances; amending s.
14 671.201, F.S.; providing, revising, and
15 deleting definitions; amending ss. 671.202 and
16 671.203, F.S.; making editorial changes;
17 amending s. 671.204, F.S.; revising criteria
18 determining when an action is taken within a
19 reasonable time and seasonably; amending s.
20 671.205, F.S.; defining "course of
21 performance"; revising the definition of
22 "course of dealing"; providing that course of
23 performance and course of dealing may be used
24 for certain purposes; revising uses for express
25 terms of an agreement; specifying when course
26 of performance, course of dealing, or usage of
27 trade prevails; providing that course of
28 performance is relevant to show a waiver or
29 modification in certain circumstances;
30 repealing s. 671.206, F.S., relating to statute
31 of frauds for kinds of personal property not

1 otherwise covered; amending s. 671.208, F.S.;
2 making editorial changes; creating s. 671.209,
3 F.S.; providing definitions; specifying when
4 notice, knowledge, or notification becomes
5 effective with the exercise of due diligence;
6 creating s. 671.21, F.S.; providing that
7 whenever the code creates certain presumptions,
8 the trier of fact must find the existence of
9 the fact presumed unless evidence is introduced
10 which supports a finding of its nonexistence;
11 creating s. 671.211, F.S.; providing in what
12 instances a person gives value for rights;
13 creating s. 671.212, F.S.; providing that the
14 code modifies, limits, and supersedes certain
15 provisions of the federal Electronic Signatures
16 in Global and National Commerce Act; creating
17 s. 671.213, F.S.; authorizing the subordination
18 of certain obligations; authorizing the
19 registry to use the fees collected to fund its
20 operations; amending s. 679.525, F.S.; deleting
21 the filing fees for electronically filing a
22 financing statement or an amendment thereto;
23 amending ss. 559.9232, 563.022, 668.50,
24 670.106, 670.204, 675.102, 680.518, 680.519,
25 680.527, and 680.528, F.S.; conforming
26 cross-references; amending s. 713.901, F.S.;
27 specifying fees under the Florida Uniform
28 Federal Lien Registration Act previously
29 provided through cross-reference; reducing a
30 fee and deleting a cross-reference to conform
31

1 to changes made by the act; providing an
2 effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Section 15.091, Florida Statutes, is
7 repealed.

8 Section 2. Section 671.101, Florida Statutes, is
9 amended to read:

10 671.101 Short title; scope of chapter.--

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

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

17 Section 3. Section 671.102, Florida Statutes, is
18 amended to read:

19 671.102 Purposes; rules of construction; variation by
20 agreement.--

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

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

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

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

29 (c) To make uniform the law among the various
30 jurisdictions.

31

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

5 (b) The obligations of good faith, diligence,
6 reasonableness, and care prescribed by this code may not be
7 disclaimed by agreement, but the parties may by agreement
8 determine the standards by which the performance of such
9 obligations is to be measured if such standards are not
10 manifestly unreasonable. Whenever this code requires an action
11 to be taken within a reasonable time, a time that is not
12 manifestly unreasonable may be fixed by agreement.

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

17 ~~(3)(5)~~ In this code, unless the context otherwise
18 requires:

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

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

24 Section 4. Subsection (1) of section 671.106, Florida
25 Statutes, is amended to read:

26 671.106 Remedies to be liberally administered.--

27 (1) The remedies provided by this code must ~~shall~~ be
28 liberally administered to the end that the aggrieved party may
29 be put in as good a position as if the other party had fully
30 performed, but neither consequential or special nor penal
31

1 damages may be had except as specifically provided in this
2 code or by other rule of law.

3 Section 5. Section 671.107, Florida Statutes, is
4 amended to read:

5 671.107 Waiver or renunciation of claim or right after
6 breach.--~~A Any~~ claim or right arising out of an alleged breach
7 can be discharged in whole or in part without consideration by
8 agreement of a written waiver or renunciation signed and
9 delivered by the aggrieved party in an authenticated record.

10 Section 6. Section 671.201, Florida Statutes, is
11 amended to read:

12 671.201 General definitions.--Unless the context
13 otherwise requires, words or phrases defined in this section,
14 or in the additional definitions contained in other chapters
15 of this code which apply to particular chapters or parts
16 thereof, have the meanings stated. Subject to ~~additional~~
17 definitions contained in other ~~the subsequent~~ chapters of this
18 code which apply ~~which are applicable~~ to particular specific
19 chapters or parts thereof, the term ~~and unless the context~~
20 ~~otherwise requires, in this code:~~

21 (1) "Action_r" in the sense of a judicial proceeding_r
22 includes recoupment, counterclaim, setoff, suit in equity_r and
23 any other proceedings in which rights are determined.

24 (2) "Aggrieved party" means a party entitled to pursue
25 ~~resort to~~ a remedy.

26 (3) "Agreement_r" as distinguished from "contract,"
27 means the bargain of the parties in fact_r as found in their
28 language or inferred by implication from other circumstances_r
29 including course of dealing_r ~~or~~ usage of trade_r or course of
30 performance as provided in ~~this code~~ (ss. 671.205 and
31 672.208). ~~Whether an agreement has legal consequences is~~

1 ~~determined by the provisions of this code, if applicable;~~
2 ~~otherwise by the law of contracts (s. 671.103). (Compare~~
3 ~~"contract.")~~

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

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

10 (6) "Bill of lading" means a document evidencing the
11 receipt of goods for shipment issued by a person engaged in
12 the business of transporting or forwarding goods, ~~and includes~~
13 ~~an airbill. "Airbill" means a document serving for air~~
14 ~~transportation as a bill of lading does for marine or rail~~
15 ~~transportation, and includes an air consignment note or air~~
16 ~~waybill.~~

17 (7) "Branch" includes a separately incorporated
18 foreign branch of a bank.

19 (8) "Burden of establishing" a fact means the burden
20 of persuading the triers of fact that the existence of the
21 fact is more probable than its nonexistence.

22 (9) "Buyer in ordinary course of business" means a
23 person who, in ordinary course, buys goods in good faith,
24 without knowledge that the sale violates the rights of another
25 person in the goods, ~~and in the ordinary course~~ from a person,
26 other than a pawnbroker, in the business of selling goods of
27 that kind. A person buys goods in ~~the~~ ordinary course if the
28 sale to the person comports with the usual or customary
29 practices in the kind of business in which the seller is
30 engaged or with the seller's own usual or customary practices.
31 A person who sells oil, gas, or other minerals at the wellhead

1 or minehead is a person in the business of selling goods of
2 that kind. A buyer in ~~the~~ ordinary course of business may buy
3 for cash, by exchange of other property, or on secured or
4 unsecured credit and may acquire goods or documents of title
5 under a preexisting contract for sale. Only a buyer who takes
6 possession of the goods or has a right to recover the goods
7 from the seller under chapter 672 may be a buyer in ~~the~~
8 ordinary course of business. "Buyer in ordinary course of
9 business" does not include a person who acquires goods in a
10 transfer in bulk or as security for or in total or partial
11 satisfaction of a money debt ~~is not a buyer in the ordinary~~
12 ~~course of business.~~

13 (10) ~~A term or clause is~~ "Conspicuous," with reference
14 to a term, means when it is so written, displayed, or
15 presented that a reasonable person against whom it is to
16 operate ought to have noticed it. Whether a term is
17 "conspicuous" is a decision for the court. Conspicuous terms
18 include the following:

19 (a) A ~~printed~~ heading in capitals in a size equal to
20 or larger than that of the surrounding text or in a ~~(as+~~
21 ~~NONNEGOTIABLE BILL OF LADING)~~ ~~is conspicuous. Language in the~~
22 ~~body of a form is conspicuous if it is in larger or other~~
23 ~~contrasting~~ type, font, or color in contrast to the
24 surrounding text of the same or lesser size.

25 (b) Language in the body of a record or display in
26 type larger than that of the surrounding text; in a type,
27 font, or color in contrast to the surrounding text of the same
28 size; or set off from surrounding text of the same size by
29 symbols or other marks that call attention to the language.
30 ~~But in a telegram any stated term is conspicuous. Whether a~~
31

1 ~~term or clause is conspicuous or not is for decision by the~~
2 ~~court.~~

3 (11) "Consumer" means an individual who enters into a
4 transaction primarily for personal, family, or household
5 purposes.

6 (12)(11) "Contract," as distinguished from
7 "agreement," means the total legal obligation ~~that which~~
8 results from the parties' agreement as ~~determined~~ affected by
9 this code and ~~as supplemented by~~ any other applicable ~~laws~~
10 rules of law. (Compare "agreement.")

11 (13)(12) "Creditor" includes a general creditor, a
12 secured creditor, a lien creditor, and any representative of
13 creditors, including an assignee for the benefit of creditors,
14 a trustee in bankruptcy, a receiver in equity, and an executor
15 or administrator of an insolvent debtor's or assignor's
16 estate.

17 (14)(13) "Defendant" includes a person in the position
18 of defendant in a ~~cross action or~~ counterclaim, ~~cross-claim,~~
19 or ~~third-party claim.~~

20 (15)(14) "Delivery," with respect to ~~an instrument~~
21 ~~instruments, document documents~~ of title, ~~or~~ chattel paper, ~~or~~
22 ~~certificated securities~~ means voluntary transfer of
23 possession.

24 (16)(15) "Document of title" includes bill of lading,
25 dock warrant, dock receipt, warehouse receipt or order for the
26 delivery of goods, and ~~also~~ any other document ~~that which~~ in
27 the regular course of business or financing is treated as
28 adequately evidencing that the person in possession of it is
29 entitled to receive, hold, and dispose of the document and the
30 goods it covers. To be a document of title, a document must
31 purport to be issued by or addressed to a bailee and purport

1 to cover goods in the bailee's possession which are either
2 identified or are fungible portions of an identified mass.

3 ~~(17)(16)~~ "Fault" means a default, breach, or wrongful
4 act or, omission ~~or breach~~.

5 ~~(18)(17)~~ "Fungible goods" ~~with respect to goods or~~
6 ~~securities~~ means:

7 (a) Goods ~~or securities~~ of which any unit ~~is~~, by
8 nature or usage of trade, is the equivalent of any other like
9 unit; ~~or~~.

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

14 ~~(19)(18)~~ "Genuine" means free of forgery or
15 counterfeiting.

16 ~~(20)(19)~~ "Good faith," except as otherwise provided in
17 this code, means honesty in fact and in the observance of
18 reasonable commercial standards of fair dealing conduct or
19 ~~transaction concerned~~.

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

22 (a) The person in possession of a negotiable if the
23 instrument that is payable either to bearer or, ~~in the case of~~
24 ~~an instrument payable~~ to an identified person that is, if the
25 identified person ~~is~~ in possession; ~~or~~. "Holder," ~~with respect~~
26 ~~to a document of title, means~~

27 (b) The person in possession of a document of title if
28 the goods are deliverable either to bearer or to the order of
29 the person in possession.
30
31

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

4 (22) "Insolvency proceeding ~~proceedings~~" includes an
5 ~~any~~ assignment for the benefit of creditors or other
6 proceeding ~~proceedings~~ intended to liquidate or rehabilitate
7 the estate of the person involved.

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

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

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

14 (c) Being ~~is~~ insolvent within the meaning of the
15 Federal Bankruptcy Law.

16 (24) "Money" means a medium of exchange currently
17 authorized or adopted by a domestic or foreign government. The
18 term ~~and~~ includes a monetary unit of account established by an
19 intergovernmental organization or by agreement between two or
20 more countries ~~nations~~.

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

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

23 ~~(b) He or she has received a notice or notification of~~
24 ~~it; or~~

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

28
29 ~~A person "knows" or has "knowledge" of a fact when he or she~~
30 ~~has actual knowledge of it. "Discover" or "learn" or a word or~~
31 ~~phrase of similar import refers to knowledge rather than to~~

1 ~~reason to know. The time and circumstances under which a~~
2 ~~notice or notification may cease to be effective are not~~
3 ~~determined by this code.~~

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

9 ~~(a) It comes to his or her attention; or~~

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

14 ~~(27) Notice, knowledge or a notice or notification~~
15 ~~received by an organization is effective for a particular~~
16 ~~transaction from the time when it is brought to the attention~~
17 ~~of the individual conducting that transaction, and in any~~
18 ~~event from the time when it would have been brought to his or~~
19 ~~her attention if the organization had exercised due diligence.~~
20 ~~An organization exercises due diligence if it maintains~~
21 ~~reasonable routines for communicating significant information~~
22 ~~to the person conducting the transaction and there is~~
23 ~~reasonable compliance with the routines. Due diligence does~~
24 ~~not require an individual acting for the organization to~~
25 ~~communicate information unless such communication is part of~~
26 ~~his or her regular duties or unless the individual has reason~~
27 ~~to know of the transaction and that the transaction would be~~
28 ~~materially affected by the information.~~

29 ~~(25)(28) "Organization" means a person other than an~~
30 ~~individual includes a corporation, government or governmental~~
31 ~~subdivision or agency, business trust, estate, trust,~~

1 ~~partnership or association, two or more persons having a joint~~
2 ~~or common interest, or any other legal or commercial entity.~~

3 ~~(26)(29)~~ "Party," as distinguished ~~distinct~~ from
4 "third party," means a person who has engaged in a transaction
5 or made an agreement subject to ~~within~~ this code.

6 ~~(27)(30)~~ "Person" means ~~includes~~ an individual;
7 corporation; business trust; estate; trust; partnership;
8 limited liability company; association; joint venture;
9 government; governmental subdivision, agency, or
10 instrumentality; public corporation; or any other legal or
11 commercial entity ~~or an organization (see s. 671.102).~~

12 (28) "Present value" means the amount as of a date
13 certain of one or more sums payable in the future, discounted
14 to the date certain by use of either an interest rate
15 specified by the parties if that rate is not manifestly
16 unreasonable at the time the transaction is entered into or,
17 if an interest rate is not so specified, a commercially
18 reasonable rate that takes into account the facts and
19 circumstances at the time the transaction is entered into.

20 ~~(31)~~ "~~Presumption~~" or "~~presumed~~" means that the trier
21 ~~of fact must find the existence of the fact presumed unless~~
22 ~~and until evidence is introduced which would support a finding~~
23 ~~of its nonexistence.~~

24 ~~(29)(32)~~ "Purchase" means ~~includes~~ taking by sale,
25 lease, discount, negotiation, mortgage, pledge, lien, security
26 interest, issue or reissue, gift, or any other voluntary
27 transaction creating an interest in property.

28 ~~(30)(33)~~ "Purchaser" means a person who takes by
29 purchase.
30
31

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

4 ~~(32)(34)~~ "Remedy" means any remedial right to which an
5 aggrieved party is entitled with or without resort to a
6 tribunal.

7 ~~(33)(35)~~ "Representative" means a person empowered to
8 act for another, including ~~includes~~ an agent, an officer of a
9 corporation or association, and a trustee, executor, or
10 administrator of an estate, ~~or any other person empowered to~~
11 ~~act for another.~~

12 ~~(34)(36)~~ "Right Rights" includes "remedy" ~~remedies~~.

13 ~~(35)(37)~~ "Security interest" means an interest in
14 personal property or fixtures which secures payment or
15 performance of an obligation. "Security interest" ~~The term~~
16 ~~also~~ includes any interest of a consignor and a buyer of
17 accounts, chattel paper, a payment intangible, or a promissory
18 note in a transaction that ~~which~~ is subject to chapter 679.

19 "Security interest" ~~does not include~~ the special property
20 interest of a buyer of goods on identification of those goods
21 to a contract for sale under s. 672.401 ~~is not a security~~
22 ~~interest~~, but a buyer may also acquire a security interest by
23 complying with chapter 679. Except as otherwise provided in s.
24 672.505, the right of a seller or lessor of goods under
25 chapter 672 or chapter 680 to retain or acquire possession of
26 the goods is not a security interest, but a seller or lessor
27 may also acquire a security interest by complying with chapter
28 679. The retention or reservation of title by a seller of
29 goods, notwithstanding shipment or delivery to the buyer under
30 ~~(s. 672.401)~~, is limited in effect to a reservation of a
31 security interest. Whether a transaction in the form of a

1 lease creates a ~~lease or~~ security interest is determined by
2 the facts of each case; however:

3 (a) A transaction in the form of a lease creates a
4 security interest if the consideration that the lessee is to
5 pay the lessor for the right to possession and use of the
6 goods is an obligation for the term of the lease not subject
7 to termination by the lessee, and:
8

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

11 2. The lessee is bound to renew the lease for the
12 remaining economic life of the goods or is bound to become the
13 owner of the goods;

14 3. The lessee has an option to renew the lease for the
15 remaining economic life of the goods for no additional
16 consideration or nominal additional consideration upon
17 compliance with the lease agreement; or

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

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

23 1. The present value of the consideration the lessee
24 is obligated to pay the lessor for the right to possession and
25 use of the goods is substantially equal to or is greater than
26 the fair market value of the goods at the time the lease is
27 entered into;

28 2. The lessee assumes the risk of loss of the goods ~~or~~
29 ~~agrees to pay taxes; insurance; filing, recording, or~~
30 ~~registration fees; or service or maintenance costs with~~
31 ~~respect to the goods;~~

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

4 ~~4.3-~~ The lessee has an option to renew the lease or to
5 become the owner of the goods;

6 ~~5.4-~~ The lessee has an option to renew the lease for a
7 fixed rent that is equal to or greater than the reasonably
8 predictable fair market rent for the use of the goods for the
9 term of the renewal at the time the option is to be performed;

10 or

11 ~~6.5-~~ The lessee has an option to become the owner of
12 the goods for a fixed price that is equal to or greater than
13 the reasonably predictable fair market value of the goods at
14 the time the option is to be performed.

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

16 ~~1-~~ Additional consideration is ~~not~~ nominal if it is
17 less than the lessee's reasonably predictable cost of
18 performing under the lease agreement if the option is not
19 exercised. Additional consideration is not nominal if:

20 1. When the option to renew the lease is granted to
21 the lessee, the rent is stated to be the fair market rent for
22 the use of the goods for the term of the renewal determined at
23 the time the option is to be performed; or if,

24 2. When the option to become the owner of the goods is
25 granted to the lessee, the price is stated to be the fair
26 market value of the goods determined at the time the option is
27 to be performed. ~~Additional consideration is nominal if it is~~
28 ~~less than the lessee's reasonably predictable cost of~~
29 ~~performing under the lease agreement if the option is not~~
30 ~~exercised.~~

31

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

7 ~~3-~~ ~~"Present value" means the amount as of a date~~
8 ~~certain of one or more sums payable in the future, discounted~~
9 ~~to the date certain. The discount is determined by the~~
10 ~~interest rate specified by the parties if the rate is not~~
11 ~~manifestly unreasonable at the time the transaction is entered~~
12 ~~into; otherwise, the discount is determined by a commercially~~
13 ~~reasonable rate that takes into account the facts and~~
14 ~~circumstances of each case at the time the transaction was~~
15 ~~entered into.~~

16 ~~(36)(38)~~ "Send_L" in connection with a any writing_L
17 record_L, or notice_L, means:

18 ~~(a)~~ To deposit in the mail or deliver for transmission
19 by any other usual means of communication with postage or cost
20 of transmission provided for and properly addressed and_L in
21 the case of an instrument_L to an address specified thereon or
22 otherwise agreed_T or_L if there be none_L to any address
23 reasonable under the circumstances; or-

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

28 ~~(37)(39)~~ "Signed" means bearing ~~includes~~ any symbol
29 executed or adopted by a party with present intention to adopt
30 or accept ~~authenticate~~ a writing.

1 (38) "State" means a state of the United States, the
2 District of Columbia, Puerto Rico, the United States Virgin
3 Islands, or any territory or insular possession subject to the
4 jurisdiction of the United States.

5 ~~(39)(40)~~ "Surety" includes a guarantor or other
6 secondary obligor.

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

10 ~~(40)(42)~~ "Term" means a ~~that~~ portion of an agreement
11 which relates to a particular matter.

12 ~~(41)(43)~~ "Unauthorized" signature" means a signature
13 ~~one~~ made without actual, implied, or apparent authority. The
14 term and includes a forgery.

15 ~~(44)~~ ~~"Value." Except as otherwise provided with~~
16 ~~respect to negotiable instruments and bank collections (ss.~~
17 ~~673.3031, 674.2101, and 674.2111), a person gives value for~~
18 ~~rights if he or she acquires them:~~

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

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

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

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

29 ~~(42)(45)~~ "Warehouse receipt" means a written receipt
30 ~~or an electronic notification of receipt~~ issued by a person
31 engaged in the business of storing goods for hire.

1 ~~(43)(46) "Written" or~~ "Writing" includes printing,
2 typewriting, or any other intentional reduction to tangible
3 form. "Written" has a corresponding meaning.

4 Section 7. Section 671.202, Florida Statutes, is
5 amended to read:

6 671.202 Prima facie evidence by third-party
7 documents.--A document in due form purporting to be a bill of
8 lading, policy or certificate of insurance, official weigher's
9 or inspector's certificate, consular invoice, or any other
10 document authorized or required by the contract to be issued
11 by a third party is ~~shall be~~ prima facie evidence of its own
12 authenticity and genuineness and of the facts stated in the
13 document by the third party.

14 Section 8. Section 671.203, Florida Statutes, is
15 amended to read:

16 671.203 Obligation of good faith.--Every contract or
17 duty within this code imposes an obligation of good faith in
18 its performance and ~~or~~ enforcement.

19 Section 9. Section 671.204, Florida Statutes, is
20 amended to read:

21 671.204 Actions taken within Time; reasonable time;
22 ~~"seasonably."~~

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

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

1 ~~(2)(3)~~ An action is taken "seasonably" ~~if when~~ it is
2 taken at or within the time agreed or, if no time is agreed,
3 at or within a reasonable time.

4 Section 10. Section 671.205, Florida Statutes, is
5 amended to read:

6 671.205 Course of performance; course of dealing; and
7 usage of trade.--

8 ~~(1)~~ A "course of performance" is a sequence of conduct
9 between the parties to a particular transaction that exists
10 if:

11 ~~(a)~~ The agreement of the parties with respect to the
12 transaction involves repeated occasions for performance by a
13 party; and

14 ~~(b)~~ The other party, with knowledge of the nature of
15 the performance and opportunity for objection to it, accepts
16 the performance or acquiesces in it without objection.

17 ~~(2)(1)~~ A "course of dealing" is a sequence of ~~previous~~
18 conduct concerning previous transactions between the parties
19 to a particular transaction which is fairly to be regarded as
20 establishing a common basis of understanding for interpreting
21 their expressions and other conduct.

22 ~~(3)(2)~~ A "usage of trade" is any practice or method of
23 dealing having such regularity of observance in a place,
24 vocation, or trade as to justify an expectation that it will
25 be observed with respect to the transaction in question. The
26 existence and scope of such a usage are to be proved as facts.
27 If it is established that such a usage is embodied in a
28 written trade code or similar record, writing the
29 interpretation of the record writing is a question of law for
30 ~~the court.~~

31

1 ~~(4)(3)~~ A course of performance or a course of dealing
2 between the parties or ~~and any~~ usage of trade in the vocation
3 or trade in which they are engaged or of which they are or
4 should be aware is relevant in ascertaining the give
5 ~~particular meaning of the parties' to and supplement or~~
6 ~~qualify terms of an~~ agreement, may give particular meaning to
7 specific terms of the agreement, and may supplement or qualify
8 the terms of the agreement. A usage of trade applicable in the
9 place in which part of the performance under the agreement is
10 to occur may be so utilized as to that part of the
11 performance.

12 ~~(5)(4)~~ Except as otherwise provided in subsection (6),
13 the express terms of an agreement and any an applicable course
14 of performance, course of dealing, or usage of trade must
15 ~~shall~~ be construed whenever ~~wherever~~ reasonable as consistent
16 with each other. ~~If; but when~~ such a construction is
17 unreasonable:

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

20 ~~(b)~~ Course of performance prevails over course of
21 dealing and usage of trade; and

22 ~~(c)~~ Course of dealing prevails over ~~controls~~ usage of
23 trade.

24 ~~(6)~~ A course of performance is relevant to show a
25 waiver or modification of any term inconsistent with the
26 course of performance.

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

30 ~~(7)(6)~~ Evidence of a relevant usage of trade offered
31 by one party is not admissible unless that party ~~and until he~~

1 ~~or she~~ has given the other party ~~such~~ notice that ~~as~~ the court
2 finds sufficient to prevent unfair surprise to the other party
3 ~~latter~~.

4 Section 11. Section 671.206, Florida Statutes, is
5 repealed.

6 Section 12. Section 671.208, Florida Statutes, is
7 amended to read:

8 671.208 Option to accelerate at will.--A term
9 providing that one party or the party's successor in interest
10 may accelerate payment or performance or require collateral or
11 additional collateral "at will" or "when she or he deems
12 herself or himself insecure" or in words of similar import
13 must ~~shall~~ be construed to mean that she or he has ~~shall have~~
14 power to do so only if she or he in good faith believes that
15 the prospect of payment or performance is impaired. The burden
16 of establishing lack of good faith is on the party against
17 whom the power has been exercised.

18 Section 13. Section 671.209, Florida Statutes, is
19 created to read:

20 671.209 Notice; knowledge.--

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

23 (a) Has actual knowledge of it;

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

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

28 (2) "Knowledge" means actual knowledge. "Knows" has a
29 corresponding meaning.

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

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

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

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

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

13 (6) Notice, knowledge, or a notice or notification
14 received by an organization is effective for a particular
15 transaction from the time it is brought to the attention of
16 the person conducting that transaction and, in any event, from
17 the time it would have been brought to the person's attention
18 if the organization had exercised due diligence. An
19 organization exercises due diligence if it maintains
20 reasonable routines for communicating significant information
21 to the person conducting the transaction and there is
22 reasonable compliance with the routines. Due diligence does
23 not require an individual acting for the organization to
24 communicate information unless the communication is part of
25 the individual's regular duties or the individual has reason
26 to know of the transaction and that the transaction would be
27 materially affected by the information.

28 Section 14. Section 671.21, Florida Statutes, is
29 created to read:

30 671.21 Presumptions.--Whenever this code creates a
31 "presumption" with respect to a fact or provides that a fact

1 is "presumed," the trier of fact must find the existence of
2 the fact presumed unless evidence is introduced which supports
3 a finding of its nonexistence.

4 Section 15. Section 671.211, Florida Statutes, is
5 created to read:

6 671.211 Value.--Except as otherwise provided with
7 respect to negotiable instruments and bank collections as
8 provided in ss. 673.3031, 674.2101, and 674.2111, a person
9 gives value for rights if the person acquires them:

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

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

16 (3) By accepting delivery under a preexisting contract
17 for purchase; or

18 (4) In return for any consideration sufficient to
19 support a simple contract.

20 Section 16. Section 671.212, Florida Statutes, is
21 created to read:

22 671.212 Relation to Electronic Signatures in Global
23 and National Commerce Act.--This code modifies, limits, and
24 supersedes the federal Electronic Signatures in Global and
25 National Commerce Act, 15 U.S.C. ss. 7001 et seq., except that
26 nothing in this code modifies, limits, or supersedes s.
27 7001(c) of that act or authorizes electronic delivery of any
28 of the notices described in s. 7003(b) of that act.

29 Section 17. Section 671.213, Florida Statutes, is
30 created to read:

31

1 671.213 Subordinated obligations.--An obligation may
2 be issued as subordinated to performance of another obligation
3 of the person obligated, or a creditor may subordinate its
4 right to performance of an obligation by agreement with either
5 the person obligated or another creditor of the person
6 obligated. Subordination does not create a security interest
7 as against either the common debtor or a subordinated
8 creditor.

9 Section 18. Subsection (2) of section 559.9232,
10 Florida Statutes, is amended to read:

11 559.9232 Definitions; exclusion of rental-purchase
12 agreements from certain regulations.--

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

16 (a) A lease or agreement that ~~which~~ constitutes a
17 credit sale as defined in 12 C.F.R. s. 226.2(a)(16) and s.
18 1602(g) of the federal Truth in Lending Act, 15 U.S.C. ss.
19 1601 et seq.;

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

22 (c) Any lease for agricultural, business, or
23 commercial purposes;

24 (d) Any lease made to an organization;

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

28 (f) A security interest as defined in s. 671.201(35)
29 ~~s. 671.201(37)~~.

30 Section 19. Paragraph (g) of subsection (2) of section
31 563.022, Florida Statutes, is amended to read:

1 563.022 Relations between beer distributors and
2 manufacturers.--

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

5 (g) "Good faith" means honesty in fact in the conduct
6 or transaction concerned as defined and interpreted under s.
7 671.201(20) ~~s. 671.201(19)~~.

8 Section 20. Paragraph (b) of subsection (3) and
9 paragraph (d) of subsection (16) of section 668.50, Florida
10 Statutes, are amended to read:

11 668.50 Uniform Electronic Transaction Act.--

12 (3) SCOPE.--

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

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

17 2. The Uniform Commercial Code other than s. 33-
18 671.107 ~~and 671.206~~ and chapters 672 and 680;

19 3. The Uniform Computer Information Transactions Act;
20 or

21 4. Rules relating to judicial procedure.

22 (16) TRANSFERABLE RECORDS.--

23 (d) Except as otherwise agreed, a person having
24 control of a transferable record is the holder, as defined in
25 s. 671.201(21) ~~s. 671.201(20)~~, of the transferable record and
26 has the same rights and defenses as a holder of an equivalent
27 record or writing under the Uniform Commercial Code,
28 including, if the applicable statutory requirements under s.
29 673.3021, s. 677.501, or s. 679.308 are satisfied, the rights
30 and defenses of a holder in due course, a holder to which a
31 negotiable document of title has been duly negotiated, or a

1 purchaser, respectively. Delivery, possession, and indorsement
2 are not required to obtain or exercise any of the rights under
3 this paragraph.

4 Section 21. Subsection (1) of section 670.106, Florida
5 Statutes, is amended to read:

6 670.106 Time payment order is received.--

7 (1) The time of receipt of a payment order or
8 communication canceling or amending a payment order is
9 determined by the rules applicable to receipt of a notice
10 stated in s. 671.209 ~~s. 671.201(27)~~. A receiving bank may fix
11 a cut-off time or times on a funds-transfer business day for
12 the receipt and processing of payment orders and
13 communications canceling or amending payment orders. Different
14 cut-off times may apply to payment orders, cancellations, or
15 amendments or to different categories of payment orders,
16 cancellations, or amendments. A cut-off time may apply to
17 senders generally, or different cut-off times may apply to
18 different senders or categories of payment orders. If a
19 payment order or communication canceling or amending a payment
20 order is received after the close of a funds-transfer business
21 day or after the appropriate cut-off time on a funds-transfer
22 business day, the receiving bank may treat the payment order
23 or communication as received at the opening of the next
24 funds-transfer business day.

25 Section 22. Subsection (2) of section 670.204, Florida
26 Statutes, is amended to read:

27 670.204 Refund of payment and duty of customer to
28 report with respect to unauthorized payment order.--

29 (2) Reasonable time under subsection (1) may be fixed
30 by agreement ~~as stated in s. 671.204(1)~~, but the obligation of
31

1 a receiving bank to refund payment as stated in subsection (1)
2 may not otherwise be varied by agreement.

3 Section 23. Subsection (3) of section 675.102, Florida
4 Statutes, is amended to read:

5 675.102 Scope.--

6 (3) With the exception of this subsection, subsections
7 (1) and (4), ss. 675.103(1)(i) and (j), 675.106(4), and
8 675.114(4), and except to the extent prohibited in ss.
9 671.102(2) ~~ss. 671.102(3)~~ and 675.117(4), the effect of this
10 chapter may be varied by agreement or by a provision stated or
11 incorporated by reference in an undertaking. A term in an
12 agreement or undertaking generally excusing liability or
13 generally limiting remedies for failure to perform obligations
14 is not sufficient to vary obligations prescribed by this
15 chapter.

16 Section 24. Subsection (1) of section 679.525, Florida
17 Statutes, is amended to read:

18 679.525 Processing fees.--

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

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

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

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

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

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

31

1 ~~(f)~~ For filing a financing statement communicated by
2 an electronic filing process authorized by the filing office,
3 \$15 with no additional fees for multiple names or attached
4 pages;
5 ~~(g)~~ For filing an amendment communicated by an
6 electronic filing process authorized by the filing office, \$5
7 with no additional fees for multiple names or attached pages;
8 ~~(f)~~~~(h)~~ For a certified copy of a financing statement
9 and any and all associated amendments, \$30; and
10 ~~(g)~~~~(i)~~ For a photocopy of a filed record, \$1 per page.
11 Section 25. Subsection (2) of section 680.518, Florida
12 Statutes, is amended to read:
13 680.518 Cover; substitute goods.--
14 (2) Except as otherwise provided with respect to
15 damages liquidated in the lease agreement (s. 680.504) or
16 otherwise determined pursuant to agreement of the parties (ss.
17 671.102(2) ~~ss. 671.102(3)~~ and 680.503), if a lessee's cover is
18 by lease agreement substantially similar to the original lease
19 agreement and the new lease agreement is made in good faith
20 and in a commercially reasonable manner, the lessee may
21 recover from the lessor as damages:
22 (a) The present value, as of the date of the
23 commencement of the term of the new lease agreement, of the
24 rent under the new lease agreement and applicable to that
25 period of the new lease term which is comparable to the then
26 remaining term of the original lease agreement minus the
27 present value as of the same date of the total rent for the
28 then remaining lease term of the original lease agreement; and
29 (b) Any incidental or consequential damages, less
30 expenses saved in consequence of the lessor's default.
31

1 Section 26. Subsection (1) of section 680.519, Florida
2 Statutes, is amended to read:

3 680.519 Lessee's damages for nondelivery, repudiation,
4 default, or breach of warranty in regard to accepted goods.--

5 (1) Except as otherwise provided with respect to
6 damages liquidated in the lease agreement (s. 680.504) or
7 otherwise determined pursuant to agreement of the parties (ss.
8 671.102(2) ~~ss. 671.102(3)~~ and 680.503), if a lessee elects not
9 to cover or a lessee elects to cover and the cover is by lease
10 agreement, whether or not the lease agreement qualifies for
11 treatment under s. 680.518(2), or is by purchase or otherwise,
12 the measure of damages for nondelivery or repudiation by the
13 lessor or for rejection or revocation of acceptance by the
14 lessee is the present value, as of the date of the default, of
15 the then market rent minus the present value as of the same
16 date of the original rent, computed for the remaining lease
17 term of the original lease agreement, together with incidental
18 and consequential damages, less expenses saved in consequence
19 of the lessor's default.

20 Section 27. Subsection (2) of section 680.527, Florida
21 Statutes, is amended to read:

22 680.527 Lessor's rights to dispose of goods.--

23 (2) Except as otherwise provided with respect to
24 damages liquidated in the lease agreement (s. 680.504) or
25 otherwise determined pursuant to agreement of the parties (ss.
26 671.102(2) ~~ss. 671.102(3)~~ and 680.503), if the disposition is
27 by lease agreement substantially similar to the original lease
28 agreement and the new lease agreement is made in good faith
29 and in a commercially reasonable manner, the lessor may
30 recover from the lessee as damages:
31

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

3 (b) The present value, as of the same date, of the
4 commencement of the term of the new lease agreement of the
5 total rent for the then remaining lease term of the original
6 lease agreement minus the present value, as of the same date,
7 of the rent under the new lease agreement applicable to that
8 period of the new lease term which is comparable to the then
9 remaining term of the original lease agreement; and

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

12 Section 28. Subsection (1) of section 680.528, Florida
13 Statutes, is amended to read:

14 680.528 Lessor's damages for nonacceptance or
15 repudiation.--

16 (1) Except as otherwise provided with respect to
17 damages liquidated in the lease agreement (s. 680.504) or
18 otherwise determined pursuant to agreement of the parties (ss.
19 671.102(2) ~~ss. 671.102(3)~~ and 580.503), if a lessor elects to
20 retain the goods or a lessor elects to dispose of the goods
21 and the disposition is by lease agreement that for any reason
22 does not qualify for treatment under s. 680.527(2), or is by
23 sale or otherwise, the lessor may recover from the lessee as
24 damages a default of the type described in s. 680.523(1) or
25 (3)(a), or if agreed, for other default of the lessee:

26 (a) Accrued and unpaid rent as of the date of default
27 if the lessee has never taken possession of the goods, or, if
28 the lessee has taken possession of the goods, as of the date
29 the lessor repossesses the goods or an earlier date on which
30 the lessee makes a tender of the goods to the lessor.

31

1 (b) The present value as of the date determined under
2 paragraph (a) of the total rent for the then remaining lease
3 term of the original lease agreement minus the present value
4 as of the same date of the market rent at the place where the
5 goods were located on that date computed for the same lease
6 term.

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

9 Section 29. Subsection (6) of section 713.901, Florida
10 Statutes, is amended to read:

11 713.901 Florida Uniform Federal Lien Registration
12 Act.--

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

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

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

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

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

28 (e) For certifying any record, \$10 for the first 10
29 file numbers certified and \$10 for each subsequent group of 10
30 file numbers.

31

1 (f) For use, pursuant to s. 679.525(1)(d), of a
2 nonapproved form, \$5 shall be the same as prescribed in s.
3 15.091.

4
5 The charges or fees of the clerks of the circuit court with
6 respect to a notice or certificate filed under this section
7 shall be the same as prescribed in s. 28.24, relating to
8 instruments recorded in the official records.

9 Section 30. This act shall take effect January 1,
10 2008.

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 Senate Bill 252

15 The Committee Substitute makes the following changes:

- 16 -- Repeals s. 15.091, F.S., related to processing fees for
17 UCC filings, the substance of which has been moved to s.
18 713.901, F.S.;
- 18 -- Amends s. 679.525, F.S, related to processing fees for
19 UCC filings, to delete the fees for electronic filing;
and
- 20 -- Corrects a scrivener's error in section 29 of the bill,
21 to change a proposed fee from \$3 to \$5.