

By the Committees on Judiciary; Commerce; and Senators  
Aronberg and Lynn

590-1997-07

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; deleting a  
30 cross-reference to conform to changes made by  
31 the act; providing an effective date.

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

2

3 Section 1. Section 15.091, Florida Statutes, is  
4 repealed.

5 Section 2. Section 671.101, Florida Statutes, is  
6 amended to read:

7 671.101 Short title; scope of chapter.--

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

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

14 Section 3. Section 671.102, Florida Statutes, is  
15 amended to read:

16 671.102 Purposes; rules of construction; variation by  
17 agreement.--

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

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

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

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

26 (c) To make uniform the law among the various  
27 jurisdictions.

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

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

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

13           **(3)**~~(5)~~ In this code~~,~~ unless the context otherwise  
14 requires:

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

17           **(b)** ~~Gender specific language includes the other gender~~  
18 ~~and neuter, and when the sense so indicates~~ Words of either  
19 ~~the neuter~~ gender also may refer to the other ~~any~~ gender.

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

22           671.106 Remedies to be liberally administered.--

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

29           Section 5. Section 671.107, Florida Statutes, is  
30 amended to read:

31

1           671.107 Waiver or renunciation of claim or right after  
2 breach.--~~A~~ Any claim or right arising out of an alleged breach  
3 can be discharged in whole or in part without consideration by  
4 agreement of a written waiver or renunciation signed and  
5 delivered by the aggrieved party in an authenticated record.

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

8           671.201 General definitions.--Unless the context  
9 otherwise requires, words or phrases defined in this section,  
10 or in the additional definitions contained in other chapters  
11 of this code which apply to particular chapters or parts  
12 thereof, have the meanings stated. Subject to ~~additional~~  
13 definitions contained in other ~~the subsequent~~ chapters of this  
14 code which apply ~~which are applicable~~ to particular specific  
15 chapters or parts thereof, the term ~~and unless the context~~  
16 ~~otherwise requires, in this code:~~

17           (1) "Action<sub>1</sub>" in the sense of a judicial proceeding<sub>1</sub>  
18 includes recoupment, counterclaim, setoff, suit in equity<sub>1</sub> and  
19 any other proceedings in which rights are determined.

20           (2) "Aggrieved party" means a party entitled to pursue  
21 ~~resort to~~ a remedy.

22           (3) "Agreement<sub>1</sub>" as distinguished from "contract,"  
23 means the bargain of the parties in fact<sub>1</sub> as found in their  
24 language or inferred by implication from other circumstances<sub>1</sub>  
25 including course of dealing<sub>1</sub> ~~or~~ usage of trade<sub>1</sub> or course of  
26 performance as provided in ~~this code~~(ss. 671.205 and  
27 672.208). ~~Whether an agreement has legal consequences is~~  
28 ~~determined by the provisions of this code, if applicable;~~  
29 ~~otherwise by the law of contracts (s. 671.103). (Compare~~  
30 ~~"contract.")~~

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

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

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

14           (7) "Branch" includes a separately incorporated  
15 foreign branch of a bank.

16           (8) "Burden of establishing" a fact means the burden  
17 of persuading the triers of fact that the existence of the  
18 fact is more probable than its nonexistence.

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

1 unsecured credit and may acquire goods or documents of title  
2 under a preexisting contract for sale. Only a buyer who takes  
3 possession of the goods or has a right to recover the goods  
4 from the seller under chapter 672 may be a buyer in ~~the~~  
5 ordinary course of business. "Buyer in ordinary course of  
6 business" does not include a person who acquires goods in a  
7 transfer in bulk or as security for or in total or partial  
8 satisfaction of a money debt ~~is not a buyer in the ordinary~~  
9 ~~course of business.~~

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

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

22 (b) Language in the body of a record or display in  
23 type larger than that of the surrounding text; in a type,  
24 font, or color in contrast to the surrounding text of the same  
25 size; or set off from surrounding text of the same size by  
26 symbols or other marks that call attention to the language.  
27 ~~But in a telegram any stated term is conspicuous. Whether a~~  
28 ~~term or clause is conspicuous or not is for decision by the~~  
29 ~~court.~~

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

4           ~~(12)~~~~(11)~~ "Contract," as distinguished from  
5 "agreement," means the total legal obligation ~~that~~ ~~which~~  
6 results from the parties' agreement as determined ~~affected~~ by  
7 this code and as supplemented by any other applicable laws  
8 ~~rules of law.~~ ~~(Compare "agreement.")~~

9           ~~(13)~~~~(12)~~ "Creditor" includes a general creditor, a  
10 secured creditor, a lien creditor, and any representative of  
11 creditors, including an assignee for the benefit of creditors,  
12 a trustee in bankruptcy, a receiver in equity, and an executor  
13 or administrator of an insolvent debtor's or assignor's  
14 estate.

15           ~~(14)~~~~(13)~~ "Defendant" includes a person in the position  
16 of defendant in a ~~cross action or counterclaim,~~ cross-claim,  
17 or third-party claim.

18           ~~(15)~~~~(14)~~ "Delivery," with respect to an instrument  
19 ~~instruments, document documents~~ of title, or chattel paper, ~~or~~  
20 ~~certificated securities~~ means voluntary transfer of  
21 possession.

22           ~~(16)~~~~(15)~~ "Document of title" includes bill of lading,  
23 dock warrant, dock receipt, warehouse receipt or order for the  
24 delivery of goods, and ~~also~~ any other document ~~that~~ ~~which~~ in  
25 the regular course of business or financing is treated as  
26 adequately evidencing that the person in possession of it is  
27 entitled to receive, hold, and dispose of the document and the  
28 goods it covers. To be a document of title, a document must  
29 purport to be issued by or addressed to a bailee and purport  
30 to cover goods in the bailee's possession which are either  
31 identified or are fungible portions of an identified mass.



1           ~~(17)(16)~~ "Fault" means a default, breach, or wrongful  
2 act or, omission ~~or breach~~.

3           ~~(18)(17)~~ "Fungible goods" ~~with respect to goods or~~  
4 ~~securities~~ means:

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

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

12           ~~(19)(18)~~ "Genuine" means free of forgery or  
13 counterfeiting.

14           ~~(20)(19)~~ "Good faith," except as otherwise provided in  
15 this code, means honesty in fact and in the observance of  
16 reasonable commercial standards of fair dealing ~~conduct or~~  
17 ~~transaction concerned~~.

18           ~~(21)(20)~~ "Holder," ~~with respect to a negotiable~~  
19 ~~instrument~~, means:

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

25           ~~(b)~~ The person in possession of a document of title if  
26 the goods are deliverable either to bearer or to the order of  
27 the person in possession.

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

31

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

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

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

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

11           (c) Being is insolvent within the meaning of the  
12 Federal Bankruptcy Law.

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

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

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

20           ~~(b) He or she has received a notice or notification of~~  
21 ~~it; or~~

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

25  
26 ~~A person "knows" or has "knowledge" of a fact when he or she~~  
27 ~~has actual knowledge of it. "Discover" or "learn" or a word or~~  
28 ~~phrase of similar import refers to knowledge rather than to~~  
29 ~~reason to know. The time and circumstances under which a~~  
30 ~~notice or notification may cease to be effective are not~~  
31 ~~determined by this code.~~

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

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

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

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

26           ~~(25)(28)~~ "Organization" means a person other than an  
27 individual ~~includes a corporation, government or governmental~~  
28 ~~subdivision or agency, business trust, estate, trust,~~  
29 ~~partnership or association, two or more persons having a joint~~  
30 ~~or common interest, or any other legal or commercial entity.~~

1           ~~(26)(29)~~ "Party," as distinguished ~~distinct~~ from  
2 "third party," means a person who has engaged in a transaction  
3 or made an agreement subject to ~~within~~ this code.

4           ~~(27)(30)~~ "Person" means ~~includes~~ an individual;  
5 corporation; business trust; estate; trust; partnership;  
6 limited liability company; association; joint venture;  
7 government; governmental subdivision, agency, or  
8 instrumentality; public corporation; or any other legal or  
9 commercial entity ~~or an organization (see s. 671.102).~~

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

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

22           ~~(29)(32)~~ "Purchase" means ~~includes~~ taking by sale,  
23 lease, discount, negotiation, mortgage, pledge, lien, security  
24 interest, issue or reissue, gift, or any other voluntary  
25 transaction creating an interest in property.

26           ~~(30)(33)~~ "Purchaser" means a person who takes by  
27 purchase.

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

31

1           ~~(32)(34)~~ "Remedy" means any remedial right to which an  
2 aggrieved party is entitled with or without resort to a  
3 tribunal.

4           ~~(33)(35)~~ "Representative" means a person empowered to  
5 act for another, including ~~includes~~ an agent, an officer of a  
6 corporation or association, and a trustee, executor, or  
7 administrator of an estate, ~~or any other person empowered to~~  
8 ~~act for another.~~

9           ~~(34)(36)~~ "Right Rights" includes "remedy" ~~remedies.~~

10           ~~(35)(37)~~ "Security interest" means an interest in  
11 personal property or fixtures which secures payment or  
12 performance of an obligation. "Security interest" ~~The term~~  
13 ~~also~~ includes any interest of a consignor and a buyer of  
14 accounts, chattel paper, a payment intangible, or a promissory  
15 note in a transaction that ~~which~~ is subject to chapter 679.

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

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

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

8           2. The lessee is bound to renew the lease for the  
9 remaining economic life of the goods or is bound to become the  
10 owner of the goods;

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

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

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

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

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

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

1           ~~4.3.~~ The lessee has an option to renew the lease or to  
2 become the owner of the goods;

3           ~~5.4.~~ The lessee has an option to renew the lease for a  
4 fixed rent that is equal to or greater than the reasonably  
5 predictable fair market rent for the use of the goods for the  
6 term of the renewal at the time the option is to be performed;  
7 or

8           ~~6.5.~~ The lessee has an option to become the owner of  
9 the goods for a fixed price that is equal to or greater than  
10 the reasonably predictable fair market value of the goods at  
11 the time the option is to be performed.

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

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

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

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

28           (d)~~2.~~ ~~The "Reasonably predictable" and "remaining~~  
29 ~~economic life of the goods" and "reasonably predictable" fair~~  
30 ~~market rent, fair market value, or cost of performing under~~  
31 the lease agreement must ~~are to~~ be determined with reference

1 to the facts and circumstances at the time the transaction is  
2 entered into.

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

12 ~~(36)(38)~~ "Send," in connection with a ~~any~~ writing,  
13 record, or notice, means:

14 (a) To deposit in the mail or deliver for transmission  
15 by any other usual means of communication with postage or cost  
16 of transmission provided for and properly addressed and, in  
17 the case of an instrument, to an address specified thereon or  
18 otherwise agreed, or, if there be none, to any address  
19 reasonable under the circumstances; or.

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

24 ~~(37)(39)~~ "Signed" means bearing ~~includes~~ any symbol  
25 executed or adopted by a party with present intention to adopt  
26 or accept ~~authenticate~~ a writing.

27 (38) "State" means a state of the United States, the  
28 District of Columbia, Puerto Rico, the United States Virgin  
29 Islands, or any territory or insular possession subject to the  
30 jurisdiction of the United States.

31



1           ~~(39)(40)~~ "Surety" includes a guarantor or other  
2 secondary obligor.

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

6           ~~(40)(42)~~ "Term" means a ~~that~~ portion of an agreement  
7 which relates to a particular matter.

8           ~~(41)(43)~~ "Unauthorized" signature" means a signature  
9 ~~one~~ made without actual, implied, or apparent authority. The  
10 term and includes a forgery.

11           ~~(44)~~ "Value." ~~Except as otherwise provided with~~  
12 ~~respect to negotiable instruments and bank collections (ss.~~  
13 ~~673.3031, 674.2101, and 674.2111), a person gives value for~~  
14 ~~rights if he or she acquires them:~~

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

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

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

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

25           ~~(42)(45)~~ "Warehouse receipt" means a written receipt  
26 ~~or an electronic notification of receipt~~ issued by a person  
27 engaged in the business of storing goods for hire.

28           ~~(43)(46)~~ "Written" or "Writing" includes printing,  
29 typewriting, or any other intentional reduction to tangible  
30 form. "Written" has a corresponding meaning.

31

1 Section 7. Section 671.202, Florida Statutes, is  
2 amended to read:

3 671.202 Prima facie evidence by third-party  
4 documents.--A document in due form purporting to be a bill of  
5 lading, policy or certificate of insurance, official weigher's  
6 or inspector's certificate, consular invoice, or any other  
7 document authorized or required by the contract to be issued  
8 by a third party is ~~shall be~~ prima facie evidence of its own  
9 authenticity and genuineness and of the facts stated in the  
10 document by the third party.

11 Section 8. Section 671.203, Florida Statutes, is  
12 amended to read:

13 671.203 Obligation of good faith.--Every contract or  
14 duty within this code imposes an obligation of good faith in  
15 its performance and ~~or~~ enforcement.

16 Section 9. Section 671.204, Florida Statutes, is  
17 amended to read:

18 671.204 Actions taken within ~~Time;~~ reasonable time;  
19 ~~"seasonably."~~

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

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

27 ~~(2)(3)~~ An action is taken ~~"seasonably"~~ if ~~when~~ it is  
28 taken at or within the time agreed or, if no time is agreed,  
29 at or within a reasonable time.

30 Section 10. Section 671.205, Florida Statutes, is  
31 amended to read:

1           671.205 Course of performance; course of dealing; ~~and~~  
2 usage of trade.--

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

6           (a) The agreement of the parties with respect to the  
7 transaction involves repeated occasions for performance by a  
8 party; and

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

12           (2)(1) A "course of dealing" is a sequence of ~~previous~~  
13 conduct concerning previous transactions between the parties  
14 to a particular transaction which is fairly to be regarded as  
15 establishing a common basis of understanding for interpreting  
16 their expressions and other conduct.

17           (3)(2) A "usage of trade" is any practice or method of  
18 dealing having such regularity of observance in a place,  
19 vocation, or trade as to justify an expectation that it will  
20 be observed with respect to the transaction in question. The  
21 existence and scope of such a usage are to be proved as facts.  
22 If it is established that such a usage is embodied in a  
23 written trade code or similar record, ~~writing~~ the  
24 interpretation of the record writing is a question of law for  
25 ~~the court.~~

26           (4)(3) A course of performance or a course of dealing  
27 between the parties or ~~and any~~ usage of trade in the vocation  
28 or trade in which they are engaged or of which they are or  
29 should be aware is relevant in ascertaining the give  
30 ~~particular~~ meaning of the parties' to ~~and supplement or~~  
31 ~~qualify terms of an~~ agreement, may give particular meaning to

1 specific terms of the agreement, and may supplement or qualify  
2 the terms of the agreement. A usage of trade applicable in the  
3 place in which part of the performance under the agreement is  
4 to occur may be so utilized as to that part of the  
5 performance.

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

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

14 (b) Course of performance prevails over course of  
15 dealing and usage of trade; and

16 (c) Course of dealing prevails over ~~controls~~ usage of  
17 trade.

18 (6) A course of performance is relevant to show a  
19 waiver or modification of any term inconsistent with the  
20 course of performance.

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

24 ~~(7)(6)~~ Evidence of a relevant usage of trade offered  
25 by one party is not admissible unless that party ~~and until he~~  
26 ~~or she~~ has given the other party ~~such~~ notice that ~~as~~ the court  
27 finds sufficient to prevent unfair surprise to the other party  
28 ~~latter.~~

29 Section 11. Section 671.206, Florida Statutes, is  
30 repealed.

31

1           Section 12. Section 671.208, Florida Statutes, is  
2 amended to read:

3           671.208 Option to accelerate at will.--A term  
4 providing that one party or the party's successor in interest  
5 may accelerate payment or performance or require collateral or  
6 additional collateral "at will" or "when she or he deems  
7 herself or himself insecure" or in words of similar import  
8 ~~must shall~~ be construed to mean that she or he has shall have  
9 power to do so only if she or he in good faith believes that  
10 the prospect of payment or performance is impaired. The burden  
11 of establishing lack of good faith is on the party against  
12 whom the power has been exercised.

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

15           671.209 Notice; knowledge.--

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

18           (a) Has actual knowledge of it;

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

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

23           (2) "Knowledge" means actual knowledge. "Knows" has a  
24 corresponding meaning.

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

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

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

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

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

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

23           Section 14. Section 671.21, Florida Statutes, is  
24 created to read:

25           671.21 Presumptions.--Whenever this code creates a  
26 "presumption" with respect to a fact or provides that a fact  
27 is "presumed," the trier of fact must find the existence of  
28 the fact presumed unless evidence is introduced which supports  
29 a finding of its nonexistence.

30           Section 15. Section 671.211, Florida Statutes, is  
31 created to read:

1           671.211 Value.--Except as otherwise provided with  
2 respect to negotiable instruments and bank collections as  
3 provided in ss. 673.3031, 674.2101, and 674.2111, a person  
4 gives value for rights if the person acquires them:

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

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

11           (3) By accepting delivery under a preexisting contract  
12 for purchase; or

13           (4) In return for any consideration sufficient to  
14 support a simple contract.

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

17           671.212 Relation to Electronic Signatures in Global  
18 and National Commerce Act.--This code modifies, limits, and  
19 supersedes the federal Electronic Signatures in Global and  
20 National Commerce Act, 15 U.S.C. ss. 7001 et seq., except that  
21 nothing in this code modifies, limits, or supersedes 15 U.S.C.  
22 s. 7001(c) or authorizes electronic delivery of any of the  
23 notices described in 15 U.S.C. s. 7003(b).

24           Section 17. Section 671.213, Florida Statutes, is  
25 created to read:

26           671.213 Subordinated obligations.--An obligation may  
27 be issued as subordinated to performance of another obligation  
28 of the person obligated, or a creditor may subordinate its  
29 right to performance of an obligation by agreement with either  
30 the person obligated or another creditor of the person  
31 obligated. Subordination does not create a security interest

1 as against either the common debtor or a subordinated  
2 creditor.

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

5 559.9232 Definitions; exclusion of rental-purchase  
6 agreements from certain regulations.--

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

10 (a) A lease or agreement that ~~which~~ constitutes a  
11 credit sale as defined in 12 C.F.R. s. 226.2(a)(16) and s.  
12 1602(g) of the federal Truth in Lending Act, 15 U.S.C. ss.  
13 1601 et seq.;

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

16 (c) Any lease for agricultural, business, or  
17 commercial purposes;

18 (d) Any lease made to an organization;

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

22 (f) A security interest as defined in s. 671.201(35)  
23 ~~s. 671.201(37)~~.

24 Section 19. Paragraph (g) of subsection (2) of section  
25 563.022, Florida Statutes, is amended to read:

26 563.022 Relations between beer distributors and  
27 manufacturers.--

28 (2) DEFINITIONS.--In construing this section, unless  
29 the context otherwise requires, the word, phrase, or term:  
30  
31



1 (g) "Good faith" means honesty in fact in the conduct  
2 or transaction concerned as defined and interpreted under s.  
3 671.201(20) ~~s. 671.201(19)~~.

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

7 668.50 Uniform Electronic Transaction Act.--

8 (3) SCOPE.--

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

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

13 2. The Uniform Commercial Code other than s. 33-  
14 671.107 ~~and 671.206~~ and chapters 672 and 680;

15 3. The Uniform Computer Information Transactions Act;  
16 or

17 4. Rules relating to judicial procedure.

18 (16) TRANSFERABLE RECORDS.--

19 (d) Except as otherwise agreed, a person having  
20 control of a transferable record is the holder, as defined in  
21 s. 671.201(21) ~~s. 671.201(20)~~, of the transferable record and  
22 has the same rights and defenses as a holder of an equivalent  
23 record or writing under the Uniform Commercial Code,  
24 including, if the applicable statutory requirements under s.  
25 673.3021, s. 677.501, or s. 679.308 are satisfied, the rights  
26 and defenses of a holder in due course, a holder to which a  
27 negotiable document of title has been duly negotiated, or a  
28 purchaser, respectively. Delivery, possession, and indorsement  
29 are not required to obtain or exercise any of the rights under  
30 this paragraph.  
31

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

3           670.106 Time payment order is received.--

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

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

24           670.204 Refund of payment and duty of customer to  
25 report with respect to unauthorized payment order.--

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

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

1           675.102 Scope.--

2           (3) With the exception of this subsection, subsections  
3 (1) and (4), ss. 675.103(1)(i) and (j), 675.106(4), and  
4 675.114(4), and except to the extent prohibited in ss.  
5 671.102(2) ~~ss. 671.102(3)~~ and 675.117(4), the effect of this  
6 chapter may be varied by agreement or by a provision stated or  
7 incorporated by reference in an undertaking. A term in an  
8 agreement or undertaking generally excusing liability or  
9 generally limiting remedies for failure to perform obligations  
10 is not sufficient to vary obligations prescribed by this  
11 chapter.

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

14           679.525 Processing fees.--

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

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

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

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

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

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

27           ~~(f) For filing a financing statement communicated by~~  
28 ~~an electronic filing process authorized by the filing office,~~  
29 ~~\$15 with no additional fees for multiple names or attached~~  
30 ~~pages;~~

31

1           ~~(g)~~ For filing an amendment communicated by an  
2 electronic filing process authorized by the filing office, \$5  
3 with no additional fees for multiple names or attached pages;

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

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

7           Section 25. Subsection (2) of section 680.518, Florida  
8 Statutes, is amended to read:

9           680.518 Cover; substitute goods.--

10           (2) Except as otherwise provided with respect to  
11 damages liquidated in the lease agreement (s. 680.504) or  
12 otherwise determined pursuant to agreement of the parties (ss.  
13 671.102(2) ~~ss. 671.102(3)~~ and 680.503), if a lessee's cover is  
14 by lease agreement substantially similar to the original lease  
15 agreement and the new lease agreement is made in good faith  
16 and in a commercially reasonable manner, the lessee may  
17 recover from the lessor as damages:

18           (a) The present value, as of the date of the  
19 commencement of the term of the new lease agreement, of the  
20 rent under the new lease agreement and applicable to that  
21 period of the new lease term which is comparable to the then  
22 remaining term of the original lease agreement minus the  
23 present value as of the same date of the total rent for the  
24 then remaining lease term of the original lease agreement; and

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

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

29           680.519 Lessee's damages for nondelivery, repudiation,  
30 default, or breach of warranty in regard to accepted goods.--  
31

1           (1) Except as otherwise provided with respect to  
2 damages liquidated in the lease agreement (s. 680.504) or  
3 otherwise determined pursuant to agreement of the parties (ss.  
4 671.102(2) ~~ss. 671.102(3)~~ and 680.503), if a lessee elects not  
5 to cover or a lessee elects to cover and the cover is by lease  
6 agreement, whether or not the lease agreement qualifies for  
7 treatment under s. 680.518(2), or is by purchase or otherwise,  
8 the measure of damages for nondelivery or repudiation by the  
9 lessor or for rejection or revocation of acceptance by the  
10 lessee is the present value, as of the date of the default, of  
11 the then market rent minus the present value as of the same  
12 date of the original rent, computed for the remaining lease  
13 term of the original lease agreement, together with incidental  
14 and consequential damages, less expenses saved in consequence  
15 of the lessor's default.

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

18           680.527 Lessor's rights to dispose of goods.--

19           (2) Except as otherwise provided with respect to  
20 damages liquidated in the lease agreement (s. 680.504) or  
21 otherwise determined pursuant to agreement of the parties (ss.  
22 671.102(2) ~~ss. 671.102(3)~~ and 680.503), if the disposition is  
23 by lease agreement substantially similar to the original lease  
24 agreement and the new lease agreement is made in good faith  
25 and in a commercially reasonable manner, the lessor may  
26 recover from the lessee as damages:

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

29           (b) The present value, as of the same date, of the  
30 commencement of the term of the new lease agreement of the  
31 total rent for the then remaining lease term of the original

1 lease agreement minus the present value, as of the same date,  
2 of the rent under the new lease agreement applicable to that  
3 period of the new lease term which is comparable to the then  
4 remaining term of the original lease agreement; and

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

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

9 680.528 Lessor's damages for nonacceptance or  
10 repudiation.--

11 (1) Except as otherwise provided with respect to  
12 damages liquidated in the lease agreement (s. 680.504) or  
13 otherwise determined pursuant to agreement of the parties (ss.  
14 671.102(2) ~~ss. 671.102(3)~~ and 580.503), if a lessor elects to  
15 retain the goods or a lessor elects to dispose of the goods  
16 and the disposition is by lease agreement that for any reason  
17 does not qualify for treatment under s. 680.527(2), or is by  
18 sale or otherwise, the lessor may recover from the lessee as  
19 damages a default of the type described in s. 680.523(1) or  
20 (3)(a), or if agreed, for other default of the lessee:

21 (a) Accrued and unpaid rent as of the date of default  
22 if the lessee has never taken possession of the goods, or, if  
23 the lessee has taken possession of the goods, as of the date  
24 the lessor repossesses the goods or an earlier date on which  
25 the lessee makes a tender of the goods to the lessor.

26 (b) The present value as of the date determined under  
27 paragraph (a) of the total rent for the then remaining lease  
28 term of the original lease agreement minus the present value  
29 as of the same date of the market rent at the place where the  
30 goods were located on that date computed for the same lease  
31 term.

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

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

5 713.901 Florida Uniform Federal Lien Registration  
6 Act.--

7 (6) FEES.--

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

11 1. For filing a notice of lien, which fee shall  
12 include the cost of filing a certificate of release or  
13 nonstatement for said notice of lien, \$25.

14 2. For indexing of each additional debtor or secured  
15 party, \$3.

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

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

19 5. For filing a certificate of discharge or  
20 subordination, \$12.

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

22 7. For filing any other document required or permitted  
23 to be filed under this act, \$12.

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

26 (b) The charges or fees of the clerks of the circuit  
27 court with respect to a notice or certificate filed under this  
28 section shall be the same as prescribed in s. 28.24, relating  
29 to instruments recorded in the official records.

30 Section 30. This act shall take effect January 1,  
31 2008.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
CS Senate Bill 252

This committee substitute changes the underlying committee substitute in that it:

- corrects cross references to the Electronic Signatures in Global and National Commerce Act; and
- revises the terminology of the fee schedule for filings under the Florida Uniform Federal Lien Registration Act.