

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

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 671.101, Florida Statutes, is
30 amended to read:

31 671.101 Short title; scope of chapter.--

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

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

7 Section 2. Section 671.102, Florida Statutes, is
8 amended to read:

9 671.102 Purposes; rules of construction; variation by
10 agreement.--

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

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

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

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

19 (c) To make uniform the law among the various
20 jurisdictions.

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

25 (b) The obligations of good faith, diligence,
26 reasonableness, and care prescribed by this code may not be
27 disclaimed by agreement, but the parties may by agreement
28 determine the standards by which the performance of such
29 obligations is to be measured if such standards are not
30 manifestly unreasonable. Whenever this code requires an action
31

1 to be taken within a reasonable time, a time that is not
2 manifestly unreasonable may be fixed by agreement.

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

7 ~~(3)(5)~~ In this code, unless the context otherwise
8 requires:

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

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

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

16 671.106 Remedies to be liberally administered.--

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

23 Section 4. Section 671.107, Florida Statutes, is
24 amended to read:

25 671.107 Waiver or renunciation of claim or right after
26 breach.--~~A Any~~ claim or right arising out of an alleged breach
27 can be discharged in whole or in part without consideration by
28 agreement of a written waiver or renunciation signed and
29 delivered by the aggrieved party in an authenticated record.

30 Section 5. Section 671.201, Florida Statutes, is
31 amended to read:

1 671.201 General definitions.--Unless the context
2 otherwise requires, words or phrases defined in this section,
3 or in the additional definitions contained in other chapters
4 of this code which apply to particular chapters or parts
5 thereof, have the meanings stated. Subject to ~~additional~~
6 definitions contained in other ~~the subsequent~~ chapters of this
7 code which apply ~~which are applicable~~ to particular ~~specific~~
8 chapters or parts thereof, the term ~~and unless the context~~
9 ~~otherwise requires, in this code:~~

10 (1) "Action_„" in the sense of a judicial proceeding_„
11 includes recoupment, counterclaim, setoff, suit in equity_„ and
12 any other proceedings in which rights are determined.

13 (2) "Aggrieved party" means a party entitled to pursue
14 ~~resort to~~ a remedy.

15 (3) "Agreement_„" as distinguished from "contract,"
16 means the bargain of the parties in fact_„ as found in their
17 language or inferred by implication from other circumstances_„
18 including course of dealing_„ ~~or~~ usage of trade_„ or course of
19 performance as provided in ~~this code~~(ss. 671.205 and
20 672.208). ~~Whether an agreement has legal consequences is~~
21 ~~determined by the provisions of this code, if applicable;~~
22 ~~otherwise by the law of contracts (s. 671.103). (Compare~~
23 ~~"contract.")~~

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

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

30 (6) "Bill of lading" means a document evidencing the
31 receipt of goods for shipment issued by a person engaged in

1 | the business of transporting or forwarding goods, ~~and includes~~
2 | ~~an airbill. "Airbill" means a document serving for air~~
3 | ~~transportation as a bill of lading does for marine or rail~~
4 | ~~transportation, and includes an air consignment note or air~~
5 | ~~waybill.~~

6 | (7) "Branch" includes a separately incorporated
7 | foreign branch of a bank.

8 | (8) "Burden of establishing" a fact means the burden
9 | of persuading the triers of fact that the existence of the
10 | fact is more probable than its nonexistence.

11 | (9) "Buyer in ordinary course of business" means a
12 | person who, in ordinary course, buys goods in good faith,
13 | without knowledge that the sale violates the rights of another
14 | person in the goods, ~~and in the ordinary course~~ from a person,
15 | other than a pawnbroker, in the business of selling goods of
16 | that kind. A person buys goods in ~~the~~ ordinary course if the
17 | sale to the person comports with the usual or customary
18 | practices in the kind of business in which the seller is
19 | engaged or with the seller's own usual or customary practices.
20 | A person who sells oil, gas, or other minerals at the wellhead
21 | or minehead is a person in the business of selling goods of
22 | that kind. A buyer in ~~the~~ ordinary course of business may buy
23 | for cash, by exchange of other property, or on secured or
24 | unsecured credit and may acquire goods or documents of title
25 | under a preexisting contract for sale. Only a buyer who takes
26 | possession of the goods or has a right to recover the goods
27 | from the seller under chapter 672 may be a buyer in ~~the~~
28 | ordinary course of business. "Buyer in ordinary course of
29 | business" does not include a person who acquires goods in a
30 | transfer in bulk or as security for or in total or partial
31 |

1 satisfaction of a money debt ~~is not a buyer in the ordinary~~
2 ~~course of business.~~

3 (10) ~~A term or clause is~~ "Conspicuous," with reference
4 to a term, means when it is so written, displayed, or
5 presented that a reasonable person against whom it is to
6 operate ought to have noticed it. Whether a term is
7 "conspicuous" is a decision for the court. Conspicuous terms
8 include the following:

9 (a) ~~A printed heading in capitals in a size equal to~~
10 or larger than that of the surrounding text or in a ~~(as+~~
11 ~~NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the~~
12 ~~body of a form is conspicuous if it is in larger or other~~
13 contrasting type, font, or color in contrast to the
14 surrounding text of the same or lesser size.

15 (b) Language in the body of a record or display in
16 type larger than that of the surrounding text; in a type,
17 font, or color in contrast to the surrounding text of the same
18 size; or set off from surrounding text of the same size by
19 symbols or other marks that call attention to the language.
20 ~~But in a telegram any stated term is conspicuous. Whether a~~
21 ~~term or clause is conspicuous or not is for decision by the~~
22 ~~court.~~

23 (11) "Consumer" means an individual who enters into a
24 transaction primarily for personal, family, or household
25 purposes.

26 (12)~~(11)~~ "Contract," as distinguished from
27 "agreement," means the total legal obligation that which
28 results from the parties' agreement as determined affected by
29 this code and as supplemented by any other applicable laws
30 rules of law. (Compare "agreement.")

31

1 ~~(13)~~~~(12)~~ "Creditor" includes a general creditor, a
2 secured creditor, a lien creditor, and any representative of
3 creditors, including an assignee for the benefit of creditors,
4 a trustee in bankruptcy, a receiver in equity, and an executor
5 or administrator of an insolvent debtor's or assignor's
6 estate.

7 ~~(14)~~~~(13)~~ "Defendant" includes a person in the position
8 of defendant in a ~~cross action or~~ counterclaim, cross-claim,
9 or third-party claim.

10 ~~(15)~~~~(14)~~ "Delivery, and" with respect to an instrument
11 ~~instruments, document documents~~ of title, or chattel paper, ~~or~~
12 ~~certificated securities~~ means voluntary transfer of
13 possession.

14 ~~(16)~~~~(15)~~ "Document of title" includes bill of lading,
15 dock warrant, dock receipt, warehouse receipt or order for the
16 delivery of goods, and ~~also~~ any other document that ~~which~~ in
17 the regular course of business or financing is treated as
18 adequately evidencing that the person in possession of it is
19 entitled to receive, hold, and dispose of the document and the
20 goods it covers. To be a document of title, and a document must
21 purport to be issued by or addressed to a bailee and purport
22 to cover goods in the bailee's possession which are either
23 identified or are fungible portions of an identified mass.

24 ~~(17)~~~~(16)~~ "Fault" means a default, breach, or wrongful
25 act or, omission ~~or breach~~.

26 ~~(18)~~~~(17)~~ "Fungible goods" ~~with respect to goods or~~
27 ~~securities~~ means:

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

31

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

5 ~~(19)(18)~~ "Genuine" means free of forgery or
6 counterfeiting.

7 ~~(20)(19)~~ "Good faith," except as otherwise provided in
8 this code, means honesty in fact and in the observance of
9 reasonable commercial standards of fair dealing conduct or
10 transaction concerned.

11 ~~(21)(20)~~ "Holder," ~~with respect to a negotiable~~
12 ~~instrument,~~ means:

13 ~~(a) The person in possession of a negotiable if the~~
14 ~~instrument that is payable either to bearer or, in the case of~~
15 ~~an instrument payable to an identified person that is, if the~~
16 ~~identified person is in possession; or. "Holder," with respect~~
17 ~~to a document of title, means~~

18 ~~(b) The person in possession of a document of title if~~
19 ~~the goods are deliverable either to bearer or to the order of~~
20 ~~the person in possession.~~

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

24 (22) "Insolvency proceeding proceedings" includes an
25 any assignment for the benefit of creditors or other
26 proceeding proceedings intended to liquidate or rehabilitate
27 the estate of the person involved.

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

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

1 **(b) Being unable to** ~~or cannot pay his or her~~ debts as
2 they become due; or

3 **(c) Being is** insolvent within the meaning of the
4 Federal Bankruptcy Law.

5 (24) "Money" means a medium of exchange currently
6 authorized or adopted by a domestic or foreign government. The
7 term ~~and~~ includes a monetary unit of account established by an
8 intergovernmental organization or by agreement between two or
9 more countries ~~nations~~.

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

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

12 ~~(b) He or she has received a notice or notification of~~
13 ~~it; or~~

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

17
18 ~~A person "knows" or has "knowledge" of a fact when he or she~~
19 ~~has actual knowledge of it. "Discover" or "learn" or a word or~~
20 ~~phrase of similar import refers to knowledge rather than to~~
21 ~~reason to know. The time and circumstances under which a~~
22 ~~notice or notification may cease to be effective are not~~
23 ~~determined by this code.~~

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

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

30 ~~(b) It is duly delivered at the place of business~~
31 ~~through which the contract was made or at any other place held~~

1 ~~out by the person as the place for receipt of such~~
2 ~~communications.~~

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

18 ~~(25)(28) "Organization" means a person other than an~~
19 ~~individual includes a corporation, government or governmental~~
20 ~~subdivision or agency, business trust, estate, trust,~~
21 ~~partnership or association, two or more persons having a joint~~
22 ~~or common interest, or any other legal or commercial entity.~~

23 ~~(26)(29) "Party," as distinguished distinct from~~
24 ~~"third party," means a person who has engaged in a transaction~~
25 ~~or made an agreement subject to within this code.~~

26 ~~(27)(30) "Person" means includes an individual;~~
27 ~~corporation; business trust; estate; trust; partnership;~~
28 ~~limited liability company; association; joint venture;~~
29 ~~government; governmental subdivision, agency, or~~
30 ~~instrumentality; public corporation; or any other legal or~~
31 ~~commercial entity or an organization (see s. 671.102).~~

1 (28) "Present value" means the amount as of a date
2 certain of one or more sums payable in the future, discounted
3 to the date certain by use of either an interest rate
4 specified by the parties if that rate is not manifestly
5 unreasonable at the time the transaction is entered into or,
6 if an interest rate is not so specified, a commercially
7 reasonable rate that takes into account the facts and
8 circumstances at the time the transaction is entered into.

9 ~~(31) "Presumption" or "presumed" means that the trier~~
10 ~~of fact must find the existence of the fact presumed unless~~
11 ~~and until evidence is introduced which would support a finding~~
12 ~~of its nonexistence.~~

13 ~~(29)(32)~~ "Purchase" means includes taking by sale,
14 lease, discount, negotiation, mortgage, pledge, lien, security
15 interest, issue or reissue, gift, or any other voluntary
16 transaction creating an interest in property.

17 ~~(30)(33)~~ "Purchaser" means a person who takes by
18 purchase.

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

22 ~~(32)(34)~~ "Remedy" means any remedial right to which an
23 aggrieved party is entitled with or without resort to a
24 tribunal.

25 ~~(33)(35)~~ "Representative" means a person empowered to
26 act for another, including includes an agent, an officer of a
27 corporation or association, and a trustee, executor, or
28 administrator of an estate, ~~or any other person empowered to~~
29 ~~act for another.~~

30 ~~(34)(36)~~ "Right Rights" includes "remedy" ~~remedies.~~

31

1 ~~(35)(37)~~ "Security interest" means an interest in
2 personal property or fixtures which secures payment or
3 performance of an obligation. "Security interest" ~~The term~~
4 ~~also~~ includes any interest of a consignor and a buyer of
5 accounts, chattel paper, a payment intangible, or a promissory
6 note in a transaction that ~~which~~ is subject to chapter 679.
7 "Security interest" does not include the special property
8 interest of a buyer of goods on identification of those goods
9 to a contract for sale under s. 672.401 ~~is not a security~~
10 ~~interest~~, but a buyer may also acquire a security interest by
11 complying with chapter 679. Except as otherwise provided in s.
12 672.505, the right of a seller or lessor of goods under
13 chapter 672 or chapter 680 to retain or acquire possession of
14 the goods is not a security interest, but a seller or lessor
15 may also acquire a security interest by complying with chapter
16 679. The retention or reservation of title by a seller of
17 goods, notwithstanding shipment or delivery to the buyer under
18 ~~(s. 672.401)~~, is limited in effect to a reservation of a
19 security interest. Whether a transaction in the form of a
20 lease creates a ~~lease or~~ security interest is determined by
21 the facts of each case; however:

22 (a) A transaction in the form of a lease creates a
23 security interest if the consideration that the lessee is to
24 pay the lessor for the right to possession and use of the
25 goods is an obligation for the term of the lease not subject
26 to termination by the lessee, ~~and:~~

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

29 2. The lessee is bound to renew the lease for the
30 remaining economic life of the goods or is bound to become the
31 owner of the goods;

1 3. The lessee has an option to renew the lease for the
2 remaining economic life of the goods for no additional
3 consideration or nominal additional consideration upon
4 compliance with the lease agreement; or

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

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

10 1. The present value of the consideration the lessee
11 is obligated to pay the lessor for the right to possession and
12 use of the goods is substantially equal to or is greater than
13 the fair market value of the goods at the time the lease is
14 entered into;

15 2. The lessee assumes the risk of loss of the goods ~~or~~
16 ~~agrees to pay taxes; insurance; filing, recording, or~~
17 ~~registration fees; or service or maintenance costs with~~
18 ~~respect to the goods;~~

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

22 ~~4.3-~~ The lessee has an option to renew the lease or to
23 become the owner of the goods;

24 ~~5.4-~~ The lessee has an option to renew the lease for a
25 fixed rent that is equal to or greater than the reasonably
26 predictable fair market rent for the use of the goods for the
27 term of the renewal at the time the option is to be performed;
28 or

29 ~~6.5-~~ The lessee has an option to become the owner of
30 the goods for a fixed price that is equal to or greater than
31

1 the reasonably predictable fair market value of the goods at
2 the time the option is to be performed.

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

4 1. Additional consideration is ~~not~~ nominal if it is
5 less than the lessee's reasonably predictable cost of
6 performing under the lease agreement if the option is not
7 exercised. Additional consideration is not nominal if:

8 1. When the option to renew the lease is granted to
9 the lessee, the rent is stated to be the fair market rent for
10 the use of the goods for the term of the renewal determined at
11 the time the option is to be performed; or if,

12 2. When the option to become the owner of the goods is
13 granted to the lessee, the price is stated to be the fair
14 market value of the goods determined at the time the option is
15 to be performed. ~~Additional consideration is nominal if it is~~
16 ~~less than the lessee's reasonably predictable cost of~~
17 ~~performing under the lease agreement if the option is not~~
18 ~~exercised.~~

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

25 3. ~~"Present value" means the amount as of a date~~
26 ~~certain of one or more sums payable in the future, discounted~~
27 ~~to the date certain. The discount is determined by the~~
28 ~~interest rate specified by the parties if the rate is not~~
29 ~~manifestly unreasonable at the time the transaction is entered~~
30 ~~into; otherwise, the discount is determined by a commercially~~
31 ~~reasonable rate that takes into account the facts and~~

1 ~~circumstances of each case at the time the transaction was~~
2 ~~entered into.~~

3 ~~(36)(38)~~ "Send," in connection with a ~~any~~ writing,
4 record, or notice, means:

5 (a) To deposit in the mail or deliver for transmission
6 by any other usual means of communication with postage or cost
7 of transmission provided for and properly addressed and, in
8 the case of an instrument, to an address specified thereon or
9 otherwise agreed, or, if there be none, to any address
10 reasonable under the circumstances; ~~or.~~

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

15 ~~(37)(39)~~ "Signed" means bearing ~~includes~~ any symbol
16 executed or adopted by a party with present intention to adopt
17 or accept ~~authenticate~~ a writing.

18 (38) "State" means a state of the United States, the
19 District of Columbia, Puerto Rico, the United States Virgin
20 Islands, or any territory or insular possession subject to the
21 jurisdiction of the United States.

22 ~~(39)(40)~~ "Surety" includes a guarantor or other
23 secondary obligor.

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

27 ~~(40)(42)~~ "Term" means a ~~that~~ portion of an agreement
28 which relates to a particular matter.

29 ~~(41)(43)~~ "Unauthorized" signature" means a signature
30 ~~one~~ made without actual, implied, or apparent authority. The
31 term ~~and~~ includes a forgery.

1 ~~(44) "Value." Except as otherwise provided with~~
2 ~~respect to negotiable instruments and bank collections (ss.~~
3 ~~673.3031, 674.2101, and 674.2111), a person gives value for~~
4 ~~rights if he or she acquires them:~~

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

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

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

15 ~~(42)(45)~~ "Warehouse receipt" means a written receipt
16 ~~or an electronic notification of receipt~~ issued by a person
17 engaged in the business of storing goods for hire.

18 ~~(43)(46)~~ "Written" or "Writing" includes printing,
19 typewriting, or any other intentional reduction to tangible
20 form. "Written" has a corresponding meaning.

21 Section 6. Section 671.202, Florida Statutes, is
22 amended to read:

23 671.202 Prima facie evidence by third-party
24 documents.--A document in due form purporting to be a bill of
25 lading, policy or certificate of insurance, official weigher's
26 or inspector's certificate, consular invoice, or any other
27 document authorized or required by the contract to be issued
28 by a third party is ~~shall be~~ prima facie evidence of its own
29 authenticity and genuineness and of the facts stated in the
30 document by the third party.

31

1 Section 7. Section 671.203, Florida Statutes, is
2 amended to read:

3 671.203 Obligation of good faith.--Every contract or
4 duty within this code imposes an obligation of good faith in
5 its performance and ~~or~~ enforcement.

6 Section 8. Section 671.204, Florida Statutes, is
7 amended to read:

8 671.204 Actions taken within ~~Time;~~ reasonable time;
9 ~~"seasonably."~~

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

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

17 ~~(2)(3)~~ An action is taken "seasonably" if ~~when~~ it is
18 taken at or within the time agreed or, if no time is agreed,
19 at or within a reasonable time.

20 Section 9. Section 671.205, Florida Statutes, is
21 amended to read:

22 671.205 Course of performance; course of dealing; ~~and~~
23 usage of trade.--

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

27 (a) The agreement of the parties with respect to the
28 transaction involves repeated occasions for performance by a
29 party; and

30
31

1 **(b) The other party, with knowledge of the nature of**
2 **the performance and opportunity for objection to it, accepts**
3 **the performance or acquiesces in it without objection.**

4 **(2)(1)** A "course of dealing" is a sequence of ~~previous~~
5 conduct **concerning previous transactions** between the parties
6 to a particular transaction which is fairly to be regarded as
7 establishing a common basis of understanding for interpreting
8 their expressions and other conduct.

9 **(3)(2)** A "usage of trade" is any practice or method of
10 dealing having such regularity of observance in a place,
11 vocation, or trade as to justify an expectation that it will
12 be observed with respect to the transaction in question. The
13 existence and scope of such a usage are to be proved as facts.
14 If it is established that such a usage is embodied in a
15 written trade code or similar ~~record, writing~~ the
16 interpretation of the **record writing** is **a question of law for**
17 ~~the court.~~

18 **(4)(3)** A course of **performance or a course of** dealing
19 between **the parties or** ~~and any~~ usage of trade in the vocation
20 or trade in which they are engaged or of which they are or
21 should be aware **is relevant in ascertaining the give**
22 ~~particular~~ **meaning of the parties' to and supplement or**
23 ~~qualify terms of an~~ **agreement, may give particular meaning to**
24 **specific terms of the agreement, and may supplement or qualify**
25 **the terms of the agreement. A usage of trade applicable in the**
26 **place in which part of the performance under the agreement is**
27 **to occur may be so utilized as to that part of the**
28 **performance.**

29 **(5)(4)** **Except as otherwise provided in subsection (6),**
30 the express terms of an agreement and **any** ~~an~~ applicable course
31 of **performance, course of dealing, or usage of trade must**

1 ~~shall~~ be construed whenever ~~wherever~~ reasonable as consistent
2 with each other. ~~If; but when~~ such a construction is
3 unreasonable:

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

6 (b) Course of performance prevails over course of
7 dealing and usage of trade; and

8 (c) Course of dealing prevails over ~~controls~~ usage of
9 trade.

10 (6) A course of performance is relevant to show a
11 waiver or modification of any term inconsistent with the
12 course of performance.

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

16 (7)(6) Evidence of a relevant usage of trade offered
17 by one party is not admissible unless that party ~~and until he~~
18 ~~or she~~ has given the other party ~~such~~ notice that ~~as~~ the court
19 finds sufficient to prevent unfair surprise to the other party
20 ~~latter.~~

21 Section 10. Section 671.206, Florida Statutes, is
22 repealed.

23 Section 11. Section 671.208, Florida Statutes, is
24 amended to read:

25 671.208 Option to accelerate at will.--A term
26 providing that one party or the party's successor in interest
27 may accelerate payment or performance or require collateral or
28 additional collateral "at will" or "when she or he deems
29 herself or himself insecure" or in words of similar import
30 must ~~shall~~ be construed to mean that she or he has ~~shall have~~
31 power to do so only if she or he in good faith believes that

1 the prospect of payment or performance is impaired. The burden
2 of establishing lack of good faith is on the party against
3 whom the power has been exercised.

4 Section 12. Section 671.209, Florida Statutes, is
5 created to read:

6 671.209 Notice; knowledge.--

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

9 (a) Has actual knowledge of it;

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

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

14 (2) "Knowledge" means actual knowledge. "Knows" has a
15 corresponding meaning.

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

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

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

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

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

30 (6) Notice, knowledge, or a notice or notification
31 received by an organization is effective for a particular

1 transaction from the time it is brought to the attention of
2 the person conducting that transaction and, in any event, from
3 the time it would have been brought to the person's attention
4 if the organization had exercised due diligence. An
5 organization exercises due diligence if it maintains
6 reasonable routines for communicating significant information
7 to the person conducting the transaction and there is
8 reasonable compliance with the routines. Due diligence does
9 not require an individual acting for the organization to
10 communicate information unless the communication is part of
11 the individual's regular duties or the individual has reason
12 to know of the transaction and that the transaction would be
13 materially affected by the information.

14 Section 13. Section 671.21, Florida Statutes, is
15 created to read:

16 671.21 Presumptions.--Whenever this code creates a
17 "presumption" with respect to a fact or provides that a fact
18 is "presumed," the trier of fact must find the existence of
19 the fact presumed unless evidence is introduced which supports
20 a finding of its nonexistence.

21 Section 14. Section 671.211, Florida Statutes, is
22 created to read:

23 671.211 Value.--Except as otherwise provided with
24 respect to negotiable instruments and bank collections as
25 provided in ss. 673.3031, 674.2101, and 674.2111, a person
26 gives value for rights if the person acquires them:

27 (1) In return for a binding commitment to extend
28 credit or for the extension of immediately available credit
29 whether or not drawn upon and whether or not a charge-back is
30 provided for in the event of difficulties in collection;
31

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

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

5 (4) In return for any consideration sufficient to
6 support a simple contract.

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

9 671.212 Relation to Electronic Signatures in Global
10 and National Commerce Act.--This code modifies, limits, and
11 supersedes the federal Electronic Signatures in Global and
12 National Commerce Act, 15 U.S.C. ss. 7001 et seq., except that
13 nothing in this code modifies, limits, or supersedes s.
14 7001(c) of that act or authorizes electronic delivery of any
15 of the notices described in s. 7003(b) of that act.

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

18 671.213 Subordinated obligations.--An obligation may
19 be issued as subordinated to performance of another obligation
20 of the person obligated, or a creditor may subordinate its
21 right to performance of an obligation by agreement with either
22 the person obligated or another creditor of the person
23 obligated. Subordination does not create a security interest
24 as against either the common debtor or a subordinated
25 creditor.

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

28 559.9232 Definitions; exclusion of rental-purchase
29 agreements from certain regulations.--
30
31

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

4 (a) A lease or agreement that ~~which~~ constitutes a
5 credit sale as defined in 12 C.F.R. s. 226.2(a)(16) and s.
6 1602(g) of the federal Truth in Lending Act, 15 U.S.C. ss.
7 1601 et seq.;

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

10 (c) Any lease for agricultural, business, or
11 commercial purposes;

12 (d) Any lease made to an organization;

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

16 (f) A security interest as defined in s. 671.201(35)
17 ~~s. 671.201(37)~~.

18 Section 18. Paragraph (g) of subsection (2) of section
19 563.022, Florida Statutes, is amended to read:

20 563.022 Relations between beer distributors and
21 manufacturers.--

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

24 (g) "Good faith" means honesty in fact in the conduct
25 or transaction concerned as defined and interpreted under s.
26 671.201(20) ~~s. 671.201(19)~~.

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

30 668.50 Uniform Electronic Transaction Act.--

31 (3) SCOPE.--

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

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

5 2. The Uniform Commercial Code other than s. ss-
6 671.107 ~~and 671.206~~ and chapters 672 and 680;

7 3. The Uniform Computer Information Transactions Act;
8 or

9 4. Rules relating to judicial procedure.

10 (16) TRANSFERABLE RECORDS.--

11 (d) Except as otherwise agreed, a person having
12 control of a transferable record is the holder, as defined in
13 s. 671.201(21) ~~s. 671.201(20)~~, of the transferable record and
14 has the same rights and defenses as a holder of an equivalent
15 record or writing under the Uniform Commercial Code,
16 including, if the applicable statutory requirements under s.
17 673.3021, s. 677.501, or s. 679.308 are satisfied, the rights
18 and defenses of a holder in due course, a holder to which a
19 negotiable document of title has been duly negotiated, or a
20 purchaser, respectively. Delivery, possession, and indorsement
21 are not required to obtain or exercise any of the rights under
22 this paragraph.

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

25 670.106 Time payment order is received.--

26 (1) The time of receipt of a payment order or
27 communication canceling or amending a payment order is
28 determined by the rules applicable to receipt of a notice
29 stated in s. 671.209 ~~s. 671.201(27)~~. A receiving bank may fix
30 a cut-off time or times on a funds-transfer business day for
31 the receipt and processing of payment orders and

1 | communications canceling or amending payment orders. Different
2 | cut-off times may apply to payment orders, cancellations, or
3 | amendments or to different categories of payment orders,
4 | cancellations, or amendments. A cut-off time may apply to
5 | senders generally, or different cut-off times may apply to
6 | different senders or categories of payment orders. If a
7 | payment order or communication canceling or amending a payment
8 | order is received after the close of a funds-transfer business
9 | day or after the appropriate cut-off time on a funds-transfer
10 | business day, the receiving bank may treat the payment order
11 | or communication as received at the opening of the next
12 | funds-transfer business day.

13 | Section 21. Subsection (2) of section 670.204, Florida
14 | Statutes, is amended to read:

15 | 670.204 Refund of payment and duty of customer to
16 | report with respect to unauthorized payment order.--

17 | (2) Reasonable time under subsection (1) may be fixed
18 | by agreement ~~as stated in s. 671.204(1)~~, but the obligation of
19 | a receiving bank to refund payment as stated in subsection (1)
20 | may not otherwise be varied by agreement.

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

23 | 675.102 Scope.--

24 | (3) With the exception of this subsection, subsections
25 | (1) and (4), ss. 675.103(1)(i) and (j), 675.106(4), and
26 | 675.114(4), and except to the extent prohibited in ss.
27 | 671.102(2) ~~ss. 671.102(3)~~ and 675.117(4), the effect of this
28 | chapter may be varied by agreement or by a provision stated or
29 | incorporated by reference in an undertaking. A term in an
30 | agreement or undertaking generally excusing liability or
31 | generally limiting remedies for failure to perform obligations

1 is not sufficient to vary obligations prescribed by this
2 chapter.

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

5 680.518 Cover; substitute goods.--

6 (2) Except as otherwise provided with respect to
7 damages liquidated in the lease agreement (s. 680.504) or
8 otherwise determined pursuant to agreement of the parties (ss.
9 671.102(2) ~~ss. 671.102(3)~~ and 680.503), if a lessee's cover is
10 by lease agreement substantially similar to the original lease
11 agreement and the new lease agreement is made in good faith
12 and in a commercially reasonable manner, the lessee may
13 recover from the lessor as damages:

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

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

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

25 680.519 Lessee's damages for nondelivery, repudiation,
26 default, or breach of warranty in regard to accepted goods.--

27 (1) Except as otherwise provided with respect to
28 damages liquidated in the lease agreement (s. 680.504) or
29 otherwise determined pursuant to agreement of the parties (ss.
30 671.102(2) ~~ss. 671.102(3)~~ and 680.503), if a lessee elects not
31 to cover or a lessee elects to cover and the cover is by lease

1 | agreement, whether or not the lease agreement qualifies for
2 | treatment under s. 680.518(2), or is by purchase or otherwise,
3 | the measure of damages for nondelivery or repudiation by the
4 | lessor or for rejection or revocation of acceptance by the
5 | lessee is the present value, as of the date of the default, of
6 | the then market rent minus the present value as of the same
7 | date of the original rent, computed for the remaining lease
8 | term of the original lease agreement, together with incidental
9 | and consequential damages, less expenses saved in consequence
10 | of the lessor's default.

11 | Section 25. Subsection (2) of section 680.527, Florida
12 | Statutes, is amended to read:

13 | 680.527 Lessor's rights to dispose of 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 the disposition 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 lessor may
21 | recover from the lessee as damages:

22 | (a) Accrued and unpaid rent as of the date of the
23 | commencement of the term of the new lease agreement;

24 | (b) The present value, as of the same date, of the
25 | commencement of the term of the new lease agreement of the
26 | total rent for the then remaining lease term of the original
27 | lease agreement minus the present value, as of the same date,
28 | of the rent under the new lease agreement applicable to that
29 | period of the new lease term which is comparable to the then
30 | remaining term of the original lease agreement; and
31 |

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

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

5 680.528 Lessor's damages for nonacceptance or
6 repudiation.--

7 (1) Except as otherwise provided with respect to
8 damages liquidated in the lease agreement (s. 680.504) or
9 otherwise determined pursuant to agreement of the parties (ss.
10 671.102(2) ~~ss. 671.102(3)~~ and 580.503), if a lessor elects to
11 retain the goods or a lessor elects to dispose of the goods
12 and the disposition is by lease agreement that for any reason
13 does not qualify for treatment under s. 680.527(2), or is by
14 sale or otherwise, the lessor may recover from the lessee as
15 damages a default of the type described in s. 680.523(1) or
16 (3)(a), or if agreed, for other default of the lessee:

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

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

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

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

1 713.901 Florida Uniform Federal Lien Registration
2 Act.--

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

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

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

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

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

18 (e) For certifying any record, \$10 for the first 10
19 file numbers certified and \$10 for each subsequent group of 10
20 file numbers.

21 (f) For use, pursuant to s. 679.525(1)(d), of a
22 nonapproved form, \$3 shall be the same as prescribed in s.
23 15.091.

24
25 The charges or fees of the clerks of the circuit court with
26 respect to a notice or certificate filed under this section
27 shall be the same as prescribed in s. 28.24, relating to
28 instruments recorded in the official records.

29 Section 28. This act shall take effect January 1,
30 2008.

31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SENATE SUMMARY

Makes a variety of changes to the Uniform Commercial Code. Revises rules of construction. Defines and redefines terms. Defines and describes the effect of "course of performance." Describes circumstances under which notice and knowledge will be inferred. Provides effect of presumptions. Provides for determination of when a person gives value for rights. Describes the code's relation to the Electronic Signatures in Global and National Commerce Act. Provides for subordination of obligations. (See bill for details.)