

Committee Substitute for
Committee Substitute for Senate Bill No. 252

An act relating to business filings; amending s. 608.406, F.S.; deleting certain authorized words or abbreviations in limited liability company names; requiring a company name to be distinguishable on records maintained by the Division of Corporations of the Department of State; providing exceptions; deleting a name-recording requirement for the department; providing for nonapplication of certain requirements relating to distinguishability of company names in certain records under certain circumstances; amending s. 608.407, F.S.; requiring the name of a limited liability company in the company's articles of organization to satisfy certain requirements; repealing s. 15.091, F.S., relating to processing fees for filings of financial statements and other written documents under the Uniform Commercial Code; amending s. 671.101, F.S.; providing scope of chapter and a short title; amending s. 671.102, F.S.; authorizing certain timeframes to be fixed by agreement; amending s. 671.106, F.S.; making editorial changes; amending s. 671.107, F.S.; providing for the discharge of a claim or right under certain circumstances; amending s. 671.201, F.S.; providing, revising, and deleting definitions; amending ss. 671.202 and 671.203, F.S.; making editorial changes; amending s. 671.204, F.S.; revising criteria determining when an action is taken within a reasonable time and seasonably; amending s. 671.205, F.S.; defining "course of performance"; revising the definition of "course of dealing"; providing that course of performance and course of dealing may be used for certain purposes; revising uses for express terms of an agreement; specifying when course of performance, course of dealing, or usage of trade prevails; providing that course of performance is relevant to show a waiver or modification in certain circumstances; repealing s. 671.206, F.S., relating to statute of frauds for kinds of personal property not otherwise covered; amending s. 671.208, F.S.; making editorial changes; creating s. 671.209, F.S.; providing definitions; specifying when notice, knowledge, or notification becomes effective with the exercise of due diligence; creating s. 671.21, F.S.; providing that whenever the code creates certain presumptions, the trier of fact must find the existence of the fact presumed unless evidence is introduced which supports a finding of its nonexistence; creating s. 671.211, F.S.; providing in what instances a person gives value for rights; creating s. 671.212, F.S.; providing that the code modifies, limits, and supercedes certain provisions of the federal Electronic Signatures in Global and National Commerce Act; creating s. 671.213, F.S.; authorizing the subordination of certain obligations; authorizing the registry to use the fees collected to fund its operations; amending s. 679.525, F.S.; deleting the filing fees for electronically filing a financing statement or an amendment thereto; amending ss. 559.9232, 563.022, 668.50, 670.106, 670.204, 675.102, 680.518, 680.519, 680.527, and 680.528, F.S.; conforming cross-references;

amending s. 713.901, F.S.; specifying fees under the Florida Uniform Federal Lien Registration Act previously provided through cross-reference; deleting a cross-reference to conform to changes made by the act; providing an effective date.

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

Section 1. Section 608.406, Florida Statutes, is amended to read:

608.406 Limited liability company name.—

(1) A limited liability company name:

(a) Must contain the words “limited liability company” or ~~“limited company,”~~ or the abbreviation abbreviations “L.L.C.” or “L.C.,” or the designation designations “LLC” or “LC” as the last words of the name of every limited liability company formed under the provisions of this chapter. The word “limited” may be abbreviated as “Ltd.,” and the word “company” may be abbreviated as “Co.” Omission of the words “limited liability company” ~~or “limited company,”~~ the abbreviation abbreviations “L.L.C.” or “L.C.,” or the designation designations “LLC” or “LC” in the use of the name of the limited liability company shall render any person who knowingly participates in the omission, or knowingly acquiesces in the omission, liable for any indebtedness, damage, or liability caused by the omission.

(b) May not contain language stating or implying that the limited liability company is organized for a purpose other than that permitted in this chapter and its articles of organization.

(c) May not contain language stating or implying that the limited liability company is connected with a state or federal government agency or a corporation or other entity chartered under the laws of the United States.

(2) The name of the limited liability company must be distinguishable on the records of the Division of Corporations of the Department of State, except for fictitious name registrations filed pursuant to s. 865.09 and general partnership registrations filed pursuant to s. 620.8105; however, a limited liability company may register under a name that is not otherwise distinguishable on the records of the Division of Corporations with written consent of the owner entity provided the consent is filed with the Division of Corporations at the time of registration of such name.

~~(3)(2) The name of the limited liability company shall be filed with the Department of State for public notice only and shall not alone create any presumption of ownership beyond that which is created under the common law. The Department of State shall record the name without regard to any other name recorded.~~

(4) In the case of any limited liability company in existence prior to July 1, 2007, and registered with the Division of Corporations, the requirement in this section that the name of the entity be distinguishable from the names of other entities and filings shall not apply except when the limited liability

company files documents on or after July 1, 2007, that would otherwise have affected its name.

Section 2. Paragraph (a) of subsection (1) of section 608.407, Florida Statutes, is amended to read:

608.407 Articles of organization.—

(1) In order to form a limited liability company, articles of organization of a limited liability company shall be filed with the Department of State by one or more members or authorized representatives of the limited liability company. The articles of organization shall set forth:

(a) The name of the limited liability company, which must satisfy the requirements of s. 608.406.

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

Section 4. Section 671.101, Florida Statutes, is amended to read:

671.101 Short title; scope of chapter.—

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

(2) This chapter applies to a transaction to the extent that it is governed by another chapter of this code and may be cited as the “Uniform Commercial Code—General Provisions.”

Section 5. Section 671.102, Florida Statutes, is amended to read:

671.102 Purposes; rules of construction; variation by agreement.—

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

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

(a) To simplify, clarify, and modernize the law governing commercial transactions;;

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

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

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

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

reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

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

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

(a) Words in the singular ~~number~~ include the plural, and words in the plural include the singular.;

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

Section 6. Subsection (1) of section 671.106, Florida Statutes, is amended to read:

671.106 Remedies to be liberally administered.—

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

Section 7. Section 671.107, Florida Statutes, is amended to read:

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

Section 8. Section 671.201, Florida Statutes, is amended to read:

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

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

(2) “Aggrieved party” means a party entitled to pursue ~~resort to~~ a remedy.

(3) “Agreement,” as distinguished from “contract,” means the bargain of the parties in fact, as found in their language or inferred ~~by implication~~ from

other circumstances, including course of dealing, ~~or~~ usage of trade, or course of performance as provided in this code (ss. 671.205 and 672.208). ~~Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (s. 671.103). (Compare “contract.”)~~

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

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

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

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing” a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person who, in ordinary course, buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, ~~and in the ordinary course~~ from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person who sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in the ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer who takes possession of the goods or has a right to recover the goods from the seller under chapter 672 may be a buyer in the ordinary course of business. “Buyer in ordinary course of business” does not include a person who acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in the ordinary course of business.

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

(a) A printed heading in capitals in a size equal to or larger than that of the surrounding text or in a (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is conspicuous if it is in larger

~~or other contrasting type, font, or color in contrast to the surrounding text of the same or lesser size.~~

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

~~(11) “Consumer” means an individual who enters into a transaction primarily for personal, family, or household purposes.~~

~~(12)(11) “Contract,” as distinguished from “agreement,” means the total legal obligation that which results from the parties’ agreement as determined affected by this code and as supplemented by any other applicable laws rules of law. (Compare “agreement.”)~~

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

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

~~(15)(14) “Delivery,” with respect to an instrument instruments, document documents of title, or chattel paper, ~~or certificated securities~~ means voluntary transfer of possession.~~

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

~~(17)(16) “Fault” means a default, breach, or wrongful act or, omission ~~or breach~~.~~

~~(18)(17) “Fungible goods” with respect to goods or securities means:~~

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

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

~~(19)(18) “Genuine” means free of forgery or counterfeiting.~~

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

(21)(20) “Holder,” with respect to a negotiable instrument, means:

(a) The person in possession of a negotiable if the instrument that is payable either to bearer or, in the case of an instrument payable to an identified person that is, if the identified person is in possession; or, “Holder,” with respect to a document of title, means

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

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

(22) “Insolvency proceeding proceedings” includes an any assignment for the benefit of creditors or other proceeding proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is “Insolvent” means:

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

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

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

(24) “Money” means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries nations.

(25) A person has “notice” of a fact when

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

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

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

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

(26) A person “notifies” or “gives” a notice or notification to another by taking such steps as may be reasonably required to inform the other in

ordinary course whether or not such other actually comes to know of it. A person “receives” a notice or notification when

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

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

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

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

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

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

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

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

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

~~(30)(33) “Purchaser” means a person who takes by purchase.~~

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

(32)(34) “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33)(35) “Representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate, or any other person empowered to act for another.

(34)(36) “Right Rights” includes “remedy” remedies.

(35)(37) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. “Security interest” The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that which is subject to chapter 679. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under s. 672.401 is not a security interest, but a buyer may also acquire a security interest by complying with chapter 679. Except as otherwise provided in s. 672.505, the right of a seller or lessor of goods under chapter 672 or chapter 680 to retain or acquire possession of the goods is not a security interest, but a seller or lessor may also acquire a security interest by complying with chapter 679. The retention or reservation of title by a seller of goods, notwithstanding shipment or delivery to the buyer under (s. 672.401), is limited in effect to a reservation of a security interest. Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case; however:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(36)~~(38) “Send,” in connection with a any writing, record, or notice, means:

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

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

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

~~(38)~~ “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(39)~~(40) “Surety” includes a guarantor or other secondary obligor.

~~(41)~~ “Telegram” ~~includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.~~

~~(40)~~(42) “Term” means a that portion of an agreement which relates to a particular matter.

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

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

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

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

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

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

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

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

Section 9. Section 671.202, Florida Statutes, is amended to read:

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

Section 10. Section 671.203, Florida Statutes, is amended to read:

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

Section 11. Section 671.204, Florida Statutes, is amended to read:

671.204 Actions taken within Time; reasonable time; “seasonably.”—

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

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

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

Section 12. Section 671.205, Florida Statutes, is amended to read:

671.205 Course of performance; course of dealing; ~~and~~ usage of trade.—

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 13. Section 671.206, Florida Statutes, is repealed.

Section 14. Section 671.208, Florida Statutes, is amended to read:

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

Section 15. Section 671.209, Florida Statutes, is created to read:

671.209 Notice; knowledge.—

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

- (a) Has actual knowledge of it;
- (b) Has received a notice or notification of it; or
- (c) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(2) “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

(3) “Discover,” “learn,” or words of similar import refer to knowledge rather than to reason to know.

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

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

- (a) It comes to that person’s attention; or
- (b) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

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

Section 16. Section 671.21, Florida Statutes, is created to read:

671.21 Presumptions.—Whenever this code creates a “presumption” with respect to a fact or provides that a fact is “presumed,” the trier of fact must find the existence of the fact presumed unless evidence is introduced which supports a finding of its nonexistence.

Section 17. Section 671.211, Florida Statutes, is created to read:

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

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

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

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

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

Section 18. Section 671.212, Florida Statutes, is created to read:

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

Section 19. Section 671.213, Florida Statutes, is created to read:

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

Section 20. Subsection (2) of section 559.9232, Florida Statutes, is amended to read:

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

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

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

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

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

(d) Any lease made to an organization;

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

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

Section 21. Paragraph (g) of subsection (2) of section 563.022, Florida Statutes, is amended to read:

563.022 Relations between beer distributors and manufacturers.—

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

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

Section 22. Paragraph (b) of subsection (3) and paragraph (d) of subsection (16) of section 668.50, Florida Statutes, are amended to read:

668.50 Uniform Electronic Transaction Act.—

(3) SCOPE.—

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

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

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

3. The Uniform Computer Information Transactions Act; or

4. Rules relating to judicial procedure.

(16) TRANSFERABLE RECORDS.—

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

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

670.106 Time payment order is received.—

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

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

Section 24. Subsection (2) of section 670.204, Florida Statutes, is amended to read:

670.204 Refund of payment and duty of customer to report with respect to unauthorized payment order.—

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

Section 25. Subsection (3) of section 675.102, Florida Statutes, is amended to read:

675.102 Scope.—

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

Section 26. Subsection (1) of section 679.525, Florida Statutes, is amended to read:

679.525 Processing fees.—

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

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

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

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

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

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

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

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

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

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

Section 27. Subsection (2) of section 680.518, Florida Statutes, is amended to read:

680.518 Cover; substitute goods.—

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

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

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

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

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

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (s. 680.504) or otherwise determined pursuant to agreement of the parties (~~ss. 671.102(2) ss. 671.102(3)~~ and 680.503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement, whether or not the lease agreement qualifies for treatment under s. 680.518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease

agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

Section 29. Subsection (2) of section 680.527, Florida Statutes, is amended to read:

680.527 Lessor's rights to dispose of goods.—

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

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

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

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

Section 30. Subsection (1) of section 680.528, Florida Statutes, is amended to read:

680.528 Lessor's damages for nonacceptance or repudiation.—

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

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

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

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

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

713.901 Florida Uniform Federal Lien Registration Act.—

(6) FEES.—

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

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

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

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

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

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

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

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

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

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

Section 32. This act shall take effect January 1, 2008.

Approved by the Governor June 15, 2007.

Filed in Office Secretary of State June 15, 2007.