



Civil Justice & Courts Policy Committee

**Tuesday, February 16, 2010
10:15 AM - 12:00 PM
Reed Hall**

Meeting Packet

**Larry Cretul
Speaker**

**Carl J. Domino
Chair**

Committee Meeting Notice
HOUSE OF REPRESENTATIVES

Civil Justice & Courts Policy Committee

Start Date and Time: Tuesday, February 16, 2010 10:15 am
End Date and Time: Tuesday, February 16, 2010 12:00 pm
Location: Reed Hall (102 HOB)
Duration: 1.75 hrs

Consideration of the following bill(s):

HB 13 Senior Judges by Ambler
HB 103 Motor Vehicle Racing Events by Hays
HB 701 Design Professionals by Precourt
HB 731 Uniform Commerical Code by Carroll

NOTICE FINALIZED on 02/09/2010 16:18 by Ingram.Michele



The Florida House of Representatives

Criminal & Civil Justice Policy Council

Civil Justice & Courts Policy Committee

Larry Cretul
Speaker

Carl J. Domino
Chair

February 16, 2010

AGENDA

10:15 AM – 12:00 PM

Reed Hall

I. Call Meeting to Order

II. Consideration of Bills

HB 13 Senior Judges by Ambler

HB 103 Motor Vehicle Racing Events by Hays

HB 701 Design Professionals by Precourt

HB 731 Uniform Commercial Code by Carroll

III. Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 13 Senior Judges

SPONSOR(S): Ambler; Rouson

TIED BILLS: SB 130

IDEN./SIM. BILLS: none

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee		Bond MB	De La Paz
2) Policy Council			
3) Criminal & Civil Justice Appropriations Committee			
4) Criminal & Civil Justice Policy Council			
5)			

SUMMARY ANALYSIS

The Chief Justice of the Supreme Court of Florida can appoint retired justices or judges, who are often referred to as senior judges, to serve in judicial positions on a temporary basis. The courts use senior judges for temporary duty, for instance, to cover for an ill judge. Senior judges are currently paid out of the General Revenue Fund.

This bill also allows a local judicial circuit to create a program providing for additional appointments of senior judges provided that the state's costs for such appointments are advanced:

- Any party may request appointment of a senior judge to conduct pre-trial hearings. Where the request is unilateral, the cost is not taxable against other parties.
- All parties may request appointment of a senior judge to conduct hearings or the trial. The prevailing party's share of the costs advanced is taxable against a nonprevailing party.

This bill may have an indeterminate negative fiscal impact on state and local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A "senior judge" is an honorary designation that refers to a retired judge serving on assignment to temporary judicial duty. The Florida Constitution and the Florida Rules of Judicial Administration allows the Chief Justice of the Supreme Court to temporarily assign retired justices or judges to any court in which they are qualified to serve.¹ The Florida Rules of Judicial Administration define a retired judge as a judge who is not engaged in the practice of law and who has been a judicial officer of this state.² Retired judges must comply with continuing judicial education requirements, including completion of 30 hours of approved judicial education programs every three years.³

Section 25.073, F.S., provides that a retired justice or judge is a former justice or judge who is not engaged in the practice of law and who has not been defeated in seeking re-election or has not failed to be retained in seeking retention in his or her last judicial office.⁴ No person may serve more than 60 days on temporary duty during a year without the approval of the Chief Justice.⁵

Retired judges may receive compensation as set by law.⁶ Only persons who meet the qualifications set forth in s. 25.073(1), F.S., may be compensated for service as retired justices or judges. Current law sets the compensation for retired justices or judges at not less than \$200 per day.⁷ According to the Florida Supreme Court's office, retired justices or judges are currently paid \$350 per day for service.⁸ In addition, retired justices or judges are entitled to necessary travel expenses.⁹

The Code of Judicial Conduct prohibits retired justices or judges from practicing law or accepting any assignment in which the judge's present financial business dealings or other extra-judicial activities might be affected. A retired justice or judge may serve as a mediator and may be associated with

¹ Article 5, Section (2)(b) Florida Constitution; Florida Rule of Judicial Administration 2.030(a)(3)(A)

² Florida Rule of Judicial Administration 2.030(a)(3)(B)

³ See Fla.R.Jud.Admin. 2.150.

⁴ Section 25.073(1), F.S.

⁵ See s. 25.073(2)(a), F.S.

⁶ See Fla.R.Jud.Admin. 2.030(a)(3)(A).

⁷ See s. 25.073(2)(a), F.S.

⁸ Email correspondence from the State Courts System, dated March 18, 2009, on file with the Civil Justice & Courts Policy Committee staff.

⁹ Section 25.073(2)(b), F.S.

mediation or alternative dispute resolution firms. A retired justice or judge is required to disclose any negotiations or agreements for the provision of mediation services between the judge and any parties or counsel on cases that the judge is assigned to adjudicate.

The state courts utilize the following internal procedures: A retired judge seeking appointment as a senior judge must submit an application to the Chief Justice of the Supreme Court of Florida's office. The Chief Justice's office then requests information from the Judicial Qualifications Committee to determine if there is any reason why that person should not be a senior judge. After the Judicial Qualifications Committee responds to the Supreme Court, the justices review the application and the clerk's office notifies the applicant if the application is accepted. If the application is accepted, the senior judge becomes eligible for service and can be appointed to serve by the chief judge of a district or circuit court.¹⁰

Effect of Bill

This bill amends s. 25.073, F.S., to allow the chief judge of a circuit to create a program to use senior judges to expedite cases in the circuit. Any such program must be approved by the Chief Justice.

In general:

- Only senior judges who are otherwise eligible for appointment may be used in the program.
- The requesting party or parties must show that the need for appointment because of scheduling difficulties. The program may not be used to avoid the assigned trial judge.
- No party may affect the selection of which senior judge is appointed. Appointments are done by the chief judge of the circuit.

As to pre-trial hearings:

- Any party to the litigation may request that a senior judge be appointed.
- If less than all of the parties to the case requested the use of a senior judge, then those parties must advance the cost and may not seek reimbursement from the other parties. If all parties request the appointment of a senior judge, then the parties split the advance cost and the prevailing party in the litigation may have that party's cost taxed against a non-prevailing party.

As to trials:

- All parties to the litigation must request that a senior judge be appointed.
- The parties split the advance cost and the prevailing party in the litigation may have that party's cost taxed against a non-prevailing party.

As to the financial arrangements between the parties and the state:

- The requesting party or parties must advance the cost for employing the senior judge, including taxes and travel.
- The minimum time for employment of a senior judge employed under the program is one day. For more than one day, the employment must be for full days.
- The senior judge is paid at the court system's regular daily per diem rate for senior judges.

¹⁰ Telephone Conversation with Della White, office of former Chief Justice R. Fred Lewis, Supreme Court of Florida (January 2, 2008).

- The funds collected from the requesting party or parties are deposited into the Operating Trust Fund within the state courts system.
- In order for the program to be cost-neutral, indigent persons may not have prepayment of costs waived.

B. SECTION DIRECTORY:

Section 1 amends s. 25.073, F.S., regarding retired justices or judges assigned to temporary duty.

Section 2 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. Revenues to the state are dependent upon how much the program is utilized.

2. Expenditures:

Indeterminate, see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate, see Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Participants who elect to utilize a senior judge will be required to pay the regular per diem rate of such judges.

D. FISCAL COMMENTS:

The bill provides that the State Courts System is to charge participants the total per diem cost of employing a senior judge. Senior judges are paid on a daily rate of \$350 as an OPS employee. The term "cost" should include the daily rate plus other costs to the state including the Social Security and Medicaid match (7.65%, or \$26.78) and travel per diems. To that extent, revenues should equal expenditures for the appointed senior judge. This bill may, however, increase other costs to the state.

It is possible that a senior judge employed for multiple hearings in one day could receive multiple payments.

The bill does not discuss where the trials will be conducted, but it appears that the trials will be conducted in regular courtrooms in county courthouses. If the effect of this bill is to increase the total number of trials conducted in the state, the state will incur increased expenditures for juror compensation and the counties will incur increased expenditures for maintenance of courtrooms, security costs, and other incidental expenses.

If there is a large enough demand for the private assignment of senior judges, this demand could diminish the supply of senior judges to the point where the State Courts System might have to increase the daily per diem for senior judges or perhaps may not have sufficient senior judges to meet the current needs of the court system. In either case, the State Court System would be negatively affected.

For FY 2008-2009, the trial courts were appropriated \$2,182,084 from the General Revenue Fund for compensation to retired judges.¹¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, s. 21 of the Florida Constitution provides that the "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to senior judges; amending s. 25.073,
 3 F.S.; conforming provisions to changes made by this act;
 4 providing for the chief judge of a judicial circuit,
 5 subject to approval by the Chief Justice of the Supreme
 6 Court, to establish a program for retired justices or
 7 judges to preside over civil cases and trials upon written
 8 request of one or more parties; providing for compensation
 9 of such justices or judges; providing for an additional
 10 court cost and for deposit thereof; providing an effective
 11 date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (3) of section 25.073, Florida
 16 Statutes, is amended, and subsection (4) is added to that
 17 section, to read:

18 25.073 Retired justices or judges assigned to temporary
 19 duty; additional compensation; appropriation.--

20 (3) Payments required under subsection (2) ~~this section~~
 21 shall be made from moneys to be appropriated for this purpose.

22 (4) In addition to subsections (1)-(3), the chief judge of
 23 a judicial circuit may, subject to approval by the Chief
 24 Justice, establish a program for the optional use of retired
 25 justices or judges to preside over civil cases and trials
 26 pursuant to this subsection. The program shall be developed and
 27 operated so as to ensure that one or more parties to the lawsuit
 28 shall pay the cost of the retired justice or judge. The use of

29 this program shall in no way diminish or otherwise affect the
30 power and authority of the Chief Justice to assign justices or
31 judges, including consenting retired justices or judges, to
32 temporary duty in any court for which the justice or judge is
33 qualified or to delegate to a chief judge of a judicial circuit
34 the power to assign justices or judges for duty in that circuit.
35 At a minimum, the program developed under this subsection shall
36 be operated as follows:

37 (a)1. Any party to the action may request a retired
38 justice or judge to hear one or more motions. The request must
39 be in writing and addressed to the chief judge of the circuit.
40 The party may seek appointment of a retired justice or judge to
41 hear more than one motion in that case or motions in multiple
42 cases, or a lawyer or law firm may seek appointment of a retired
43 justice or judge to hear motions in multiple cases. The chief
44 judge of the circuit shall not appoint a retired justice or
45 judge if the trial judge assigned to the case can accommodate
46 the hearing or hearings within the following 2 weeks.

47 2. All parties to an action may jointly request a retired
48 justice or judge to conduct the trial of the action, including a
49 trial by special setting. The chief judge of the circuit shall
50 not appoint a retired justice or judge unless all parties agree
51 to the request and sufficient court resources are available to
52 accommodate the request.

53 (b)1. A party or parties seeking to use a retired justice
54 or judge shall submit a written request to the chief judge,
55 stating the reasons for the request.

56 2. Allowable grounds for use of a retired justice or judge

57 | include the unavailability of hearing time, scheduling
 58 | difficulties, difficulties with the availability of witnesses,
 59 | or the need to expedite the case. A request shall not be granted
 60 | if it is apparent that a party is only seeking an appointment in
 61 | order to avoid the assigned trial judge.

62 | 3. The chief judge shall consider the reasons for the
 63 | request and shall grant or deny the request in writing within 5
 64 | days.

65 | 4. Only retired justices or judges who are on the list
 66 | that is approved by the Chief Justice are eligible for
 67 | appointment in this program. Assignment of such retired justices
 68 | or judges shall be made in accordance with current judge
 69 | assignment procedures in each judicial circuit. No party may
 70 | seek or request that a particular retired justice or judge be
 71 | appointed.

72 | 5. An appointment shall be for the hearing time requested.
 73 | However, the chief judge may appoint a retired justice or judge
 74 | to hear multiple hearings in 1 day involving related or
 75 | unrelated cases.

76 | (c)1. Upon granting a request, the chief judge of the
 77 | applicable judicial circuit shall estimate the number of days
 78 | required of the retired justice or judge to complete the
 79 | hearings or trial and shall inform the requesting party or
 80 | parties of the cost.

81 | 2. The party or parties who requested the appointment of a
 82 | retired justice or judge shall prepay the per diem rate of the
 83 | retired justice or judge before the hearing or trial based on
 84 | the per diem rate then in effect. The minimum charge for

85 assignment of a retired justice or judge under this subsection
86 shall be the per diem rate for 1 day, and any required time over
87 1 day shall be charged in 1-day increments for any additional
88 days at the per diem rate. The chief judge shall set a payment
89 deadline sufficiently prior to the date of the hearing or trial
90 so that the appointment may be timely canceled if prepayment is
91 not received at least 1 business day before the scheduled
92 hearing or trial.

93 3. For purposes of this subsection, the term "per diem
94 rate" means the cost to the state of 1 day of service by a
95 retired justice or judge and shall be calculated by adding the
96 regular daily rate set by the Chief Justice for retired justices
97 or judges, plus the employer's share of required federal taxes,
98 and plus, if applicable, the justice's or judge's travel and
99 other costs reimbursable under s. 112.061.

100 4. Payments made by a party or parties under this program
101 shall be deposited into the Operating Trust Fund within the
102 state courts system under s. 25.3844.

103 5. Once a hearing or trial is scheduled, prepayment is
104 made as required under this subsection, and the state is
105 required to make payment to the retired justice or judge, there
106 shall be no refund. A refund is only authorized if the assigned
107 retired justice or judge becomes unavailable for reasons
108 unrelated to the conduct of the parties.

109 6. A person who has been relieved of the requirement to
110 prepay costs in an action may not be relieved of the requirement
111 under this subsection to prepay the costs of a retired justice
112 or judge prior to a request being granted.

113 (d)1. If a party seeks appointment of a retired justice or
 114 judge to hear one or more motions, the cost of the retired
 115 justice or judge shall not be taxable against a nonprevailing
 116 party.

117 2. If all parties sought the appointment of a retired
 118 justice or judge to hear motions or conduct the trial, the
 119 amounts paid for the retired justice or judge by a prevailing
 120 party shall be taxable against a nonprevailing party, as
 121 provided in chapter 57 and in the Florida Rules of Civil
 122 Procedure.

123 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 103
SPONSOR(S): Hays and others
TIED BILLS:

Motor Vehicle Racing Events

IDEN./SIM. BILLS: SB 368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee		De La Paz	De La Paz
2) Economic Development Policy Committee			
3) Criminal & Civil Justice Policy Council			
4)			
5)			

SUMMARY ANALYSIS

The United States Supreme Court and the Florida Supreme Court have both recognized that the right of parents to make decisions concerning care, custody and control of their children is a fundamental liberty interest protected by the constitution.

In Kirton v. Fields, decided December 11, 2008, the Florida Supreme Court held that "a parent does not have the authority to execute a pre-injury release [of liability] on behalf of a minor child when the release involves participation in a commercial activity." In Kirton, the Florida Supreme Court acknowledged that "[t]he absence of a statute governing parental pre-injury releases demonstrates that the Legislature has not precluded enforcement of such releases on behalf of a minor child." Nevertheless, later the Court declared ". . . we find that public policy concerns cannot allow parents to execute pre-injury releases on behalf of minor children."

HB 103 amends s. 549.09 to allow minors who are "nonspectators" at motorsport events at closed-course motorsport facilities to sign waivers of liability for persons owning, leasing, operating, sponsoring or sanctioning such events. Under the bill, waivers signed by minors are valid only if they are also signed by the minor's parent or guardian.

This bill may have a minor positive fiscal impact if it is successful in avoiding litigation costs that are a foreseeable result of continued application of the Kirton decision in this specific area of commercial activity.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Kirton v. Fields

In Kirton v. Fields, decided December 11, 2008, the Florida Supreme Court held that "a parent does not have the authority to execute a pre-injury release on behalf of a minor child when the release involves participation in a commercial activity."¹ In its opinion the Court identified two compelling concerns regarding the enforceability of pre-injury liability releases: the right of parents in raising their children and the interest of the state in protecting children.²

The United States Supreme Court and the Florida Supreme Court have both recognized that the right of parents to make decisions concerning care, custody and control of their children is a fundamental liberty interest protected by the constitution.³ It is "perhaps the oldest fundamental liberty interest recognized by [the United States Supreme Court]."⁴ Under the federal constitution, the Fourteenth Amendment's Due Process Clause provides heightened protection against government interference with certain fundamental rights and liberty interests, including parents' fundamental right to make decisions concerning the care, custody, and control of their children.⁵ In fact, in Troxel v. Granville, a decision cited by the Florida Supreme Court in Kirton, the United States Supreme Court reiterated its recognition that there is a presumption that fit parents act in their children's best interests.⁶ "Accordingly, so long as a parent adequately cares for his or her children (i.e. is fit), there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children."⁷

In Kirton, the Florida Supreme Court acknowledged that "[t]he absence of a statute governing parental pre-injury releases demonstrates that the Legislature has not precluded enforcement of such releases

¹ Kirton v. Fields, 997 So.2d 349 (Fla. 2008) The Kirton decision was a 4 to 1 decision. Justices Quince, Anstead, Lewis and Pariente were in the majority. Justice Wells dissented. Justices Polston and Canady did not participate in the opinion.

² Id. at 352.

³ See, Troxel v. Granville, 530 U.S. 57, 60 (2000); Stanley v. Illinois, 405 U.S. 645, 651 (1972); Beagle v. Beagle, 678 So.2d 1271, 1275 (Fla. 1996).

⁴ Troxel, supra at 65, citing Meyer v. Nebraska, 262 U.S. 390 (1923).

⁵ Washington v. Glucksberg, 521 U.S. 702 (1997)

⁶ Troxel, supra at 69. See also, Parham v. J.R., 442 U.S. 584, 602 (1979).

⁷ Troxel, supra at 69 & 70. See also e.g., Reno v. Flores, 507 U.S. 292 (1993).

on behalf of a minor child.”⁸ Nevertheless, the later Court declared “. . . *we find* that public policy concerns cannot allow parents to execute pre-injury releases on behalf of minor children.” (emphasis added).⁹

The Court explained further:

Although parents undoubtedly have a fundamental right to make decisions concerning the care, custody, upbringing, and control of their children, Troxel [v. Granville], 530 U.S. 57, 67 (2000), the question of whether a parent should be allowed to waive a minor child’s future tort claims implicates wider *public policy* concerns. See Hojnowski [v. Vans Skate Park], 901 A.2d 381, 390. While a parent’s decision to allow a minor child to participate in a particular activity is part of the parent’s fundamental right to raise a child, this does not equate with a conclusion that a parent has a fundamental right to execute a pre-injury release of a tortfeasor on behalf of a minor child. *It cannot be presumed that a parent who has decided to voluntarily risk a minor child’s physical wellbeing is acting in the child’s best interest.* Furthermore, we find that there is injustice when a parent agrees to waive the tort claims of a minor child and deprive the child of the right to legal relief when the child is injured as a result of another party’s negligence. When a parent executes such a release and a child is injured, the provider of the activity escapes liability while the parent is left to deal with the financial burden of an injured child. If the parent cannot afford to bear that burden, the parties who suffer are the child, other family members, and the people of the State who will be called on to bear that financial burden. Therefore, when a parent decides to execute a pre-injury release on behalf of a minor child, the parent is not protecting the welfare of the child, but is instead protecting the interests of the activity provider. Moreover, a “parent’s decision in signing a pre-injury release impacts the minor’s estate and the property rights personal to the minor.” Fields, 961 So. 2d at 1129-30. *For this reason, the state must assert its role under parens patriae to protect the interests of the minor children.* (emphasis added).

In Troxel v. Granville, when the United States Supreme Court had before it a Washington state statute allowing any person to petition for forced visitation of a child at any time with the only requirement being that visitation serve the best interests of the child, they said of the statute:

[The statute] contains no requirement that a court accord the parent’s decision any presumption of validity or any weight whatsoever. Instead, the Washington statute places the best-interest determination solely in the hands of the judge. Should the judge disagree with the parent’s estimation of the child’s best interests, the judge’s view necessarily prevails. Thus, in practical effect, in the State of Washington a court can disregard and overturn any decision by a fit custodial parent concerning visitation whenever a third party affected by the decision files a visitation petition, based solely on the judge’s determination of the child’s best interests.¹⁰

The U. S. Supreme Court in Troxel, while refraining from invalidating the statute on its face, found the application of the statute against the parent’s wishes in her case to be an unconstitutional violation of her due process right to make decisions concerning the care, custody and control of her daughters.¹¹ The effect of the Kirton decision is much broader in its application than the statute the U.S. Supreme Court had before it in Troxel. Under the Kirton decision, rather than having the validity of waivers

⁸ Kirton, supra at 354.

⁹ Kirton, supra at 354.

¹⁰ Troxel v. Granville, 530 U.S. 57 (2000).

¹¹ Troxel, supra at 76.

evaluated on a case by case basis on their own facts and circumstances, the Florida Supreme Court preemptively invalidated all parental liability waivers for all commercial activities as a matter of statewide public policy.

While the decision in Kirton is limited to pre-injury releases for participation in commercial activities, its rationale may not be. The Court said in a footnote:

We answer the certified question as to pre-injury releases in commercial activities because that is what this case involves. Our decision in this case should not be read as limiting our reasoning only to pre-injury releases involving commercial activity; however, any discussion on pre-injury releases in noncommercial activities would be dicta and it is for that reason we do not discuss the broader question posed by the Fifth District.¹²

Justice Wells in a dissenting opinion pointed out several issues concerning the effect of the Court's new public policy edict. Justice Wells stated in part:

The importance of this issue cannot be overstated because it affects so many youth activities and involves so much monetary exposure. Bands, cheerleading squads, sports teams, church choirs, and other groups that often charge for their activities and performances will not know whether they are a commercial activity because of the fees and ticket sales. How can these groups carry on their activities that are so needed by youth if the groups face exposure to large damage claims either by paying defense costs or damages? Insuring against such claims is not a realistic answer for many activity providers because insurance costs deplete already very scarce resources. The majority's decision seems just as likely to force small-scale activity providers out of business as it is to encourage such providers to obtain insurance coverage.

If pre-injury releases are to be banned or regulated, it should be done by the Legislature so that a statute can set universally applicable standards and definitions. When the Legislature acts, all are given advance notice before a minor's participation in an activity as to what is regulated and as to whether a pre-injury release is enforceable. In contrast, *the majority's present opinion will predictably create extensive and expensive litigation attempting to sort out the bounds of commercial activities on a case-by-case basis.*

The majority opinion also does not explain the reason why after years of not finding pre-injury releases to be against public policy, it today finds a public policy reason to rule pre-injury releases unenforceable when the Legislature has not done so.¹³ (emphasis added).

Effect of HB 103

Section 549.09(2), F.S, provides:

Any person who operates a closed-course motorsport facility may require, as a condition of admission to any nonspectator part of such facility, the signing of a liability release form. The persons or entities owning, leasing, or operating the facility or sponsoring or sanctioning the motorsport event shall not be liable to a nonspectator or her or his heirs, representative, or assigns for negligence which proximately causes injury or property damage to the nonspectator within a nonspectator area during the period of time covered by the release.

¹² Kirton, supra at n2.

¹³ Wells dissenting, Kirton, supra at 363.

HB 103 amends s. 549.09, F.S., to allow minors who are “nonspectators” at motorsport events at closed-course motorsport facilities to sign waivers of liability for persons owning, leasing, operating, sponsoring or sanctioning such events. Under the bill, waivers signed by minors are valid only if they are also signed by the minor’s parent or guardian.

Enforceability of Waivers

With respect to the extent to which an adult may waive liability on his or her own behalf, courts generally disfavor exculpatory clauses and strictly construe such clauses against the party claiming to be relieved of liability.¹⁴ “Such clauses are enforceable only where and to the extent that the intention to be relieved was made clear and unequivocal in the contract, and the wording must be so clear and understandable that an ordinary and knowledgeable party will know what they are contracting away.”¹⁵

With regard to simple negligence specifically, a waiver may release a party from liability for negligence, but to do so the waiver must be written in such a manner that it “clearly state[s] that it releases the party from liability for [its] own negligence.”¹⁶

Absent statutory language to the contrary expressing a different legislative policy with respect to child waivers, it is a foregone conclusion that child waivers will be subject to the same disfavor, the same scrutiny, and the same application to simple negligence that courts apply to adult waivers. They will not, however, be totally prohibited as required under the Florida Supreme Court decision in Kirton.

B. SECTION DIRECTORY:

Section 1. Amends s. 549.09, F.S., relating to motorsport nonspectator liability releases.

Section 2. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹⁴ See, Murphy v. Young Men’s Christian Association of Lake Wales, 974 So.2d 565, 567 (Fla. 2nd DCA, 2008) ; Theis v. I&J Racing Promotions, 571 So.2d 92, 94 (Fla. 2nd DCA, 1990); Southworth & McGil, P.A. v. S. Bell Tel. & Tel. Co., 580 So.2d 628, 634 (Fla. 1st DCA, 1991).

¹⁵ Southworth, *supra* note 19 at 634.

¹⁶ Goyings v. Jack & Ruth Eckerd Foundation, 403 So.2d 1144, 1146 (Fla. 2nd DCA, 1981).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

This bill may have a minor positive fiscal impact if it is successful in avoiding litigation costs that are a foreseeable result of continued application of the Kirton decision in this specific area of commercial activity.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

See discussion in Effect of Proposed Changes.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the facts of the Kirton decision involved a wrongful death action resulting from an accident occurring at a motor sports park, it will impact all commercial activities. This bill is narrowly constructed to only address the effect of Kirton as it relates to motor vehicle sports and will leave Kirton's impact on all other commercial activities intact.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to motor vehicle racing events; amending
 3 s. 549.09, F.S.; providing that a motorsport liability
 4 release signed by a minor is valid if the release is also
 5 signed by the parent or guardian of the minor; providing
 6 an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (g) of subsection (1) and subsection
 11 (3) of section 549.09, Florida Statutes, are amended to read:

12 549.09 Motorsport nonspectator liability release.--

13 (1) As used in this section:

14 (g) "Nonspectators" means event participants who have
 15 signed a motorsport liability release, including a minor if the
 16 minor's parent or guardian has also signed the release.

17 (3) (a) A motorsport liability release may be signed by
 18 more than one person if ~~so long as~~ the release form appears on
 19 each page, or side of a page, which is signed. A motorsport
 20 liability release shall be printed in 8 point type or larger.

21 (b) A release signed by a minor is valid if the release is
 22 also signed by the minor's parent or guardian.

23 Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 701
SPONSOR(S): Precourt
TIED BILLS: None

Design Professionals

IDEN./SIM. BILLS: None

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		Bond <i>NB</i>	De La Paz <i>[Signature]</i>
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Design professionals are engineers, surveyors, architects, interior designers, and landscape architects. Like other professionals, a design professional is personally subject to claims of professional malpractice.

The economic loss rule is a common law concept that provides that contract law, not tort law, applies where one party to a contract suffers a purely economic loss occasioned by another party to the contract. It sets a line between contract law and tort law. The theory supporting the rule is that the parties to a contract are free to negotiate remedies, and to price their goods and services based in part on the potential remedies.

Florida courts have inconsistently applied the economic loss rule to malpractice claims against professionals. Current case law provides that the economic loss rule does not bar any action for professional malpractice, including an action for professional malpractice against a design professional.

This bill provides that the economic loss rule applies to design professionals.

This bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Negligence Law, in general

Negligence law provides that a person injured by the wrongful conduct of another is entitled to a judgment against the wrongdoer for the damages caused. In general, where the wrongdoer was an employee of a business entity and was acting within the normal scope of his or her duties as an employee, the business entity is liable for damages but the employee is not.

However, professionals are held personally liable for their negligent acts, regardless of whether they are an employee of a business entity. This personal liability, known as malpractice, is set forth in general in the law on professional associations¹, and is specifically created by statute as to design professionals:

- Engineers, at s. 471.023(3), F.S.
- Surveyors, at s. 472.021(3), F.S.
- Architects and interior designers, at s. 481.219(11), F.S.
- Landscape architects, at s. 481.319(6), F.S.

Economic Loss Rule

The economic loss rule is a common law rule that provides that, where there is a contract between parties and a person harmed by the wrongful conduct suffers only economic damages (that is, there is no personal injury involved), the lawsuit must proceed under contract law. Where the economic loss rule applies, the person harmed cannot choose to sue in tort law. The economic loss rule tends to favor defendants because tort law damages are usually greater than contract law damages.²

The economic loss rule has long been recognized in Florida law:

Tort law imposes upon manufacturers a duty to exercise reasonable care so that the products they place in the marketplace will not harm persons or property. However, tort

¹ Section 621.07, F.S.

² *Casa Clara Condominium Association, Inc. v. Charley Toppino and Sons, Inc.*, 620 So.2d 1244 (Fla. 1993) ("Plaintiffs find a tort remedy attractive because it often permits the recovery of greater damages than an action on a contract and may avoid the conditions of a contract.")

law does not impose any duty to manufacture only such products as will meet the economic expectations of purchasers. Such a duty does, of course, exist where the manufacturer assumes the duty as part of his bargain with the purchaser, or where implied by law, but the duty arises under the law of contract, and not under tort law. Prosser, Law of Torts sec. 101 (4th Edition 1971).³

We agree and find no reason to intrude into the parties' allocation of risk by imposing a tort duty and corresponding cost burden on the public. We hold contract principles more appropriate than tort principles for resolving economic loss without an accompanying physical injury or property damage. The lack of a tort remedy does not mean that the purchaser is unable to protect himself from loss. We note the Uniform Commercial Code contains statutory remedies for dealing with economic losses under warranty law, which, to a large extent, would have limited application if we adopted the minority view. Further, the purchaser, particularly in a large commercial transaction like the instant case, can protect his interests by negotiation and contractual bargaining or insurance. The purchaser has the choice to forego warranty protection in order to obtain a lower price. We conclude that we should refrain from injecting the judiciary into this type of economic decision-making. . . . [We] hold the economic loss rule approved in this opinion is not a new principle of law in Florida and has not changed or modified any decisions of this Court. In fact, the economic loss rule has a long, historic basis originating with the privity doctrine, which precluded recovery of economic losses outside a contractual setting. Consequently, we hold that the economic loss rule should be applied to the instant case.⁴

In *Florida Power & Light Co.*, we held that contract principles are more appropriate than tort principles for resolving economic losses resulting from the purchase of a product where there are no personal injury or property damage claims. This holding is consistent with the United States Supreme Court decision in *East River Steamship Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858 (1986), and is the majority view in this country.⁵

The [economic loss] rule is the fundamental boundary between contract law, which is designed to enforce the expectancy interests of the parties, and tort law, which imposes a duty of reasonable care and thereby encourages citizens to avoid causing physical harm to others.⁶

The Florida courts have differed on whether the economic loss rule applies to professionals. In 1992, the Second District ruled that the economic loss rule barred a tort action against an architect who was alleged to have negligently designed a condominium building.⁷ In 1999, however, the Supreme Court expressly provided that the economic loss rule would not bar a negligence action against an engineer who was alleged to have negligently inspected a home.⁸ Based on the 1999 case, it appears that, under current law, the economic loss rule would not protect a design professional from tort damages related to negligent design.

Effect of Bill

This bill provides that the economic loss rule applies to claims against a design professional. As to any design professional, this bill provides that a person does not have a cause of action against a design professional for the recovery of economic damages that result from malpractice or negligence in the

³ *Monsanto Agricultural Products v. Edenfield*, 426 So.2d 574 (1st DCA 1982).

⁴ *Florida Power & Light Co. v. Westinghouse Electric Corp.*, 510 So.2d 899, 902 (Fla. 1987).

⁵ *AFM Corp. v. Southern Bell Telephone & Telegraph Co.*, 515 So.2d 180, 181 (Fla.1987).

⁶ *Casa Clara Condominium Association, Inc. v. Charley Toppino and Sons, Inc.*, 620 So.2d 1244, 1246 (Fla.1993)

⁷ *Sandarac Association, Inc. v. W.R. Frizzell Architects, Inc.*, 609 So.2d 1349 (Fla. 2nd DCA 1992).

⁸ *Moransais v. Heathman*, 744 So.2d 973 (Fla. 1999).

performance of professional services if the malpractice or negligence does not cause personal injury or damage to property other than the property that is the subject of the professional services and the licensee performs the professional services pursuant to a contract between the licensee or his or her employer and either of the following persons:

- The person claiming economic damages; or
- A consultant, subconsultant, or sub-subconsultant to a person or entity having a contract with the person claiming economic damages to provide the professional services at issue.

This bill does not affect the professional liability of design professionals where any person suffers personal injury.

B. SECTION DIRECTORY:

Section 1 creates s. 471.046, F.S., creating a limitation of liability applicable to engineers.

Section 2 creates s. 472.0367, F.S., creating a limitation of liability applicable to surveyors.

Section 3 creates s. 481.23, F.S., creating a limitation of liability applicable to architects and interior designers.

Section 4 creates s. 481.333, F.S., creating a limitation of liability applicable to landscape architects.

Section 5 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In any bill limiting liability, there are a number of possible direct economic impacts. In this bill, design professionals will likely see lower costs for professional liability insurance and presumably can charge lower prices to their customers. Insurance agents may earn lower commissions. Correspondingly, injured persons may receive lower recoveries upon their claims, and if so their attorneys would earn lower fees.

D. FISCAL COMMENTS:

The courts have described the basic economic theory supporting adoption of an economic loss rule:

In tort a manufacturer or producer of goods "is liable whether or not it is negligent because 'public policy demands that responsibility be fixed wherever it will most effectively reduce the hazards to life and health inherent in defective products that reach the market.'" *East River*, 476 U.S. at 866, 106 S.Ct. at 2300 (quoting *Escola v. Coca Cola Bottling Co.*, 24 Cal.2d 453, 150 P.2d 436, 441 (1944) (Traynor, J., concurring)). Thus, the "basic function of tort law is to shift the burden of loss from the injured plaintiff to one who is at fault ... or to one who is better able to bear the loss and prevent its occurrence." *Barrett*, supra at 935. The purpose of a duty in tort is to protect society's interest in being free from harm, *Spring Motors Distributors, Inc. v. Ford Motor Co.*, 98 N.J. 555, 489 A.2d 660 (1985), and the cost of protecting society from harm is borne by society in general. Contractual duties, on the other hand, come from society's interest in the performance of promises. *Id.* When only economic harm is involved, the question becomes "whether the consuming public as a whole should bear the cost of economic losses sustained by those who failed to bargain for adequate contract remedies." *Barrett*, supra at 933.⁹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

⁹ *Casa Clara Condominium Association, Inc. v. Charley Toppino and Sons, Inc.*, 620 So.2d 1244, 1246-47 (Fla.1993).

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A bill to be entitled
An act relating to design professionals; creating ss.
471.046, 472.0367, 481.23, and 481.333, F.S.; providing
that the malpractice or negligence for which licensed
engineers, surveyors and mappers, architects, interior
designers, and registered landscape architects are liable
must cause personal injury or damage to property other
than the property that is the subject of the professional
services; providing an effective date.

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

Section 1. Section 471.046, Florida Statutes, is created
to read:

471.046 Limitation of causes of action.—Notwithstanding
any other law, a person does not have a cause of action against
a licensee under this chapter for the recovery of economic
damages that result from malpractice or negligence in the
performance of professional services if the malpractice or
negligence does not cause personal injury or damage to property
other than the property that is the subject of the professional
services and the licensee performs the professional services
pursuant to a contract between the licensee or his or her
employer and either of the following persons:

- (1) The person claiming economic damages; or
- (2) A consultant, subconsultant, or sub-subconsultant to a
person or entity having a contract with the person claiming
economic damages to provide the professional services at issue.

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29 Section 2. Section 472.0367, Florida Statutes, is created
 30 to read:

31 472.0367 Limitation of causes of action.—Notwithstanding
 32 any other law, a person does not have a cause of action against
 33 a licensee under this chapter for the recovery of economic
 34 damages that result from malpractice or negligence in the
 35 performance of professional services if the malpractice or
 36 negligence does not cause personal injury or damage to property
 37 other than the property that is the subject of the professional
 38 services and the licensee performs the professional services
 39 pursuant to a contract between the licensee or his or her
 40 employer and either of the following persons:

- 41 (1) The person claiming economic damages; or
- 42 (2) A consultant, subconsultant, or sub-subconsultant to a
 43 person or entity having a contract with the person claiming
 44 economic damages to provide the professional services at issue.

45 Section 3. Section 481.23, Florida Statutes, is created to
 46 read:

47 481.23 Limitation of causes of action.—Notwithstanding any
 48 other law, a person does not have a cause of action against a
 49 licensee under this part for the recovery of economic damages
 50 that result from malpractice or negligence in the performance of
 51 professional services if the malpractice or negligence does not
 52 cause personal injury or damage to property other than the
 53 property that is the subject of the professional services and
 54 the licensee performs the professional services pursuant to a
 55 contract between the licensee or his or her employer and either
 56 of the following persons:

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- 57 (1) The person claiming economic damages; or
 58 (2) A consultant, subconsultant, or sub-subconsultant to a
 59 person or entity having a contract with the person claiming
 60 economic damages to provide the professional services at issue.

61 Section 4. Section 481.333, Florida Statutes, is created
 62 to read:

63 481.333 Limitation of causes of action.—Notwithstanding
 64 any other law, a person does not have a cause of action against
 65 a licensee under this part for the recovery of economic damages
 66 that result from malpractice or negligence in the performance of
 67 professional services if the malpractice or negligence does not
 68 cause personal injury or damage to property other than the
 69 property that is the subject of the professional services and
 70 the licensee performs the professional services pursuant to a
 71 contract between the licensee or his or her employer and either
 72 of the following persons:

- 73 (1) The person claiming economic damages; or
 74 (2) A consultant, subconsultant, or sub-subconsultant to a
 75 person or entity having a contract with the person claiming
 76 economic damages to provide the professional services at issue.

77 Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 731

Uniform Commercial Code

SPONSOR(S): Carroll

TIED BILLS: None

IDEN./SIM. BILLS: SB 1366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee		Bond <i>VB</i>	De La Paz <i>[Signature]</i>
2) Policy Council			
3) Criminal & Civil Justice Policy Council			
4)			
5)			

SUMMARY ANALYSIS

The Uniform Commercial Code is a set of uniform laws regulating various business transactions and trade. The drafts of the code are developed by the Uniform Law Commissioners, a group of scholars and business representatives. The term "uniform" refers how the separate states of the Union have separately enacted the various parts of the Uniform Commercial Code in laws that uniform to one another.

Article 7 of the Uniform Commercial Code regulates documents of title. Documents of title are used to specify ownership of goods as they travel through commerce. Historically, business has used a paper system for documents of title.

This bill adopts the revised Article 7 updating the article and creating a means for electronic records that business may use in lieu of paper documents of title.

This bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Uniform Commercial Code is a set of uniform laws regulating various business transactions and trade. The drafts of the code are developed by the Uniform Law Commissioners, a group of scholars and business representatives. The term "uniform" refers how the separate states of the Union have separately enacted the various parts of the Uniform Commercial Code in laws that uniform to one another.

Article 7 of the Uniform Commercial Code regulates documents of title. Documents of title are used to specify ownership of goods as they travel through commerce. Historically, business has used a paper system for documents of title.

The Uniform Law Commissioners have developed a revised Article 7 for adoption by the states. To date, 36 states have adopted the revised Article 7. The commissioners have written this explanation of documents of title and the draft changes¹:

Revision in 2003

The original Article 7 of the Uniform Commercial Code, "Warehouse Receipts, Bills of Lading and Other Documents of Title," combined two earlier uniform acts, the Uniform Warehouse Receipts Act (1906) and the Uniform Bills of Lading Act (1909), with some principles from the Uniform Sales Act (which became Article 2-Sales of the UCC). Article 7 had not been revisited after the 1951 promulgation of the original Uniform Commercial Code until 2003, a period of 52 years. The longevity of the principles of warehouse receipts and bills of lading suggests very successful law and law-making as it pertains to the commercial storage and shipment of goods. The basic principles do not change basically in the 2003 revision. But there are reasons to readdress this area of the commercial law in 2003, which shall be discussed a little later. First, it is necessary to establish some of the basics.

Introduction to Documents of Title

The storage and shipment of tangible goods for commercial purposes has been going on for centuries. The physical side of the business is carried on by entities that provide

¹ http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-ucc7.asp

warehouses (warehousemen) and entities that carry the goods from place of origin to destination (common carriers). These are tangible, visible businesses. What is not tangible and visible is the transfer of rights in the goods while they are stored and/or shipped. The common law provided the rules of bailment. The terminology of bailor and bailee is still incorporated in the Uniform Act. As the law developed, the transfer of rights came to depend upon the transfer of specific documents of title. The transfer of the documents from one person to another became the transfer of the rights. The title documents were warehouseman's receipts on the storage/warehouse side, and the bill of lading on the carrier side. The original uniform acts and the 2003 revision all incorporate these basics.

One of the important principles carried forward into the 2003 revision is that of negotiability. Free transfer of interests is an important policy norm throughout the UCC. In Article 7, documents of title may be negotiable. Whether a document is negotiable or non-negotiable depends upon how it identifies the transferee and how it is transferred. A negotiable document may be one of two kinds of paper documents, bearer paper or order paper. A document made out to bearer may be transferred from one person to another by simple delivery of possession. The delivery transfers the rights to the goods (therefore the title) to the transferee. Order paper is made out to a specific person. After initial delivery to the person named on the document, it may be negotiated to another person by the indorsement of the named person and delivery of possession to that other person. The rights to the goods (and therefore the title) pass with the negotiation to the transferee.

Documents of title may also be made non-negotiable. This is primarily done by a statement on the face of the instrument. Non-negotiable documents of title may also be assigned or transferred. The difference between negotiable and non-negotiable documents is the rights that they may transfer. A non-negotiable document of title transfers only the actual interests of the transferor. A negotiable document of title may transfer more than the actual interests of the transferor. If negotiated, for example, it transfers free of any claims against the issuer of the document. A non-negotiable document is not free of such claims.

Negotiation as a concept exists to make commerce in goods possible. Goods would not be transferred if the purchaser always has to look behind the transaction to see who may come after the goods after the transfer is complete. Negotiation erases the peril. The principle enunciated in Article 7 is consistent with other parts of the UCC governing notes, drafts, checks and investment securities.

Electronic Documents of Title

Article 7 governs other important aspects of the transfer of rights in goods when stored or shipped, such as the liens of warehousemen and carriers and their enforcement and allocation of risk of loss of the goods either in storage or transit, but the issue of negotiation has been its single most important aspect, up to the revisions in 2003. Something very important has happened to change the way we look at the principle of negotiation. That something is computers, electronic communications and the ability to create electronic documents of title. Computers have been accused and applauded for their impact on commerce and business. Their impact on storage and shipment of goods is profound. Federal law has actually recognized electronic documents for some time, but electronic documents of title cannot be substituted one to one with tangible documents of title. Their characteristics in electronic form are not the same as their characteristics in tangible form.

The tangible form is a written document on paper with signatures of issuers and subsequent transferors. The individual document is a unique token of the rights and interests it represents. Even if there is a copy, there is always the original. This is not so

with electronic documents. Originals and copies are indistinguishable from each other in electronic form. Signatures in the sense of an individual's scribing them uniquely on a piece of paper cannot be equally duplicated in an electronic document. Transferrors and transferees, who are remote from each other when tangible documents are transferred, are not remote from each other in electronic media. Electronic communications can occur between any two persons anywhere in the world. Yet, it is difficult for each participant in an electronic communication to verify or authenticate the identity of the other party. To have the effective electronic documents that commerce demands, new concepts have to be introduced into the law. The concept of negotiation as we have known it in American law cannot apply in electronic media. The great addition to Article 7, therefore, is the new rules for electronic documents of title.

These rules must deal with distinct issues: recognition of electronic documents of title; statute of fraud extensions; establishment of the unique original in electronic form (sometimes thought of as authentication); and interchangeability between electronic and tangible documents of title. In addition, the rules for electronic documents of title must fit as seamlessly as possible into the existing system governing tangible documents of title. The law should avoid skewing the choice between tangible and electronic documents of title in the favor of either form. Only the actual marketplace should determine users' choices. Revised Article 7 deals with these issues and meets the test of seamless insertion into the existing law.

Recognition of Electronic Documents of Title

Recognition of electronic documents of title begins in the definition of "Document of Title:" "An electronic document of title is evidence by a record consisting of information stored in an electronic medium." Other definitions have been modified to accord with this root definition. For example, "Holder" is defined to include: "a person in control of a negotiable electronic document of title." Electronic documents of title become the equal to tangible documents of title.

Statute of Frauds Requirements

Revised Article 7 extends statute of fraud requirements to include electronic records and signatures. Any writing requirement that relates to enforceability of a document is a statute of frauds requirement. Article 7 treats electronic records and signatures as the equivalent of paper documents and written, manual signatures. This initially occurs in new definitions of "record" and "sign." A record is "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." The term "sign" is defined to "execute or adopt a tangible symbol" and "to attach or logically associate with the record an electronic sound, symbol or process." Within Revised Article 7, wherever the term "writing" or an equivalent may have been used before revision, the term "record" is uniformly used. When a document is required to be signed anywhere in Revised Article 7, electronic signing meets the test.

In addition, Revised Article 7 provides language stating expressly that it modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act. This express language, permitted in the federal act, avoids any issue of federal preemption. The federal statute allows specific tailoring for the purposes of incorporating electronic records and signatures into state law.

Establishing the Unique Token

It is not possible to transfer an electronic document of title in the same manner as a tangible document of title, particularly in terms of negotiating it. It cannot be guaranteed that a transfer directly from one person to the next by delivery and/or signature will transfer the authentic original document of title. An electronic alternative to the tangible

system is necessary. To accomplish the equivalent system for electronic documents of title, Article 7 adapts the concept of "control" to the purpose. It is not a brand-new concept. It initially was developed in Article 8 of the Uniform Commercial Code for investment securities in the indirect holding system. The 1999 revisions to Article 9 adapted the concept further for secured transactions. Further adaptation of the concept occurred in Section 16 of the Uniform Electronic Transactions Act for promissory notes. This latter adaptation is most important for Revised Article 7, because the issues of negotiation for promissory notes are very similar to those for documents of title.

A person has control of a document of title for Article 7 purposes "if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred." Such a system exists when it establishes a "single authoritative copy ...which is unique, identifiable and ... unalterable." The authoritative copy must identify the person in control or the next person to whom the document has transferred. The person in control determines to whom the document is next transferred. Further, the standard requires that copies that are not authoritative, including copies of the authoritative copy, must be readily identifiable as not being the authoritative copy.

There is more than one way to meet this set of standards, unlike negotiation of a paper document, which occurs in one way only. One way to establish the single authoritative document is to have a single custodian of the electronic record, who enters all transfers of the document and identifies the person in control on its records, records that for all who want to know is the source of the single authoritative copy. In such a system, the person in control notifies the custodian of any transfer or authorized change in the document, who then notates its records appropriately and notifies the person in control and other relevant parties of the action. A transfer would obviously shift control from transferor to transferee. The transferee would become the new person in control.

Encryption technology may provide other methods for meeting these standards. Some kind of hybrid system of encryption and custodian may arise. UCC Article 7 prescribes no system per se and more than one system may develop over time. It is not possible to predict what technology may finally bring to electronic transfer systems. Revised Article 7 allows the technology to develop without need to amend it later when a new kind of technology comes along.

Interchangeability

UCC Article 7 provides for an electronic system of transfer for electronic documents of title and for the traditional paper system of documents of title which includes negotiable documents of title. There are dual tracks. Control is the operative term with electronic documents and negotiation is the operative term for tangible documents of title. With respect to the transfer of rights in a particular group of goods, can electronic documents be converted to tangible documents and vice versa? UCC Article 7 provides for such conversions. An electronic document may be converted when the person in control surrenders control to the issuer, which then issues a tangible document of title containing a statement that it substitutes for the electronic document. The same kind of process will convert a tangible document to an electronic one. The person entitled to enforce a tangible document surrenders possession to the issuer. The electronic document must also state that it is a substitute for the tangible document. Without the ability to convert from tangible to electronic documents, this system would not work.

This bill:

- Amends Article 7 of the Uniform Commercial Code to allow (not require) electronic means for documenting title to goods in commerce, in lieu of paper documents. Paper documents of title

can be converted to electronic, and electronic can be converted to paper, in order to accommodate the needs of different shippers and warehouses.

- Corrects language and usage throughout Article 7, without substantive change.
- Amends other articles of the Uniform Commercial Code to conform, without substantive change.

B. SECTION DIRECTORY:

Section 1 amends s. 559.9232, F.S., to correct a cross-reference.

Section 2 amends s. 671.201, F.S., regarding definitions applicable to the Uniform Commercial Code.

Section 3 amends s. 672.103, F.S., regarding definitions applicable to Article 2 of the Uniform Commercial Code (Sales).

Section 4 amends s. 672.104, F.S., regarding definitions applicable to Article 2 of the Uniform Commercial Code (Sales).

Section 5 amends s. 672.310, F.S., regarding delivery of goods.

Section 6 amends s. 672.323, F.S., regarding bills of lading in international shipments.

Section 7 amends s. 672.401, F.S., regarding transfer of title to tangible goods.

Section 8 amends s. 672.503, F.S., regarding tender of delivery to tangible goods.

Section 9 amends s. 672.505, F.S., regarding shipment under reservation.

Section 10 amends s. 672.506, F.S., regarding rights of a financing agency.

Section 11 amends s. 672.509, F.S., regarding risk of loss of goods in shipment.

Section 12 amends s. 672.605, F.S., regarding waiver of a buyer's objection.

Section 13 amends s. 672.705, F.S., regarding stoppage of delivery.

Section 14 amends s. 674.104, F.S., regarding definitions applicable to Article 4 of the Uniform Commercial Code (bank deposits and collections).

Section 15 amends s. 674.2101, F.S., regarding security interest in bank deposits.

Section 16 amends s. 677.102, F.S., regarding definitions applicable to Article 7 of the Uniform Commercial Code (documents of title).

Section 17 amends s. 677.103, F.S., regarding relationship between law on documents of title and international law.

Section 18 amends s. 677.104, F.S., regarding negotiable documents of title.

Section 19 amends s. 677.105, F.S., regarding reissuance of a document of title in an alternative medium.

Section 20 creates s. 677.106, F.S., regarding control of an electronic document of title.

Section 21 amends s. 677.201, F.S., regarding issuance of a warehouse receipt.

Section 22 amends s. 677.202, F.S., regarding forms of warehouse receipts.

Section 23 amends s. 677.203, F.S., regarding liability for nonreceipt or misdescription in a document of title.

Section 24 amends s. 677.204, F.S., regarding duty of care and limitations on liability.

Section 25 amends s. 677.205, F.S., regarding title under warehouse receipt.

Section 26 amends s. 677.206, F.S., regarding termination of storage at the option of the warehouse.

Section 27 amends s. 677.207, F.S., regarding separation of goods.

Section 28 amends s. 677.208, F.S., regarding altered warehouse receipts.

Section 29 amends s. 677.209, F.S., regarding warehouse lien.

Section 30 amends s. 677.210, F.S., regarding enforcement of warehouse lien.

Section 31 amends s. 677.301, F.S. regarding liability for nonreceipt or misdescription.

Section 32 amends s. 677.302, F.S., regarding through bills of lading.

Section 33 amends s. 677.303, F.S., regarding diversion and reconsignment of goods.

Section 34 amends s. 677.304, F.S., regarding bills of lading in a set.

Section 35 amends s. 677.305, F.S., regarding destination bills.

Section 36 amends s. 677.307, F.S., regarding lien of a carrier.

Section 37 amends s. 677.308, F.S., regarding enforcement of a carrier's lien.

Section 38 amends s. 677.309, F.S., regarding duty or care and limitation of a carrier's lien.

Section 39 amends s. 677.401, F.S., regarding irregularities in issue of a receipt of bill.

Section 40 amends s. 677.402, F.S., regarding duplicate documents of title.

Section 41 amends s. 677.403, F.S., regarding obligation of a bailee.

Section 42 amends s. 677.404, F.S. regarding a limitation on liability upon good faith delivery of goods.

Section 43 amends s. 677.501, F.S., regarding "due negotiation".

Section 44 amends s. 677.502, F.S., regarding the rights acquired by due negotiation.

Section 45 amends s. 677.503, F.S., regarding defeat of a document of title.

Section 46 amends s. 677.504, F.S., regarding rights acquired in the absence of due negotiation.

Section 47 amends s. 677.505, F.S., regarding whether an indorser is a guarantor for other parties.

Section 48 amends s. 677.506, F.S., regarding delivery without indorsement.

Section 49 amends s. 677.507, F.S., regarding warranties on negotiation or delivery of document of title.

Section 50 amends s. 677.508, F.S., regarding warranties of a collecting bank.

Section 51 amends s. 677.509, F.S., regarding compliance with a commercial contract.

Section 52 amends s. 677.601, F.S., regarding lost, stolen and destroyed documents of title.

Section 53 amends s. 677.602, F.S., regarding judicial process against goods covered by a negotiable document of title.

Section 54 amends s. 677.603, F.S., regarding conflicting claims against goods.

Section 55 amends s. 678.1031, F.S., regarding whether a document of title is a financial asset.

Section 56 amends s. 679.1021, F.S., regarding definitions applicable to Article 9 of the Uniform Commercial Code (secured transactions).

Section 57 amends s. 679.2031, F.S., regarding attachment and enforcement of a security interest.

Section 58 amends s. 679.2071, F.S., regarding rights and duties of secured party in possession.

Section 59 amends s. 679.2081, F.S., regarding additional duties of a secured party having control of collateral.

Section 60 amends s. 679.3011, F.S., regarding perfection and priority of security interests.

Section 61 amends s. 679.3101, F.S., regarding agricultural liens.

Section 62 amends s. 679.3121, F.S., regarding perfection of security interest in various items.

Section 63 amends s. 679.3131, F.S., regarding when possession or delivery can perfect a security interest without a filing.

Section 64 amends s. 679.3141, F.S., regarding perfection by control.

Section 65 amends s. 679.3171, F.S., regarding priority of certain security interests.

Section 66 amends s. 679.338, F.S., regarding priority of certain security interests.

Section 67 amends s. 680.1031, F.S., regarding definitions applicable to Article 10 of the Uniform Commercial Code (leases).

Section 68 amends s. 680.514, F.S., regarding waiver of a lessee's objections.

Section 69 amends s. 680.526, F.S., regarding lessor's stoppage of delivery in transit.

Section 70 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill is anticipated to lower the cost of doing business. It is not anticipated that this bill will have any negative economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
2 An act relating to the Uniform Commercial Code; revising
3 and providing provisions of the Uniform Commercial Code
4 relating to electronic documents of title, warehouse
5 receipts, bills of lading, and other documents of title to
6 conform to the revised Article 7 of the Uniform Commercial
7 Code as prepared by the National Conference of
8 Commissioners on Uniform State Laws; amending ss. 671.201,
9 672.103, 672.104, 674.104, 677.102, and 679.1021, F.S.;
10 revising and providing definitions; revising provisions
11 pertaining to definitions applicable to certain provisions
12 of the code, to conform cross-references to revisions made
13 by this act; amending s. 672.310, F.S.; revising time when
14 certain delivery payments are due; amending ss. 559.9232,
15 672.323, 672.401, 672.503, 672.505, 672.506, 672.509,
16 672.605, 672.705, 674.2101, 677.201, 677.202, 677.203,
17 677.205, 677.206, 677.207, 677.208, 677.301, 677.302,
18 677.304, 677.305, 677.401, 677.402, 677.403, 677.404,
19 677.502, 677.503, 677.505, 677.506, 677.507, 677.508,
20 677.509, 677.602, 677.603, 679.2031, 679.2071, 679.3011,
21 679.3101, 679.3121, 679.3131, 679.3141, 679.3171, 679.338,
22 680.1031, 680.514, and 680.526, F.S.; revising provisions
23 to conform to changes made by this act; making editorial
24 changes; amending s. 677.103, F.S.; revising and providing
25 application in relation of chapter to treaty, statute,
26 tariff, classification, or regulation; amending s.
27 677.104, F.S.; providing when certain documents of title
28 are nonnegotiable; amending s. 677.105, F.S.; authorizing

29 an issuer of the electronic document to issue a tangible
 30 document of title as a substitute for the electronic
 31 document under certain conditions; authorizing an issuer
 32 of a tangible document to issue an electronic document of
 33 title as a substitute for the tangible document under
 34 certain conditions; creating s. 677.106, F.S.; providing
 35 when certain persons have control of an electronic
 36 document of title; amending s. 677.204, F.S.; revising
 37 liability of certain damages; authorizing a warehouse
 38 receipt or storage agreement to provide certain
 39 requirements; amending s. 677.209, F.S.; revising
 40 conditions for a warehouse to establish a lien against a
 41 bailor; providing when and against whom the lien is
 42 effective; amending s. 677.210, F.S.; revising provisions
 43 relating to the enforcement of liens; amending s. 677.303,
 44 F.S.; prohibiting liability for certain carriers; amending
 45 s. 677.307, F.S.; revising conditions under which a
 46 carrier has a lien on goods covered by a bill of lading;
 47 amending s. 677.308, F.S.; revising provisions relating to
 48 the enforcement of a carrier's lien; amending s. 677.309,
 49 F.S.; revising provisions relating to the contractual
 50 limitation of a carrier's liability; amending s. 677.501,
 51 F.S.; providing requirements for negotiable tangible
 52 documents of title and negotiable electronic documents of
 53 title; amending s. 677.504, F.S.; providing condition
 54 under which the rights of the transferee may be defeated;
 55 amending s. 677.601, F.S.; revising provisions relating to
 56 lost, stolen, or destroyed documents of title; amending s.

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57 678.1031, F.S.; providing that certain documents of title
 58 are not financial assets; amending s. 679.2081, F.S.;
 59 providing requirements for secured parties having control
 60 of an electronic document; providing an effective date.
 61

62 Be It Enacted by the Legislature of the State of Florida:
 63

64 Section 1. Paragraph (f) of subsection (2) of section
 65 559.9232, Florida Statutes, is amended to read:

66 559.9232 Definitions; exclusion of rental-purchase
 67 agreements from certain regulations.-

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

71 (f) A security interest as defined in s. 671.201(38)~~(35)~~.

72 Section 2. Present subsections (25) through (43) of
 73 section 671.201, Florida Statutes, are renumbered as subsections
 74 (28) through (46), respectively, new subsections (25), (26), and
 75 (27) are added to that section, and present subsections (5),
 76 (6), (10), (15), (16), (21), and (42) are amended, to read:

77 671.201 General definitions.-Unless the context otherwise
 78 requires, words or phrases defined in this section, or in the
 79 additional definitions contained in other chapters of this code
 80 which apply to particular chapters or parts thereof, have the
 81 meanings stated. Subject to definitions contained in other
 82 chapters of this code which apply to particular chapters or
 83 parts thereof, the term:

84 (5) "Bearer" means a person in control of a negotiable

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85 electronic document of title or a person in possession of a
86 negotiable instrument, a negotiable tangible document of title,
87 or a certificated security that is payable to bearer or indorsed
88 in blank.

89 (6) "Bill of lading" means a document of title evidencing
90 the receipt of goods for shipment issued by a person engaged in
91 the business of directly or indirectly transporting or
92 forwarding goods. The term does not include a warehouse receipt.

93 (10) "Conspicuous," with reference to a term, means so
94 written, displayed, or presented that a reasonable person
95 against which ~~whom~~ it is to operate ought to have noticed it.
96 Whether a term is "conspicuous" is a decision for the court.
97 Conspicuous terms include the following:

98 (a) A heading in capitals ~~in a size~~ equal to or greater in
99 size larger than ~~that of~~ the surrounding text, or in contrasting
100 a type, font, or color in contrast to the surrounding text of
101 the same or lesser size; and.

102 (b) Language in the body of a record or display in larger
103 type larger than ~~that of~~ the surrounding text, ~~in a type, font,~~
104 ~~or color in contrast to the surrounding text~~ of the same size,
105 or set off from surrounding text of the same size by symbols or
106 other marks that call attention to the language.

107 (15) "Delivery," with respect to an electronic document of
108 title, means voluntary transfer of control and "delivery," with
109 respect to instruments instrument, tangible document of title,
110 ~~or~~ chattel paper, or certificated securities, means voluntary
111 transfer of possession.

112 (16) "Document of title" means a record:

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113 ~~(a) includes bill of lading, dock warrant, dock receipt,~~
 114 ~~warehouse receipt or order for the delivery of goods, and any~~
 115 ~~other document~~ That in the regular course of business or
 116 financing is treated as adequately evidencing that the person in
 117 possession or control of the record ~~it~~ is entitled to receive,
 118 control, hold, and dispose of the record ~~document~~ and the goods
 119 the record ~~it~~ covers; and

120 (b) That purports to be issued by or addressed to a bailee
 121 and to cover goods in the bailee's possession which are either
 122 identified or are fungible portions of an identified mass. The
 123 term includes a bill of lading, transport document, dock
 124 warrant, dock receipt, warehouse receipt, and order for delivery
 125 of goods. An electronic document of title means a document of
 126 title evidenced by a record consisting of information stored in
 127 an electronic medium. A tangible document of title means a
 128 document of title evidenced by a record consisting of
 129 information that is inscribed on a tangible medium. To be a
 130 ~~document of title, a document must purport to be issued by or~~
 131 ~~addressed to a bailee and purport to cover goods in the bailee's~~
 132 ~~possession which are either identified or are fungible portions~~
 133 ~~of an identified mass.~~

134 (21) "Holder" means:

135 (a) The person in possession of a negotiable instrument
 136 that is payable either to bearer or to an identified person that
 137 is the person in possession; ~~or~~

138 (b) The person in possession of a negotiable tangible
 139 document of title if the goods are deliverable either to bearer
 140 or to the order of the person in possession; ~~or~~

141 (c) The person in control of a negotiable electronic
 142 document of title.

143 (25) Subject to subsection (27), a person has "notice" of
 144 a fact if the person:

145 (a) Has actual knowledge of it;
 146 (b) Has received a notice or notification of it; or
 147 (c) From all the facts and circumstances known to the
 148 person at the time in question, has reason to know that it
 149 exists. A person "knows" or has "knowledge" of a fact when the
 150 person has actual knowledge of it. "Discover" or "learn" or a
 151 word or phrase of similar import refers to knowledge rather than
 152 to reason to know. The time and circumstances under which a
 153 notice or notification may cease to be effective are not
 154 determined by this section.

155 (26) A person "notifies" or "gives" a notice or
 156 notification to another person by taking such steps as may be
 157 reasonably required to inform the other person in ordinary
 158 course, whether or not the other person actually comes to know
 159 of it. Subject to subsection (27), a person "receives" a notice
 160 or notification when:

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

166 (27) Notice, knowledge, or a notice or notification
 167 received by an organization is effective for a particular
 168 transaction from the time when it is brought to the attention of

169 the individual conducting that transaction, and, in any event,
 170 from the time when it would have been brought to the
 171 individual's attention if the organization had exercised due
 172 diligence. An organization exercises due diligence if it
 173 maintains reasonable routines for communicating significant
 174 information to the person conducting the transaction and there
 175 is reasonable compliance with the routines. Due diligence does
 176 not require an individual acting for the organization to
 177 communicate information unless such communication is part of the
 178 individual's regular duties or the individual has reason to know
 179 of the transaction and that the transaction would be materially
 180 affected by the information.

181 (45)+(42) "Warehouse receipt" means a document of title
 182 ~~receipt~~ issued by a person engaged in the business of storing
 183 goods for hire.

184 Section 3. Subsection (3) of section 672.103, Florida
 185 Statutes, is amended to read:

186 672.103 Definitions and index of definitions.—

187 (3) The following definitions in other chapters apply to
 188 this chapter:

- 189 "Check," s. 673.1041.
- 190 "Consignee," s. 677.102.
- 191 "Consignor," s. 677.102.
- 192 "Consumer goods," s. 679.1021.
- 193 "Control," s. 677.106.
- 194 "Dishonor," s. 673.5021.
- 195 "Draft," s. 673.1041.

196 Section 4. Subsection (2) of section 672.104, Florida

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197 Statutes, is amended to read:

198 672.104 Definitions: "merchant"; "between merchants";
 199 "financing agency."—

200 (2) "Financing agency" means a bank, finance company or
 201 other person who in the ordinary course of business makes
 202 advances against goods or documents of title or who by
 203 arrangement with either the seller or the buyer intervenes in
 204 ordinary course to make or collect payment due or claimed under
 205 the contract for sale, as by purchasing or paying the seller's
 206 draft or making advances against it or by merely taking it for
 207 collection whether or not documents of title accompany or are
 208 associated with the draft. "Financing agency" includes also a
 209 bank or other person who similarly intervenes between persons
 210 who are in the position of seller and buyer in respect to the
 211 goods (s. 672.707).

212 Section 5. Subsection (3) of section 672.310, Florida
 213 Statutes, is amended to read:

214 672.310 Open time for payment or running of credit;
 215 authority to ship under reservation.—Unless otherwise agreed:

216 (3) If delivery is authorized and made by way of documents
 217 of title otherwise than by subsection (2) then payment is due
 218 regardless of where the goods are to be received at the time and
 219 place at which the buyer is to receive delivery of the tangible
 220 documents or at the time the buyer is to receive delivery of the
 221 electronic documents and at the seller's place of business or,
 222 if none, the seller's residence ~~regardless of where the goods~~
 223 ~~are to be received; and~~

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224 Section 6. Section 672.323, Florida Statutes, is amended
 225 to read:

226 672.323 Form of bill of lading required in overseas
 227 shipment; "overseas."—

228 (1) Where the contract contemplates overseas shipment and
 229 contains a term "C.I.F." or "C. & F. or F.O.B. vessel," the
 230 seller unless otherwise agreed shall ~~must~~ obtain a negotiable
 231 bill of lading stating that the goods have been loaded in ~~on~~
 232 board or, in the case of a term "C.I.F." or "C. & F.," received
 233 for shipment.

234 (2) Where in a case within subsection (1) a tangible bill
 235 of lading has been issued in a set of parts, unless otherwise
 236 agreed if the documents are not to be sent from abroad the buyer
 237 may demand tender of the full set; otherwise only one part of
 238 the bill of lading need be tendered. Even if the agreement
 239 expressly requires a full set:

240 (a) Due tender of a single part is acceptable within the
 241 provisions of this chapter on cure of improper delivery (s.
 242 672.508(1)); and

243 (b) Even though the full set is demanded, if the documents
 244 are sent from abroad the person tendering an incomplete set may
 245 nevertheless require payment upon furnishing an indemnity which
 246 the buyer in good faith deems adequate.

247 (3) A shipment by water or by air or a contract
 248 contemplating such shipment is "overseas" insofar as by usage of
 249 trade or agreement it is subject to the commercial, financing or
 250 shipping practices characteristic of international deepwater
 251 commerce.

252 Section 7. Subsections (2) and (3) of section 672.401,
 253 Florida Statutes, are amended to read:

254 672.401 Passing of title; reservation for security;
 255 limited application of this section.—Each provision of this
 256 chapter with regard to the rights, obligations and remedies of
 257 the seller, the buyer, purchasers or other third parties applies
 258 irrespective of title to the goods except where the provision
 259 refers to such title. Insofar as situations are not covered by
 260 the other provisions of this chapter and matters concerning
 261 title become material the following rules apply:

262 (2) Unless otherwise explicitly agreed title passes to the
 263 buyer at the time and place at which the seller completes her or
 264 his performance with reference to the physical delivery of the
 265 goods, despite any reservation of a security interest and even
 266 though a document of title is to be delivered at a different
 267 time or place; and in particular and despite any reservation of
 268 a security interest by the bill of lading:

269 (a) If the contract requires or authorizes the seller to
 270 send the goods to the buyer but does not require him or her ~~the~~
 271 ~~seller~~ to deliver them at destination, title passes to the buyer
 272 at the time and place of shipment; but

273 (b) If the contract requires delivery at destination,
 274 title passes on tender there.

275 (3) Unless otherwise explicitly agreed where delivery is
 276 to be made without moving the goods:

277 (a) If the seller is to deliver a tangible document of
 278 title, title passes at the time when and the place where he or
 279 she ~~the seller~~ delivers such documents and if the seller is to

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280 deliver an electronic document of title, title passes when the
 281 seller delivers the document; or

282 (b) If the goods are at the time of contracting already
 283 identified and no documents of title are to be delivered, title
 284 passes at the time and place of contracting.

285 Section 8. Subsections (4) and (5) of section 672.503,
 286 Florida Statutes, are amended to read:

287 672.503 Manner of seller's tender of delivery.—

288 (4) Where goods are in the possession of a bailee and are
 289 to be delivered without being moved:

290 (a) Tender requires that the seller either tender a
 291 negotiable document of title covering such goods or procure
 292 acknowledgment by the bailee of the buyer's right to possession
 293 of the goods; but

294 (b) Tender to the buyer of a nonnegotiable document of
 295 title or of a record directing ~~written direction~~ to the bailee
 296 to deliver is sufficient tender unless the buyer seasonably
 297 objects, and, except as otherwise provided in Article 9 of the
 298 Uniform Commercial Code, receipt by the bailee of notification
 299 of the buyer's rights fixes those rights as against the bailee
 300 and all third persons; but risk of loss of the goods and of any
 301 failure by the bailee to honor the nonnegotiable document of
 302 title or to obey the direction remains on the seller until the
 303 buyer has had a reasonable time to present the document or
 304 direction, and a refusal by the bailee to honor the document or
 305 to obey the direction defeats the tender.

306 (5) Where the contract requires the seller to deliver
 307 documents:

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308 (a) He or she shall ~~must~~ tender all such documents in
 309 correct form, except as provided in this chapter with respect to
 310 bills of lading in a set (s. 672.323(2)); and

311 (b) Tender through customary banking channels is
 312 sufficient and dishonor of a draft accompanying or associated
 313 with the documents constitutes nonacceptance or rejection.

314 Section 9. Section 672.505, Florida Statutes, is amended
 315 to read:

316 672.505 Seller's shipment under reservation.-

317 (1) Where the seller has identified goods to the contract
 318 by or before shipment:

319 (a) His or her ~~The seller's~~ procurement of a negotiable
 320 bill of lading to his or her own order or otherwise reserves in
 321 him or her ~~the seller~~ a security interest in the goods. His or
 322 her procurement of the bill to the order of a financing agency
 323 or of the buyer indicates in addition only the seller's
 324 expectation of transferring that interest to the person named.

325 (b) A nonnegotiable bill of lading to himself or herself
 326 or his or her nominee reserves possession of the goods as
 327 security but except in a case of conditional delivery (s.
 328 672.507(2)) a nonnegotiable bill of lading naming the buyer as
 329 consignee reserves no security interest even though the seller
 330 retains possession or control of the bill of lading.

331 (2) When shipment by the seller with reservation of a
 332 security interest is in violation of the contract for sale it
 333 constitutes an improper contract for transportation within the
 334 preceding section but impairs neither the rights given to the
 335 buyer by shipment and identification of the goods to the

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336 contract nor the seller's powers as a holder of a negotiable
 337 document of title.

338 Section 10. Subsection (2) of section 672.506, Florida
 339 Statutes, is amended to read:

340 672.506 Rights of financing agency.—

341 (2) The right to reimbursement of a financing agency which
 342 has in good faith honored or purchased the draft under
 343 commitment to or authority from the buyer is not impaired by
 344 subsequent discovery of defects with reference to any relevant
 345 document which was apparently regular ~~on its face~~.

346 Section 11. Subsection (2) of section 672.509, Florida
 347 Statutes, is amended to read:

348 672.509 Risk of loss in the absence of breach.—

349 (2) Where the goods are held by a bailee to be delivered
 350 without being moved, the risk of loss passes to the buyer:

351 (a) On her or his receipt of possession or control of a
 352 negotiable document of title covering the goods; or

353 (b) On acknowledgment by the bailee of the buyer's right
 354 to possession of the goods; or

355 (c) After her or his receipt of possession or control of a
 356 nonnegotiable document of title or other ~~written~~ direction to
 357 deliver in a record, as provided in s. 672.503(4)(b).

358 Section 12. Subsection (2) of section 672.605, Florida
 359 Statutes, is amended to read:

360 672.605 Waiver of buyer's objections by failure to
 361 particularize.—

362 (2) Payment against documents made without reservation of
 363 rights precludes recovery of the payment for defects apparent in

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364 ~~on the face of~~ the documents.

365 Section 13. Subsections (2) and (3) of section 672.705,
366 Florida Statutes, are amended to read:

367 672.705 Seller's stoppage of delivery in transit or
368 otherwise.—

369 (2) As against such buyer the seller may stop delivery
370 until:

371 (a) Receipt of the goods by the buyer; or

372 (b) Acknowledgment to the buyer by any bailee of the goods
373 except a carrier that the bailee holds the goods for the buyer;
374 or

375 (c) Such acknowledgment to the buyer by a carrier by
376 reshipment or as a warehouse ~~warehouseman~~; or

377 (d) Negotiation to the buyer of any negotiable document of
378 title covering the goods.

379 (3)(a) To stop delivery the seller shall ~~must~~ so notify as
380 to enable the bailee by reasonable diligence to prevent delivery
381 of the goods.

382 (b) After such notification the bailee shall ~~must~~ hold and
383 deliver the goods according to the directions of the seller but
384 the seller is liable to the bailee for any ensuing charges or
385 damages.

386 (c) If a negotiable document of title has been issued for
387 goods the bailee is not obliged to obey a notification to stop
388 until surrender of possession or control of the document.

389 (d) A carrier who has issued a nonnegotiable bill of
390 lading is not obliged to obey a notification to stop received
391 from a person other than the consignor.

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392 Section 14. Subsection (3) of section 674.104, Florida
 393 Statutes, is amended to read:

394 674.104 Definitions and index of definitions.—

395 (3) The following definitions in other chapters apply to
 396 this chapter:

397 "Acceptance," s. 673.4091.

398 "Alteration," s. 673.4071.

399 "Cashier's check," s. 673.1041.

400 "Certificate of deposit," s. 673.1041.

401 "Certified check," s. 673.4091.

402 "Check," s. 673.1041.

403 "Control," s. 677.106.

404 "Good faith," s. 673.1031.

405 "Holder in due course," s. 673.3021.

406 "Instrument," s. 673.1041.

407 "Notice of dishonor," s. 673.5031.

408 "Order," s. 673.1031.

409 "Ordinary care," s. 673.1031.

410 "Person entitled to enforce," s. 673.3011.

411 "Presentment," s. 673.5011.

412 "Promise," s. 673.1031.

413 "Prove," s. 673.1031.

414 "Teller's check," s. 673.1041.

415 "Unauthorized signature," s. 673.4031.

416 Section 15. Subsection (3) of section 674.2101, Florida
 417 Statutes, is amended to read:

418 674.2101 Security interest of collecting bank in items,
 419 accompanying documents, and proceeds.—

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420 (3) Receipt by a collecting bank of a final settlement for
 421 an item is a realization on its security interest in the item,
 422 accompanying documents, and proceeds. So long as the bank does
 423 not receive final settlement for the item or give up possession
 424 of the item or possession or control of the accompanying
 425 documents for purposes other than collection, the security
 426 interest continues to that extent and is subject to chapter 679,
 427 but:

428 (a) No security agreement is necessary to make the
 429 security interest enforceable (s. 679.2031(2)(c)1.);

430 (b) No filing is required to perfect the security
 431 interest; and

432 (c) The security interest has priority over conflicting
 433 perfected security interests in the item, accompanying
 434 documents, or proceeds.

435 Section 16. Section 677.102, Florida Statutes, is amended
 436 to read:

437 677.102 Definitions and index of definitions.—

438 (1) In this chapter, unless the context otherwise
 439 requires:

440 (a) "Bailee" means a ~~the~~ person that ~~who~~ by a warehouse
 441 receipt, bill of lading or other document of title acknowledges
 442 possession of goods and contracts to deliver them.

443 (b) "Carrier" means a person that issues a bill of
 444 lading.

445 (c) ~~(b)~~ "Consignee" means a ~~the~~ person named in a bill of of
 446 lading to which ~~whom~~ or to whose order the bill promises
 447 delivery.

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448 ~~(d)(e)~~ "Consignor" means a the person named in a bill of
 449 lading as the person from which ~~whom~~ the goods have been
 450 received for shipment.

451 ~~(e)(d)~~ "Delivery order" means a record that contains an
 452 ~~written~~ order to deliver goods directed to a warehouse
 453 ~~warehouseman,~~ carrier, or other person that ~~who~~ in the ordinary
 454 course of business issues warehouse receipts or bills of lading.

455 (f) "Good faith" means honesty in fact and the observance
 456 of reasonable commercial standards of fair dealing.

457 ~~(e) "Document" means document of title as defined in the~~
 458 ~~general definitions in chapter 671 (s. 671.201).~~

459 ~~(g)(f)~~ "Goods" means all things that ~~which~~ are treated as
 460 movable for the purposes of a contract of storage or
 461 transportation.

462 ~~(h)(g)~~ "Issuer" means a bailee who issues a document of
 463 title or, in the case of ~~except that in relation to~~ an
 464 unaccepted delivery order, ~~it means~~ the person who orders the
 465 possessor of goods to deliver. The term issuer includes a any
 466 person for which ~~whom~~ an agent or employee purports to act in
 467 issuing a document if the agent or employee has real or apparent
 468 authority to issue documents, notwithstanding that the issuer
 469 received no goods or that the goods were misdescribed or that in
 470 any other respect the agent or employee violated his or her
 471 instructions.

472 (i) "Person entitled under the document" means the holder,
 473 in the case of a negotiable document of title, or the person to
 474 which delivery of the goods is to be made by the terms of, or
 475 pursuant to instructions in a record under, a nonnegotiable

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476 document of title.

477 (j) "Record" means information that is inscribed on a
 478 tangible medium or that is stored in an electronic or other
 479 medium and is retrievable in perceivable form.

480 (k) "Shipper" means a person that enters into a contract
 481 of transportation with a carrier.

482 (l) "Sign" means, with present intent to authenticate or
 483 adopt a record:

- 484 1. To execute or adopt a tangible symbol; or
- 485 2. To attach to or logically associate with the record an
 486 electronic sound, symbol, or process.

487 (m) ~~(h)~~ "Warehouse" means ~~"Warehouseman"~~ is a person
 488 engaged in the business of storing goods for hire.

489 (2) ~~Other definitions applying to this chapter or to~~
 490 ~~specified parts thereof, and the sections in which they appear~~
 491 ~~are:~~

492 ~~"Duly negotiate," s. 677.501.~~

493 ~~"Person entitled under the document," s. 677.403(4).~~

494 ~~(3)~~ Definitions in other chapters applying to this chapter
 495 and the sections in which they appear are:

496 "Contract for sale," s. 672.106.

497 ~~"Overseas," s. 672.323.~~

498 "Lessee in ordinary course of business," s. 680.1031.

499 "Receipt" of goods, s. 672.103.

500 (3) ~~(4)~~ In addition, chapter 671 contains general
 501 definitions and principles of construction and interpretation
 502 applicable throughout this chapter.

503 Section 17. Section 677.103, Florida Statutes, is amended

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504 to read:

505 677.103 Relation of chapter to treaty, statute, tariff,
506 classification or regulation.—

507 (1) Except as otherwise provided in this chapter, this
508 chapter is subject to the extent that any treaty or statute of
509 the United States to the extent the treaty or statute,
510 regulatory statute of this state or tariff, classification or
511 regulation filed or issued pursuant thereto is applicable, the
512 provisions of this chapter are subject thereto.

513 (2) This chapter does not modify or repeal any law
514 prescribing the form or content of a document of title or the
515 services or facilities to be afforded by a bailee, or otherwise
516 regulating a bailee's business in respects not specifically
517 treated in this chapter. However, a violation of such a law does
518 not affect the status of a document of title that otherwise is
519 within the definition of a document of title.

520 (3) This chapter modifies, limits, and supersedes the
521 federal Electronic Signatures in Global and National Commerce
522 Act, 15 U.S.C. ss. 7001, et seq., but does not modify, limit, or
523 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or
524 authorize electronic delivery of any of the notices described in
525 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

526 (4) To the extent that there is a conflict between any
527 provisions of the laws of this state regarding electronic
528 transactions and this chapter, this chapter governs.

529 Section 18. Section 677.104, Florida Statutes, is amended
530 to read:

531 677.104 Negotiable and nonnegotiable ~~warehouse receipt,~~

532 ~~bill of lading or other~~ document of title.-

533 (1) Except as otherwise provided in subsection (3), a
 534 ~~warehouse receipt, bill of lading or other~~ document of title is
 535 negotiable:

536 ~~(a) if by its terms the goods are to be delivered to~~
 537 ~~bearer or to the order of a named person; or~~

538 ~~(b) Where recognized in overseas trade, if it runs to a~~
 539 ~~named person or assigns.~~

540 (2) A document of title other than one described in
 541 subsection (1) Any other document is nonnegotiable. A bill of
 542 lading that states in which it is stated that the goods are
 543 consigned to a named person is not made negotiable by a
 544 provision that the goods are to be delivered only against an a
 545 written order in a record signed by the same or another named
 546 person.

547 (3) A document of title is nonnegotiable if, at the time
 548 it is issued, the document has a conspicuous legend, however
 549 expressed, that it is nonnegotiable.

550 Section 19. Section 677.105, Florida Statutes, is amended
 551 to read:

552 677.105 Reissuance in alternative medium ~~Construction~~
 553 ~~against negative implication.-~~

554 (1) Upon request of a person entitled under an electronic
 555 document of title, the issuer of the electronic document may
 556 issue a tangible document of title as a substitute for the
 557 electronic document if:

558 (a) The person entitled under the electronic document
 559 surrenders control of the document to the issuer; and

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560 (b) The tangible document when issued contains a statement
 561 that it is issued in substitution for the electronic document.

562 (2) Upon issuance of a tangible document of title in
 563 substitution for an electronic document of title in accordance
 564 with subsection (1):

565 (a) The electronic document ceases to have any effect or
 566 validity; and

567 (b) The person that procured issuance of the tangible
 568 document warrants to all subsequent persons entitled under the
 569 tangible document that the warrantor was a person entitled under
 570 the electronic document when the warrantor surrendered control
 571 of the electronic document to the issuer.

572 (3) Upon request of a person entitled under a tangible
 573 document of title, the issuer of the tangible document may issue
 574 an electronic document of title as a substitute for the tangible
 575 document if:

576 (a) The person entitled under the tangible document
 577 surrenders possession of the document to the issuer; and

578 (b) The electronic document when issued contains a
 579 statement that it is issued in substitution for the tangible
 580 document.

581 (4) Upon issuance of an electronic document of title in
 582 substitution for a tangible document of title is accordance with
 583 subsection (3):

584 (a) The tangible document ceases to have any effect or
 585 validity; and

586 (b) The person that procured issuance of the electronic
 587 document warrants to all subsequent persons entitled under the

588 electronic document that the warrantor was a person entitled
 589 under the tangible document when the warrantor surrendered
 590 possession of the tangible document to the issuer. The omission
 591 from either part II or part III of this chapter of a provision
 592 corresponding to a provision made in the other part does not
 593 imply that a corresponding rule of law is not applicable.

594 Section 20. Section 677.106, Florida Statutes, is created
 595 to read:

596 677.106 Control of electronic document of title.-

597 (1) A person has control of an electronic document of
 598 title if a system employed for evidencing the transfer of
 599 interests in the electronic document reliably establishes that
 600 person as the person to which the electronic document was issued
 601 or transferred.

602 (2) A system satisfies subsection (1), and a person is
 603 deemed to have control of an electronic document of title, if
 604 the document is created, stored, and assigned in a manner that:

605 (a) A single authoritative copy of the document exists
 606 which is unique, identifiable, and, except as otherwise provided
 607 in paragraphs (d), (e), and (f), unalterable;

608 (b) The authoritative copy identifies the person asserting
 609 control as:

- 610 1. The person to which the document was issued; or
- 611 2. If the authoritative copy indicates that the document
 612 has been transferred, the person to which the document was most
 613 recently transferred;

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614 (c) The authoritative copy is communicated to and
 615 maintained by the person asserting control or its designated
 616 custodian;

617 (d) Copies or amendments that add or change an identified
 618 assignee of the authoritative copy can be made only with the
 619 consent of the person asserting control;

620 (e) Each copy of the authoritative copy and any copy of a
 621 copy is readily identifiable as a copy that is not the
 622 authoritative copy; and

623 (f) Any amendment of the authoritative copy is readily
 624 identifiable as authorized or unauthorized.

625 Section 21. Section 677.201, Florida Statutes, is amended
 626 to read:

627 677.201 Persons that ~~Who~~ may issue a warehouse receipt;
 628 storage under ~~government~~ bond.-

629 (1) A warehouse receipt may be issued by any warehouse
 630 warehouseman.

631 (2) If ~~Where~~ goods, including distilled spirits and
 632 agricultural commodities, are stored under a statute requiring a
 633 bond against withdrawal or a license for the issuance of
 634 receipts in the nature of warehouse receipts, a receipt issued
 635 for the goods is deemed to be ~~has like effect as~~ a warehouse
 636 receipt even if ~~though~~ issued by a person that ~~who~~ is the owner
 637 of the goods and is not a warehouse ~~warehouseman.~~

638 Section 22. Section 677.202, Florida Statutes, is amended
 639 to read:

640 677.202 Form of warehouse receipt; effect of omission
 641 ~~essential terms; optional terms.-~~

- 642 (1) A warehouse receipt need not be in any particular
 643 form.
- 644 (2) Unless a warehouse receipt provides for ~~embodies~~
 645 ~~within its written or printed terms~~ each of the following, the
 646 warehouse warehouseman is liable for damages caused to a person
 647 injured by its ~~by the omission to a person injured thereby~~:
- 648 (a) A statement of the location of the warehouse facility
 649 where the goods are stored;
- 650 (b) The date of issue of the receipt;
- 651 (c) The unique identification code ~~consecutive number~~ of
 652 the receipt;
- 653 (d) A statement whether the goods received will be
 654 delivered to the bearer, to a named ~~specified~~ person, or to a
 655 named ~~specified~~ person or its ~~his or her~~ order;
- 656 (e) The rate of storage and handling charges, unless
 657 ~~except that where~~ goods are stored under a field warehousing
 658 arrangement, in which case a statement of that fact is
 659 sufficient on a nonnegotiable receipt;
- 660 (f) A description of the goods or ~~of~~ the packages
 661 containing them;
- 662 (g) The signature of the warehouse or its warehouseman,
 663 ~~which may be made by his or her authorized agent~~;
- 664 (h) If the receipt is issued for goods that the warehouse
 665 owns ~~of which the warehouseman is owner~~, either solely, or
 666 jointly, or in common with others, a statement of the fact of
 667 that ~~such~~ ownership; and
- 668 (i) A statement of the amount of advances made and of
 669 liabilities incurred for which the warehouse ~~warehouseman~~ claims

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670 a lien or security interest, unless ~~(s. 677.209)~~. If the precise
 671 amount of ~~such~~ advances made or ~~of such~~ liabilities incurred ~~is,~~
 672 at the time of the issue of the receipt is, unknown to the
 673 warehouse warehouseman or to its ~~his or her~~ agent that issued
 674 the receipt, in which case ~~who issues it,~~ a statement of the
 675 fact that advances have been made or liabilities incurred and
 676 the purpose of the advances or liabilities ~~thereof~~ is
 677 sufficient.

678 (3) A warehouse warehouseman may insert in its ~~his or her~~
 679 receipt any ~~other~~ terms that ~~which~~ are not contrary to the
 680 provisions of this code and do not impair its ~~his or her~~
 681 obligation of delivery under s. 677.403 ~~(s. 677.403)~~ or its ~~his~~
 682 ~~or her~~ duty of care under s. 677.204 ~~(s. 677.204)~~. Any contrary
 683 provision is ~~provisions shall be~~ ineffective.

684 Section 23. Section 677.203, Florida Statutes, is amended
 685 to read:

686 677.203 Liability of nonreceipt or misdescription.—A party
 687 to or purchaser for value in good faith of a document of title,
 688 other than a bill of lading, that relies ~~relying in either case~~
 689 upon the description ~~therein~~ of the goods in the document may
 690 recover from the issuer damages caused by the nonreceipt or
 691 misdescription of the goods, except to the extent that:

692 (1) The document conspicuously indicates that the issuer
 693 does not know whether all or any part ~~or all~~ of the goods in
 694 fact were received or conform to the description, such as a case
 695 in which ~~as where~~ the description is in terms of marks or labels
 696 or kind, quantity or condition, or the receipt or description is
 697 qualified by "contents, condition and quality unknown," "said to

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698 contain," or words of similar import ~~the like~~, if such
 699 indication is ~~be~~ true;; or

700 (2) The party or purchaser otherwise has notice of the
 701 nonreceipt or misdescription.

702 Section 24. Section 677.204, Florida Statutes, is amended
 703 to read:

704 677.204 Duty of care; contractual limitation of
 705 warehouse's warehouseman's liability.-

706 (1) A warehouse ~~warehouseman~~ is liable for damages for
 707 loss of or injury to the goods caused by its ~~his or her~~ failure
 708 to exercise ~~such~~ care with ~~in~~ regard to the goods that ~~them~~ as a
 709 reasonably careful person would exercise under similar ~~like~~
 710 circumstances. ~~but~~ Unless otherwise agreed, the warehouse ~~he or~~
 711 ~~she~~ is not liable for damages that ~~which~~ could not have been
 712 avoided by the exercise of that ~~such~~ care.

713 (2) Damages may be limited by a term in the warehouse
 714 receipt or storage agreement limiting the amount of liability in
 715 case of loss or damage, ~~and setting forth a specific liability~~
 716 ~~per article or item, or value per unit of weight, beyond which~~
 717 the warehouse is warehouseman shall not be liable; provided,
 718 however, that such liability may on written. Such a limitation
 719 is not effective with respect to the warehouse's liability for
 720 conversion to its own use. On request of the bailor in a record
 721 at the time of signing the ~~such~~ storage agreement or within a
 722 reasonable time after receipt of the warehouse receipt, the
 723 warehouse's liability may be increased on part or all of the
 724 goods covered by the storage agreement or the warehouse receipt.
 725 In this event, thereunder, in which event increased rates may be

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726 charged based on an such increased valuation of the goods, ~~but~~
 727 ~~that no such increase shall be permitted contrary to a lawful~~
 728 ~~limitation of liability contained in the warehouseman's tariff,~~
 729 ~~if any. No such limitation is effective with respect to the~~
 730 ~~warehouseman's liability for conversion to his or her own use.~~

731 (3) Reasonable provisions as to the time and manner of
 732 presenting claims and commencing actions based on the bailment
 733 may be included in the warehouse receipt or storage agreement.

734 ~~(4)(3)~~ This section does not impair or repeal any statute
 735 which imposes a higher responsibility upon the warehouse
 736 ~~warehouseman~~ or invalidates contractual limitations which would
 737 be permissible under this chapter.

738 Section 25. Section 677.205, Florida Statutes, is amended
 739 to read:

740 677.205 Title under warehouse receipt defeated in certain
 741 cases.—A buyer in ~~the~~ ordinary course of business of fungible
 742 goods sold and delivered by a warehouse that warehouseman ~~who~~ is
 743 also in the business of buying and selling such goods takes the
 744 goods free of any claim under a warehouse receipt even if the
 745 receipt is negotiable and ~~though it~~ has been duly negotiated.

746 Section 26. Section 677.206, Florida Statutes, is amended
 747 to read:

748 677.206 Termination of storage at warehouse's
 749 ~~warehouseman's~~ option.—

750 (1) A warehouse, by giving notice to warehouseman ~~may on~~
 751 ~~notifying~~ the person on whose account the goods are held and any
 752 other person known to claim an interest in the goods, may
 753 require payment of any charges and removal of the goods from the

754 warehouse at the termination of the period of storage fixed by
 755 the document of title, or, if a ~~no~~ period is not fixed, within a
 756 stated period not less than 30 days after the warehouse gives
 757 notice notification. If the goods are not removed before the
 758 date specified in the notice notification, the warehouse
 759 ~~warehouseman~~ may sell them pursuant to s. 677.210 ~~in accordance~~
 760 ~~with the provisions of the section on enforcement of a~~
 761 ~~warehouseman's lien (s. 677.210).~~

762 (2) If a warehouse ~~warehouseman~~ in good faith believes
 763 that ~~the~~ goods are about to deteriorate or decline in value to
 764 less than the amount of its ~~his or her~~ lien within the time
 765 provided ~~prescribed~~ in subsection (1) and s. 677.210 ~~for~~
 766 ~~notification, advertisement and sale~~, the warehouse ~~warehouseman~~
 767 may specify in the notice given under subsection (1)
 768 ~~notification~~ any reasonable shorter time for removal of the
 769 goods and, if ~~in case~~ the goods are not removed, may sell them
 770 at public sale held not less than 1 week after a single
 771 advertisement or posting.

772 (3) If, as a result of a quality or condition of the goods
 773 of which the warehouse did not have ~~warehouseman had no~~ notice
 774 at the time of deposit, the goods are a hazard to other
 775 property, or to the warehouse facilities, or other ~~to~~ persons,
 776 the warehouse ~~warehouseman~~ may sell the goods at public or
 777 private sale without advertisement or posting on reasonable
 778 notification to all persons known to claim an interest in the
 779 goods. If the warehouse, ~~warehouseman~~ after a reasonable effort,
 780 is unable to sell the goods, it ~~he or she~~ may dispose of them in
 781 any lawful manner and does not ~~shall~~ incur ~~no~~ liability by

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782 reason of that ~~such~~ disposition.

783 (4) A warehouse shall ~~The warehouseman must~~ deliver the
 784 goods to any person entitled to them under this chapter upon due
 785 demand made at any time before ~~prior to~~ sale or other
 786 disposition under this section.

787 (5) A warehouse ~~The warehouseman~~ may satisfy its ~~his or~~
 788 ~~her~~ lien from the proceeds of any sale or disposition under this
 789 section but shall ~~must~~ hold the balance for delivery on the
 790 demand of any person to which the warehouse ~~whom he or she~~ would
 791 have been bound to deliver the goods.

792 Section 27. Section 677.207, Florida Statutes, is amended
 793 to read:

794 677.207 Goods shall ~~must~~ be kept separate; fungible
 795 goods.—

796 (1) Unless the warehouse receipt ~~otherwise~~ provides
 797 otherwise, a warehouse shall ~~warehouseman must~~ keep separate the
 798 goods covered by each receipt so as to permit at all times
 799 identification and delivery of those goods. However, ~~except that~~
 800 different lots of fungible goods may be commingled.

801 (2) If different lots of fungible goods are ~~se~~ commingled,
 802 the goods are owned in common by the persons entitled thereto
 803 and the warehouse ~~warehouseman~~ is severally liable to each owner
 804 for that owner's share. If, ~~Where~~ because of overissue, a mass
 805 of fungible goods is insufficient to meet all the receipts ~~which~~
 806 the warehouse ~~warehouseman~~ has issued against it, the persons
 807 entitled include all holders to whom overissued receipts have
 808 been duly negotiated.

809 Section 28. Section 677.208, Florida Statutes, is amended

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810 to read:

811 677.208 Altered warehouse receipts.—~~If where~~ a blank in a
 812 negotiable warehouse receipt has been filled in without
 813 authority, a good faith purchaser for value and without notice
 814 of the lack want of authority may treat the insertion as
 815 authorized. Any other unauthorized alteration leaves any
 816 tangible or electronic warehouse receipt enforceable against the
 817 issuer according to its original tenor.

818 Section 29. Section 677.209, Florida Statutes, is amended
 819 to read:

820 677.209 Lien of warehouse ~~warehouseman~~.—

821 (1) A warehouse ~~warehouseman~~ has a lien against the bailor
 822 on the goods covered by a warehouse receipt or storage agreement
 823 or on the proceeds thereof in its ~~his or her~~ possession for
 824 charges for storage or transportation, including demurrage and
 825 terminal charges ~~(including demurrage and terminal charges)~~,
 826 insurance, labor, or other charges, present or future, in
 827 relation to the goods, and for expenses necessary for
 828 preservation of the goods or reasonably incurred in their sale
 829 pursuant to law. If the person on whose account the goods are
 830 held is liable for similar ~~like~~ charges or expenses in relation
 831 to other goods whenever deposited and it is stated in the
 832 warehouse receipt or storage agreement that a lien is claimed
 833 for charges and expenses in relation to other goods, the
 834 warehouse ~~warehouseman~~ also has a lien against the goods covered
 835 by the warehouse receipt or storage agreement or on the proceeds
 836 thereof in its possession ~~him or her~~ for those ~~such~~ charges and
 837 expenses, whether or not the other goods have been delivered by

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838 the warehouse ~~warehouseman~~. ~~However, as~~ But against a person to
 839 which ~~whom~~ a negotiable warehouse receipt is duly negotiated, a
 840 warehouse's ~~warehouseman's~~ lien is limited to charges in an
 841 amount or at a rate specified in ~~on~~ the warehouse receipt or, if
 842 no charges are so specified, ~~then~~ to a reasonable charge for
 843 storage of the specific goods covered by the receipt subsequent
 844 to the date of the receipt.

845 (2) A warehouse ~~The warehouseman~~ may also reserve a
 846 security interest against the bailor for the ~~a~~ maximum amount
 847 specified on the receipt for charges other than those specified
 848 in subsection (1), such as for money advanced and interest. The
 849 ~~Such a~~ security interest is governed by chapter 679 ~~the chapter~~
 850 ~~on secured transactions~~ (chapter 679).

851 (3) A warehouse's ~~warehouseman's~~ lien for charges and
 852 expenses under subsection (1) or a security interest under
 853 subsection (2) is also effective against any person that ~~who~~ so
 854 entrusted the bailor with possession of the goods that a pledge
 855 of them by the bailor ~~him or her~~ to a good faith ~~good faith~~
 856 purchaser for value would have been valid. However, the lien or
 857 security interest ~~but~~ is not effective against a person that
 858 before issuance of a document of title had a legal interest or a
 859 perfected security interest in the goods and that did not:

860 (a) Deliver or entrust the goods or any document of title
 861 covering the goods to the bailor or the bailor's nominee with:

- 862 1. Actual or apparent authority to ship, store, or sell;
- 863 2. Power to obtain delivery under s. 677.403; or
- 864 3. Power of disposition under s. 672.403, s. 680.304(2),
 865 s. 680.305(2), s. 679.320, or s. 679.321(3) or other statute or

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866 rule of law; or

867 (b) Acquiesce in the procurement by the bailor or its
 868 nominee of any document as to whom the document confers no right
 869 in the goods covered by it under s. 677.503.

870 (4) A warehouse's lien on household goods for charges and
 871 expenses in relation to the goods under subsection (1) is also
 872 effective against all persons if the depositor was the legal
 873 possessor of the goods at the time of deposit. In this
 874 subsection, the term "household goods" means furniture,
 875 furnishings, or personal effects used by the depositor in a
 876 dwelling.

877 (5)(4) A warehouse warehouseman loses its his or her lien
 878 on any goods that it which he or she voluntarily delivers or
 879 which he or she unjustifiably refuses to deliver.

880 Section 30. Section 677.210, Florida Statutes, is amended
 881 to read:

882 677.210 Enforcement of warehouse's warehouseman's lien.-

883 (1) Except as provided in subsection (2), a warehouse's
 884 warehouseman's lien may be enforced by public or private sale of
 885 the goods, in bulk or in packages in block or in parcels, at any
 886 time or place and on any terms that which are commercially
 887 reasonable, after notifying all persons known to claim an
 888 interest in the goods. The Such notification shall must include
 889 a statement of the amount due, the nature of the proposed sale,
 890 and the time and place of any public sale. The fact that a
 891 better price could have been obtained by a sale at a different
 892 time or in a different method from that selected by the
 893 warehouse warehouseman is not of itself sufficient to establish

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894 that the sale was not made in a commercially reasonable manner.
 895 The warehouse sells in a commercially reasonable manner if the
 896 warehouse ~~if the warehouseman either~~ sells the goods in the
 897 usual manner in any recognized market therefor, ~~or if he or she~~
 898 sells at the price current in that ~~such~~ market at the time of
 899 the ~~his or her~~ sale, or ~~if he or she has~~ otherwise sells ~~sold~~ in
 900 conformity with commercially reasonable practices among dealers
 901 in the type of goods sold, ~~he or she has sold in a commercially~~
 902 ~~reasonable manner~~. A sale of more goods than apparently
 903 necessary to be offered to ensure satisfaction of the obligation
 904 is not commercially reasonable except in cases covered by the
 905 preceding sentence.

906 (2) A warehouse may enforce its ~~warehouseman's~~ lien on
 907 goods, other than goods stored by a merchant in the course of
 908 its ~~his or her~~ business, only if the following requirements are
 909 satisfied ~~may be enforced only as follows:~~

910 (a) All persons known to claim an interest in the goods
 911 shall ~~must~~ be notified.

912 ~~(b) The notification must be delivered in person or sent~~
 913 ~~by registered or certified letter to the last known address of~~
 914 ~~any person to be notified.~~

915 ~~(b)(c)~~ (b) The notification shall ~~must~~ include an itemized
 916 statement of the claim, a description of the goods subject to
 917 the lien, a demand for payment within a specified time not less
 918 than 10 days after receipt of the notification, and a
 919 conspicuous statement that unless the claim is paid within that
 920 time the goods will be advertised for sale and sold by auction
 921 at a specified time and place.

922 ~~(c)(d)~~ The sale shall ~~must~~ conform to the terms of the
 923 notification.

924 ~~(d)(e)~~ The sale shall ~~must~~ be held at the nearest suitable
 925 place to ~~that~~ where the goods are held or stored.

926 ~~(e)(f)~~ After the expiration of the time given in the
 927 notification, an advertisement of the sale shall ~~must~~ be
 928 published once a week for 2 weeks consecutively in a newspaper
 929 of general circulation where the sale is to be held. The
 930 advertisement shall ~~must~~ include a description of the goods, the
 931 name of the person on whose account they are being held, and the
 932 time and place of the sale. The sale shall ~~must~~ take place at
 933 least 15 days after the first publication. If there is no
 934 newspaper of general circulation where the sale is to be held,
 935 the advertisement shall ~~must~~ be posted at least 10 days before
 936 the sale in not fewer ~~less~~ than 6 conspicuous places in the
 937 neighborhood of the proposed sale.

938 (3) Before any sale pursuant to this section any person
 939 claiming a right in the goods may pay the amount necessary to
 940 satisfy the lien and the reasonable expenses incurred in
 941 complying with ~~under~~ this section. In that event, the goods may
 942 ~~must~~ not be sold, but shall ~~must~~ be retained by the warehouse
 943 ~~warehouseman~~ subject to the terms of the receipt and this
 944 chapter.

945 (4) A warehouse ~~The warehouseman~~ may buy at any public
 946 sale held pursuant to this section.

947 (5) A purchaser in good faith of goods sold to enforce a
 948 warehouse's ~~warehouseman's~~ lien takes the goods free of any
 949 rights of persons against which ~~whom~~ the lien was valid, despite

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950 the warehouse's noncompliance by the warehouseman with the
 951 requirements of this section.

952 (6) A warehouse ~~The warehouseman~~ may satisfy its ~~his or~~
 953 ~~her~~ lien from the proceeds of any sale pursuant to this section
 954 but shall ~~must~~ hold the balance, if any, for delivery on demand
 955 to any person to which the warehouse ~~whom he or she~~ would have
 956 been bound to deliver the goods.

957 (7) The rights provided by this section shall be in
 958 addition to all other rights allowed by law to a creditor
 959 against a ~~his or her~~ debtor.

960 (8) If ~~Where~~ a lien is on goods stored by a merchant in
 961 the course of its ~~his or her~~ business, the lien may be enforced
 962 in accordance with ~~either~~ subsection (1) or subsection (2).

963 (9) A warehouse ~~The warehouseman~~ is liable for damages
 964 caused by failure to comply with the requirements for sale under
 965 this section, and in case of willful violation, is liable for
 966 conversion.

967 Section 31. Section 677.301, Florida Statutes, is amended
 968 to read:

969 677.301 Liability for nonreceipt or misdescription; "said
 970 to contain"; "shipper's weight, load, and count"; improper
 971 handling.-

972 (1) A consignee of a nonnegotiable bill of lading which
 973 ~~who~~ has given value in good faith, or a holder to which ~~whom~~ a
 974 negotiable bill has been duly negotiated, relying ~~in either case~~
 975 upon the description ~~therein~~ of the goods in the bill, or upon
 976 the date ~~therein~~ shown in the bill, may recover from the issuer
 977 damages caused by the misdating of the bill or the nonreceipt or

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978 misdescription of the goods, except to the extent that the bill
 979 ~~document~~ indicates that the issuer does not know whether any
 980 part or all of the goods in fact were received or conform to the
 981 description, such as in the case in which ~~where~~ the description
 982 is in terms of marks or labels or kind, quantity, or condition
 983 or the receipt or description is qualified by "contents or
 984 condition of contents of packages unknown," "said to contain,"
 985 "shipper's weight, load, and count" or words of similar import
 986 ~~the like~~, if that such indication is ~~be~~ true.

987 (2) If ~~When~~ goods are loaded by the ~~an~~ issuer of a bill of
 988 lading: who is a common carrier,

989 (a) The issuer shall ~~must~~ count the packages of goods if
 990 shipped in packages ~~package freight~~ and ascertain the kind and
 991 quantity if shipped in bulk; and freight.

992 (b) Words ~~In~~ such as ~~cases~~ "shipper's weight, load, and
 993 count" or ~~other~~ words of similar import indicating that the
 994 description was made by the shipper are ineffective except as to
 995 goods freight concealed in ~~by~~ packages.

996 (3) If ~~When~~ bulk goods are ~~freight is~~ loaded by a shipper
 997 that ~~who~~ makes available to the issuer of a bill of lading
 998 adequate facilities for weighing those goods, the ~~such freight,~~
 999 an issuer shall ~~who is a common carrier must~~ ascertain the kind
 1000 and quantity within a reasonable time after receiving the
 1001 shipper's written request ~~of the shipper~~ to do so. In that case
 1002 ~~such cases~~ "shipper's weight, load, and count" or ~~other~~ words of
 1003 similar import ~~like purport~~ are ineffective.

1004 (4) The issuer of a bill of lading, ~~may~~ by including
 1005 inserting in the bill the words "shipper's weight, load, and

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1006 count" or ~~other~~ words of similar import, may ~~like~~ purport
 1007 indicate that the goods were loaded by the shipper,~~+~~ and if that
 1008 ~~such~~ statement is ~~be~~ true, the issuer is ~~shall~~ not ~~be~~ liable for
 1009 damages caused by the improper loading. However, ~~But their~~
 1010 omission of such words does not imply liability for ~~such~~ damages
 1011 caused by improper loading.

1012 (5) ~~A~~ The shipper guarantees ~~shall be deemed to have~~
 1013 ~~guaranteed~~ to an the issuer the accuracy at the time of shipment
 1014 of the description, marks, labels, number, kind, quantity,
 1015 condition and weight, as furnished by the shipper, ~~him or her,~~
 1016 and the shipper shall indemnify the issuer against damage caused
 1017 by inaccuracies in those ~~such~~ particulars. This ~~The~~ right of ~~the~~
 1018 ~~issuer to such~~ indemnity does not ~~shall in no way~~ limit the
 1019 issuer's ~~his or her~~ responsibility or ~~and~~ liability under the
 1020 contract of carriage to any person other than the shipper.

1021 Section 32. Section 677.302, Florida Statutes, is amended
 1022 to read:

1023 677.302 Through bills of lading and similar documents of
 1024 title.-

1025 (1) The issuer of a through bill of lading, or other
 1026 document of title embodying an undertaking to be performed in
 1027 part by a person ~~persons~~ acting as its agent ~~agents~~ or by a
 1028 performing carrier, ~~connecting carriers~~ is liable to any person
 1029 ~~anyone~~ entitled to recover on the bill or other document for any
 1030 breach by the ~~such~~ other person ~~persons~~ or the performing ~~by a~~
 1031 ~~connecting~~ carrier of its obligation under the bill or other
 1032 document. However, ~~but~~ to the extent that the bill or other
 1033 document covers an undertaking to be performed overseas or in

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1034 territory not contiguous to the continental United States or an
 1035 undertaking including matters other than transportation, this
 1036 liability for breach by the other person or the performing
 1037 carrier may be varied by agreement of the parties.

1038 (2) ~~If where~~ goods covered by a through bill of lading or
 1039 other document of title embodying an undertaking to be performed
 1040 in part by a person ~~persons~~ other than the issuer are received
 1041 by that ~~any such person,~~ the person ~~he or she~~ is subject, with
 1042 respect to its ~~his or her~~ own performance while the goods are in
 1043 its ~~his or her~~ possession, to the obligation of the issuer. The
 1044 person's ~~His or her~~ obligation is discharged by delivery of the
 1045 goods to another ~~such~~ person pursuant to the bill or other
 1046 document, and does not include liability for breach by any other
 1047 person ~~such persons~~ or by the issuer.

1048 (3) The issuer of a ~~such~~ through bill of lading or other
 1049 document of title described in subsection (1) ~~is shall be~~
 1050 entitled to recover from the performing ~~connecting~~ carrier, or
 1051 ~~such~~ other person in possession of the goods when the breach of
 1052 the obligation under the bill or other document occurred;

1053 (a) The amount it may be required to pay to any person
 1054 ~~anyone~~ entitled to recover on the bill or other document for the
 1055 breach therefor, as may be evidenced by any receipt, judgment,
 1056 or transcript of judgment; ~~thereof,~~ and

1057 (b) The amount of any expense reasonably incurred by the
 1058 insurer ~~it~~ in defending any action commenced ~~brought~~ by any
 1059 person ~~anyone~~ entitled to recover on the bill or other document
 1060 for the breach therefor.

1061 Section 33. Section 677.303, Florida Statutes, is amended

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1062 to read:

1063 677.303 Diversion; reconsignment; change of instructions.—

1064 (1) Unless the bill of lading otherwise provides, a the
 1065 carrier may deliver the goods to a person or destination other
 1066 than that stated in the bill or may otherwise dispose of the
 1067 goods, without liability for misdelivery, on instructions from:

1068 (a) The holder of a negotiable bill; ~~or~~

1069 (b) The consignor on a nonnegotiable bill, even if the
 1070 consignee has given notwithstanding contrary instructions from
 1071 ~~the consignee; or~~

1072 (c) The consignee on a nonnegotiable bill in the absence
 1073 of contrary instructions from the consignor, if the goods have
 1074 arrived at the billed destination or if the consignee is in
 1075 possession of the tangible bill or in control of the electronic
 1076 bill; or

1077 (d) The consignee on a nonnegotiable bill, if the
 1078 consignee ~~he or she~~ is entitled as against the consignor to
 1079 dispose of the goods ~~them~~.

1080 (2) Unless ~~such~~ instructions described in subsection (1)
 1081 are included in noted on a negotiable bill of lading, a person
 1082 to which ~~whom~~ the bill is duly negotiated may ~~can~~ hold the
 1083 bailee according to the original terms.

1084 Section 34. Section 677.304, Florida Statutes, is amended
 1085 to read:

1086 677.304 Tangible bills of lading in a set.—

1087 (1) Except as ~~where~~ customary in international ~~overseas~~
 1088 transportation, a tangible bill of lading may ~~must~~ not be issued
 1089 in a set of parts. The issuer is liable for damages caused by

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1090 violation of this subsection.

1091 (2) If ~~Where~~ a tangible bill of lading is lawfully issued
 1092 ~~drawn~~ in a set of parts, each of which contains an
 1093 identification code ~~is numbered~~ and is expressed to be valid
 1094 only if the goods have not been delivered against any other
 1095 part, the whole of the parts constitutes ~~constitute~~ one bill.

1096 (3) If ~~Where~~ a tangible negotiable bill of lading is
 1097 lawfully issued in a set of parts and different parts are
 1098 negotiated to different persons, the title of the holder to
 1099 which ~~whom~~ the first due negotiation is made prevails as to both
 1100 the document of title and the goods even if ~~though~~ any later
 1101 holder may have received the goods from the carrier in good
 1102 faith and discharged the carrier's obligation by surrendering
 1103 its ~~surrender of his or her~~ part.

1104 (4) A ~~Any~~ person that ~~who~~ negotiates or transfers a single
 1105 part of a tangible bill of lading issued ~~drawn~~ in a set is
 1106 liable to holders of that part as if it were the whole set.

1107 (5) The bailee shall ~~is obliged to~~ deliver in accordance
 1108 with part IV of this chapter against the first presented part of
 1109 a tangible bill of lading lawfully drawn in a set. ~~Such~~ Delivery
 1110 in this manner discharges the bailee's obligation on the whole
 1111 bill.

1112 Section 35. Section 677.305, Florida Statutes, is amended
 1113 to read:

1114 677.305 Destination bills.-

1115 (1) Instead of issuing a bill of lading to the consignor
 1116 at the place of shipment, a carrier, may at the request of the
 1117 consignor, may procure the bill to be issued at destination or

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1118 at any other place designated in the request.

1119 (2) Upon request of any person ~~anyone~~ entitled as against
 1120 the carrier to control the goods while in transit and on
 1121 surrender of possession or control of any outstanding bill of
 1122 lading or other receipt covering such goods, the issuer, subject
 1123 to s. 677.105, may procure a substitute bill to be issued at any
 1124 place designated in the request.

1125 Section 36. Section 677.307, Florida Statutes, is amended
 1126 to read:

1127 677.307 Lien of carrier.-

1128 (1) A carrier has a lien on the goods covered by a bill of
 1129 lading or on the proceeds thereof in its possession for charges
 1130 after ~~subsequent to~~ the date of the carrier's ~~its~~ receipt of the
 1131 goods for storage or transportation, including demurrage and
 1132 terminal charges, ~~(including demurrage and terminal charges)~~ and
 1133 for expenses necessary for preservation of the goods incident to
 1134 their transportation or reasonably incurred in their sale
 1135 pursuant to law. However, ~~But~~ against a purchaser for value of a
 1136 negotiable bill of lading, a carrier's lien is limited to
 1137 charges stated in the bill or the applicable tariffs, or, if no
 1138 charges are stated, ~~then to~~ a reasonable charge.

1139 (2) A lien for charges and expenses under subsection (1)
 1140 on goods that ~~which~~ the carrier was required by law to receive
 1141 for transportation is effective against the consignor or any
 1142 person entitled to the goods unless the carrier had notice that
 1143 the consignor lacked authority to subject the goods to those
 1144 ~~such~~ charges and expenses. Any other lien under subsection (1)
 1145 is effective against the consignor and any person that ~~who~~

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1146 permitted the bailor to have control or possession of the goods
 1147 unless the carrier had notice that the bailor lacked ~~such~~
 1148 authority.

1149 (3) A carrier loses its ~~his or her~~ lien on any goods that
 1150 it ~~which the carrier~~ voluntarily delivers or ~~which he or she~~
 1151 unjustifiably refuses to deliver.

1152 Section 37. Section 677.308, Florida Statutes, is amended
 1153 to read:

1154 677.308 Enforcement of carrier's lien.-

1155 (1) A carrier's lien on goods may be enforced by public or
 1156 private sale of the goods, in bulk ~~block~~ or in packages ~~parcels~~,
 1157 at any time or place and on any terms that ~~which~~ are
 1158 commercially reasonable, after notifying all persons known to
 1159 claim an interest in the goods. The ~~Such~~ notification shall ~~must~~
 1160 include a statement of the amount due, the nature of the
 1161 proposed sale, and the time and place of any public sale. The
 1162 fact that a better price could have been obtained by a sale at a
 1163 different time or in a method ~~different method~~ from that
 1164 selected by the carrier is not of itself sufficient to establish
 1165 that the sale was not made in a commercially reasonable manner.
 1166 ~~If~~ The carrier ~~either~~ sells ~~the~~ goods in a commercially
 1167 reasonable ~~the usual~~ manner ~~in any recognized market therefor or~~
 1168 if the carrier ~~he or she~~ sells the goods in the usual manner in
 1169 any recognized market therefor, sells at the price current in
 1170 that ~~such~~ market at the time of the ~~his or her~~ sale, or ~~if the~~
 1171 ~~carrier has~~ otherwise sells ~~sold~~ in conformity with commercially
 1172 reasonable practices among dealers in the type of goods sold ~~he~~
 1173 ~~or she has sold in a commercially reasonable manner.~~ A sale of

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1174 more goods than apparently necessary to be offered to ensure
 1175 satisfaction of the obligation is not commercially reasonable,
 1176 except in cases covered by the preceding sentence.

1177 (2) Before any sale pursuant to this section, any person
 1178 claiming a right in the goods may pay the amount necessary to
 1179 satisfy the lien and the reasonable expenses incurred in
 1180 complying with ~~under~~ this section. In that event, the goods may
 1181 ~~must~~ not be sold, but shall ~~must~~ be retained by the carrier,
 1182 subject to the terms of the bill of lading and this chapter.

1183 (3) The carrier may buy at any public sale pursuant to
 1184 this section.

1185 (4) A purchaser in good faith of goods sold to enforce a
 1186 carrier's lien takes the goods free of any rights of persons
 1187 against which ~~whom~~ the lien was valid, despite the carrier's
 1188 ~~noncompliance by the carrier with the requirements of this~~
 1189 section.

1190 (5) A ~~The~~ carrier may satisfy its ~~his or her~~ lien from the
 1191 proceeds of any sale pursuant to this section but shall ~~must~~
 1192 hold the balance, if any, for delivery on demand to any person
 1193 to which ~~whom~~ the carrier would have been bound to deliver the
 1194 goods.

1195 (6) The rights provided by this section are ~~shall be~~ in
 1196 addition to all other rights allowed by law to a creditor
 1197 against a ~~his or her~~ debtor.

1198 (7) A carrier's lien may be enforced pursuant to ~~in~~
 1199 ~~accordance with~~ either subsection (1) or the procedure set forth
 1200 in s. 677.210(2).

1201 (8) A ~~The~~ carrier is liable for damages caused by failure

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1202 to comply with the requirements for sale under this section and,
 1203 in case of willful violation, is liable for conversion.

1204 Section 38. Section 677.309, Florida Statutes, is amended
 1205 to read:

1206 677.309 Duty of care; contractual limitation of carrier's
 1207 liability.-

1208 (1) A carrier that ~~who~~ issues a bill of lading, whether
 1209 negotiable or nonnegotiable, shall ~~must~~ exercise the degree of
 1210 care in relation to the goods which a reasonably careful person
 1211 would exercise under similar ~~like~~ circumstances. This subsection
 1212 does not affect ~~repeal or change~~ any statute, regulation, law or
 1213 rule of law that ~~which~~ imposes liability upon a common carrier
 1214 for damages not caused by its negligence.

1215 (2) Damages may be limited by a term in the bill of lading
 1216 or in a transportation agreement ~~provision~~ that the carrier's
 1217 liability may ~~shall~~ not exceed a value stated in the bill or
 1218 transportation agreement ~~document~~ if the carrier's rates are
 1219 dependent upon value and the consignor ~~by the carrier's tariff~~
 1220 is afforded an opportunity to declare a higher value and the
 1221 consignor ~~or a value as lawfully provided in the tariff, or~~
 1222 ~~where no tariff is filed he or she is otherwise~~ advised of the
 1223 ~~such~~ opportunity. However, ~~but no~~ such a limitation is not
 1224 effective with respect to the carrier's liability for conversion
 1225 to its own use.

1226 (3) Reasonable provisions as to the time and manner of
 1227 presenting claims and commencing ~~instituting~~ actions based on
 1228 the shipment may be included in the bill of lading or a
 1229 transportation agreement ~~tariff~~.

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1230 Section 39. Section 677.401, Florida Statutes, is amended
 1231 to read:

1232 677.401 Irregularities in issue of receipt or bill or
 1233 conduct of issuer.—The obligations imposed by this chapter on an
 1234 issuer apply to a document of title even if ~~regardless of the~~
 1235 ~~fact that:~~

1236 (1) The document does ~~may~~ not comply with the requirements
 1237 of this chapter or of any other statute, rule of law, law or
 1238 regulation regarding its issuance ~~issue~~, form, or content; ~~or~~

1239 (2) The issuer ~~may have~~ violated laws regulating the
 1240 conduct of its ~~his or her~~ business; ~~or~~

1241 (3) The goods covered by the document were owned by the
 1242 bailee when ~~at the time~~ the document was issued; or

1243 (4) The person issuing the document is not a warehouse but
 1244 the document ~~does not come within the definition of warehouseman~~
 1245 ~~if it~~ purports to be a warehouse receipt.

1246 Section 40. Section 677.402, Florida Statutes, is amended
 1247 to read:

1248 677.402 Duplicate document of title ~~receipt or bill~~;
 1249 overissue. ~~Neither~~ A duplicate or ~~nor~~ any other document of
 1250 title purporting to cover goods already represented by an
 1251 outstanding document of the same issuer does not confer ~~confers~~
 1252 any right in the goods, except as provided in the case of
 1253 tangible bills of lading in a set of parts, overissue of
 1254 documents for fungible goods, and substitutes for lost, stolen
 1255 or destroyed documents, or substitute documents issued pursuant
 1256 to s. 677.105. ~~But~~ The issuer is liable for damages caused by
 1257 its ~~his or her~~ overissue or failure to identify a duplicate

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1258 document ~~as such~~ by a conspicuous notation ~~on its face~~.

1259 Section 41. Section 677.403, Florida Statutes, is amended
1260 to read:

1261 677.403 Obligation of bailee ~~warehouseman or carrier~~ to
1262 deliver; excuse.—

1263 (1) A ~~The~~ bailee shall ~~must~~ deliver the goods to a person
1264 entitled under a ~~the~~ document of title if the person who
1265 complies with subsections (2) and (3), unless and to the extent
1266 that the bailee establishes any of the following:

1267 (a) Delivery of the goods to a person whose receipt was
1268 rightful as against the claimant;

1269 (b) Damage to or delay, loss or destruction of the goods
1270 for which the bailee is not liable, but the burden of
1271 establishing negligence in such cases when value of such damage,
1272 delay, loss, or destruction exceeds \$10,000 is on the person
1273 entitled under the document;—

1274 (c) Previous sale or other disposition of the goods in
1275 lawful enforcement of a lien or on a warehouse's ~~warehouseman's~~
1276 lawful termination of storage;

1277 (d) The exercise by a seller of its ~~his or her~~ right to
1278 stop delivery pursuant to s. 672.705 or by a lessor of its right
1279 to stop delivery pursuant to s. 680.526 ~~the provisions of the~~
1280 ~~chapter on sales (s. 672.705);~~

1281 (e) A diversion, reconsignment, or other disposition
1282 pursuant to s. 677.303 ~~the provisions of this chapter (s.~~
1283 ~~677.303) or tariff regulating such right;~~

1284 (f) Release, satisfaction, or any other ~~fact~~ ~~affording a~~
1285 personal defense against the claimant; or

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1286 (g) Any other lawful excuse.
 1287 (2) A person claiming goods covered by a document of title
 1288 shall ~~must~~ satisfy the bailee's lien if ~~where~~ the bailee so
 1289 requests or if ~~where~~ the bailee is prohibited by law from
 1290 delivering the goods until the charges are paid.

1291 (3) Unless a ~~the~~ person claiming the goods is a person ~~one~~
 1292 against which ~~whom~~ the document of title does not confer a
 1293 ~~confers no~~ right under s. 677.503(1):

1294 (a) The person claiming under a document shall ~~he or she~~
 1295 ~~must~~ surrender possession or control of any outstanding
 1296 negotiable document covering the goods for cancellation or
 1297 indication of partial deliveries; and

1298 (b) ~~for cancellation or notation of partial deliveries any~~
 1299 ~~outstanding negotiable document covering the goods, and~~ The
 1300 bailee shall ~~must~~ cancel the document or conspicuously indicate
 1301 in the document ~~note~~ the partial delivery ~~thereon~~ or the bailee
 1302 is ~~be~~ liable to any person to which ~~whom~~ the document is duly
 1303 negotiated.

1304 (4) ~~"Person entitled under the document" means holder in~~
 1305 ~~the case of a negotiable document, or the person to whom~~
 1306 ~~delivery is to be made by the terms of or pursuant to written~~
 1307 ~~instructions under a nonnegotiable document.~~

1308 Section 42. Section 677.404, Florida Statutes, is amended
 1309 to read:

1310 677.404 No liability for good faith delivery pursuant to
 1311 document of title ~~receipt or bill.~~ A bailee that ~~who~~ in good
 1312 faith ~~including observance of reasonable commercial standards~~
 1313 has received goods and delivered or otherwise disposed of the

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1314 goods ~~them~~ according to the terms of the document of title or
 1315 pursuant to this chapter is not liable for the goods ~~therefor~~.
 1316 ~~This rule applies even if:~~

1317 (1) ~~though~~ The person from which the bailee ~~whom he or she~~
 1318 received the goods did not have ~~had no~~ authority to procure the
 1319 document or to dispose of the goods; or

1320 (2) ~~The and even though~~ the person to which the bailee
 1321 ~~whom he or she~~ delivered the goods did not have ~~had no~~ authority
 1322 to receive the goods ~~them~~.

1323 Section 43. Section 677.501, Florida Statutes, is amended
 1324 to read:

1325 677.501 Form of negotiation and requirements of "due
 1326 negotiation."~~—~~

1327 (1) The following rules apply to a negotiable tangible
 1328 document of title:

1329 (a) If the document's original terms run ~~running~~ to the
 1330 order of a named person, the document is negotiated by the named
 1331 person's indorsement and delivery. After the named person's ~~his~~
 1332 ~~or her~~ indorsement in blank or to bearer, any person may ~~can~~
 1333 negotiate the document ~~it~~ by delivery alone.

1334 (b) If the document's original

1335 ~~(2) (a) A negotiable document of title is also negotiated~~
 1336 ~~by delivery alone when by its original terms~~ run ~~it runs~~ to
 1337 bearer, it is negotiated by delivery alone.

1338 (c) If the document's original terms run

1339 ~~(b) When a document running~~ to the order of a named person
 1340 and it is delivered to the named person, ~~him or her~~ the effect
 1341 is the same as if the document had been negotiated.

1342 (d)~~(3)~~ Negotiation of the ~~a negotiable document of title~~
 1343 after it has been indorsed to a named ~~specified~~ person requires
 1344 indorsement by the named person and ~~special indorsee as well as~~
 1345 delivery.

1346 (e)~~(4)~~ A ~~negotiable document of title~~ is duly negotiated
 1347 if ~~"duly negotiated"~~ when it is negotiated in the manner stated
 1348 in this subsection ~~section~~ to a holder that ~~who~~ purchases it in
 1349 good faith, without notice of any defense against or claim to it
 1350 on the part of any person, and for value, unless it is
 1351 established that the negotiation is not in the regular course of
 1352 business or financing or involves receiving the document in
 1353 settlement or payment of a money obligation.

1354 (2) The following rules apply to a negotiable electronic
 1355 document of title:

1356 (a) If the document's original terms run to the order of a
 1357 named person or to bearer, the document is negotiated by
 1358 delivery of the document to another person. Indorsement by the
 1359 named person is not required to negotiate the document.

1360 (b) If the document's original terms run to the order of a
 1361 named person and the named person has control of the document,
 1362 the effect is the same as if the document had been negotiated.

1363 (c) A document is duly negotiated if it is negotiated in
 1364 the manner stated in this subsection to a holder that purchases
 1365 it in good faith, without notice of any defense against or claim
 1366 to it on the part of any person, and for value, unless it is
 1367 established that the negotiation is not in the regular course of
 1368 business or financing or involves taking delivery of the
 1369 document in settlement or payment of a monetary obligation.

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1370 ~~(3)~~⁽⁵⁾ Indorsement of a nonnegotiable document of title
 1371 neither makes it negotiable nor adds to the transferee's rights.

1372 ~~(4)~~⁽⁶⁾ The naming in a negotiable bill of lading of a
 1373 person to be notified of the arrival of the goods does not limit
 1374 the negotiability of the bill or ~~nor~~ constitute notice to a
 1375 purchaser of the bill thereof of any interest of that such
 1376 person in the goods.

1377 Section 44. Section 677.502, Florida Statutes, is amended
 1378 to read:

1379 677.502 Rights acquired by due negotiation.—

1380 (1) Subject to ss. ~~the following section and to the~~
 1381 ~~provisions of s. 677.205 and 677.503 on fungible goods~~, a holder
 1382 to which ~~whom~~ a negotiable document of title has been duly
 1383 negotiated acquires thereby:

1384 (a) Title to the document;

1385 (b) Title to the goods;

1386 (c) All rights accruing under the law of agency or
 1387 estoppel, including rights to goods delivered to the bailee
 1388 after the document was issued; and

1389 (d) The direct obligation of the issuer to hold or deliver
 1390 the goods according to the terms of the document free of any
 1391 defense or claim by the issuer ~~him or her~~ except those arising
 1392 under the terms of the document or under this chapter, but ~~in~~
 1393 the case of a delivery order, the bailee's obligation accrues
 1394 only upon the bailee's acceptance of the delivery order and the
 1395 obligation acquired by the holder is that the issuer and any
 1396 indorser will procure the acceptance of the bailee.

1397 (2) Subject to the following section, title and rights so

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1398 | acquired by due negotiation are not defeated by any stoppage of
 1399 | the goods represented by the document of title or by surrender
 1400 | of ~~the such~~ goods by the bailee, and are not impaired even if:

1401 | (a) ~~though~~ The due negotiation or any prior due
 1402 | negotiation constituted a breach of duty; ~~or even though~~

1403 | (b) Any person has been deprived of possession of a
 1404 | negotiable tangible ~~the~~ document or control of a negotiable
 1405 | electronic document by misrepresentation, fraud, accident,
 1406 | mistake, duress, loss, theft, or conversion; ~~or even though~~

1407 | (c) A previous sale or other transfer of the goods or
 1408 | document has been made to a third person.

1409 | Section 45. Section 677.503, Florida Statutes, is amended
 1410 | to read:

1411 | 677.503 Document of title to goods defeated in certain
 1412 | cases.—

1413 | (1) A document of title confers no right in goods against
 1414 | a person that ~~who~~ before issuance of the document had a legal
 1415 | interest or a perfected security interest in the goods ~~them~~ and
 1416 | that did not ~~who neither:~~

1417 | (a) Deliver or entrust the goods ~~Delivered or entrusted~~
 1418 | ~~them~~ or any document of title covering the goods ~~them~~ to the
 1419 | bailor or the bailor's nominee with:

1420 | 1. Actual or apparent authority to ship, store, or sell;
 1421 | ~~or with~~

1422 | 2. Power to obtain delivery under s. 677.403; ~~this chapter~~
 1423 | ~~(s. 677.403)~~ or with

1424 | 3. Power of disposition under s. 672.403, s. 680.304(2),
 1425 | s. 680.305(2), s. 679.320, or s. 679.321(3) ~~this code (ss.~~

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1426 ~~672.403 and 679.320~~ or other statute or rule of law; or nor
 1427 (b)(b) Acquiesce ~~Acquiesced~~ in the procurement by the
 1428 bailor or its ~~the bailor's~~ nominee of any document ~~of title~~.

1429 (2) Title to goods based upon an unaccepted delivery order
 1430 is subject to the rights of any person ~~anyone~~ to which ~~whom~~ a
 1431 negotiable warehouse receipt or bill of lading covering the
 1432 goods has been duly negotiated. That ~~Such a~~ title may be
 1433 defeated under the next section to the same extent as the rights
 1434 of the issuer or a transferee from the issuer.

1435 (3) Title to goods based upon a bill of lading issued to a
 1436 freight forwarder is subject to the rights of any person ~~anyone~~
 1437 to which ~~whom~~ a bill issued by the freight forwarder is duly
 1438 negotiated. However, ~~but~~ delivery by the carrier in accordance
 1439 with part IV of this chapter pursuant to its own bill of lading
 1440 discharges the carrier's obligation to deliver.

1441 Section 46. Section 677.504, Florida Statutes, is amended
 1442 to read:

1443 677.504 Rights acquired in the absence of due negotiation;
 1444 effect of diversion; ~~seller's~~ stoppage of delivery.—

1445 (1) A transferee of a document of title, whether
 1446 negotiable or nonnegotiable, to which ~~whom~~ the document has been
 1447 delivered but not duly negotiated, acquires the title and rights
 1448 that its ~~which his or her~~ transferor had or had actual authority
 1449 to convey.

1450 (2) In the case of a transfer of a nonnegotiable document
 1451 of title, until but not after the bailee receives notice
 1452 ~~notification~~ of the transfer, the rights of the transferee may
 1453 be defeated:

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1454 (a) By those creditors of the transferor which ~~who~~ could
 1455 treat the transfer ~~sale~~ as void under s. 672.402 or s. 680.308;
 1456 ~~or~~

1457 (b) By a buyer from the transferor in ordinary course of
 1458 business if the bailee has delivered the goods to the buyer or
 1459 received notification of the buyer's ~~his or her~~ rights; ~~or~~

1460 (c) By a lessee from the transferor in ordinary course of
 1461 business if the bailee has delivered the goods to the lessee or
 1462 received notification of the lessee's rights; or

1463 (d) ~~(e)~~ As against the bailee, by good-faith ~~good faith~~
 1464 dealings of the bailee with the transferor.

1465 (3) A diversion or other change of shipping instructions
 1466 by the consignor in a nonnegotiable bill of lading which causes
 1467 the bailee not to deliver to the consignee defeats the
 1468 consignee's title to the goods if the goods ~~they~~ have been
 1469 delivered to a buyer or a lessee in ordinary course of business
 1470 and, in any event, defeats the consignee's rights against the
 1471 bailee.

1472 (4) Delivery of the goods pursuant to a nonnegotiable
 1473 document of title may be stopped by a seller under s. 672.705 or
 1474 by a lessor under s. 680.526, and subject to the requirements
 1475 ~~requirement~~ of due notification ~~there provided~~. A bailee that
 1476 honors ~~honoring~~ the seller's or lessor's instructions is
 1477 entitled to be indemnified by the seller or lessor against any
 1478 resulting loss or expense.

1479 Section 47. Section 677.505, Florida Statutes, is amended
 1480 to read:

1481 677.505 Indorser not a guarantor for other parties.—The

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1482 indorsement of a tangible document of title issued by a bailee
 1483 does not make the indorser liable for any default by the bailee
 1484 or ~~by~~ previous indorsers.

1485 Section 48. Section 677.506, Florida Statutes, is amended
 1486 to read:

1487 677.506 Delivery without indorsement; right to compel
 1488 indorsement.—The transferee of a negotiable tangible document of
 1489 title has a specifically enforceable right to have its ~~his or~~
 1490 ~~her~~ transferor supply any necessary indorsement but the transfer
 1491 becomes a negotiation only as of the time the indorsement is
 1492 supplied.

1493 Section 49. Section 677.507, Florida Statutes, is amended
 1494 to read:

1495 677.507 Warranties on negotiation or delivery of document
 1496 of title ~~transfer of receipt or bill.~~—~~If~~ ~~Where~~ a person
 1497 negotiates or delivers ~~transfers~~ a document of title for value,
 1498 otherwise than as a mere intermediary under the next following
 1499 section, ~~then~~ unless otherwise agreed, the transferor, in
 1500 addition to any warranty made in selling or leasing the goods,
 1501 person warrants to its his or her immediate purchaser only that
 1502 ~~in addition to any warranty made in selling the goods:~~

- 1503 (1) ~~That~~ The document is genuine; ~~and~~
- 1504 (2) The transferor does not have ~~That he or she has no~~
 1505 knowledge of any fact that ~~which~~ would impair the document's ~~its~~
 1506 validity or worth; and
- 1507 (3) The ~~That his or her~~ negotiation or delivery ~~transfer~~
 1508 is rightful and fully effective with respect to the title to the
 1509 document and the goods it represents.

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1510 Section 50. Section 677.508, Florida Statutes, is amended
 1511 to read:

1512 677.508 Warranties of collecting bank as to documents of
 1513 title.—A collecting bank or other intermediary known to be
 1514 entrusted with documents of title on behalf of another or with
 1515 collection of a draft or other claim against delivery of
 1516 documents warrants by the ~~such~~ delivery of the documents only
 1517 its own good faith and authority. ~~This rule applies~~ even if
 1518 ~~though~~ the collecting bank or other intermediary has purchased
 1519 or made advances against the claim or draft to be collected.

1520 Section 51. Section 677.509, Florida Statutes, is amended
 1521 to read:

1522 677.509 ~~Receipt or bill; when~~ Adequate compliance with
 1523 commercial contract. ~~The question~~ Whether a document of title is
 1524 adequate to fulfill the obligations of a contract for sale, ~~or~~
 1525 the conditions of a letter of credit, or a contract for lease is
 1526 determined governed by chapter 672, chapter 675, or chapter 680
 1527 ~~the chapters on sales (chapter 672) and on letters of credit~~
 1528 ~~(chapter 675).~~

1529 Section 52. Section 677.601, Florida Statutes, is amended
 1530 to read:

1531 677.601 Lost, stolen, or destroyed ~~and missing~~ documents
 1532 of title.—

1533 (1) If a document of title is ~~has been~~ lost, stolen, or
 1534 destroyed, a court may order delivery of the goods or issuance
 1535 of a substitute document and the bailee may without liability to
 1536 any person comply with the ~~such~~ order. If the document was
 1537 negotiable, a court may not order delivery of the goods or the

1538 issuance of a substitute document without the claimant's posting
 1539 ~~claimant must post security unless it finds that approved by the~~
 1540 ~~court to indemnify any person that who~~ may suffer loss as a
 1541 result of nonsurrender of possession or control of the document
 1542 is adequately protected against the loss. If the document was
 1543 nonnegotiable ~~not negotiable, the court such security~~ may
 1544 ~~require security be required at the discretion of the court.~~ The
 1545 court may also ~~in its discretion~~ order payment of the bailee's
 1546 reasonable costs and attorney's counsel fees in any action under
 1547 this subsection.

1548 (2) A bailee that, who without a court order, delivers
 1549 goods to a person claiming under a missing negotiable document
 1550 of title is liable to any person injured thereby, ~~and~~ If the
 1551 delivery is not in good faith, the bailee is ~~becomes~~ liable for
 1552 conversion. Delivery in good faith is not conversion if ~~made in~~
 1553 ~~accordance with a filed classification or tariff or, where no~~
 1554 ~~classification or tariff is filed,~~ if the claimant posts
 1555 security with the bailee in an amount at least double the value
 1556 of the goods at the time of posting to indemnify any person
 1557 injured by the delivery which ~~who~~ files a notice of claim within
 1558 1 year after the delivery.

1559 Section 53. Section 677.602, Florida Statutes, is amended
 1560 to read:

1561 677.602 Judicial process against ~~Attachment of~~ goods
 1562 covered by a negotiable document of title. ~~Unless a~~ ~~Except where~~
 1563 ~~the~~ document of title was originally issued upon delivery of the
 1564 goods by a person that did not have ~~who had no~~ power to dispose
 1565 of them, a no lien does not attach ~~attaches~~ by virtue of any

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1566 judicial process to goods in the possession of a bailee for
 1567 which a negotiable document of title is outstanding unless
 1568 possession or control of the document is ~~be~~ first surrendered to
 1569 the bailee or the document's ~~its~~ negotiation is enjoined, ~~and~~
 1570 The bailee may ~~shall~~ not be compelled to deliver the goods
 1571 pursuant to process until possession or control of the document
 1572 is surrendered to the bailee or to ~~him or her or impounded by~~
 1573 the court. A purchaser of ~~One who purchases~~ the document for
 1574 value without notice of the process or injunction takes free of
 1575 the lien imposed by judicial process.

1576 Section 54. Section 677.603, Florida Statutes, is amended
 1577 to read:

1578 677.603 Conflicting claims; interpleader.—If more than one
 1579 person claims title to or possession of the goods, the bailee is
 1580 excused from delivery until the bailee ~~he or she~~ has had a
 1581 reasonable time to ascertain the validity of the adverse claims
 1582 or to commence ~~bring~~ an action for ~~to compel all claimants to~~
 1583 ~~interplead and may compel such~~ interpleader. The bailee may
 1584 assert an interpleader, either in defending an action for
 1585 nondelivery of the goods, or by original action, ~~whichever is~~
 1586 appropriate.

1587 Section 55. Subsection (7) is added to section 678.1031,
 1588 Florida Statutes, to read:

1589 678.1031 Rules for determining whether certain obligations
 1590 and interests are securities or financial assets.—

1591 (7) A document of title is not a financial asset unless s.
 1592 678.1021(1)(i)2. applies.

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1593 Section 56. Subsection (2) of section 679.1021, Florida
 1594 Statutes, is amended to read:
 1595 679.1021 Definitions and index of definitions.—
 1596 (2) The following definitions in other chapters apply to
 1597 this chapter:
 1598 "Applicant" s. 675.103.
 1599 "Beneficiary" s. 675.103.
 1600 "Broker" s. 678.1021.
 1601 "Certificated security" s. 678.1021.
 1602 "Check" s. 673.1041.
 1603 "Clearing corporation" s. 678.1021.
 1604 "Contract for sale" s. 672.106.
 1605 "Control" s. 677.106.
 1606 "Customer" s. 674.104.
 1607 "Entitlement holder" s. 678.1021.
 1608 "Financial asset" s. 678.1021.
 1609 "Holder in due course" s. 673.3021.
 1610 "Issuer" (with respect to a letter of credit
 1611 or letter-of-credit right) s. 675.103.
 1612 "Issuer" (with respect to a security) s. 678.2011.
 1613 "Issuer" (with respect to documents of title) s.
 1614 677.102.
 1615 "Lease" s. 680.1031.
 1616 "Lease agreement" s. 680.1031.
 1617 "Lease contract" s. 680.1031.
 1618 "Leasehold interest" s. 680.1031.
 1619 "Lessee" s. 680.1031.
 1620 "Lessee in ordinary course of

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1621 business" s. 680.1031.
 1622 "Lessor" s. 680.1031.
 1623 "Lessor's residual interest" s. 680.1031.
 1624 "Letter of credit" s. 675.103.
 1625 "Merchant" s. 672.104.
 1626 "Negotiable instrument" s. 673.1041.
 1627 "Nominated person" s. 675.103.
 1628 "Note" s. 673.1041.
 1629 "Proceeds of a letter of credit" s. 675.114.
 1630 "Prove" s. 673.1031.
 1631 "Sale" s. 672.106.
 1632 "Securities account" s. 678.5011.
 1633 "Securities intermediary" s. 678.1021.
 1634 "Security" s. 678.1021.
 1635 "Security certificate" s. 678.1021.
 1636 "Security entitlement" s. 678.1021.
 1637 "Uncertificated security" s. 678.1021.
 1638 Section 57. Subsection (2) of section 679.2031, Florida
 1639 Statutes, is amended to read:
 1640 679.2031 Attachment and enforceability of security
 1641 interest; proceeds; supporting obligations; formal requisites.—
 1642 (2) Except as otherwise provided in subsections (3)
 1643 through (10), a security interest is enforceable against the
 1644 debtor and third parties with respect to the collateral only if:
 1645 (a) Value has been given;
 1646 (b) The debtor has rights in the collateral or the power
 1647 to transfer rights in the collateral to a secured party; and
 1648 (c) One of the following conditions is met:

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1649 1. The debtor has authenticated a security agreement that
 1650 provides a description of the collateral and, if the security
 1651 interest covers timber to be cut, a description of the land
 1652 concerned;

1653 2. The collateral is not a certificated security and is in
 1654 the possession of the secured party under s. 679.3131 pursuant
 1655 to the debtor's security agreement;

1656 3. The collateral is a certificated security in registered
 1657 form and the security certificate has been delivered to the
 1658 secured party under s. 678.3011 pursuant to the debtor's
 1659 security agreement; or

1660 4. The collateral is deposit accounts, electronic chattel
 1661 paper, investment property, ~~or~~ letter-of-credit rights, or
 1662 electronic documents, and the secured party has control under s.
 1663 677.106, s. 679.1041, s. 679.1051, s. 679.1061, or s. 679.1071
 1664 pursuant to the debtor's security agreement.

1665 Section 58. Subsection (3) of section 679.2071, Florida
 1666 Statutes, is amended to read:

1667 679.2071 Rights and duties of secured party having
 1668 possession or control of collateral.—

1669 (3) Except as otherwise provided in subsection (4), a
 1670 secured party having possession of collateral or control of
 1671 collateral under s. 677.106, s. 679.1041, s. 679.1051, s.
 1672 679.1061, or s. 679.1071:

1673 (a) May hold as additional security any proceeds, except
 1674 money or funds, received from the collateral;

1675 (b) Shall apply money or funds received from the
 1676 collateral to reduce the secured obligation, unless remitted to

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1677 the debtor; and
 1678 (c) May create a security interest in the collateral.
 1679 Section 59. Subsection (2) of section 679.2081, Florida
 1680 Statutes, is amended to read:
 1681 679.2081 Additional duties of secured party having control
 1682 of collateral.—
 1683 (2) Within 10 days after receiving an authenticated demand
 1684 by the debtor:
 1685 (a) A secured party having control of a deposit account
 1686 under s. 679.1041(1)(b) shall send to the bank with which the
 1687 deposit account is maintained an authenticated statement that
 1688 releases the bank from any further obligation to comply with
 1689 instructions originated by the secured party;
 1690 (b) A secured party having control of a deposit account
 1691 under s. 679.1041(1)(c) shall:
 1692 1. Pay the debtor the balance on deposit in the deposit
 1693 account; or
 1694 2. Transfer the balance on deposit into a deposit account
 1695 in the debtor's name;
 1696 (c) A secured party, other than a buyer, having control of
 1697 electronic chattel paper under s. 679.1051 shall:
 1698 1. Communicate the authoritative copy of the electronic
 1699 chattel paper to the debtor or its designated custodian;
 1700 2. If the debtor designates a custodian that is the
 1701 designated custodian with which the authoritative copy of the
 1702 electronic chattel paper is maintained for the secured party,
 1703 communicate to the custodian an authenticated record releasing
 1704 the designated custodian from any further obligation to comply

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1705 with instructions originated by the secured party and
 1706 instructing the custodian to comply with instructions originated
 1707 by the debtor; and

1708 3. Take appropriate action to enable the debtor or the
 1709 debtor's designated custodian to make copies of or revisions to
 1710 the authoritative copy which add or change an identified
 1711 assignee of the authoritative copy without the consent of the
 1712 secured party;

1713 (d) A secured party having control of investment property
 1714 under s. 678.1061(4)(b) or s. 679.1061(2) shall send to the
 1715 securities intermediary or commodity intermediary with which the
 1716 security entitlement or commodity contract is maintained an
 1717 authenticated record that releases the securities intermediary
 1718 or commodity intermediary from any further obligation to comply
 1719 with entitlement orders or directions originated by the secured
 1720 party; ~~and~~

1721 (e) A secured party having control of a letter-of-credit
 1722 right under s. 679.1071 shall send to each person having an
 1723 unfulfilled obligation to pay or deliver proceeds of the letter
 1724 of credit to the secured party an authenticated release from any
 1725 further obligation to pay or deliver proceeds of the letter of
 1726 credit to the secured party; ~~and-~~

1727 (f) A secured party having control of an electronic
 1728 document shall:

1729 1. Give control of the electronic document to the debtor
 1730 or its designated custodian;

1731 2. If the debtor designates a custodian that is the
 1732 designated custodian with which the authoritative copy of the

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1733 electronic document is maintained for the secured party,
 1734 communicate to the custodian an authenticated record releasing
 1735 the designated custodian from any further obligation to comply
 1736 with instructions originated by the secured party and
 1737 instructing the custodian to comply with instructions originated
 1738 by the debtor; and

1739 3. Take appropriate action to enable the debtor or its
 1740 designated custodian to make copies of or revisions to the
 1741 authenticated copy which add or change an identified assignee of
 1742 the authoritative copy without the consent of the secured party.

1743 Section 60. Subsection (3) of section 679.3011, Florida
 1744 Statutes, is amended to read:

1745 679.3011 Law governing perfection and priority of security
 1746 interests.—Except as otherwise provided in ss. 679.1091,
 1747 679.3031, 679.3041, 679.3051, and 679.3061, the following rules
 1748 determine the law governing perfection, the effect of perfection
 1749 or nonperfection, and the priority of a security interest in
 1750 collateral:

1751 (3) Except as otherwise provided in subsections (4) and
 1752 (5), while tangible negotiable documents, goods, instruments,
 1753 money, or tangible chattel paper is located in a jurisdiction,
 1754 the local law of that jurisdiction governs:

1755 (a) Perfection of a security interest in the goods by
 1756 filing a fixture filing;

1757 (b) Perfection of a security interest in timber to be cut;
 1758 and

1759 (c) The effect of perfection or nonperfection and the
 1760 priority of a nonpossessory security interest in the collateral.

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1761 Section 61. Subsection (2) of section 679.3101, Florida
 1762 Statutes, is amended to read:
 1763 679.3101 When filing required to perfect security interest
 1764 or agricultural lien; security interests and agricultural liens
 1765 to which filing provisions do not apply.-
 1766 (2) The filing of a financing statement is not necessary
 1767 to perfect a security interest:
 1768 (a) That is perfected under s. 679.3081(4), (5), (6), or
 1769 (7);
 1770 (b) That is perfected under s. 679.3091 when it attaches;
 1771 (c) In property subject to a statute, regulation, or
 1772 treaty described in s. 679.3111(1);
 1773 (d) In goods in possession of a bailee which is perfected
 1774 under s. 679.3121(4)(a) or (b);
 1775 (e) In certificated securities, documents, goods, or
 1776 instruments which is perfected without filing, control, or
 1777 possession under s. 679.3121(5), (6), or (7);
 1778 (f) In collateral in the secured party's possession under
 1779 s. 679.3131;
 1780 (g) In a certificated security which is perfected by
 1781 delivery of the security certificate to the secured party under
 1782 s. 679.3131;
 1783 (h) In deposit accounts, electronic chattel paper,
 1784 electronic documents, investment property, or letter-of-credit
 1785 rights which is perfected by control under s. 679.3141;
 1786 (i) In proceeds which is perfected under s. 679.3151; or
 1787 (j) That is perfected under s. 679.3161.

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1788 Section 62. Subsection (5) of section 679.3121, Florida
 1789 Statutes, is amended to read:

1790 679.3121 Perfection of security interests in chattel
 1791 paper, deposit accounts, documents, goods covered by documents,
 1792 instruments, investment property, letter-of-credit rights, and
 1793 money; perfection by permissive filing; temporary perfection
 1794 without filing or transfer of possession.—

1795 (5) A security interest in certificated securities,
 1796 negotiable documents, or instruments is perfected without filing
 1797 or the taking of possession or control for a period of 20 days
 1798 from the time it attaches to the extent that it arises for new
 1799 value given under an authenticated security agreement.

1800 Section 63. Subsection (1) of section 679.3131, Florida
 1801 Statutes, is amended to read:

1802 679.3131 When possession by or delivery to secured party
 1803 perfects security interest without filing.—

1804 (1) Except as otherwise provided in subsection (2), a
 1805 secured party may perfect a security interest in tangible
 1806 negotiable documents, goods, instruments, money, or tangible
 1807 chattel paper by taking possession of the collateral. A secured
 1808 party may perfect a security interest in certificated securities
 1809 by taking delivery of the certificated securities under s.

1810 678.3011.

1811 Section 64. Subsections (1) and (2) of section 679.3141,
 1812 Florida Statutes, are amended to read:

1813 679.3141 Perfection by control.—

1814 (1) A security interest in investment property, deposit
 1815 accounts, letter-of-credit rights, ~~or~~ electronic chattel paper,

1816 or electronic documents may be perfected by control of the
 1817 collateral under s. 677.106, s. 679.1041, s. 679.1051, s.
 1818 679.1061, or s. 679.1071.

1819 (2) A security interest in deposit accounts, electronic
 1820 chattel paper, ~~or~~ letter-of-credit rights, or electronic
 1821 documents is perfected by control under s. 677.106, s. 679.1041,
 1822 s. 679.1051, or s. 679.1071 when the secured party obtains
 1823 control and remains perfected by control only while the secured
 1824 party retains control.

1825 Section 65. Subsections (2) and (4) of section 679.3171,
 1826 Florida Statutes, are amended to read:

1827 679.3171 Interests that take priority over or take free of
 1828 security interest or agricultural lien.—

1829 (2) Except as otherwise provided in subsection (5), a
 1830 buyer, other than a secured party, of tangible chattel paper,
 1831 tangible documents, goods, instruments, or a security
 1832 certificate takes free of a security interest or agricultural
 1833 lien if the buyer gives value and receives delivery of the
 1834 collateral without knowledge of the security interest or
 1835 agricultural lien and before it is perfected.

1836 (4) A licensee of a general intangible or a buyer, other
 1837 than a secured party, of accounts, electronic chattel paper,
 1838 electronic documents, general intangibles, or investment
 1839 property other than a certificated security takes free of a
 1840 security interest if the licensee or buyer gives value without
 1841 knowledge of the security interest and before it is perfected.

1842 Section 66. Subsection (2) of section 679.338, Florida
 1843 Statutes, is amended to read:

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1844 679.338 Priority of security interest or agricultural lien
 1845 perfected by filed financing statement providing certain
 1846 incorrect information.—If a security interest or agricultural
 1847 lien is perfected by a filed financing statement providing
 1848 information described in s. 679.516(2)(d) which is incorrect at
 1849 the time the financing statement is filed:

1850 (2) A purchaser, other than a secured party, of the
 1851 collateral takes free of the security interest or agricultural
 1852 lien to the extent that, in reasonable reliance upon the
 1853 incorrect information, the purchaser gives value and, in the
 1854 case of tangible chattel paper, tangible documents, goods,
 1855 instruments, or a security certificate, receives delivery of the
 1856 collateral.

1857 Section 67. Paragraphs (a) and (o) of subsection (1) of
 1858 section 680.1031, Florida Statutes, are amended to read:

1859 680.1031 Definitions and index of definitions.—

1860 (1) In this chapter, unless the context otherwise
 1861 requires:

1862 (a) "Buyer in ordinary course of business" means a person
 1863 who in good faith and without knowledge that the sale to him or
 1864 her is in violation of the ownership rights or security interest
 1865 or leasehold interest of a third party in the goods buys in
 1866 ordinary course from a person in the business of selling goods
 1867 of that kind but does not include a pawnbroker. Buying may be
 1868 for cash or by exchange of other property or on secured or
 1869 unsecured credit and includes acquiring ~~receiving~~ goods or
 1870 documents of title under a preexisting contract for sale but
 1871 does not include a transfer in bulk or as security for or in

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1872 total or partial satisfaction of a money debt.

1873 (o) "Lessee in ordinary course of business" means a person
 1874 who in good faith and without knowledge that the lease to him or
 1875 her is in violation of the ownership rights or security interest
 1876 or leasehold interest of a third party in the goods leases in
 1877 ordinary course from a person in the business of selling or
 1878 leasing goods of that kind but does not include a pawnbroker.
 1879 Leasing may be for cash or by exchange of other property or on
 1880 secured or unsecured credit and includes acquiring ~~receiving~~
 1881 goods or documents of title under a preexisting lease contract
 1882 but does not include a transfer in bulk or as security for or in
 1883 total or partial satisfaction of a money debt.

1884 Section 68. Subsection (2) of section 680.514, Florida
 1885 Statutes, is amended to read:

1886 680.514 Waiver of lessee's objections.—

1887 (2) A lessee's failure to reserve rights when paying rent
 1888 or other consideration against documents precludes recovery of
 1889 the payment for defects apparent in ~~on the face of~~ the
 1890 documents.

1891 Section 69. Subsection (2) of section 680.526, Florida
 1892 Statutes, is amended to read:

1893 680.526 Lessor's stoppage of delivery in transit or
 1894 otherwise.—

1895 (2) In pursuing her or his remedies under subsection (1),
 1896 the lessor may stop delivery until:

1897 (a) Receipt of the goods by the lessee;

1898 (b) Acknowledgment to the lessee by any bailee of the
 1899 goods, except a carrier, that the bailee holds the goods for the

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2010

1900 lessee; or

1901 (c) Such an acknowledgment to the lessee by a carrier via
1902 reshipment or as a warehouse ~~warehouseman~~.

1903 Section 70. This act shall take effect July 1, 2010.



Civil Justice & Courts Policy Committee

**Tuesday, February 16, 2010
10:15 AM - 12:00 PM
Reed Hall**

**ADDENDUM A
(Amendments)**

**Larry Cretul
Speaker**

**Carl J. Domino
Chair**

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee

3 Representative Ambler offered the following:
4

5 **Amendment**

6 Remove lines 37-52 and insert:

7 (a)1. Any party to the action may request a retired
8 justice or judge to hear one or more motions that will not lead
9 to final disposition of the case. The request must be in
10 writing and addressed to the chief judge of the circuit. The
11 party may seek appointment of a retired justice or judge to hear
12 more than one motion in that case. The chief judge of the
13 circuit shall not appoint a retired justice or judge if the
14 trial judge assigned to the case can accommodate the hearing or
15 hearings within the following 2 weeks.

16 2. All parties to an action may jointly request a retired
17 justice or judge to hear one or more dispositive motions or to
18 conduct the trial of the action, including a trial by special
19 setting. The chief judge of the circuit shall not appoint a

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 13 (2010)

Amendment No. 1

20 retired justice or judge unless all parties agree to the request
21 and sufficient court resources are available to accommodate the
22 request. A party in default shall be deemed to have consented
23 to the appointment of a retired justice or judge under this sub-
24 paragraph.

25

26

27

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 13 (2010)

Amendment No. 2

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee

3 Representative Ambler offered the following:

4

5 **Amendment**

6 Between lines 112-113, insert:

7 7. The per diem paid to a retired justice or judge under
8 this subsection for one day of service for all trials or
9 hearings conducted on that one day shall not exceed the standard
10 per diem rate for one day of service established by the chief
11 justice.