

Bill No. CS for SB 2474

Amendment No. ____

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Latvala moved the following amendment:

Senate Amendment (with title amendment)

On page 1, line 10,

insert:

Section 1. (1) SHORT TITLE.--This section may be cited as the "Uniform Electronic Transaction Act."

(2) DEFINITIONS.--As used in this section:

(a) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under provisions of law otherwise applicable to a particular transaction.

(b) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

Bill No. CS for SB 2474

Amendment No. ____

1 (c) "Computer program" means a set of statements or
2 instructions to be used directly or indirectly in an
3 information processing system in order to bring about a
4 certain result.

5 (d) "Contract" means the total legal obligation
6 resulting from the parties' agreement as affected by this act
7 and other applicable provisions of law.

8 (e) "Electronic" means relating to technology having
9 electrical, digital, magnetic, wireless, optical,
10 electromagnetic, or similar capabilities.

11 (f) "Electronic agent" means a computer program or an
12 electronic or other automated means used independently to
13 initiate an action or respond to electronic records or
14 performances in whole or in part, without review or action by
15 an individual.

16 (g) "Electronic record" means a record created,
17 generated, sent, communicated, received, or stored by
18 electronic means.

19 (h) "Electronic signature" means an electronic sound,
20 symbol, or process attached to or logically associated with a
21 record and executed or adopted by a person with the intent to
22 sign the record.

23 (i) "Governmental agency" means an executive,
24 legislative, or judicial agency, department, board,
25 commission, authority, institution, or instrumentality of this
26 state, including a county, municipality, or other political
27 subdivision of this state and any other public or private
28 agency, person, partnership, corporation, or business entity
29 acting on behalf of any public agency.

30 (j) "Information" means data, text, images, sounds,
31 codes, computer programs, software, databases, or other

Bill No. CS for SB 2474

Amendment No. ____

1 similar representations of knowledge.

2 (k) "Information processing system" means an
3 electronic system for creating, generating, sending,
4 receiving, storing, displaying, or processing information.

5 (l) "Person" means an individual, corporation,
6 business trust, estate, trust, partnership, limited liability
7 company, association, joint venture, governmental agency,
8 public corporation, or any other legal or commercial entity.

9 (m) "Record" means information that is inscribed on a
10 tangible medium or that is stored in an electronic or other
11 medium and is retrievable in perceivable form, including
12 public records as defined in s. 119.011(1), Florida Statutes.

13 (n) "Security procedure" means a procedure employed
14 for the purpose of verifying that an electronic signature,
15 record, or performance is that of a specific person or for
16 detecting changes or errors in the information in an
17 electronic record. The term includes a procedure that requires
18 the use of algorithms or other codes, identifying words or
19 numbers, encryption, or callback or other acknowledgment
20 procedures.

21 (o) "State" means a state of the United States, the
22 District of Columbia, Puerto Rico, the United States Virgin
23 Islands, or any territory or insular possession subject to the
24 jurisdiction of the United States. The term includes an Indian
25 tribe or band, or Alaskan native village, which is recognized
26 by federal law or formally acknowledged by a state.

27 (p) "Transaction" means an action or set of actions
28 occurring between two or more persons relating to the conduct
29 of business, commercial, insurance, or governmental affairs.

30 (3) SCOPE.--

31 (a) Except as otherwise provided in paragraph (b),

Bill No. CS for SB 2474

Amendment No. ____

1 this section applies to electronic records and electronic
2 signatures relating to a transaction.

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

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

7 2. The Uniform Commercial Code other than ss. 671.107
8 and 671.206, Florida Statutes, and chapters 672 and 680,
9 Florida Statutes;

10 3. The Uniform Computer Information Transactions Act;
11 or

12 4. Rules relating to judicial procedure.

13 (c) This section applies to an electronic record or
14 electronic signature otherwise excluded under paragraph (b) to
15 the extent such record or signature is governed by a provision
16 of law other than those specified in paragraph (b).

17 (d) A transaction subject to this section is also
18 subject to other applicable provisions of substantive law.

19 (4) PROSPECTIVE APPLICATION.--This section applies to
20 any electronic record or electronic signature created,
21 generated, sent, communicated, received, or stored on or after
22 July 1, 2000.

23 (5) USE OF ELECTRONIC RECORDS AND ELECTRONIC
24 SIGNATURES; VARIATION BY AGREEMENT.--

25 (a) This section does not require a record or
26 signature to be created, generated, sent, communicated,
27 received, stored, or otherwise processed or used by electronic
28 means or in electronic form.

29 (b) This section applies only to transactions between
30 parties each of which has agreed to conduct transactions by
31 electronic means. Whether the parties agree to conduct a

Bill No. CS for SB 2474

Amendment No. ____

1 transaction by electronic means is determined from the context
2 and surrounding circumstances, including the parties' conduct.

3 (c) A party that agrees to conduct a transaction by
4 electronic means may refuse to conduct other transactions by
5 electronic means. The right granted by this paragraph may not
6 be waived by agreement.

7 (d) Except as otherwise provided in this section, the
8 effect of any provision of this section may be varied by
9 agreement. The presence in certain provisions of this section
10 of the words "unless otherwise agreed," or words of similar
11 import, does not imply that the effect of other provisions may
12 not be varied by agreement.

13 (e) Whether an electronic record or electronic
14 signature has legal consequences is determined by this section
15 and other applicable provisions of law.

16 (6) CONSTRUCTION AND APPLICATION.--This section shall
17 be construed and applied to:

18 (a) Facilitate electronic transactions consistent with
19 other applicable provisions of law.

20 (b) Be consistent with reasonable practices concerning
21 electronic transactions and with the continued expansion of
22 those practices.

23 (c) Effectuate its general purpose to make uniform the
24 law with respect to the subject of this section among states
25 enacting similar legislation.

26 (7) LEGAL RECOGNITION OF ELECTRONIC RECORDS,
27 ELECTRONIC SIGNATURES, AND ELECTRONIC CONTRACTS.--

28 (a) A record or signature may not be denied legal
29 effect or enforceability solely because the record or
30 signature is in electronic form.

31 (b) A contract may not be denied legal effect or

Bill No. CS for SB 2474

Amendment No. ____

1 enforceability solely because an electronic record was used in
2 the formation of the contract.

3 (c) If a provision of law requires a record to be in
4 writing, an electronic record satisfies such provision.

5 (d) If a provision of law requires a signature, an
6 electronic signature satisfies such provision.

7 (8) PROVISION OF INFORMATION IN WRITING; PRESENTATION
8 OF RECORDS.--

9 (a) If parties have agreed to conduct a transaction by
10 electronic means and a provision of law requires a person to
11 provide, send, or deliver information in writing to another
12 person, the requirement is satisfied if the information is
13 provided, sent, or delivered, as the case may be, in an
14 electronic record capable of retention by the recipient at the
15 time of receipt. An electronic record is not capable of
16 retention by the recipient if the sender or the sender's
17 information processing system inhibits the ability of the
18 recipient to print or store the electronic record.

19 (b) If a provision of law other than this section
20 requires a record to be posted or displayed in a certain
21 manner; to be sent, communicated, or transmitted by a
22 specified method; or to contain information that is formatted
23 in a certain manner, the following rules apply:

24 1. The record must be posted or displayed in the
25 manner specified in the other provision of law.

26 2. Except as otherwise provided in subparagraph (d)2.,
27 the record must be sent, communicated, or transmitted by the
28 method specified in the other provision of law.

29 3. The record must contain the information formatted
30 in the manner specified in the other provision of law.

31 (c) If a sender inhibits the ability of a recipient to

Bill No. CS for SB 2474

Amendment No. ____

1 store or print an electronic record, the electronic record is
2 not enforceable against the recipient.

3 (d) The requirements of this section may not be varied
4 by agreement, provided:

5 1. To the extent a provision of law other than this
6 section requires information to be provided, sent, or
7 delivered in writing but permits that requirement to be varied
8 by agreement, the requirement under paragraph (a) that the
9 information be in the form of an electronic record capable of
10 retention may also be varied by agreement.

11 2. A requirement under a law other than this section
12 to send, communicate, or transmit a record by first-class
13 mail, postage prepaid, or other regular United States mail,
14 may be varied by agreement to the extent permitted by the
15 other provision of law.

16 (9) ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND
17 ELECTRONIC SIGNATURE.--

18 (a) An electronic record or electronic signature is
19 attributable to a person if the record or signature was the
20 act of the person. The act of the person may be shown in any
21 manner, including a showing of the efficacy of any security
22 procedure applied to determine the person to which the
23 electronic record or electronic signature was attributable.

24 (b) The effect of an electronic record or electronic
25 signature attributed to a person under paragraph (a) is
26 determined from the context and surrounding circumstances at
27 the time of its creation, execution, or adoption, including
28 the parties' agreement, if any, and otherwise as provided by
29 law.

30 (10) EFFECT OF CHANGE OR ERROR.--If a change or error
31 in an electronic record occurs in a transmission between

Bill No. CS for SB 2474

Amendment No. ____

1 parties to a transaction, the following rules apply:

2 (a) If the parties have agreed to use a security
3 procedure to detect changes or errors and one party has
4 conformed to the procedure, but the other party has not, and
5 the nonconforming party would have detected the change or
6 error had that party also conformed, the conforming party may
7 avoid the effect of the changed or erroneous electronic
8 record.

9 (b) In an automated transaction involving an
10 individual, the individual may avoid the effect of an
11 electronic record that resulted from an error made by the
12 individual in dealing with the electronic agent of another
13 person if the electronic agent did not provide an opportunity
14 for the prevention or correction of the error and, at the time
15 the individual learns of the error, the individual:

16 1. Promptly notifies the other person of the error and
17 that the individual did not intend to be bound by the
18 electronic record received by the other person.

19 2. Takes reasonable steps, including steps that
20 conform to the other person's reasonable instructions, to
21 return to the other person or, if instructed by the other
22 person, to destroy the consideration received, if any, as a
23 result of the erroneous electronic record.

24 3. Has not used or received any benefit or value from
25 the consideration, if any, received from the other person.

26 (c) If paragraphs (a) and (b) do not apply, the change
27 or error has the effect provided by the other provision of
28 law, including the law of mistake, and the parties' contract,
29 if any.

30 (d) Paragraphs (b) and (c) may not be varied by
31 agreement.

Bill No. CS for SB 2474

Amendment No. ____

1 (11) NOTARIZATION AND ACKNOWLEDGMENT.--

2 (a) If a law requires a signature or record to be
3 notarized, acknowledged, verified, or made under oath, the
4 requirement is satisfied if the electronic signature of the
5 person authorized by applicable law to perform those acts,
6 together with all other information required to be included by
7 other applicable law, is attached to or logically associated
8 with the signature or record. Neither a rubber stamp nor an
9 impression type seal is required for an electronic
10 notarization.

11 (b) A first-time applicant for a notary commission
12 must submit proof that the applicant has, within 1 year prior
13 to the application, completed at least 3 hours of interactive
14 or classroom instruction, including electronic notarization,
15 and covering the duties of the notary public. Courses
16 satisfying this section may be offered by any public or
17 private sector person or entity registered with the Executive
18 Office of the Governor and must include a core curriculum
19 approved by that office.

20 (12) RETENTION OF ELECTRONIC RECORDS; ORIGINALS.--

21 (a) If a law requires that a record be retained, the
22 requirement is satisfied by retaining an electronic record of
23 the information in the record which:

24 1. Accurately reflects the information set forth in
25 the record after the record was first generated in final form
26 as an electronic record or otherwise.

27 2. Remains accessible for later reference.

28 (b) A requirement to retain a record in accordance
29 with paragraph (a) does not apply to any information the sole
30 purpose of which is to enable the record to be sent,
31 communicated, or received.

Bill No. CS for SB 2474

Amendment No. ____

1 (c) A person may satisfy paragraph (a) by using the
2 services of another person if the requirements of paragraph
3 (a) are satisfied.

4 (d) If a provision of law requires a record to be
5 presented or retained in its original form, or provides
6 consequences if the record is not presented or retained in its
7 original form, that law is satisfied by an electronic record
8 retained in accordance with paragraph (a).

9 (e) If a provision of law requires retention of a
10 check, that requirement is satisfied by retention of an
11 electronic record of the information on the front and back of
12 the check in accordance with paragraph (a).

13 (f) A record retained as an electronic record in
14 accordance with paragraph (a) satisfies a provision of law
15 requiring a person to retain a record for evidentiary, audit,
16 or similar purposes, unless a provision of law enacted after
17 July 1, 2000, specifically prohibits the use of an electronic
18 record for the specified purpose.

19 (g) This section does not preclude a governmental
20 agency of this state from specifying additional requirements
21 for the retention of a record subject to the agency's
22 jurisdiction.

23 (13) ADMISSIBILITY IN EVIDENCE.--In a proceeding,
24 evidence of a record or signature may not be excluded solely
25 because the record or signature is in electronic form.

26 (14) AUTOMATED TRANSACTIONS.--In an automated
27 transaction, the following rules apply:

28 (a) A contract may be formed by the interaction of
29 electronic agents of the parties, even if no individual was
30 aware of or reviewed the electronic agents' actions or the
31 resulting terms and agreements.

Bill No. CS for SB 2474

Amendment No. ____

1 (b) A contract may be formed by the interaction of an
2 electronic agent and an individual, acting on the individual's
3 own behalf or for another person, including by an interaction
4 in which the individual performs actions that the individual
5 is free to refuse to perform and which the individual knows or
6 has reason to know will cause the electronic agent to complete
7 the transaction or performance.

8 (c) The terms of the contract are determined by the
9 substantive law applicable to the contract.

10 (15) TIME AND PLACE OF SENDING AND RECEIVING.--

11 (a) Unless otherwise agreed between the sender and the
12 recipient, an electronic record is sent when the record:

13 1. Is addressed properly or otherwise directed
14 properly to an information processing system that the
15 recipient has designated or uses for the purpose of receiving
16 electronic records or information of the type sent and from
17 which the recipient is able to retrieve the electronic record.

18 2. Is in a form capable of being processed by that
19 system.

20 3. Enters an information processing system outside the
21 control of the sender or of a person that sent the electronic
22 record on behalf of the sender or enters a region of the
23 information processing system designated or used by the
24 recipient which is under the control of the recipient.

25 (b) Unless otherwise agreed between a sender and the
26 recipient, an electronic record is received when the record
27 enters an information processing system that the recipient has
28 designated or uses for the purpose of receiving electronic
29 records or information of the type sent and from which the
30 recipient is able to retrieve the electronic record; and is in
31 a form capable of being processed by that system.

Bill No. CS for SB 2474

Amendment No. ____

1 (c) Paragraph (b) applies even if the place the
2 information processing system is located is different from the
3 place the electronic record is deemed to be received under
4 paragraph (d).

5 (d) Unless otherwise expressly provided in the
6 electronic record or agreed between the sender and the
7 recipient, an electronic record is deemed to be sent from the
8 sender's place of business and to be received at the
9 recipient's place of business. For purposes of this paragraph,
10 the following rules apply:

11 1. If the sender or recipient has more than one place
12 of business, the place of business of that person is the place
13 having the closest relationship to the underlying transaction.

14 2. If the sender or the recipient does not have a
15 place of business, the place of business is the sender's or
16 recipient's residence, as the case may be.

17 (e) An electronic record is received under paragraph
18 (b) even if no individual is aware of its receipt.

19 (f) Receipt of an electronic acknowledgment from an
20 information processing system described in paragraph (b)
21 establishes that a record was received but, by itself, does
22 not establish that the content sent corresponds to the content
23 received.

24 (g) If a person is aware that an electronic record
25 purportedly sent under paragraph (a), or purportedly received
26 under paragraph (b), was not actually sent or received, the
27 legal effect of the sending or receipt is determined by other
28 applicable provisions of law. Except to the extent permitted
29 by the other provisions of law, the requirements of this
30 paragraph may not be varied by agreement.

31 (h) An automated transaction does not establish the

Bill No. CS for SB 2474

Amendment No. ____

1 acceptability of an electronic record for recording purposes.

2 (16) TRANSFERABLE RECORDS.--

3 (a) For purposes of this paragraph, "transferable
4 record" means an electronic record that:

5 1. Would be a note under chapter 673, Florida
6 Statutes, or a document under chapter 677, Florida Statutes,
7 if the electronic record were in writing.

8 2. The issuer of the electronic record expressly has
9 agreed is a transferable record.

10 (b) A person has control of a transferable record if a
11 system employed for evidencing the transfer of interests in
12 the transferable record reliably establishes that person as
13 the person to which the transferable record was issued or
14 transferred.

15 (c) A system satisfies paragraph (b), and a person is
16 deemed to have control of a transferable record, if the
17 transferable record is created, stored, and assigned in such a
18 manner that:

19 1. A single authoritative copy of the transferable
20 record exists which is unique, identifiable, and, except as
21 otherwise provided in subparagraphs 4., 5., and 6.,
22 unalterable.

23 2. The authoritative copy identifies the person
24 asserting control as the person to which the transferable
25 record was issued or, if the authoritative copy indicates that
26 the transferable record has been transferred, the person to
27 which the transferable record was most recently transferred.

28 3. The authoritative copy is communicated to and
29 maintained by the person asserting control or its designated
30 custodian.

31 4. Copies or revisions that add or change an

Bill No. CS for SB 2474

Amendment No. ____

1 identified assignee of the authoritative copy can be made only
2 with the consent of the person asserting control.

3 5. Each copy of the authoritative copy and any copy of
4 a copy is readily identifiable as a copy that is not the
5 authoritative copy.

6 6. Any revision of the authoritative copy is readily
7 identifiable as authorized or unauthorized.

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

20 (e) Except as otherwise agreed, an obligor under a
21 transferable record has the same rights and defenses as an
22 equivalent obligor under equivalent records or writings under
23 the Uniform Commercial Code.

24 (f) If requested by a person against which enforcement
25 is sought, the person seeking to enforce the transferable
26 record shall provide reasonable proof that the person is in
27 control of the transferable record. Proof may include access
28 to the authoritative copy of the transferable record and
29 related business records sufficient to review the terms of the
30 transferable record and to establish the identity of the
31 person having control of the transferable record.

Bill No. CS for SB 2474

Amendment No. ____

1 (17) CREATION AND RETENTION OF ELECTRONIC RECORDS AND
2 CONVERSION OF WRITTEN RECORDS BY GOVERNMENTAL AGENCIES.--Each
3 governmental agency shall determine whether, and the extent to
4 which, such agency will create and retain electronic records
5 and convert written records to electronic records.

6 (18) ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS
7 BY GOVERNMENTAL AGENCIES.--

8 (a) Except as otherwise provided in paragraph (12)(f),
9 each governmental agency shall determine whether, and the
10 extent to which, such agency will send and accept electronic
11 records and electronic signatures to and from other persons
12 and otherwise create, generate, communicate, store, process,
13 use, and rely upon electronic records and electronic
14 signatures.

15 (b) To the extent that a governmental agency uses
16 electronic records and electronic signatures under paragraph
17 (a), the state technology office, in consultation with the
18 governmental agency, giving due consideration to security, may
19 specify:

20 1. The manner and format in which the electronic
21 records must be created, generated, sent, communicated,
22 received, and stored and the systems established for those
23 purposes.

24 2. If electronic records must be signed by electronic
25 means, the type of electronic signature required, the manner
26 and format in which the electronic signature must be affixed
27 to the electronic record, and the identity of, or criteria
28 that must be met by, any third party used by a person filing a
29 document to facilitate the process.

30 3. Control processes and procedures as appropriate to
31 ensure adequate preservation, disposition, integrity,

Bill No. CS for SB 2474

Amendment No. ____

1 security, confidentiality, and auditability of electronic
2 records.

3 4. Any other required attributes for electronic
4 records which are specified for corresponding nonelectronic
5 records or reasonably necessary under the circumstances.

6 (c) Except as otherwise provided in paragraph (12)(f),
7 this section does not require a governmental agency of this
8 state to use or permit the use of electronic records or
9 electronic signatures.

10 (d) Service charges and fees otherwise established by
11 law applicable to the filing of nonelectronic records shall
12 apply in kind to the filing of electronic records.

13 (19) INTEROPERABILITY.--The governmental agency which
14 adopts standards pursuant to subsection (18) may encourage and
15 promote consistency and interoperability with similar
16 requirements adopted by other governmental agencies of this
17 and other states and the Federal Government and
18 nongovernmental persons interacting with governmental agencies
19 of this state. If appropriate, those standards may specify
20 differing levels of standards from which governmental agencies
21 of this state may choose in implementing the most appropriate
22 standard for a particular application.

23 (20) SEVERABILITY.--If any provision of this section
24 or its application to any person or circumstance is held
25 invalid, the invalidity does not affect other provisions or
26 applications of this section which can be given effect without
27 the invalid provision or application, and to this end the
28 provisions of this act are severable.

29 Section 2. (1) The Legislature finds that a proper
30 and legitimate state purpose is served by providing the public
31 with access to public records and information on the Internet

Bill No. CS for SB 2474

Amendment No. ____

1 and hereby determines that the provisions of this section
2 fulfill and further an important state interest.

3 (2) No later than January 1, 2002, the county recorder
4 in each county shall provide a current index of documents
5 recorded in the official records of the county for the period
6 beginning no later than January 1, 1990, on a publicly
7 available Internet website which shall also contain a document
8 requisition point for obtaining images or copies of the
9 documents reflected in the index and which has the capability
10 of electronically providing the index data to a central
11 statewide search site.

12 (3) Each county recorder shall use appropriate
13 Internet security measures to ensure that no person has the
14 ability to alter or to modify any public record.

15 (4) Unless otherwise provided by law, no information
16 retrieved electronically pursuant to this section shall be
17 admissible in court as an authenticated document.

18 (5) By January 1, 2006, each county recorder shall
19 provide for electronic retrieval, at a minimum, of images of
20 documents referenced as the index required to be maintained on
21 the county's official records website by this section.

22
23 (Redesignate subsequent sections.)

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26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 On page 1, lines 2 and 3, delete those lines

29
30 and insert:

31 A bill to be entitled

Bill No. CS for SB 2474

Amendment No. ____

1 An act relating to electronic commerce;
2 providing a short title; providing definitions;
3 providing scope; providing for prospective
4 application; providing for use of electronic
5 records and signatures; providing for variation
6 by agreement among parties using electronic
7 records and electronic signatures; providing
8 construction and application; providing for
9 uniformity; providing for legal recognition of
10 electronic records, signatures, and contracts;
11 providing for provision of information in
12 writing; providing for presentation of records;
13 providing for attribution and effect of
14 electronic records and electronic signatures;
15 providing for the effect of changes or errors
16 in electronic records; providing for
17 notarization and acknowledgment; providing for
18 retention of electronic records and originals;
19 providing for admissibility of electronic
20 records as evidence; providing for rules
21 applying to automated transactions; providing
22 for time and place of sending and receiving
23 electronic records and signatures; providing
24 for transferable records; providing for
25 creation and retention of electronic records by
26 governmental agencies; providing for conversion
27 of written records by governmental agencies;
28 providing for acceptance and distribution of
29 electronic records by governmental agencies;
30 providing for interoperability; providing
31 severability; requiring the county recorders to

Bill No. CS for SB 2474

Amendment No. ____

1 provide a statewide index of official records
2 available on the Internet by a time certain;
3 providing for security; requiring that the
4 Internet information shall not be admissible in
5 court; authorizing charging a reasonable fee
6 for certain purposes; providing that the
7 official records must be made available for
8 electronic retrieval on the statewide site by a
9 time certain; amending ss. 282.005, 282.101,
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