

Bill No. SB 2126

Amendment No. 1 Barcode 382074

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Commerce and Economic Opportunities  
recommended the following amendment:

**Senate Amendment (with title amendment)**  
Delete everything after the enacting clause

and insert:

Section 1. Legislative intent.--

(1) The Legislature has found that it is in the best interest of the people and businesses in the state to adopt Revised Article 9 of the Uniform Commercial Code as proposed by the National Conference of Commissioners on Uniform State Law, subject to certain modifications. Revised Article 9 (chapter 679, Florida Statutes) almost exclusively affects secured transactions and the relationships among secured creditors, debtors, or other creditors, and purchasers of personal property subject to a security interest. Both individuals and business entities are intended to benefit from the enactment of Revised Article 9.

(2) Revised Article 9 is intended to create a more straightforward and efficient system for documenting the

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1 perfection, amendment, continuance, termination, assignment,  
2 and transfer of security interests, requiring less  
3 governmental involvement than that which is necessary under  
4 existing law. Under Revised Article 9, states may delegate  
5 their historical administrative and operational  
6 responsibilities over financing-statement filings to a  
7 nongovermental entity. This principle accords with the  
8 Legislature's policy of reducing government's detailed  
9 regulation and involvement with private commerce and business  
10 transactions. Consistent with other revisions to current  
11 chapter 679, Florida Statutes, adopted by this act, the  
12 requirement for exclusive administration and operations by the  
13 state of the system of filing and maintaining documents  
14 evidencing secured transactions no longer exists. However, the  
15 fulfillment of the duties of the filing office and filing  
16 officer remain essential to the uninterrupted flow of secured  
17 transactions, and the State of Florida retains ownership of  
18 all records filed and maintained under chapter 679, Florida  
19 Statutes, and databases evidencing such documents, and the  
20 Secretary of State retains governmental oversight over the  
21 private filing agency to which the filing office's and filing  
22 officer's duties under Revised Article 9 are transferred. The  
23 Legislature, therefore, enacts this act as part of chapter  
24 679, Florida Statutes.

25 Section 2. Subsections (1) and (5) of section 679.401,  
26 Florida Statutes, are amended to read:

27 679.401 Place of filing; erroneous filing; removal of  
28 collateral.--

29 (1) The proper place to file in order to perfect a  
30 security interest is as follows:

31 (a) If the collateral is farm products, or accounts,

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1 or general intangibles arising from or relating to the sale of  
2 farm products by a farmer, by recording:

3 1. In the office of the clerk of the circuit court in  
4 the county of the debtor's place of business if he or she has  
5 one, in the county of the debtor's chief executive office if  
6 he or she has more than one place of business, otherwise in  
7 the county of the debtor's residence; or

8 2. If the debtor is not a resident of this state, in  
9 the office of the clerk of the circuit court in the county  
10 where the collateral is located; and

11 3. In addition, if the collateral is crops, in the  
12 office of the clerk of the circuit court in the county where  
13 the land is located on which the crops are growing or to be  
14 grown.

15 (b) When the collateral is timber to be cut or is  
16 minerals or the like (including oil and gas) or is accounts  
17 subject to s. 679.103(5) or is goods which are or are to  
18 become fixtures, then in the office where a mortgage on the  
19 real estate would be filed or recorded.

20 (c) In all other cases, by filing under the Florida  
21 Secured Transaction Registry ~~in the office of the Department~~  
22 ~~of State.~~

23 (5) Notwithstanding the preceding subsections, and  
24 subject to s. 679.302(3), the proper place to file in order to  
25 perfect a security interest in collateral, including fixtures,  
26 of a transmitting utility is under the Florida Secured  
27 Transaction Registry ~~the office of the Department of State.~~

28 Section 3. Section 679.4015, Florida Statutes, is  
29 created to read:

30 679.4015 Florida Secured Transaction Registry.--

31 (1) The Florida Secured Transaction Registry is the

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1 centralized database in which all initial financing  
2 statements, amendments, assignments, and other statements of  
3 change authorized to be filed under this chapter are filed and  
4 maintained and from which they are retrieved. The Florida  
5 Secured Transaction Registry shall include the date and other  
6 information pertaining to Uniform Commercial Code Records  
7 filed with the Secretary of State and effective under this  
8 chapter before October 1, 2001, or filed with the Secretary of  
9 State or with the private filing agency or UCC filing agent as  
10 authorized in this section after October 1, 2001. Consistent  
11 with s. 679.401, this section does not apply to initial  
12 financing statements, amendments, assignments, and other  
13 statements of change filed under this chapter with an office  
14 of the clerk of the circuit court.

15 (2) Except as otherwise provided in this section, the  
16 duties of the filing office and filing officer under this  
17 chapter may be performed by an entity that is qualified to  
18 transact business in this state (the private filing agency)  
19 and that has entered into a written contract with the  
20 Department of State satisfying the minimum requirements  
21 provided in this section. The private filing agency, among its  
22 other duties conferred by contract or this part, shall have  
23 the responsibility for acting as the filing office under this  
24 chapter and overseeing the continued existence and maintenance  
25 of the Florida Secured Transaction Registry.

26 (3) The Secretary of State, or the private filing  
27 agency if authorized by the Secretary of State in the contract  
28 or another writing, may enter into a separate contract  
29 approved by the Secretary of State and satisfying the minimum  
30 requirements provided in this section with another entity  
31 qualified to transact business in this state (the UCC filing

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1 agent) for the purpose of physically performing the filing  
2 officer's duties under this part. However, the private filing  
3 agency, unless displaced by the Secretary of State or a  
4 subsequent private filing agency, shall remain the filing  
5 office under this chapter.

6 (4) Upon the effective date of the contract with the  
7 private filing agency or on October 31, 2001, whichever is  
8 later, the Secretary of State and the Department of State,  
9 respectively, shall cease acting as the filing officer and  
10 filing office under this part, although the Secretary of State  
11 shall retain authority and powers as otherwise provided in  
12 this section or by other applicable law.

13 (5) The Secretary of State shall immediately develop  
14 and issue a request for qualifications seeking qualified  
15 entities to perform the duties of the private filing agency  
16 and UCC filing agent under this part. The qualifications and  
17 any contract must, at a minimum, require:

18 (a) The creation and maintenance of a central filing,  
19 recording, retrieval, and response system as part of the  
20 Florida Secured Transaction Registry which is capable of  
21 satisfying the filing-officer and filing-office requirements  
22 under this chapter, which system must be comparable and  
23 compatible with the filing system in existence immediately  
24 prior to the effective date of this section to the fullest  
25 extent possible as determined by the Secretary of State.

26 (b) Continuous and easy access by the public,  
27 including review at no charge through the Internet or such  
28 other substitute medium as is acceptable to the Secretary of  
29 State, of all UCC records filed and maintained by the  
30 Department of State under this chapter as of the effective  
31 date of this section and of all UCC records filed and

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1 maintained after the effective date of this section, subject  
2 to any requirements or limitations of chapter 119 and this  
3 chapter.

4 (c) Record maintenance in compliance with this part  
5 and chapter 119.

6 (d) Oversight by the Secretary of State, including  
7 compliance audits of the performance standards described in  
8 subsection (7).

9 (e) Maintenance of the current level of filing fees  
10 and procedures for the deposit of revenues, net of operating  
11 costs, consistent with chapter 15.

12 (f) A bond by the private filing agency and UCC filing  
13 agent in an amount acceptable to the Secretary of State.

14 (6) Except as otherwise provided in a contract  
15 approved by the Secretary of State, the private filing agency  
16 and UCC filing agent are not liable to any person harmed by  
17 their failure to comply with the filing-officer or  
18 filing-office requirements under this chapter unless such  
19 failure is due to specific acts or omissions done recklessly  
20 or committed knowingly and with malicious intent, and then  
21 only to the extent that such acts or omissions directly and  
22 proximately cause ascertainable damages.

23 (7) The Secretary of State shall develop performance  
24 standards to ensure that the Florida Secured Transaction  
25 Registry and its central filing system implemented and  
26 maintained by the private filing agency or UCC filing agent  
27 are accurate and complete and that the system implemented and  
28 maintained satisfies the responsibilities of the filing office  
29 and filing officer under this chapter and meets the needs of  
30 various persons and entities using or affected by the filing  
31 system.

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1           (8) Any contract between the Secretary of State and  
 2 the private filing agency or UCC filing agent or between the  
 3 private filing agency and the UCC filing agent is not  
 4 assignable, absolutely or for security, or otherwise  
 5 transferable without the express written consent of the  
 6 Secretary of State, which consent may be withheld in his or  
 7 her sole and absolute discretion.

8           (9) The Secretary of State shall, as soon as  
 9 practicable, either assume temporarily or permanently the  
 10 duties of the filing office and filing officer under this  
 11 chapter or assign the duties of the filing office and filing  
 12 officer under this chapter to a new private filing agency or  
 13 UCC filing agent, as applicable, which meets the requirements  
 14 of this section and which enters into a new contract with the  
 15 Secretary of State satisfying the requirements of this  
 16 section:

17           (a) If:

18           1. A private filing agency or UCC filing agent has not  
 19 been approved by the Secretary of State and a contract  
 20 required by this section has not been executed;

21           2. The private filing agency or UCC filing agent  
 22 ceases, is unable, or fails to perform the duties of the  
 23 filing office or filing officer which are required under this  
 24 chapter or which are provided for in any contract, as  
 25 determined by the Secretary of State in accordance with the  
 26 terms of the contract; or

27           3. An assignee for the benefit of creditors is  
 28 appointed for the private filing agency or UCC filing agent or  
 29 its assets or a receiver is appointed for the private filing  
 30 agency or UCC filing agent or its assets other than by the  
 31 Secretary of State; and

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- 1           (b) Notwithstanding:
- 2           1. That a bankruptcy case or other insolvency
- 3 proceeding has been commenced by the private filing agency or
- 4 UCC filing agent; or
- 5           2. That an involuntary bankruptcy case or other
- 6 insolvency proceeding has been commenced against the private
- 7 filing agency or UCC filing agent and the case or proceeding
- 8 has not been dismissed within 5 business days after the
- 9 petition's filing.
- 10          (10) Immediately upon the occurrence of an event
- 11 described in subsection (9)(a)1. or 3. or (b), any rights of
- 12 the private filing agency or UCC filing agent, as applicable,
- 13 pertaining to the contract or otherwise with respect to this
- 14 chapter shall terminate without any further action being
- 15 required. Upon the occurrence of an event described in
- 16 subsection (9)(a)2., any rights of the private filing agency
- 17 or UCC filing agent, as applicable, pertaining to the contract
- 18 or otherwise with respect to this chapter may terminate, in
- 19 the discretion of the Secretary of State, upon written notice
- 20 to the private filing agency or UCC filing agent.
- 21          (11) If required by the Secretary of State, any
- 22 contract with the private filing agency or UCC filing agent
- 23 entered into pursuant to this section must provide that any
- 24 exclusive rights of the private filing agency and UCC filing
- 25 agent terminate automatically without further action upon any
- 26 default under the contract, even if the default is capable of
- 27 being cured under law.
- 28          (12) The Florida Secured Transaction Registry;
- 29 databases, source or object codes, and any software relating
- 30 to the Florida Secured Transaction Registry and system for
- 31 central filing under this part and all information contained



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1 in any of the foregoing; all documents and records, in  
2 whatever form or medium, filed with, created by, or maintained  
3 by the private filing agency or UCC filing agent under this  
4 chapter, including all UCC records and any other records or  
5 documents relating to the UCC records, in whatever form or  
6 medium, whether existing prior to the effective date of this  
7 section or thereafter (collectively, the UCC filing office  
8 materials and records), shall be and remain the sole and  
9 exclusive property of the state, and upon demand the originals  
10 and all copies are subject to immediate return by the private  
11 filing agency or UCC filing agent, as applicable, to the  
12 Secretary of State upon the occurrence of any of the events  
13 enumerated in subsection (9). The Secretary of State also has  
14 the right to inspect at any time and make copies of the UCC  
15 filing office materials and records, and the cost shall be  
16 borne as provided in the contracts with or approved by the  
17 Secretary of State. Neither the private filing agency nor UCC  
18 filing agent shall have or acquire any rights in the Florida  
19 Secured Transaction Registry or the UCC filing office  
20 materials and records, and neither of them may sell, license,  
21 lease, donate, copyright, patent, trademark, pledge, or  
22 otherwise transfer any of the UCC filing office materials and  
23 records to any person or entity, except as authorized in  
24 writing by the Secretary of State.

25 (13) To the extent permitted by its contract with the  
26 Secretary of State and provided that the procedures for  
27 certification required by the Secretary of State are complied  
28 with, the private filing agency and UCC filing agent are  
29 authorized to certify any of the UCC records for purposes of  
30 admissibility in a state or federal court or other tribunal  
31 proceeding, upon request by a authenticated record and payment

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1 of a service charge in the amount permitted in the contract  
2 with the private filing agency and UCC filing agent, as  
3 applicable. Such certified record constitutes a public record  
4 under s. 90.803(8).

5 (14) The private filing agency and UCC filing agent  
6 are subject to the exclusive original jurisdiction of the  
7 Circuit Court of Leon County for any litigation between or  
8 among the Secretary of State, the private filing agency, and  
9 the UCC filing agent. The Secretary of State is entitled to  
10 emergency injunctive relief if the private filing agency or  
11 UCC filing agent or its agents or employees fail to turn over  
12 any of the UCC filing office materials and records or  
13 otherwise fail to comply with their contracts or with the  
14 filing officer's or filing office's duties under this part.

15 (15) As used in this part in this connection with  
16 carrying out the filing office's and filing officer's duties  
17 assigned to them under this chapter, the terms "Florida  
18 Secretary of State," "Secretary of State," or "Secretary" also  
19 refer to the private filing agency or UCC filing agent, as  
20 applicable.

21 Section 4. This act shall take effect upon becoming a  
22 law.

23  
24

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

26 And the title is amended as follows:

27 Delete everything before the enacting clause

28

29 and insert:

30 A bill to be entitled

31 An act relating to filings administered by the

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1 Department of State; providing legislative  
2 findings and intent; amending s. 679.401, F.S.;  
3 prescribing methods for filing security  
4 interests; creating s. 679.4015, F.S.;  
5 establishing the Florida Secured Transaction  
6 Registry; prescribing duties of the Department  
7 of State and Secretary of State; prescribing  
8 standards for the registry; providing powers  
9 and duties of contracting entities performing  
10 services with respect to the registry;  
11 providing an effective date.

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