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## CHAMBER ACTION

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1 The Civil Justice Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the Uniform Commercial Code; amending  
7 s. 15.16, F.S.; removing provision requiring certain  
8 records to be filed with the Department of State; amending  
9 s. 285.20, F.S.; requiring the governing body of the  
10 Seminole Tribe of Florida or the Miccosukee Tribe of  
11 Indians to file certain records with the central filing  
12 office; amending s. 671.101, F.S.; providing scope of  
13 chapter and a short title; amending s. 671.102, F.S.;  
14 authorizing certain timeframes to be fixed by agreement;  
15 amending s. 671.106, F.S.; making editorial changes;  
16 amending s. 671.107, F.S.; providing for the discharge of  
17 a claim or right under certain circumstances; amending s.  
18 671.201, F.S.; providing, revising, and deleting  
19 definitions; amending ss. 671.202 and 671.203, F.S.;  
20 making editorial changes; amending s. 671.204, F.S.;  
21 revising criteria determining when an action is taken  
22 within a reasonable time and seasonably; amending s.  
23 671.205, F.S.; defining "course of performance"; revising

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24 | the definition of "course of dealing"; providing that  
25 | course of performance and course of dealing may be used  
26 | for certain purposes; revising uses for express terms of  
27 | an agreement; specifying when course of performance,  
28 | course of dealing, or usage of trade prevails; providing  
29 | that course of performance is relevant to show a waiver or  
30 | modification in certain circumstances; repealing s.  
31 | 671.206, F.S., relating to statute of frauds for kinds of  
32 | personal property not otherwise covered; amending s.  
33 | 671.208, F.S.; making editorial changes; creating s.  
34 | 671.209, F.S.; providing definitions; specifying when  
35 | notice, knowledge, or notification becomes effective with  
36 | the exercise of due diligence; creating s. 671.210, F.S.;  
37 | providing that whenever the code creates certain  
38 | presumptions, the trier of fact must find the existence of  
39 | the fact presumed unless and until evidence is introduced  
40 | that supports a finding of its nonexistence; creating s.  
41 | 671.211, F.S.; providing in what instances a person gives  
42 | value for rights; creating s. 671.212, F.S.; providing  
43 | that the code modifies, limits, and supersedes certain  
44 | provisions of the federal Electronic Signatures in Global  
45 | and National Commerce Act; creating s. 671.213, F.S.;  
46 | authorizing the subordination of certain obligations;  
47 | amending s. 671.301, F.S.; revising the effective date of  
48 | the act; amending s. 679.5011, F.S.; requiring certain  
49 | financing statements to be filed with the central filing  
50 | office; authorizing the Florida Secured Transaction  
51 | Registry to certify a copy of certain financing

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52 | statements; providing the admissability of such documents;  
53 | amending s. 679.525, F.S.; reducing the amount of certain  
54 | processing fees; authorizing the registry to use the fees  
55 | collected to fund its operations; amending s. 679.527,  
56 | F.S., relating to the Florida Secured Transaction  
57 | Registry; revising the duties of the Department of State;  
58 | providing requirements for a central filing office;  
59 | providing that the central filing office shall be a  
60 | private nongovernmental entity and shall not be subject to  
61 | the provisions of law that apply to government operations;  
62 | amending s. 679.705, F.S.; extending the time that a  
63 | financing statement filed under previous law is effective;  
64 | repealing s. 15.091, F.S., relating to processing fees for  
65 | filing certain statements under ch. 679, F.S.; repealing  
66 | s. 679.521, F.S., relating to the uniform form of written  
67 | financing statements and amendments; repealing s. 679.526,  
68 | F.S., relating to filing-office rules; amending ss.  
69 | 319.27, 559.9232, 563.022, 668.50, 670.106, 670.204,  
70 | 675.102, 679.1021, 680.1031, 680.518, 680.519, 680.527,  
71 | and 680.528, F.S.; conforming cross-references; amending  
72 | s. 713.901, F.S.; specifying fees under the Florida  
73 | Uniform Federal Lien Registration Act previously provided  
74 | through cross-reference; reducing a fee and deleting a  
75 | cross-reference to conform to changes made by the act;  
76 | providing an effective date.

77 |  
78 | Be It Enacted by the Legislature of the State of Florida:  
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80 Section 1. Subsection (3) of section 15.16, Florida  
81 Statutes, is amended to read:

82 15.16 Reproduction of records; admissibility in evidence;  
83 electronic receipt and transmission of records; certification;  
84 acknowledgment.--

85 (3) The Department of State may cause to be received  
86 electronically any records that are required to be filed with it  
87 pursuant to chapter 55, chapter 606, chapter 607, chapter 608,  
88 chapter 617, chapter 620, chapter 621, ~~chapter 679~~, chapter 713,  
89 or chapter 865, through facsimile or other electronic transfers,  
90 for the purpose of filing such records. The originals of all  
91 such electronically transmitted records must be executed in the  
92 manner provided in paragraph (5)(b). The receipt of such  
93 electronic transfer constitutes delivery to the department as  
94 required by law.

95 Section 2. Subsection (1) of section 285.20, Florida  
96 Statutes, is amended to read:

97 285.20 Tribal Secured Transactions Filing Offices.--

98 (1) If the governing body of the Seminole Tribe of Florida  
99 or the governing body of the Miccosukee Tribe of Indians adopts  
100 or enacts a law or ordinance governing secured transactions  
101 arising within or relating to the reservation of such tribe in  
102 this state, and if such tribal law or ordinance authorizes  
103 financing statements and other records relating to secured  
104 transactions to be filed:

105 (a) With the ~~Department of State or such other~~ central  
106 filing office as ~~may be established from time to time under the~~  
107 ~~Uniform Commercial Code of this state~~, then the Department of

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108 ~~State or other~~ central filing office, ~~including any private~~  
109 ~~secured transaction registry that may be designated as such in~~  
110 ~~this state,~~ shall accept and process such filings made under the  
111 tribal secured transactions law in accordance with this section  
112 and the provisions of chapter 679; or

113 (b) With the office of the clerk of circuit court in any  
114 county of this state in which the tribal secured transactions  
115 law requires a local filing, then such county filing office  
116 shall accept and process such filings made under such tribal law  
117 in accordance with this section and the provisions of chapter  
118 28.

119 Section 3. Section 671.101, Florida Statutes, is amended  
120 to read:

121 671.101 Short title; scope of chapter.--

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

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

127 Section 4. Section 671.102, Florida Statutes, is amended  
128 to read:

129 671.102 Purposes; rules of construction; variation by  
130 agreement.--

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

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

134 (a) To simplify, clarify, and modernize the law governing  
135 commercial transactions. +

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

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

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

143 (b) The obligations of good faith, diligence,  
144 reasonableness, and care prescribed by this code may not be  
145 disclaimed by agreement, but the parties may by agreement  
146 determine the standards by which the performance of such  
147 obligations is to be measured if such standards are not  
148 manifestly unreasonable. Whenever this code requires an action  
149 to be taken within a reasonable time, a time that is not  
150 manifestly unreasonable may be fixed by agreement.

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

155 ~~(3) (5)~~ In this code, unless the context otherwise  
156 requires:

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

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

162 Section 5. Subsection (1) of section 671.106, Florida  
163 Statutes, is amended to read:

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164 671.106 Remedies to be liberally administered.--

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

171 Section 6. Section 671.107, Florida Statutes, is amended  
 172 to read:

173 671.107 Waiver or renunciation of claim or right after  
 174 breach.--A ~~Any~~ claim or right arising out of an alleged breach  
 175 can be discharged in whole or in part without consideration by  
 176 agreement of a written waiver or renunciation signed and  
 177 delivered by the aggrieved party in an authenticated record.

178 Section 7. Section 671.201, Florida Statutes, is amended  
 179 to read:

180 671.201 General definitions.--Unless the context otherwise  
 181 requires, words or phrases defined in this section, or in the  
 182 additional definitions contained in other chapters of this code  
 183 that apply to particular chapters or parts thereof, have the  
 184 meanings stated. Subject to ~~additional~~ definitions contained in  
 185 other the subsequent chapters of this code that apply ~~which are~~  
 186 applicable to particular ~~specific~~ chapters or parts thereof, ~~and~~  
 187 ~~unless the context otherwise requires, in this code:~~

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

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191 (2) "Aggrieved party" means a party entitled to pursue  
192 ~~resort to~~ a remedy.

193 (3) "Agreement," as distinguished from "contract," means  
194 the bargain of the parties in fact, as found in their language  
195 or inferred by implication from other circumstances, including  
196 course of dealing, ~~or~~ usage of trade, or course of performance  
197 as provided in ~~this code~~ (ss. 671.205 and 672.208). ~~Whether an~~  
198 ~~agreement has legal consequences is determined by the provisions~~  
199 ~~of this code, if applicable, otherwise by the law of contracts~~  
200 ~~(s. 671.103). (Compare "contract.")~~

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

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

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

214 (7) "Branch" includes a separately incorporated foreign  
215 branch of a bank.

216 (8) "Burden of establishing" a fact means the burden of  
217 persuading the triers of fact that the existence of the fact is  
218 more probable than its nonexistence.



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219           (9) "Buyer in ordinary course of business" means a person  
220 who, in ordinary course, buys goods in good faith, without  
221 knowledge that the sale violates the rights of another person in  
222 the goods, ~~and in the ordinary course~~ from a person, other than  
223 a pawnbroker, in the business of selling goods of that kind. A  
224 person buys goods in ~~the~~ ordinary course if the sale to the  
225 person comports with the usual or customary practices in the  
226 kind of business in which the seller is engaged or with the  
227 seller's own usual or customary practices. A person who sells  
228 oil, gas, or other minerals at the wellhead or minehead is a  
229 person in the business of selling goods of that kind. A buyer in  
230 ~~the~~ ordinary course of business may buy for cash, by exchange of  
231 other property, or on secured or unsecured credit and may  
232 acquire goods or documents of title under a preexisting contract  
233 for sale. Only a buyer who takes possession of the goods or has  
234 a right to recover the goods from the seller under chapter 672  
235 may be a buyer in ~~the~~ ordinary course of business. "Buyer in  
236 ordinary course of business" does not include a person who  
237 acquires goods in a transfer in bulk or as security for or in  
238 total or partial satisfaction of a money debt ~~is not a buyer in~~  
239 ~~the ordinary course of business.~~

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

245           (a) A ~~printed~~ heading in capitals in a size equal to or  
246 larger than that of the surrounding text or in a ~~(as+~~

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247 ~~NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the~~  
 248 ~~body of a form is conspicuous if it is in larger or other~~  
 249 ~~contrasting type, font, or color in contrast to the surrounding~~  
 250 ~~text of the same or lesser size.~~

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

258 (11) "Consumer" means an individual who enters into a  
 259 transaction primarily for personal, family, or household  
 260 purposes.

261 (12)~~(11)~~ "Contract," as distinguished from "agreement,"  
 262 means the total legal obligation that ~~which~~ results from the  
 263 parties' agreement as determined ~~affected~~ by this code and as  
 264 supplemented by any other applicable laws ~~rules of law.~~ ~~(Compare~~  
 265 ~~"agreement.")~~

266 (13)~~(12)~~ "Creditor" includes a general creditor, a secured  
 267 creditor, a lien creditor, and any representative of creditors,  
 268 including an assignee for the benefit of creditors, a trustee in  
 269 bankruptcy, a receiver in equity, and an executor or  
 270 administrator of an insolvent debtor's or assignor's estate.

271 (14)~~(13)~~ "Defendant" includes a person in the position of  
 272 defendant in a ~~cross action or counterclaim,~~ cross-claim, or  
 273 third-party claim.

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274        (15)~~(14)~~ "Delivery," with respect to an instrument  
275 ~~instruments, document documents~~ of title, or chattel paper, ~~or~~  
276 ~~eertificated securities~~ means voluntary transfer of possession.

277        (16)~~(15)~~ "Document of title" includes bill of lading, dock  
278 warrant, dock receipt, warehouse receipt or order for the  
279 delivery of goods, and ~~also~~ any other document that ~~which~~ in the  
280 regular course of business or financing is treated as adequately  
281 evidencing that the person in possession of it is entitled to  
282 receive, hold, and dispose of the document and the goods it  
283 covers. To be a document of title, a document must purport to be  
284 issued by or addressed to a bailee and purport to cover goods in  
285 the bailee's possession that ~~which~~ are either identified or are  
286 fungible portions of an identified mass.

287        (17)~~(16)~~ "Fault" means a default, breach, or wrongful act  
288 or omission ~~or breach~~.

289        (18)~~(17)~~ "Fungible goods" ~~with respect to goods or~~  
290 ~~securities~~ means:

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

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

297        (19)~~(18)~~ "Genuine" means free of forgery or  
298 counterfeiting.

299        (20)~~(19)~~ "Good faith," except as otherwise provided in  
300 this code, means honesty in fact and ~~in~~ the observance of

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301 reasonable commercial standards of fair dealing ~~conduct or~~  
302 ~~transaction concerned.~~

303 ~~(21)-(20)~~ "Holder," ~~with respect to a negotiable~~  
304 ~~instrument,~~ means:

305 (a) The person in possession of a negotiable ~~if the~~  
306 instrument that is payable either to bearer or, ~~in the case of~~  
307 ~~an instrument payable to an identified person that is,~~ if the  
308 identified person is in possession; or. ~~"Holder," with respect~~  
309 ~~to a document of title, means~~

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

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

316 (22) "Insolvency proceeding ~~proceedings~~" includes an ~~any~~  
317 assignment for the benefit of creditors or other proceeding  
318 ~~proceedings~~ intended to liquidate or rehabilitate the estate of  
319 the person involved.

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

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

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

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

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328           (24) "Money" means a medium of exchange currently  
329 authorized or adopted by a domestic or foreign government. The  
330 term ~~and~~ includes a monetary unit of account established by an  
331 intergovernmental organization or by agreement between two or  
332 more countries ~~nations~~.

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

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

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

336 ~~or~~

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

340  
341 ~~A person "knows" or has "knowledge" of a fact when he or she has~~  
342 ~~actual knowledge of it. "Discover" or "learn" or a word or~~  
343 ~~phrase of similar import refers to knowledge rather than to~~  
344 ~~reason to know. The time and circumstances under which a notice~~  
345 ~~or notification may cease to be effective are not determined by~~  
346 ~~this code.~~

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

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

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

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

371 ~~(25)(28)~~ "Organization" means a person other than an  
372 individual ~~includes a corporation, government or governmental~~  
373 ~~subdivision or agency, business trust, estate, trust,~~  
374 ~~partnership or association, two or more persons having a joint~~  
375 ~~or common interest, or any other legal or commercial entity.~~

376 ~~(26)(29)~~ "Party," as distinguished ~~distinct~~ from "third  
377 party," means a person who has engaged in a transaction or made  
378 an agreement subject to ~~within~~ this code.

379 ~~(27)(30)~~ "Person" means ~~includes~~ an individual,  
380 corporation, business trust, estate, trust, partnership, limited  
381 liability company, association, joint venture, government,  
382 governmental subdivision, agency, or instrumentality, public

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383 corporation, or any other legal or commercial entity or an  
384 organization (see s. 671.102).

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

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

397 (29)~~(32)~~ "Purchase" means ~~includes~~ taking by sale, lease,  
398 discount, negotiation, mortgage, pledge, lien, security  
399 interest, issue or reissue, gift, or any other voluntary  
400 transaction creating an interest in property.

401 (30)~~(33)~~ "Purchaser" means a person who takes by purchase.

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

405 (32)~~(34)~~ "Remedy" means any remedial right to which an  
406 aggrieved party is entitled with or without resort to a  
407 tribunal.

408 (33)~~(35)~~ "Representative" means a person empowered to act  
409 for another, including ~~includes~~ an agent, an officer of a  
410 corporation or association, and a trustee, executor, or

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411 administrator of an estate, ~~or any other person empowered to act~~  
412 ~~for another.~~

413 ~~(34)-(36)~~ "Right Rights" includes remedy remedies.

414 ~~(35)-(37)~~ "Security interest" means an interest in personal  
415 property or fixtures which secures payment or performance of an  
416 obligation. "Security interest" ~~The term also~~ includes any  
417 interest of a consignor and a buyer of accounts, chattel paper,  
418 a payment intangible, or a promissory note in a transaction that  
419 ~~which~~ is subject to chapter 679. "Security interest" does not  
420 include the special property interest of a buyer of goods on  
421 identification of those goods to a contract for sale under s.  
422 672.401 ~~is not a security interest~~, but a buyer may also acquire  
423 a security interest by complying with chapter 679. Except as  
424 otherwise provided in s. 672.505, the right of a seller or  
425 lessor of goods under chapter 672 or chapter 680 to retain or  
426 acquire possession of the goods is not a security interest, but  
427 a seller or lessor may also acquire a security interest by  
428 complying with chapter 679. The retention or reservation of  
429 title by a seller of goods, notwithstanding shipment or delivery  
430 to the buyer under ~~(s. 672.401)~~, is limited in effect to a  
431 reservation of a security interest. Whether a transaction in the  
432 form of a lease creates a ~~lease or~~ security interest is  
433 determined by the facts of each case; however:

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

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

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

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

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

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

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

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

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

465 | ~~4.3.~~ The lessee has an option to renew the lease or to  
466 | become the owner of the goods;

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467 ~~5.4.~~ The lessee has an option to renew the lease for a  
 468 fixed rent that is equal to or greater than the reasonably  
 469 predictable fair market rent for the use of the goods for the  
 470 term of the renewal at the time the option is to be performed;  
 471 or

472 ~~6.5.~~ The lessee has an option to become the owner of the  
 473 goods for a fixed price that is equal to or greater than the  
 474 reasonably predictable fair market value of the goods at the  
 475 time the option is to be performed.

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

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

480 Additional consideration is not nominal if:

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

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

491 ~~(d)2.~~ The "Reasonably predictable" and "remaining economic  
 492 life of the goods" and "reasonably predictable" fair market  
 493 rent, fair market value, or cost of performing under the lease

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494 agreement must ~~are to~~ be determined with reference to the facts  
495 and circumstances at the time the transaction is entered into.

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

505 ~~(36)(38)~~ "Send," in connection with a any writing, record,  
506 or notice, means:

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

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

517 ~~(37)(39)~~ "Signed" means bearing ~~includes~~ any symbol  
518 executed or adopted by a party with present intention to adopt  
519 or accept ~~authenticate~~ a writing.

520 (38) "State" means a state of the United States, the  
521 District of Columbia, Puerto Rico, the United States Virgin

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522 Islands, or any territory or insular possession subject to the  
523 jurisdiction of the United States.

524 ~~(39)-(40)~~ "Surety" includes a guarantor or other secondary  
525 obligor.

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

529 ~~(40)-(42)~~ "Term" means a that portion of an agreement that  
530 ~~which~~ relates to a particular matter.

531 ~~(41)-(43)~~ "Unauthorized" signature" means a signature ~~one~~  
532 ~~made without actual, implied, or apparent authority. The term~~  
533 ~~and includes a forgery.~~

534 ~~(44)~~ "Value." ~~Except as otherwise provided with respect to~~  
535 ~~negotiable instruments and bank collections (ss. 673.3031,~~  
536 ~~674.2101, and 674.2111), a person gives value for rights if he~~  
537 ~~or she acquires them.~~

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

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

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

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

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548            ~~(42)-(45)~~ "Warehouse receipt" means a ~~written receipt or an~~  
549 ~~electronic notification of receipt~~ issued by a person engaged in  
550 the business of storing goods for hire.

551            ~~(43)-(46)~~ "~~Written~~" or "Writing" includes printing,  
552 typewriting, or any other intentional reduction to tangible  
553 form. "Written" has a corresponding meaning.

554            Section 8. Section 671.202, Florida Statutes, is amended  
555 to read:

556            671.202 Prima facie evidence by third-party documents.--A  
557 document in due form purporting to be a bill of lading, policy  
558 or certificate of insurance, official weigher's or inspector's  
559 certificate, consular invoice, or any other document authorized  
560 or required by the contract to be issued by a third party is  
561 ~~shall be~~ prima facie evidence of its own authenticity and  
562 genuineness and of the facts stated in the document by the third  
563 party.

564            Section 9. Section 671.203, Florida Statutes, is amended  
565 to read:

566            671.203 Obligation of good faith.--Every contract or duty  
567 within this code imposes an obligation of good faith in its  
568 performance and ~~or~~ enforcement.

569            Section 10. Section 671.204, Florida Statutes, is amended  
570 to read:

571            671.204 Actions taken within Time, reasonable time;  
572 "seasonably."--

573            (1) Whether a time for taking an action required by  
574 ~~Whenever this code is~~ requires any action to be taken within a

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575 | reasonable time, any time which is not manifestly unreasonable  
576 | may be fixed by agreement.

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

580 | ~~(2)-(3)~~ An action is taken "seasonably" if ~~when~~ it is taken  
581 | at or within the time agreed or, if no time is agreed, at or  
582 | within a reasonable time.

583 | Section 11. Section 671.205, Florida Statutes, is amended  
584 | to read:

585 | 671.205 Course of performance; course of dealing; and  
586 | usage of trade.--

587 | (1) A "course of performance" is a sequence of conduct  
588 | between the parties to a particular transaction that exists if:

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

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

595 | ~~(2)-(1)~~ A "course of dealing" is a sequence of ~~previous~~  
596 | conduct concerning previous transactions between the parties to  
597 | a particular transaction that ~~which~~ is fairly to be regarded as  
598 | establishing a common basis of understanding for interpreting  
599 | their expressions and other conduct.

600 | ~~(3)-(2)~~ A "usage of trade" is any practice or method of  
601 | dealing having such regularity of observance in a place,  
602 | vocation, or trade as to justify an expectation that it will be

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603 | observed with respect to the transaction in question. The  
 604 | existence and scope of such a usage are to be proved as facts.  
 605 | If it is established that such a usage is embodied in a written  
 606 | trade code or similar record, ~~writing~~ the interpretation of the  
 607 | record ~~writing~~ is a question of law ~~for the court~~.

608 |       ~~(4)-(3)~~ A course of performance or a course of dealing  
 609 | between the parties or ~~and any~~ usage of trade in the vocation or  
 610 | trade in which they are engaged or of which they are or should  
 611 | be aware is relevant in ascertaining the ~~give particular~~ meaning  
 612 | of the parties' to and supplement or qualify terms of an  
 613 | agreement, may give particular meaning to specific terms of the  
 614 | agreement, and may supplement or qualify the terms of the  
 615 | agreement. A usage of trade applicable in the place in which  
 616 | part of the performance under the agreement is to occur may be  
 617 | so utilized as to that part of the performance.

618 |       ~~(5)-(4)~~ Except as otherwise provided in subsection (6), the  
 619 | express terms of an agreement and any an applicable course of  
 620 | performance, course of dealing, or usage of trade must shall be  
 621 | construed whenever wherever reasonable as consistent with each  
 622 | other. If, but when such a construction is unreasonable:

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

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

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

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

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

635           (7)~~(6)~~ Evidence of a relevant usage of trade offered by  
 636 one party is not admissible unless that party ~~and until he or~~  
 637 ~~she~~ has given the other party ~~such~~ notice that ~~as~~ the court  
 638 finds sufficient to prevent unfair surprise to the other party  
 639 ~~latter.~~

640           Section 12. Section 671.206, Florida Statutes, is  
 641 repealed.

642           Section 13. Section 671.208, Florida Statutes, is amended  
 643 to read:

644           671.208 Option to accelerate at will.--A term providing  
 645 that one party or the party's successor in interest may  
 646 accelerate payment or performance or require collateral or  
 647 additional collateral "at will" or "when she or he deems herself  
 648 or himself insecure" or in words of similar import must ~~shall~~ be  
 649 construed to mean that she or he has ~~shall have~~ power to do so  
 650 only if she or he in good faith believes that the prospect of  
 651 payment or performance is impaired. The burden of establishing  
 652 lack of good faith is on the party against whom the power has  
 653 been exercised.

654           Section 14. Section 671.209, Florida Statutes, is created  
 655 to read:

656           671.209 Notice; knowledge.--



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

659 (a) Has actual knowledge of it;

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

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

664 (2) "Knowledge" means actual knowledge. "Knows" has a  
665 corresponding meaning.

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

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

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

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

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

680 (6) Notice, knowledge, or a notice or notification  
681 received by an organization is effective for a particular  
682 transaction from the time it is brought to the attention of the  
683 person conducting that transaction and, in any event, from the  
684 time it would have been brought to the person's attention if the

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685 organization had exercised due diligence. An organization  
 686 exercises due diligence if it maintains reasonable routines for  
 687 communicating significant information to the person conducting  
 688 the transaction and there is reasonable compliance with the  
 689 routines. Due diligence does not require an individual acting  
 690 for the organization to communicate information unless the  
 691 communication is part of the individual's regular duties or the  
 692 individual has reason to know of the transaction and that the  
 693 transaction would be materially affected by the information.

694 Section 15. Section 671.210, Florida Statutes, is created  
 695 to read:

696 671.210 Presumptions.--Whenever this code creates a  
 697 "presumption" with respect to a fact or provides that a fact is  
 698 "presumed," the trier of fact must find the existence of the  
 699 fact presumed unless and until evidence is introduced that  
 700 supports a finding of its nonexistence.

701 Section 16. Section 671.211, Florida Statutes, is created  
 702 to read:

703 671.211 Value.--Except as otherwise provided with respect  
 704 to negotiable instruments and bank collections as provided in  
 705 ss. 673.3031, 674.2101, and 674.2111, a person gives value for  
 706 rights if the person acquires them:

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

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

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

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

717           Section 17. Section 671.212, Florida Statutes, is created  
718 to read:

719           671.212 Relation to Electronic Signatures in Global and  
720 National Commerce Act.--This code modifies, limits, and  
721 supersedes the federal Electronic Signatures in Global and  
722 National Commerce Act, 15 U.S.C. ss. 7001 et seq., except that  
723 nothing in this code modifies, limits, or supersedes s. 7001(c)  
724 of that act or authorizes electronic delivery of any of the  
725 notices described in s. 7003(b) of that act.

726           Section 18. Section 671.213, Florida Statutes, is created  
727 to read:

728           671.213 Subordinated obligations.--An obligation may be  
729 issued as subordinated to performance of another obligation of  
730 the person obligated, or a creditor may subordinate its right to  
731 performance of an obligation by agreement with either the person  
732 obligated or another creditor of the person obligated.

733           Subordination does not create a security interest as against  
734 either the common debtor or a subordinated creditor.

735           Section 19. Subsection (1) of section 671.301, Florida  
736 Statutes, is amended to read:

737           671.301 Effective date; provision for transition;  
738 preservation of old transition provision.--

739           (1) This act shall take effect at 12:01 a.m. on January 1,  
740 2007 ~~1980~~.

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741 Section 20. Subsection (2) of section 679.5011, Florida  
742 Statutes, is amended, and subsection (3) is added to that  
743 section, to read:

744 679.5011 Filing office.--

745 (2) The office in which to file a financing statement to  
746 perfect a security interest in collateral, including fixtures,  
747 of a transmitting utility is ~~the Office of the Secretary of~~  
748 ~~State, or~~ the filing office authorized by s. 679.527 to accept  
749 filings for the Florida Secured Transaction Registry. The  
750 financing statement also constitutes a fixture filing as to the  
751 collateral indicated in the financing statement which is or is  
752 to become fixtures.

753 (3) The Florida Secured Transaction Registry may certify a  
754 copy of a financing statement, or an amendment thereto, which  
755 shall be admissible in a state or federal court or in a  
756 proceeding before any other tribunal.

757 Section 21. Section 679.525, Florida Statutes, is amended  
758 to read:

759 679.525 Processing fees.--

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

764 (a) For filing an initial financing statement, \$15 ~~\$25~~ for  
765 the first page, which shall include the cost of filing a  
766 termination statement for the financing statement;

767 (b) For filing an amendment, \$8 ~~\$12~~ for the first page;

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768 (c) For indexing by additional debtor, secured party, or  
769 assignee, \$2 ~~\$3~~ per additional name indexed;

770 (d) For use of a nonapproved form, \$3 ~~\$5~~;

771 (e) For each additional page attached to a record, \$2 ~~\$3~~;

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

775 (g) For filing an amendment communicated by an electronic  
776 filing process authorized by the filing office, \$3 ~~\$5~~ with no  
777 additional fees for multiple names or attached pages;

778 (h) For a certified copy of a financing statement and any  
779 and all associated amendments, \$15 ~~\$30~~; and

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

781 (2) Except as otherwise provided in subsection (3), the  
782 fee for filing and indexing an initial financing statement of  
783 the kind described in s. 679.5021(3) is the amount specified in  
784 chapter 28.

785 (3) This section does not require a fee with respect to a  
786 mortgage that is effective as a financing statement filed as a  
787 fixture filing or as a financing statement covering as-extracted  
788 collateral or timber to be cut under s. 679.5021(3). However,  
789 the recording and satisfaction fees that otherwise would be  
790 applicable to the mortgage apply.

791 (4) The Florida Secured Transaction Registry shall use the  
792 fees collected to fund its operations.

793 Section 22. Section 679.527, Florida Statutes, is amended  
794 to read:

795 679.527 Florida Secured Transaction Registry.--

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796 (1) As used in this section, the term:  
 797 (a) The "Florida Secured Transaction Registry" or  
 798 "registry" means the centralized database in which all initial  
 799 financing statements, amendments, assignments, and other  
 800 statements of change authorized to be filed under this chapter  
 801 are filed, maintained, and retrieved. The term does not apply to  
 802 documents that are filed under this chapter with the clerk of a  
 803 circuit court.  
 804 (b) "Department" means the Department of State.  
 805 (c) "Materials and records" includes, but is not limited  
 806 to databases, source or object codes, and any software relating  
 807 to the Florida Secured Transaction Registry or other filing  
 808 system for centralized filing under this chapter, regardless of  
 809 the original source of its creation or maintenance.  
 810 (2) ~~Under chapter 287, The department shall have has the~~  
 811 ~~authority to determine, and select, and appoint the central~~  
 812 ~~filing office for the secured transaction registry. There shall~~  
 813 ~~only be one central filing office and filing officer appointed~~  
 814 ~~by the department at any one time. Any current appointment or~~  
 815 ~~renewal of appointment in existence on the effective date of~~  
 816 ~~this act shall continue until the expiration of such appointment~~  
 817 ~~or renewal of appointment the most qualified respondents to the~~  
 818 ~~request for qualifications and to negotiate and enter into one~~  
 819 ~~or more contracts as provided in this section. The contract may~~  
 820 ~~not be assignable or otherwise transferable without the express~~  
 821 ~~written consent of the department, notwithstanding any~~  
 822 ~~limitations imposed by s. 679.4061 or s. 679.4081.~~

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823       ~~(3) The department shall perform the duties, as filing~~  
824       ~~officer and filing office under this chapter, for the Florida~~  
825       ~~Secured Transaction Registry until October 1, 2001, or until the~~  
826       ~~effective date of a contract executed by the department to~~  
827       ~~administer and operate the registry for the performance of these~~  
828       ~~duties, whichever occurs later. At that time, the department~~  
829       ~~shall cease serving as the designated filing officer and filing~~  
830       ~~office for the registry under this chapter, and thereafter,~~  
831       ~~except to the extent the department may reclaim those duties as~~  
832       ~~provided below, the department shall not be responsible for the~~  
833       ~~performance of the duties of the filing office or officer under~~  
834       ~~this chapter, including determining whether documents tendered~~  
835       ~~for filing under this chapter satisfy the requirements of law.~~  
836       ~~The department shall retain authority under this chapter to~~  
837       ~~approve the forms required to be filed under this chapter. If~~  
838       ~~authorized by the contract with the department, the entity~~  
839       ~~performing the duties of the filing office may certify a copy of~~  
840       ~~a financing statement, or an amendment thereto, which shall be~~  
841       ~~admissible in a state or federal court or in a proceeding before~~  
842       ~~any other tribunal.~~

843       ~~(4) Notwithstanding the terms and conditions of any~~  
844       ~~contract to perform the administrative and operational functions~~  
845       ~~of the filing office or filing officer under this part for the~~  
846       ~~Florida Secured Transaction Registry, the department and the~~  
847       ~~state shall retain sole and exclusive ownership of the materials~~  
848       ~~and records of the registry, shall have the right to inspect and~~  
849       ~~make copies of the materials and records of the registry, and~~  
850       ~~shall have the right to immediately reclaim and take possession~~

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851 ~~and control of the original materials and records of the~~  
852 ~~registry if any entity under contract with the department to~~  
853 ~~administer and operate the registry does not, or cannot, perform~~  
854 ~~the terms and conditions of the contract for any reason or~~  
855 ~~commences or is adjudicated a debtor in an insolvency~~  
856 ~~proceeding. If the department reclaims control of the materials~~  
857 ~~and records of the registry, the department shall provide for~~  
858 ~~the uninterrupted fulfillment of the duties of the filing office~~  
859 ~~and filing officer under this chapter by administration and~~  
860 ~~operation by the department until a subsequent contract for such~~  
861 ~~duties can be executed. The department shall be entitled to~~  
862 ~~injunctive relief if the entity fails to turn over the materials~~  
863 ~~and records upon demand, and the Circuit Court for Leon County,~~  
864 ~~Florida, shall have exclusive original jurisdiction to~~  
865 ~~adjudicate any disputes pertaining to this section or any~~  
866 ~~contract entered into under this section.~~

867 (3)(5) When appointing the registry, the department shall  
868 require that the central filing office: The Department of State  
869 shall immediately develop and issue a Request for Qualifications  
870 seeking capable entities to perform both the duties currently  
871 being performed by the department as a filing officer and filing  
872 office under this chapter.

873 (a) ~~The qualifications shall, at a minimum, Provide for~~  
874 ~~the organization and maintenance of the Florida Secured~~  
875 ~~Transaction Registry as the centralized Uniform Commercial Code~~  
876 ~~filing and retrieval system, which:~~

877 ~~1. Is comparable and compatible with the department's~~  
878 ~~existing filing system.~~



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879            (b)2. ~~Be~~ ~~is~~ open to the public and accessible through the  
880 Internet, to permit the review of all existing filings of the  
881 department and all future filings in the registry, ~~in compliance~~  
882 ~~with chapter 119.~~

883            ~~3. Provides for oversight and compliance audits by the~~  
884 ~~department.~~

885            ~~4. Requires records maintenance in compliance with this~~  
886 ~~chapter and chapter 119.~~

887            ~~5. Maintains the current level of filing fees and~~  
888 ~~procedures for the deposit of revenues with the department as~~  
889 ~~specified in chapter 15, net of operating costs, for a period of~~  
890 ~~5 years.~~

891            ~~(b) The Department of State shall develop performance~~  
892 ~~standards to ensure that the Florida Secured Transaction~~  
893 ~~Registry is accurate and complete and that the users thereof are~~  
894 ~~being well served. Periodically, the department shall verify~~  
895 ~~that these performance standards are being met or modified as~~  
896 ~~may be needed from time to time.~~

897            (4) The central filing office shall be a private  
898 nongovernmental entity and shall not be subject to the  
899 provisions of law that apply to government operations.

900            Section 23. Subsection (3) of section 679.705, Florida  
901 Statutes, is amended to read:

902            679.705 Effectiveness of action taken before effective  
903 date.--

904            (3) This act does not render ineffective an effective  
905 financing statement that, before this act takes effect, is filed  
906 and satisfies the applicable requirements for perfection under

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907 | the law of the jurisdiction governing perfection as provided in  
 908 | s. 679.103, Florida Statutes 2000. However, except as otherwise  
 909 | provided in subsections (4) and (5) and s. 679.706, the  
 910 | financing statement ceases to be effective at the earlier of:

911 |       (a) The time the financing statement would have ceased to  
 912 | be effective under the law of the jurisdiction in which it is  
 913 | filed; or

914 |       (b) December 31 ~~June 30~~, 2006.

915 |       Section 24. Sections 15.091, 679.521, and 679.526, Florida  
 916 | Statutes, are repealed.

917 |       Section 25. Subsection (2) and paragraph (b) of subsection  
 918 | (3) of section 319.27, Florida Statutes, are amended to read:

919 |       319.27 Notice of lien on motor vehicles or mobile homes;  
 920 | notation on certificate; recording of lien.--

921 |       (2) No lien for purchase money or as security for a debt  
 922 | in the form of a security agreement, retain title contract,  
 923 | conditional bill of sale, chattel mortgage, or other similar  
 924 | instrument or any other nonpossessory lien, including a lien for  
 925 | child support, upon a motor vehicle or mobile home upon which a  
 926 | Florida certificate of title has been issued shall be  
 927 | enforceable in any of the courts of this state against creditors  
 928 | or subsequent purchasers for a valuable consideration and  
 929 | without notice, unless a sworn notice of such lien has been  
 930 | filed in the department and such lien has been noted upon the  
 931 | certificate of title of the motor vehicle or mobile home. Such  
 932 | notice shall be effective as constructive notice when filed. The  
 933 | interest of a statutory nonpossessory lienor; the interest of a  
 934 | nonpossessory execution, attachment, or equitable lienor; or the

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935 interest of a lien creditor as defined in s.  
 936 679.1021(1) (yy)~~(zz)~~, if nonpossessory, shall not be enforceable  
 937 against creditors or subsequent purchasers for a valuable  
 938 consideration unless such interest becomes a possessory lien or  
 939 is noted upon the certificate of title for the subject motor  
 940 vehicle or mobile home prior to the occurrence of the subsequent  
 941 transaction. Provided the provisions of this subsection relating  
 942 to a nonpossessory statutory lienor; a nonpossessory execution,  
 943 attachment, or equitable lienor; or the interest of a lien  
 944 creditor as defined in s. 679.1021(1) (yy)~~(zz)~~ shall not apply to  
 945 liens validly perfected prior to October 1, 1988. The notice of  
 946 lien shall provide the following information:

947 (a) The date of the lien if a security agreement, retain  
 948 title contract, conditional bill of sale, chattel mortgage, or  
 949 other similar instrument was executed prior to the filing of the  
 950 notice of lien;

951 (b) The name and address of the registered owner;

952 (c) A description of the motor vehicle or mobile home,  
 953 showing the make, type, and vehicle identification number; and

954 (d) The name and address of the lienholder.

955 (3)

956 (b) As applied to a determination of the respective rights  
 957 of a secured party under this chapter and a lien creditor as  
 958 defined by s. 679.1021(1) (yy)~~(zz)~~, or a nonpossessory statutory  
 959 lienor, a security interest under this chapter shall be  
 960 perfected upon the filing of the notice of lien with the  
 961 department, the county tax collector, or their agents. Provided,  
 962 however, the date of perfection of a security interest of such

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963 secured party shall be the same date as the execution of the  
 964 security agreement or other similar instrument if the notice of  
 965 lien is filed in accordance with this subsection within 15 days  
 966 after the debtor receives possession of the motor vehicle or  
 967 mobile home and executes such security agreement or other  
 968 similar instrument. The date of filing of the notice of lien  
 969 shall be the date of its receipt by the department central  
 970 office in Tallahassee, if first filed there, or otherwise by the  
 971 office of the county tax collector, or their agents.

972 Section 26. Paragraph (f) of subsection (2) of section  
 973 559.9232, Florida Statutes, is amended to read:

974 559.9232 Definitions; exclusion of rental-purchase  
 975 agreements from certain regulations.--

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

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

980 Section 27. Paragraph (g) of subsection (2) of section  
 981 563.022, Florida Statutes, is amended to read:

982 563.022 Relations between beer distributors and  
 983 manufacturers.--

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

986 (g) "Good faith" means honesty in fact in the conduct or  
 987 transaction concerned as defined and interpreted under s.  
 988 671.201(20)~~(19)~~.

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

992 668.50 Uniform Electronic Transaction Act.--

993 (3) SCOPE.--

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

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

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

1000 3. The Uniform Computer Information Transactions Act; or

1001 4. Rules relating to judicial procedure.

1002 (16) TRANSFERABLE RECORDS.--

1003 (d) Except as otherwise agreed, a person having control of  
1004 a transferable record is the holder, as defined in s.

1005 671.201(21) ~~(20)~~, of the transferable record and has the same  
1006 rights and defenses as a holder of an equivalent record or

1007 writing under the Uniform Commercial Code, including, if the

1008 applicable statutory requirements under s. 673.3021, s. 677.501,

1009 or s. 679.308 are satisfied, the rights and defenses of a holder

1010 in due course, a holder to which a negotiable document of title

1011 has been duly negotiated, or a purchaser, respectively.

1012 Delivery, possession, and indorsement are not required to obtain

1013 or exercise any of the rights under this paragraph.

1014 Section 29. Subsection (1) of section 670.106, Florida  
1015 Statutes, is amended to read:

1016 670.106 Time payment order is received.--

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1017 (1) The time of receipt of a payment order or  
 1018 communication canceling or amending a payment order is  
 1019 determined by the rules applicable to receipt of a notice stated  
 1020 in s. 671.209 ~~671.201(27)~~. A receiving bank may fix a cut-off  
 1021 time or times on a funds-transfer business day for the receipt  
 1022 and processing of payment orders and communications canceling or  
 1023 amending payment orders. Different cut-off times may apply to  
 1024 payment orders, cancellations, or amendments or to different  
 1025 categories of payment orders, cancellations, or amendments. A  
 1026 cut-off time may apply to senders generally, or different cut-  
 1027 off times may apply to different senders or categories of  
 1028 payment orders. If a payment order or communication canceling or  
 1029 amending a payment order is received after the close of a funds-  
 1030 transfer business day or after the appropriate cut-off time on a  
 1031 funds-transfer business day, the receiving bank may treat the  
 1032 payment order or communication as received at the opening of the  
 1033 next funds-transfer business day.

1034 Section 30. Subsection (2) of section 670.204, Florida  
 1035 Statutes, is amended to read:

1036 670.204 Refund of payment and duty of customer to report  
 1037 with respect to unauthorized payment order.--

1038 (2) Reasonable time under subsection (1) may be fixed by  
 1039 agreement ~~as stated in s. 671.204(1)~~, but the obligation of a  
 1040 receiving bank to refund payment as stated in subsection (1) may  
 1041 not otherwise be varied by agreement.

1042 Section 31. Subsection (3) of section 675.102, Florida  
 1043 Statutes, is amended to read:

1044 675.102 Scope.--

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1045 (3) With the exception of this subsection, subsections (1)  
1046 and (4), ss. 675.103(1)(i) and (j), 675.106(4), and 675.114(4),  
1047 and except to the extent prohibited in ss. 671.102(2)~~(3)~~ and  
1048 675.117(4), the effect of this chapter may be varied by  
1049 agreement or by a provision stated or incorporated by reference  
1050 in an undertaking. A term in an agreement or undertaking  
1051 generally excusing liability or generally limiting remedies for  
1052 failure to perform obligations is not sufficient to vary  
1053 obligations prescribed by this chapter.

1054 Section 32. Paragraphs (mm) through (aaaa) of subsection  
1055 (1) of section 679.1021, Florida Statutes, are redesignated as  
1056 paragraphs (ll) through (zzz), respectively, and present  
1057 paragraph (ll) of that subsection is amended to read:

1058 679.1021 Definitions and index of definitions.--

1059 (1) In this chapter, the term:

1060 ~~(ll) "Filing office rule" means a rule adopted pursuant to~~  
1061 ~~s. 679.526.~~

1062 Section 33. Paragraphs (h), (j), (l), and (m) of  
1063 subsection (3) of section 680.1031, Florida Statutes, are  
1064 amended to read:

1065 680.1031 Definitions and index of definitions.--

1066 (3) The following definitions in other chapters of this  
1067 code apply to this chapter:

1068 (h) "General intangible," s. 679.1021(1) (oo) ~~(pp)~~.

1069 (j) "Instrument," s. 679.1021(1) (tt) ~~(uu)~~.

1070 (l) "Mortgage," s. 679.1021(1) (bbb) ~~(ccc)~~.

1071 (m) "Pursuant to a commitment," s. 679.1021(1) (nnn) ~~(ooo)~~.

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1072 Section 34. Subsection (2) of section 680.518, Florida  
1073 Statutes, is amended to read:

1074 680.518 Cover; substitute goods.--

1075 (2) Except as otherwise provided with respect to damages  
1076 liquidated in the lease agreement (s. 680.504) or otherwise  
1077 determined pursuant to agreement of the parties (ss.  
1078 671.102(2)~~(3)~~ and 680.503), if a lessee's cover is by lease  
1079 agreement substantially similar to the original lease agreement  
1080 and the new lease agreement is made in good faith and in a  
1081 commercially reasonable manner, the lessee may recover from the  
1082 lessor as damages:

1083 (a) The present value, as of the date of the commencement  
1084 of the term of the new lease agreement, of the rent under the  
1085 new lease agreement and applicable to that period of the new  
1086 lease term which is comparable to the then remaining term of the  
1087 original lease agreement minus the present value as of the same  
1088 date of the total rent for the then remaining lease term of the  
1089 original lease agreement; and

1090 (b) Any incidental or consequential damages, less expenses  
1091 saved in consequence of the lessor's default.

1092 Section 35. Subsection (1) of section 680.519, Florida  
1093 Statutes, is amended to read:

1094 680.519 Lessee's damages for nondelivery, repudiation,  
1095 default, or breach of warranty in regard to accepted goods.--

1096 (1) Except as otherwise provided with respect to damages  
1097 liquidated in the lease agreement (s. 680.504) or otherwise  
1098 determined pursuant to agreement of the parties (ss.  
1099 671.102(2)~~(3)~~ and 680.503), if a lessee elects not to cover or a



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1100 lessee elects to cover and the cover is by lease agreement,  
 1101 whether or not the lease agreement qualifies for treatment under  
 1102 s. 680.518(2), or is by purchase or otherwise, the measure of  
 1103 damages for nondelivery or repudiation by the lessor or for  
 1104 rejection or revocation of acceptance by the lessee is the  
 1105 present value, as of the date of the default, of the then market  
 1106 rent minus the present value as of the same date of the original  
 1107 rent, computed for the remaining lease term of the original  
 1108 lease agreement, together with incidental and consequential  
 1109 damages, less expenses saved in consequence of the lessor's  
 1110 default.

1111 Section 36. Subsection (2) of section 680.527, Florida  
 1112 Statutes, is amended to read:

1113 680.527 Lessor's rights to dispose of goods.--

1114 (2) Except as otherwise provided with respect to damages  
 1115 liquidated in the lease agreement (s. 680.504) or otherwise  
 1116 determined pursuant to agreement of the parties (ss.  
 1117 671.102(2)~~(3)~~ and 680.503), if the disposition is by lease  
 1118 agreement substantially similar to the original lease agreement  
 1119 and the new lease agreement is made in good faith and in a  
 1120 commercially reasonable manner, the lessor may recover from the  
 1121 lessee as damages:

1122 (a) Accrued and unpaid rent as of the date of the  
 1123 commencement of the term of the new lease agreement;

1124 (b) The present value, as of the same date, of the  
 1125 commencement of the term of the new lease agreement of the total  
 1126 rent for the then remaining lease term of the original lease  
 1127 agreement minus the present value, as of the same date, of the

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1128 | rent under the new lease agreement applicable to that period of  
1129 | the new lease term which is comparable to the then remaining  
1130 | term of the original lease agreement; and

1131 | (c) Any incidental damages allowed under s. 680.53, less  
1132 | expenses saved in consequence of the lessee's default.

1133 | Section 37. Subsection (1) of section 680.528, Florida  
1134 | Statutes, is amended to read:

1135 | 680.528 Lessor's damages for nonacceptance or  
1136 | repudiation.--

1137 | (1) Except as otherwise provided with respect to damages  
1138 | liquidated in the lease agreement (s. 680.504) or otherwise  
1139 | determined pursuant to agreement of the parties (ss.  
1140 | 671.102(2)~~(3)~~ and 580.503), if a lessor elects to retain the  
1141 | goods or a lessor elects to dispose of the goods and the  
1142 | disposition is by lease agreement that for any reason does not  
1143 | qualify for treatment under s. 680.527(2), or is by sale or  
1144 | otherwise, the lessor may recover from the lessee as damages a  
1145 | default of the type described in s. 680.523(1) or (3)(a), or if  
1146 | agreed, for other default of the lessee:

1147 | (a) Accrued and unpaid rent as of the date of default if  
1148 | the lessee has never taken possession of the goods, or, if the  
1149 | lessee has taken possession of the goods, as of the date the  
1150 | lessor repossesses the goods or an earlier date on which the  
1151 | lessee makes a tender of the goods to the lessor.

1152 | (b) The present value as of the date determined under  
1153 | paragraph (a) of the total rent for the then remaining lease  
1154 | term of the original lease agreement minus the present value as

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1155 | of the same date of the market rent at the place where the goods  
1156 | were located on that date computed for the same lease term.

1157 | (c) Any incidental damages allowed under s. 680.53, less  
1158 | expenses saved in consequence of the lessee's default.

1159 | Section 38. Subsection (6) of section 713.901, Florida  
1160 | Statutes, is amended to read:

1161 | 713.901 Florida Uniform Federal Lien Registration Act.--

1162 | (6) FEES.--The charges or fees of the Secretary of State,  
1163 | with respect to a notice or certificate filed under this  
1164 | section, or for searching records with respect thereto, are:

1165 | (a) For filing any financing statement, \$25 for the first  
1166 | page, which fee shall include the cost of filing a termination  
1167 | statement for the financing statement.

1168 | (b) For filing a continuation, release, amendment,  
1169 | assignment, or any other writing permitted by chapter 679, \$12  
1170 | for the first page.

1171 | (c) For indexing by multiple debtors or secured parties,  
1172 | \$3 for each additional debtor or secured party.

1173 | (d) For each additional facing page attached to a  
1174 | financing statement, continuation, release, amendment,  
1175 | assignment, or any other writing, \$3.

1176 | (e) For certifying any record, \$10 for the first 10 file  
1177 | numbers certified and \$10 for each subsequent group of 10 file  
1178 | numbers.

1179 | (f) For use, pursuant to s. 679.525(1)(d), of a  
1180 | nonapproved form, \$3 shall be the same as prescribed in s.  
1181 | 15.091.

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1183 | The charges or fees of the clerks of the circuit court with  
1184 | respect to a notice or certificate filed under this section  
1185 | shall be the same as prescribed in s. 28.24, relating to  
1186 | instruments recorded in the official records.

1187 |       Section 39. This act shall take effect January 1, 2007.