

Bill No. SB 2716

Barcode 975928

CHAMBER ACTION

Senate

House

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The Committee on Commerce and Consumer Services (Aronberg)  
recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Subsection (3) of section 15.16, Florida  
Statutes, is amended to read:

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

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

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1 to the department as required by law.

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

4 285.20 Tribal Secured Transactions Filing Offices.--

5 (1) If the governing body of the Seminole Tribe of  
6 Florida or the governing body of the Miccosukee Tribe of  
7 Indians adopts or enacts a law or ordinance governing secured  
8 transactions arising within or relating to the reservation of  
9 such tribe in this state, and if such tribal law or ordinance  
10 authorizes financing statements and other records relating to  
11 secured transactions to be filed:

12 (a) With the ~~Department of State or such other~~ central  
13 filing office ~~as may be established from time to time under~~  
14 ~~the Uniform Commercial Code of this state, then the Department~~  
15 ~~of State or other central filing office, including any private~~  
16 ~~secured transaction registry that may be designated as such in~~  
17 ~~this state,~~ shall accept and process such filings made under  
18 the tribal secured transactions law in accordance with this  
19 section and the provisions of chapter 679; or

20 (b) With the office of the clerk of circuit court in  
21 any county of this state in which the tribal secured  
22 transactions law requires a local filing, then such county  
23 filing office shall accept and process such filings made under  
24 such tribal law in accordance with this section and the  
25 provisions of chapter 28.

26 Section 3. Section 671.101, Florida Statutes, is  
27 amended to read:

28 671.101 Short title; scope of chapter.--

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

31 (2) This chapter applies to a transaction to the

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1 extent that it is governed by another chapter of this code and  
2 may be cited as the "Uniform Commercial Code--General  
3 Provisions."

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

6 671.102 Purposes; rules of construction; variation by  
7 agreement.--

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

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

11 (a) To simplify, clarify, and modernize the law  
12 governing commercial transactions.†

13 (b) To permit the continued expansion of commercial  
14 practices through custom, usage, and agreement of the  
15 parties.†

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

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

22 (b) The obligations of good faith, diligence,  
23 reasonableness, and care prescribed by this code may not be  
24 disclaimed by agreement, but the parties may by agreement  
25 determine the standards by which the performance of such  
26 obligations is to be measured if such standards are not  
27 manifestly unreasonable. Whenever this code requires an action  
28 to be taken within a reasonable time, a time that is not  
29 manifestly unreasonable may be fixed by agreement.

30 (c)(4) The presence in certain provisions of this code  
31 of the words "unless otherwise agreed" or words of similar

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1 import does not imply that the effect of other provisions may  
2 not be varied by agreement under this subsection ~~(3)~~.

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

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

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

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

12 671.106 Remedies to be liberally administered.--

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

19 Section 6. Section 671.107, Florida Statutes, is  
20 amended to read:

21 671.107 Waiver or renunciation of claim or right after  
22 breach.--A Any claim or right arising out of an alleged breach  
23 can be discharged in whole or in part without consideration by  
24 agreement of ~~a written waiver or renunciation signed and~~  
25 ~~delivered by~~ the aggrieved party in an authenticated record.

26 Section 7. Section 671.201, Florida Statutes, is  
27 amended to read:

28 671.201 General definitions.--Unless the context  
29 otherwise requires, words or phrases defined in this section,  
30 or in the additional definitions contained in other chapters  
31 of this code which apply to particular chapters or parts

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1 thereof, have the meanings stated. Subject to ~~additional~~  
 2 definitions contained in other ~~the subsequent~~ chapters of this  
 3 code which apply ~~which are applicable to particular specific~~  
 4 chapters or parts thereof, ~~and unless the context otherwise~~  
 5 ~~requires, in this code:~~

6 (1) "Action<sub>L</sub>" in the sense of a judicial proceeding<sub>L</sub>  
 7 includes recoupment, counterclaim, setoff, suit in equity<sub>L</sub> and  
 8 any other proceedings in which rights are determined.

9 (2) "Aggrieved party" means a party entitled to pursue  
 10 ~~resort to~~ a remedy.

11 (3) "Agreement<sub>L</sub>" as distinguished from "contract,"  
 12 means the bargain of the parties in fact<sub>L</sub> as found in their  
 13 language or inferred ~~by implication~~ from other circumstances<sub>L</sub>  
 14 including course of dealing<sub>L</sub> or usage of trade<sub>L</sub> or course of  
 15 performance as provided in ~~this code~~ (ss. 671.205 and  
 16 672.208). ~~Whether an agreement has legal consequences is~~  
 17 ~~determined by the provisions of this code, if applicable;~~  
 18 ~~otherwise by the law of contracts (s. 671.103). (Compare~~  
 19 ~~"contract.")~~

20 (4) "Bank" means a ~~any~~ person engaged in the business  
 21 of banking and includes a savings bank, a savings and loan  
 22 association, a credit union, and a trust company.

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

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

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1 ~~waybill.~~

2 (7) "Branch" includes a separately incorporated  
3 foreign branch of a bank.

4 (8) "Burden of establishing" a fact means the burden  
5 of persuading the triers of fact that the existence of the  
6 fact is more probable than its nonexistence.

7 (9) "Buyer in ordinary course of business" means a  
8 person who, in ordinary course, buys goods in good faith,  
9 without knowledge that the sale violates the rights of another  
10 person in the goods, ~~and in the ordinary course~~ from a person,  
11 other than a pawnbroker, in the business of selling goods of  
12 that kind. A person buys goods in ~~the~~ ordinary course if the  
13 sale to the person comports with the usual or customary  
14 practices in the kind of business in which the seller is  
15 engaged or with the seller's own usual or customary practices.  
16 A person who sells oil, gas, or other minerals at the wellhead  
17 or minehead is a person in the business of selling goods of  
18 that kind. A buyer in ~~the~~ ordinary course of business may buy  
19 for cash, by exchange of other property, or on secured or  
20 unsecured credit and may acquire goods or documents of title  
21 under a preexisting contract for sale. Only a buyer who takes  
22 possession of the goods or has a right to recover the goods  
23 from the seller under chapter 672 may be a buyer in ~~the~~  
24 ordinary course of business. "Buyer in ordinary course of  
25 business" does not include a person who acquires goods in a  
26 transfer in bulk or as security for or in total or partial  
27 satisfaction of a money debt ~~is not a buyer in the ordinary~~  
28 ~~course of business.~~

29 (10) ~~A term or clause is~~ "Conspicuous," with reference  
30 to a term, means ~~when it is~~ so written, displayed, or  
31 presented that a reasonable person against whom it is to

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1 operate ought to have noticed it. Whether a term is  
2 "conspicuous" is a decision for the court. Conspicuous terms  
3 include the following:

4       (a) A printed heading in capitals in a size equal to  
5 or larger than that of the surrounding text or in a ~~(as:~~  
6 ~~NONNEGOTIABLE BILL OF LADING)~~ is conspicuous. Language in the  
7 body of a form is conspicuous if it is in larger or other  
8 contrasting type, font, or color in contrast to the  
9 surrounding text of the same or lesser size.

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

18       (11) "Consumer" means an individual who enters into a  
19 transaction primarily for personal, family, or household  
20 purposes.

21       (12)(11) "Contract," as distinguished from  
22 "agreement," means the total legal obligation that which  
23 results from the parties' agreement as determined affected by  
24 this code and as supplemented by any other applicable laws  
25 rules of law. (Compare "agreement.")

26       (13)(12) "Creditor" includes a general creditor, a  
27 secured creditor, a lien creditor, and any representative of  
28 creditors, including an assignee for the benefit of creditors,  
29 a trustee in bankruptcy, a receiver in equity, and an executor  
30 or administrator of an insolvent debtor's or assignor's  
31 estate.

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1           ~~(14)(13)~~ "Defendant" includes a person in the position  
 2 of defendant in a ~~cross-action or~~ counterclaim, cross-claim,  
 3 or third-party claim.

4           ~~(15)(14)~~ "Delivery," with respect to an instrument  
 5 ~~instruments, document documents~~ of title, or chattel paper, ~~or~~  
 6 ~~certificated securities~~ means voluntary transfer of  
 7 possession.

8           ~~(16)(15)~~ "Document of title" includes bill of lading,  
 9 dock warrant, dock receipt, warehouse receipt or order for the  
 10 delivery of goods, and ~~also~~ any other document that ~~which~~ in  
 11 the regular course of business or financing is treated as  
 12 adequately evidencing that the person in possession of it is  
 13 entitled to receive, hold, and dispose of the document and the  
 14 goods it covers. To be a document of title, a document must  
 15 purport to be issued by or addressed to a bailee and purport  
 16 to cover goods in the bailee's possession which are either  
 17 identified or are fungible portions of an identified mass.

18           ~~(17)(16)~~ "Fault" means a default, breach, or wrongful  
 19 act or, omission ~~or breach.~~

20           ~~(18)(17)~~ "Fungible goods" ~~with respect to goods or~~  
 21 ~~securities~~ means:

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

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

29           ~~(19)(18)~~ "Genuine" means free of forgery or  
 30 counterfeiting.

31           ~~(20)(19)~~ "Good faith," except as otherwise provided in

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1 this code, means honesty in fact and ~~in~~ the observance of  
2 reasonable commercial standards of fair dealing ~~conduct or~~  
3 ~~transaction concerned.~~

4 ~~(21)(20)~~ "Holder," ~~with respect to a negotiable~~  
5 ~~instrument,~~ means:

6 (a) The person in possession of a negotiable ~~if the~~  
7 instrument that is payable either to bearer or, ~~in the case of~~  
8 ~~an instrument payable~~ to an identified person that is, if the  
9 identified person is in possession; or. ~~"Holder," with respect~~  
10 ~~to a document of title, means~~

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

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

17 (22) "Insolvency proceeding ~~proceedings~~" includes an  
18 ~~any~~ assignment for the benefit of creditors or other  
19 proceeding ~~proceedings~~ intended to liquidate or rehabilitate  
20 the estate of the person involved.

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

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

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

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

29 (24) "Money" means a medium of exchange currently  
30 authorized or adopted by a domestic or foreign government. The  
31 term ~~and~~ includes a monetary unit of account established by an

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1 | intergovernmental organization or by agreement between two or  
2 | more countries nations.

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

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

5 |       ~~(b) He or she has received a notice or notification of~~  
6 | ~~it; or~~

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

10 |

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

17 |       ~~(26) A person "notifies" or "gives" a notice or~~

18 | ~~notification to another by taking such steps as may be~~  
19 | ~~reasonably required to inform the other in ordinary course~~  
20 | ~~whether or not such other actually comes to know of it. A~~

21 | ~~person "receives" a notice or notification when~~

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

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

27 |       ~~(27) Notice, knowledge or a notice or notification~~

28 | ~~received by an organization is effective for a particular~~  
29 | ~~transaction from the time when it is brought to the attention~~  
30 | ~~of the individual conducting that transaction, and in any~~

31 | ~~event from the time when it would have been brought to his or~~

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1 ~~her attention if the organization had exercised due diligence.~~  
2 ~~An organization exercises due diligence if it maintains~~  
3 ~~reasonable routines for communicating significant information~~  
4 ~~to the person conducting the transaction and there is~~  
5 ~~reasonable compliance with the routines. Due diligence does~~  
6 ~~not require an individual acting for the organization to~~  
7 ~~communicate information unless such communication is part of~~  
8 ~~his or her regular duties or unless the individual has reason~~  
9 ~~to know of the transaction and that the transaction would be~~  
10 ~~materially affected by the information.~~

11 ~~(25)(28)~~ "Organization" means a person other than an  
12 individual ~~includes a corporation, government or governmental~~  
13 ~~subdivision or agency, business trust, estate, trust,~~  
14 ~~partnership or association, two or more persons having a joint~~  
15 ~~or common interest, or any other legal or commercial entity.~~

16 ~~(26)(29)~~ "Party," as distinguished ~~distinct~~ from  
17 "third party," means a person who has engaged in a transaction  
18 or made an agreement subject to ~~within~~ this code.

19 ~~(27)(30)~~ "Person" means ~~includes~~ an individual,  
20 corporation, business trust, estate, trust, partnership,  
21 limited liability company, association, joint venture,  
22 government, governmental subdivision, agency, instrumentality,  
23 public corporation, or any other legal or commercial entity ~~or~~  
24 ~~an organization (see s. 671.102).~~

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

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1 circumstances at the time the transaction is entered into.

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

6 ~~(29)(32)~~ "Purchase" means ~~includes~~ taking by sale,  
7 lease, discount, negotiation, mortgage, pledge, lien, security  
8 interest, issue or reissue, gift, or any other voluntary  
9 transaction creating an interest in property.

10 ~~(30)(33)~~ "Purchaser" means a person who takes by  
11 purchase.

12 ~~(31)~~ "Record" means information that is inscribed on a  
13 tangible medium or that is stored in an electronic or other  
14 medium and is retrievable in perceivable form.

15 ~~(32)(34)~~ "Remedy" means any remedial right to which an  
16 aggrieved party is entitled with or without resort to a  
17 tribunal.

18 ~~(33)(35)~~ "Representative" means a person empowered to  
19 act for another, including ~~includes~~ an agent, an officer of a  
20 corporation or association, and a trustee, executor, or  
21 administrator of an estate, ~~or any other person empowered to~~  
22 ~~act for another.~~

23 ~~(34)(36)~~ "Right Rights" includes remedy ~~remedies~~.

24 ~~(35)(37)~~ "Security interest" means an interest in  
25 personal property or fixtures which secures payment or  
26 performance of an obligation. "Security interest" ~~The term~~  
27 ~~also~~ includes any interest of a consignor and a buyer of  
28 accounts, chattel paper, a payment intangible, or a promissory  
29 note in a transaction that ~~which~~ is subject to chapter 679.

30 "Security interest" does not include the special property

31 interest of a buyer of goods on identification of those goods

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1 to a contract for sale under s. 672.401 ~~is not a security~~  
 2 ~~interest~~, but a buyer may also acquire a security interest by  
 3 complying with chapter 679. Except as otherwise provided in s.  
 4 672.505, the right of a seller or lessor of goods under  
 5 chapter 672 or chapter 680 to retain or acquire possession of  
 6 the goods is not a security interest, but a seller or lessor  
 7 may also acquire a security interest by complying with chapter  
 8 679. The retention or reservation of title by a seller of  
 9 goods, notwithstanding shipment or delivery to the buyer under  
 10 ~~(s. 672.401)~~, is limited in effect to a reservation of a  
 11 security interest. Whether a transaction in the form of a  
 12 lease creates a ~~lease or~~ security interest is determined by  
 13 the facts of each case; however:

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

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

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

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

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

31 (b) A transaction does not create a security interest

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1 merely because ~~it provides that:~~

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

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

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

14           ~~4.3.~~ The lessee has an option to renew the lease or to  
15 become the owner of the goods;

16           ~~5.4.~~ The lessee has an option to renew the lease for a  
17 fixed rent that is equal to or greater than the reasonably  
18 predictable fair market rent for the use of the goods for the  
19 term of the renewal at the time the option is to be performed;  
20 or

21           ~~6.5.~~ The lessee has an option to become the owner of  
22 the goods for a fixed price that is equal to or greater than  
23 the reasonably predictable fair market value of the goods at  
24 the time the option is to be performed.

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

26           ~~1.~~ Additional consideration is ~~not~~ nominal if it is  
27 less than the lessee's reasonably predictable cost of  
28 performing under the lease agreement if the option is not  
29 exercised. Additional consideration is not nominal if:

30           1. When the option to renew the lease is granted to  
31 the lessee, the rent is stated to be the fair market rent for

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1 the use of the goods for the term of the renewal determined at  
2 the time the option is to be performed; ~~or if,~~

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

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

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

25 ~~(36)(38)~~ "Send," in connection with a any writing,  
26 record, or notice, means:

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

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1 reasonable under the circumstances; or-

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

6 ~~(37)(39)~~ "Signed" means bearing ~~includes~~ any symbol  
 7 executed or adopted by a party with present intention to adopt  
 8 or accept ~~authenticate~~ a writing.

9 (38) "State" means a state of the United States, the  
 10 District of Columbia, Puerto Rico, the United States Virgin  
 11 Islands, or any territory or insular possession subject to the  
 12 jurisdiction of the United States.

13 ~~(39)(40)~~ "Surety" includes a guarantor or other  
 14 secondary obligor.

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

18 ~~(40)(42)~~ "Term" means a ~~that~~ portion of an agreement  
 19 that ~~which~~ relates to a particular matter.

20 ~~(41)(43)~~ "Unauthorized" signature" means a signature  
 21 ~~one~~ made without actual, implied, or apparent authority. The  
 22 term ~~and~~ includes a forgery.

23 ~~(44)~~ ~~"Value." Except as otherwise provided with~~  
 24 ~~respect to negotiable instruments and bank collections (ss.~~  
 25 ~~673.3031, 674.2101, and 674.2111), a person gives value for~~  
 26 ~~rights if he or she acquires them:~~

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

31 ~~(b) As security for or in total or partial~~

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1 ~~satisfaction of a preexisting claim;~~

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

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

6       ~~(42)(45)~~ "Warehouse receipt" means a ~~written~~ receipt  
7 ~~or an electronic notification of receipt~~ issued by a person  
8 engaged in the business of storing goods for hire.

9       ~~(43)(46)~~ "Written" or "Writing" includes printing,  
10 typewriting, or any other intentional reduction to tangible  
11 form. "Written" has a corresponding meaning.

12       Section 8. Section 671.202, Florida Statutes, is  
13 amended to read:

14       671.202 Prima facie evidence by third-party  
15 documents.--A document in due form purporting to be a bill of  
16 lading, policy or certificate of insurance, official weigher's  
17 or inspector's certificate, consular invoice, or any other  
18 document authorized or required by the contract to be issued  
19 by a third party is ~~shall be~~ prima facie evidence of its own  
20 authenticity and genuineness and of the facts stated in the  
21 document by the third party.

22       Section 9. Section 671.203, Florida Statutes, is  
23 amended to read:

24       671.203 Obligation of good faith.--Every contract or  
25 duty within this code imposes an obligation of good faith in  
26 its performance and ~~or~~ enforcement.

27       Section 10. Section 671.204, Florida Statutes, is  
28 amended to read:

29       671.204 Actions taken within ~~Time;~~ reasonable time;  
30 ~~"seasonably."~~

31       (1) Whether a time for taking an action required by

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1 ~~Whenever this code is~~ requires any action to be taken within a  
2 reasonable time, any time which is not manifestly unreasonable  
3 may be fixed by agreement.

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

7 (2)(3) An action is taken "seasonably" if ~~when~~ it is  
8 taken at or within the time agreed or, if no time is agreed,  
9 at or within a reasonable time.

10 Section 11. Section 671.205, Florida Statutes, is  
11 amended to read:

12 671.205 Course of performance; course of dealing; ~~and~~  
13 usage of trade.--

14 (1) A "course of performance" is a sequence of conduct  
15 between the parties to a particular transaction that exists  
16 if:

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

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

23 (2)(1) A "course of dealing" is a sequence of ~~previous~~  
24 conduct concerning previous transactions between the parties  
25 to a particular transaction which is fairly to be regarded as  
26 establishing a common basis of understanding for interpreting  
27 their expressions and other conduct.

28 (3)(2) A "usage of trade" is any practice or method of  
29 dealing having such regularity of observance in a place,  
30 vocation, or trade as to justify an expectation that it will  
31 be observed with respect to the transaction in question. The

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1 existence and scope of such a usage are to be proved as facts.  
 2 If it is established that such a usage is embodied in a  
 3 written trade code or similar record, ~~writing~~ the  
 4 interpretation of the record ~~writing~~ is a question of law ~~for~~  
 5 ~~the court.~~

6 ~~(4)(3)~~ A course of performance or a course of dealing  
 7 between the parties or ~~and any~~ usage of trade in the vocation  
 8 or trade in which they are engaged or of which they are or  
 9 should be aware is relevant in ascertaining the ~~give~~  
 10 ~~particular meaning of the parties'~~ ~~to and supplement or~~  
 11 ~~qualify terms of an agreement, may give particular meaning to~~  
 12 specific terms of the agreement, and may supplement or qualify  
 13 the terms of the agreement. A usage of trade applicable in the  
 14 place in which part of the performance under the agreement is  
 15 to occur may be so utilized as to that part of the  
 16 performance.

17 ~~(5)(4)~~ Except as otherwise provided in subsection (6),  
 18 the express terms of an agreement and any ~~an~~ applicable course  
 19 of performance, course of dealing, or usage of trade must  
 20 ~~shall~~ be construed whenever ~~wherever~~ reasonable as consistent  
 21 with each other. ~~If;~~ ~~but when~~ such a construction is  
 22 unreasonable:

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

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

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

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

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

4           (7)(6) Evidence of a relevant usage of trade offered  
5 by one party is not admissible unless that party ~~and until he~~  
6 ~~or she~~ has given the other party ~~such~~ notice that ~~as~~ the court  
7 finds sufficient to prevent unfair surprise to the other party  
8 ~~latter~~.

9           Section 12. Section 671.206, Florida Statutes, is  
10 repealed.

11           Section 13. Section 671.208, Florida Statutes, is  
12 amended to read:

13           671.208 Option to accelerate at will.--A term  
14 providing that one party or the party's successor in interest  
15 may accelerate payment or performance or require collateral or  
16 additional collateral "at will" or "when she or he deems  
17 herself or himself insecure" or in words of similar import  
18 must ~~shall~~ be construed to mean that she or he has ~~shall have~~  
19 power to do so only if she or he in good faith believes that  
20 the prospect of payment or performance is impaired. The burden  
21 of establishing lack of good faith is on the party against  
22 whom the power has been exercised.

23           Section 14. Section 671.209, Florida Statutes, is  
24 created to read:

25           671.209 Notice; knowledge.--

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

28           (a) Has actual knowledge of it;

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

30           (c) From all the facts and circumstances known to the  
31 person at the time in question, has reason to know that it

1 exists.

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

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

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

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

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

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

18       (6) Notice, knowledge, or a notice or notification  
19 received by an organization is effective for a particular  
20 transaction from the time it is brought to the attention of  
21 the person conducting that transaction and, in any event, from  
22 the time it would have been brought to the person's attention  
23 if the organization had exercised due diligence. An  
24 organization exercises due diligence if it maintains  
25 reasonable routines for communicating significant information  
26 to the person conducting the transaction and there is  
27 reasonable compliance with the routines. Due diligence does  
28 not require an individual acting for the organization to  
29 communicate information unless the communication is part of  
30 the individual's regular duties or the individual has reason  
31 to know of the transaction and that the transaction would be

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1 materially affected by the information.

2 Section 15. Section 671.210, Florida Statutes, is  
3 created to read:

4 671.210 Presumptions.--Whenever this code creates a  
5 "presumption" with respect to a fact or provides that a fact  
6 is "presumed," the trier of fact must find the existence of  
7 the fact presumed unless and until evidence is introduced that  
8 supports a finding of its nonexistence.

9 Section 16. Section 671.211, Florida Statutes, is  
10 created to read:

11 671.211 Value.--Except as otherwise provided with  
12 respect to negotiable instruments and bank collections as  
13 provided in ss. 673.3031, 674.2101, and 674.2111, a person  
14 gives value for rights if the person acquires them:

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

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

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

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

25 Section 17. Section 671.212, Florida Statutes, is  
26 created to read:

27 671.212 Relation to Electronic Signatures in Global  
28 and National Commerce Act.--This code modifies, limits, and  
29 supersedes the federal Electronic Signatures in Global and  
30 National Commerce Act, 15 U.S.C. ss. 7001 et seq., except that  
31 nothing in this code modifies, limits, or supersedes s.

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1 7001(c) of that act or authorizes electronic delivery of any  
2 of the notices described in s. 7003(b) of that act.

3 Section 18. Section 671.213, Florida Statutes, is  
4 created to read:

5 671.213 Subordinated obligations.--An obligation may  
6 be issued as subordinated to performance of another obligation  
7 of the person obligated, or a creditor may subordinate its  
8 right to performance of an obligation by agreement with either  
9 the person obligated or another creditor of the person  
10 obligated. Subordination does not create a security interest  
11 as against either the common debtor or a subordinated  
12 creditor.

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

15 671.301 Effective date; provision for transition;  
16 preservation of old transition provision.--

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

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

22 679.5011 Filing office.--

23 (2) The office in which to file a financing statement  
24 to perfect a security interest in collateral, including  
25 fixtures, of a transmitting utility is ~~the Office of the~~  
26 ~~Secretary of State, or~~ the filing office authorized by s.  
27 679.527 to accept filings for the Florida Secured Transaction  
28 Registry. The financing statement also constitutes a fixture  
29 filing as to the collateral indicated in the financing  
30 statement which is or is to become fixtures.

31 (3) The Florida Secured Transaction Registry may

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1 certify a copy of a financing statement, or an amendment  
2 thereto, which shall be admissible in a state or federal court  
3 or in a proceeding before any other tribunal.

4 Section 21. Section 679.525, Florida Statutes, is  
5 amended to read:

6 679.525 Processing fees.--

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

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

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

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

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

19 (e) For each additional page attached to a record, ~~\$2~~  
20 \$3;

21 (f) For filing a financing statement communicated by  
22 an electronic filing process authorized by the filing office,  
23 \$15 with no additional fees for multiple names or attached  
24 pages;

25 (g) For filing an amendment communicated by an  
26 electronic filing process authorized by the filing office, ~~\$3~~  
27 \$5 with no additional fees for multiple names or attached  
28 pages;

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

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

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

5           (3) This section does not require a fee with respect  
 6 to a mortgage that is effective as a financing statement filed  
 7 as a fixture filing or as a financing statement covering  
 8 as-extracted collateral or timber to be cut under s.  
 9 679.5021(3). However, the recording and satisfaction fees that  
 10 otherwise would be applicable to the mortgage apply.

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

13           Section 22. Section 679.527, Florida Statutes, is  
 14 amended to read:

15           679.527 Florida Secured Transaction Registry.--

16           (1) As used in this section, the term:

17           (a) The "Florida Secured Transaction Registry" or  
 18 "registry" means the centralized database in which all initial  
 19 financing statements, amendments, assignments, and other  
 20 statements of change authorized to be filed under this chapter  
 21 are filed, maintained, and retrieved. The term does not apply  
 22 to documents that are filed under this chapter with the clerk  
 23 of a circuit court.

24           (b) "Department" means the Department of State.

25           (c) "Materials and records" includes, but is not  
 26 limited to databases, source or object codes, and any software  
 27 relating to the Florida Secured Transaction Registry or other  
 28 filing system for centralized filing under this chapter,  
 29 regardless of the original source of its creation or  
 30 maintenance.

31           (2) ~~Under chapter 287,~~ The department has the

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1 authority to determine, ~~and~~ select, and appoint the central  
2 filing office for the secured transaction registry. There  
3 shall be only one central filing office and filing officer  
4 appointed by the department at any one time. Any current  
5 appointment or renewal of appointment in existence on the  
6 effective date of this act shall continue until the expiration  
7 of such appointment or renewal of appointment the most  
8 ~~qualified respondents to the request for qualifications and to~~  
9 ~~negotiate and enter into one or more contracts as provided in~~  
10 ~~this section. The contract may not be assignable or otherwise~~  
11 ~~transferable without the express written consent of the~~  
12 ~~department, notwithstanding any limitations imposed by s.~~  
13 ~~679.4061 or s. 679.4081.~~

14 (3) The central filing office may not modify the forms  
15 for the initial financing statement or the amended financing  
16 statement in effect on the January 1, 2007, without the  
17 approval of the department. The department shall perform the  
18 ~~duties, as filing officer and filing office under this~~  
19 ~~chapter, for the Florida Secured Transaction Registry until~~  
20 ~~October 1, 2001, or until the effective date of a contract~~  
21 ~~executed by the department to administer and operate the~~  
22 ~~registry for the performance of these duties, whichever occurs~~  
23 ~~later. At that time, the department shall cease serving as the~~  
24 ~~designated filing officer and filing office for the registry~~  
25 ~~under this chapter, and thereafter, except to the extent the~~  
26 ~~department may reclaim those duties as provided below, the~~  
27 ~~department shall not be responsible for the performance of the~~  
28 ~~duties of the filing office or officer under this chapter,~~  
29 ~~including determining whether documents tendered for filing~~  
30 ~~under this chapter satisfy the requirements of law. The~~  
31 ~~department shall retain authority under this chapter to~~

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1 ~~approve the forms required to be filed under this chapter. If~~  
 2 ~~authorized by the contract with the department, the entity~~  
 3 ~~performing the duties of the filing office may certify a copy~~  
 4 ~~of a financing statement, or an amendment thereto, which shall~~  
 5 ~~be admissible in a state or federal court or in a proceeding~~  
 6 ~~before any other tribunal.~~

7           (4) Notwithstanding the terms and conditions of any  
 8 contract to perform the administrative and operational  
 9 functions of the filing office or filing officer under this  
 10 part for the Florida Secured Transaction Registry, the  
 11 department and the state shall retain sole and exclusive  
 12 ownership of the materials and records of the registry, shall  
 13 have the right to inspect and make copies of the materials and  
 14 records of the registry, and shall have the right to  
 15 immediately reclaim and take possession and control of the  
 16 original materials and records of the registry if the central  
 17 filing office ~~any entity under contract with the department to~~  
 18 ~~administer and operate the registry does not, or cannot,~~  
 19 perform the terms and conditions of the contract for any  
 20 reason or commences or is adjudicated a debtor in an  
 21 insolvency proceeding. If the central filing office does not  
 22 perform the terms and conditions of the contract, the  
 23 department may immediately select a successor central filing  
 24 office and central filing officer who may immediately take  
 25 possession and, thereafter, control of the original materials  
 26 and records of the registry and fulfill the duties of the  
 27 central filing office under this chapter. ~~If the department~~  
 28 ~~reclaims control of the materials and records of the registry,~~  
 29 ~~the department shall provide for the uninterrupted fulfillment~~  
 30 ~~of the duties of the filing office and filing officer under~~  
 31 ~~this chapter by administration and operation by the department~~

1 ~~until a subsequent contract for such duties can be executed.~~

2 The department is ~~shall be~~ entitled to injunctive relief if  
3 the entity fails to turn over the materials and records upon  
4 demand, and the Circuit Court for Leon County, Florida, shall  
5 have exclusive original jurisdiction to adjudicate any  
6 disputes pertaining to this section or any contract entered  
7 into under this section.

8 (5) When appointing the registry, the department shall  
9 require that the central filing office: ~~The Department of~~  
10 ~~State shall immediately develop and issue a Request for~~  
11 ~~Qualifications seeking capable entities to perform both the~~  
12 ~~duties currently being performed by the department as a filing~~  
13 ~~officer and filing office under this chapter.~~

14 (a) ~~The qualifications shall, at a minimum, Provide~~  
15 ~~for the organization and maintenance of the Florida Secured~~  
16 ~~Transaction Registry as the centralized Uniform Commercial~~  
17 ~~Code filing and retrieval system, which:~~

18 1. ~~Is comparable and compatible with the department's~~  
19 ~~existing filing system.~~

20 (b) ~~2. Be~~ is open to the public and accessible through  
21 the Internet, to permit the review of all existing filings of  
22 the department and all future filings in the registry, ~~in~~  
23 ~~compliance with chapter 119.~~

24 3. ~~Provides for oversight and compliance audits by the~~  
25 ~~department.~~

26 4. ~~Requires records maintenance in compliance with~~  
27 ~~this chapter and chapter 119.~~

28 5. ~~Maintains the current level of filing fees and~~  
29 ~~procedures for the deposit of revenues with the department as~~  
30 ~~specified in chapter 15, net of operating costs, for a period~~  
31 ~~of 5 years.~~

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1           ~~(b) The Department of State shall develop performance~~  
 2 ~~standards to ensure that the Florida Secured Transaction~~  
 3 ~~Registry is accurate and complete and that the users thereof~~  
 4 ~~are being well served. Periodically, the department shall~~  
 5 ~~verify that these performance standards are being met or~~  
 6 ~~modified as may be needed from time to time.~~

7           (6) The central filing office may not assign or  
 8 otherwise transfer the rights granted to it by this section  
 9 without the express written approval of the department,  
 10 notwithstanding any limitations imposed by s. 679.4061 or s.  
 11 479.4081.

12           (7) The central filing office is a private  
 13 nongovernmental entity and is not subject to the provisions of  
 14 law that apply to government operations.

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

17           679.705 Effectiveness of action taken before effective  
 18 date.--

19           (3) This act does not render ineffective an effective  
 20 financing statement that, before this act takes effect, is  
 21 filed and satisfies the applicable requirements for perfection  
 22 under the law of the jurisdiction governing perfection as  
 23 provided in s. 679.103, Florida Statutes 2000. However, except  
 24 as otherwise provided in subsections (4) and (5) and s.  
 25 679.706, the financing statement ceases to be effective at the  
 26 earlier of:

27           (a) The time the financing statement would have ceased  
 28 to be effective under the law of the jurisdiction in which it  
 29 is filed; or

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

31           Section 24. Sections 15.091, 679.521, and 679.526,

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1 Florida Statutes, are repealed.

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

5 319.27 Notice of lien on motor vehicles or mobile  
6 homes; notation on certificate; recording of lien.--

7 (2) No lien for purchase money or as security for a  
8 debt in the form of a security agreement, retain title  
9 contract, conditional bill of sale, chattel mortgage, or other  
10 similar instrument or any other nonpossessory lien, including  
11 a lien for child support, upon a motor vehicle or mobile home  
12 upon which a Florida certificate of title has been issued  
13 shall be enforceable in any of the courts of this state  
14 against creditors or subsequent purchasers for a valuable  
15 consideration and without notice, unless a sworn notice of  
16 such lien has been filed in the department and such lien has  
17 been noted upon the certificate of title of the motor vehicle  
18 or mobile home. Such notice shall be effective as constructive  
19 notice when filed. The interest of a statutory nonpossessory  
20 lienor; the interest of a nonpossessory execution, attachment,  
21 or equitable lienor; or the interest of a lien creditor as  
22 defined in s. 679.1021(1)(yy)(~~zz~~), if nonpossessory, shall not  
23 be enforceable against creditors or subsequent purchasers for  
24 a valuable consideration unless such interest becomes a  
25 possessory lien or is noted upon the certificate of title for  
26 the subject motor vehicle or mobile home prior to the  
27 occurrence of the subsequent transaction. Provided the  
28 provisions of this subsection relating to a nonpossessory  
29 statutory lienor; a nonpossessory execution, attachment, or  
30 equitable lienor; or the interest of a lien creditor as  
31 defined in s. 679.1021(1)(yy)(~~zz~~) shall not apply to liens

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1 validly perfected prior to October 1, 1988. The notice of lien  
2 shall provide the following information:

3 (a) The date of the lien if a security agreement,  
4 retain title contract, conditional bill of sale, chattel  
5 mortgage, or other similar instrument was executed prior to  
6 the filing of the notice of lien;

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

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

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

11 (3)

12 (b) As applied to a determination of the respective  
13 rights of a secured party under this chapter and a lien  
14 creditor as defined by s. 679.1021(1)(~~yy~~)(~~zz~~), or a  
15 nonpossessory statutory lienor, a security interest under this  
16 chapter shall be perfected upon the filing of the notice of  
17 lien with the department, the county tax collector, or their  
18 agents. Provided, however, the date of perfection of a  
19 security interest of such secured party shall be the same date  
20 as the execution of the security agreement or other similar  
21 instrument if the notice of lien is filed in accordance with  
22 this subsection within 15 days after the debtor receives  
23 possession of the motor vehicle or mobile home and executes  
24 such security agreement or other similar instrument. The date  
25 of filing of the notice of lien shall be the date of its  
26 receipt by the department central office in Tallahassee, if  
27 first filed there, or otherwise by the office of the county  
28 tax collector, or their agents.

29 Section 26. Paragraph (f) of subsection (2) of section  
30 559.9232, Florida Statutes, is amended to read:

31 559.9232 Definitions; exclusion of rental-purchase

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1 | agreements from certain regulations.--

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

5 |             (f) A security interest as defined in s.  
6 | 671.201(35)(37).

7 |             Section 27. Paragraph (g) of subsection (2) of section  
8 | 563.022, Florida Statutes, is amended to read:

9 |             563.022 Relations between beer distributors and  
10 | manufacturers.--

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

13 |             (g) "Good faith" means honesty in fact in the conduct  
14 | or transaction concerned as defined and interpreted under s.  
15 | 671.201(20)(19).

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

19 |             668.50 Uniform Electronic Transaction Act.--

20 |             (3) SCOPE.--

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

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

25 |             2. The Uniform Commercial Code other than s. 55.  
26 | 671.107 ~~and 671.206~~ and chapters 672 and 680;

27 |             3. The Uniform Computer Information Transactions Act;  
28 | or

29 |             4. Rules relating to judicial procedure.

30 |             (16) TRANSFERABLE RECORDS.--

31 |             (d) Except as otherwise agreed, a person having

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1 control of a transferable record is the holder, as defined in  
 2 s. 671.201(21)(20), of the transferable record and has the  
 3 same rights and defenses as a holder of an equivalent record  
 4 or writing under the Uniform Commercial Code, including, if  
 5 the applicable statutory requirements under s. 673.3021, s.  
 6 677.501, or s. 679.308 are satisfied, the rights and defenses  
 7 of a holder in due course, a holder to which a negotiable  
 8 document of title has been duly negotiated, or a purchaser,  
 9 respectively. Delivery, possession, and indorsement are not  
 10 required to obtain or exercise any of the rights under this  
 11 paragraph.

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

14 670.106 Time payment order is received.--

15 (1) The time of receipt of a payment order or  
 16 communication canceling or amending a payment order is  
 17 determined by the rules applicable to receipt of a notice  
 18 stated in s. 671.209 ~~671.201(27)~~. A receiving bank may fix a  
 19 cut-off time or times on a funds-transfer business day for the  
 20 receipt and processing of payment orders and communications  
 21 canceling or amending payment orders. Different cut-off times  
 22 may apply to payment orders, cancellations, or amendments or  
 23 to different categories of payment orders, cancellations, or  
 24 amendments. A cut-off time may apply to senders generally, or  
 25 different cut-off times may apply to different senders or  
 26 categories of payment orders. If a payment order or  
 27 communication canceling or amending a payment order is  
 28 received after the close of a funds-transfer business day or  
 29 after the appropriate cut-off time on a funds-transfer  
 30 business day, the receiving bank may treat the payment order  
 31 or communication as received at the opening of the next

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1 funds-transfer business day.

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

4 670.204 Refund of payment and duty of customer to  
5 report with respect to unauthorized payment order.--

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

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

12 675.102 Scope.--

13 (3) With the exception of this subsection, subsections  
14 (1) and (4), ss. 675.103(1)(i) and (j), 675.106(4), and  
15 675.114(4), and except to the extent prohibited in ss.  
16 671.102(2)(~~3~~) and 675.117(4), the effect of this chapter may  
17 be varied by agreement or by a provision stated or  
18 incorporated by reference in an undertaking. A term in an  
19 agreement or undertaking generally excusing liability or  
20 generally limiting remedies for failure to perform obligations  
21 is not sufficient to vary obligations prescribed by this  
22 chapter.

23 Section 32. Paragraphs (mm) through (aaaa) of  
24 subsection (1) of section 679.1021, Florida Statutes, are  
25 redesignated as paragraphs (ll) through (zzz), respectively,  
26 and present paragraph (ll) of that subsection is amended to  
27 read:

28 679.1021 Definitions and index of definitions.--

29 (1) In this chapter, the term:

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

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

4 680.1031 Definitions and index of definitions.--

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

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

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

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

10 (m) "Pursuant to a commitment," s.

11 679.1021(1)(~~nnn~~)(~~ooo~~).

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

14 680.518 Cover; substitute goods.--

15 (2) Except as otherwise provided with respect to  
16 damages liquidated in the lease agreement (s. 680.504) or  
17 otherwise determined pursuant to agreement of the parties (ss.  
18 671.102(~~2~~)(~~3~~) and 680.503), if a lessee's cover is by lease  
19 agreement substantially similar to the original lease  
20 agreement and the new lease agreement is made in good faith  
21 and in a commercially reasonable manner, the lessee may  
22 recover from the lessor as damages:

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

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

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

3 680.519 Lessee's damages for nondelivery, repudiation,  
4 default, or breach of warranty in regard to accepted goods.--

5 (1) Except as otherwise provided with respect to  
6 damages liquidated in the lease agreement (s. 680.504) or  
7 otherwise determined pursuant to agreement of the parties (ss.  
8 671.102(2)(~~3~~) and 680.503), if a lessee elects not to cover or  
9 a lessee elects to cover and the cover is by lease agreement,  
10 whether or not the lease agreement qualifies for treatment  
11 under s. 680.518(2), or is by purchase or otherwise, the  
12 measure of damages for nondelivery or repudiation by the  
13 lessor or for rejection or revocation of acceptance by the  
14 lessee is the present value, as of the date of the default, of  
15 the then market rent minus the present value as of the same  
16 date of the original rent, computed for the remaining lease  
17 term of the original lease agreement, together with incidental  
18 and consequential damages, less expenses saved in consequence  
19 of the lessor's default.

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

22 680.527 Lessor's rights to dispose of goods.--

23 (2) Except as otherwise provided with respect to  
24 damages liquidated in the lease agreement (s. 680.504) or  
25 otherwise determined pursuant to agreement of the parties (ss.  
26 671.102(2)(~~3~~) and 680.503), if the disposition is by lease  
27 agreement substantially similar to the original lease  
28 agreement and the new lease agreement is made in good faith  
29 and in a commercially reasonable manner, the lessor may  
30 recover from the lessee as damages:

31 (a) Accrued and unpaid rent as of the date of the

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1 commencement of the term of the new lease agreement;

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

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

11 Section 37. Subsection (1) of section 680.528, Florida  
12 Statutes, is amended to read:

13 680.528 Lessor's damages for nonacceptance or  
14 repudiation.--

15 (1) Except as otherwise provided with respect to  
16 damages liquidated in the lease agreement (s. 680.504) or  
17 otherwise determined pursuant to agreement of the parties (ss.  
18 671.102(2)(~~3~~) and 580.503), if a lessor elects to retain the  
19 goods or a lessor elects to dispose of the goods and the  
20 disposition is by lease agreement that for any reason does not  
21 qualify for treatment under s. 680.527(2), or is by sale or  
22 otherwise, the lessor may recover from the lessee as damages a  
23 default of the type described in s. 680.523(1) or (3)(a), or  
24 if agreed, for other default of the lessee:

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

30 (b) The present value as of the date determined under  
31 paragraph (a) of the total rent for the then remaining lease

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1 term of the original lease agreement minus the present value  
2 as of the same date of the market rent at the place where the  
3 goods were located on that date computed for the same lease  
4 term.

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

7 Section 38. Subsection (6) of section 713.901, Florida  
8 Statutes, is amended to read:

9 713.901 Florida Uniform Federal Lien Registration  
10 Act.--

11 (6) FEES.--The charges or fees of the Secretary of  
12 State, with respect to a notice or certificate filed under  
13 this section, or for searching records with respect thereto,  
14 are:

15 (a) For filing any financing statement, \$25 for the  
16 first page, which fee shall include the cost of filing a  
17 termination statement for the financing statement.

18 (b) For filing a continuation, release, amendment,  
19 assignment, or any other writing permitted by chapter 679, \$12  
20 for the first page.

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

23 (d) For each additional facing page attached to a  
24 financing statement, continuation, release, amendment,  
25 assignment, or any other writing, \$3.

26 (e) For certifying any record, \$10 for the first 10  
27 file numbers certified and \$10 for each subsequent group of 10  
28 file numbers.

29 (f) For use, pursuant to s. 679.525(1)(d), of a  
30 nonapproved form, \$3 shall be the same as prescribed in s.  
31 15-091.

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

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

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

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to the Uniform Commercial Code; amending s. 15.16, F.S.; removing provision requiring certain records to be filed with the Department of State; amending s. 285.20, F.S.; requiring the governing body of the Seminole Tribe of Florida or the Miccosukee Tribe of Indians to file certain records with the central filing office; amending s. 671.101, F.S.; providing scope of chapter and a short title; amending s. 671.102, F.S.; authorizing certain timeframes to be fixed by agreement; amending s. 671.106, F.S.; making editorial changes; amending s. 671.107, F.S.; providing for the discharge of a claim or right under certain circumstances; amending s. 671.201, F.S.; providing, revising, and deleting

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1 definitions; amending ss. 671.202 and 671.203,  
2 F.S.; making editorial changes; amending s.  
3 671.204, F.S.; revising criteria determining  
4 when an action is taken within a reasonable  
5 time and seasonably; amending s. 671.205, F.S.;  
6 defining "course of performance"; revising the  
7 definition of "course of dealing"; providing  
8 that course of performance and course of  
9 dealing may be used for certain purposes;  
10 revising uses for express terms of an  
11 agreement; specifying when course of  
12 performance, course of dealing, or usage of  
13 trade prevails; providing that course of  
14 performance is relevant to show a waiver or  
15 modification in certain circumstances;  
16 repealing s. 671.206, F.S., relating to statute  
17 of frauds for kinds of personal property not  
18 otherwise covered; amending s. 671.208, F.S.;  
19 making editorial changes; creating s. 671.209,  
20 F.S.; providing definitions; specifying when  
21 notice, knowledge, or notification becomes  
22 effective with the exercise of due diligence;  
23 creating s. 671.210, F.S.; providing that  
24 whenever the code creates certain presumptions,  
25 the trier of fact must find the existence of  
26 the fact presumed unless and until evidence is  
27 introduced that supports a finding of its  
28 nonexistence; creating s. 671.211, F.S.;  
29 providing in what instances a person gives  
30 value for rights; creating s. 671.212, F.S.;  
31 providing that the code modifies, limits, and

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1           supersedes certain provisions of the federal  
2           Electronic Signatures in Global and National  
3           Commerce Act; creating s. 671.213, F.S.;  
4           authorizing the subordination of certain  
5           obligations; amending s. 671.301, F.S.;  
6           revising the effective date of the act;  
7           amending s. 679.5011, F.S.; requiring certain  
8           financing statements to be filed with the  
9           central filing office; authorizing the Florida  
10          Secured Transaction Registry to certify a copy  
11          of certain financing statements; providing the  
12          admissability of such documents; amending s.  
13          679.525, F.S.; reducing the amount of certain  
14          processing fees; authorizing the registry to  
15          use the fees collected to fund its operations;  
16          amending s. 679.527, F.S., relating to the  
17          Florida Secured Transaction Registry; revising  
18          the duties of the Department of State;  
19          providing requirements for a central filing  
20          office; providing that the central filing  
21          office shall be a private nongovernmental  
22          entity and shall not be subject to the  
23          provisions of law that apply to government  
24          operations; amending s. 679.705, F.S.;  
25          extending the time that a financing statement  
26          filed under previous law is effective;  
27          repealing s. 15.091, F.S., relating to  
28          processing fees for filing certain statements  
29          under ch. 679, F.S.; repealing s. 679.521,  
30          F.S., relating to the uniform form of written  
31          financing statements and amendments; repealing

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1 s. 679.526, F.S., relating to filing-office  
2 rules; amending ss. 319.27, 559.9232, 563.022,  
3 668.50, 670.106, 670.204, 675.102, 679.1021,  
4 680.1031, 680.518, 680.519, 680.527, and  
5 680.528, F.S.; conforming cross-references;  
6 amending s. 713.901, F.S.; specifying fees  
7 under the Florida Uniform Federal Lien  
8 Registration Act previously provided through  
9 cross-reference; reducing a fee and deleting a  
10 cross-reference to conform to changes made by  
11 the act; providing an effective date.

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