

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 483 Uniform Commercial Code

SPONSOR(S): Civil Justice Subcommittee; Passidomo

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1090

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Caridad	Bond
2) Insurance & Banking Subcommittee	14 Y, 0 N	Read	Cooper
3) Judiciary Committee	18 Y, 0 N	Caridad	Havlicak

SUMMARY ANALYSIS

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

Article 9 of the UCC governs secured transactions of personal property. In 1998, Article 9 was substantially revised and adopted by all states. In Florida, it is codified in Ch. 679, F.S. In 2010, the Commission drafted and adopted amendments to Article 9. The 2010 amendments modify Article 9 to address filing issues and other matters that have arisen since the 1998 revision.

The bill adopts the 2010 amendments to Article 9. The most significant revision to Ch. 679, F.S., is changes governing the name of a debtor for purposes of filing a financing statement. The bill also provides the following changes:

- Makes minor revisions to s. 679.3071, F.S., relating to the location of debtors;
- Modifies provisions relating to guidelines for the continued perfection of security interests that were perfected according to the law of another jurisdiction;
- Provides rules for transition to the proposed version of Article 9; and
- Makes numerous stylistic and grammatical changes.

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

The effective date of the bill is July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Uniform Commercial Code (UCC) is a set of uniform laws regulating various business transactions and trade. The drafts of the code are developed by the Uniform Law Commissioners (ULC), who are members of the National Conference of Commissioners on Uniform State Laws, a group of scholars and business representatives. "Conference members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical."¹

Participation in the Conference is not limited to lawyers since "stakeholder" meetings are held, where the opinions of all groups concerned with a particular area can be heard.² Every state, the District of Columbia, Puerto Rico and the U.S. Virgin Islands is assessed a specific amount for the maintenance of the ULC based upon state population. Florida's assessment for 2009-2010 is \$96,700.³

Article 9 of the UCC governs secured transactions in personal property. A secured transaction is a "business arrangement by which a buyer or borrower gives collateral to the seller or lender to guarantee payment of an obligation."⁴ In 1998, Article 9 was substantially revised and adopted by all states and U.S. territories except Puerto Rico where it is currently being considered. In 2010, the Commission drafted and adopted amendments to Article 9.

The 2010 amendments to Article 9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following passage of the 1998 version of Article 9. The Article 9 amendments have been adopted in Connecticut, Indiana, Minnesota, Nebraska, Nevada, North Dakota, Rhode Island, Texas, and Washington. They are also currently being considered in a number of other states and U.S. territories.⁵

Issues Concerning Filing

Identifying the Debtor

The purpose of the UCC filing system is to give notice to creditors and other interested parties that there is a valid, perfected security interest in property of the debtor.⁶ A security interest is a "property interest created by agreement or by operation of law to secure performance of an obligation" (i.e. payment of a debt).⁷ An individual or entity files a financial statement to notify third parties — typically prospective buyers and lenders — of a secured party's security interest in goods or real property. Financing statements are indexed under the name of the debtor; therefore, an individual looking for a specific financing statement will search for it under the debtor's name.

¹ <http://www.nccusl.org/Narrative.aspx?title=About the ULC> (last visited Jan. 23, 2012).

² See 2011 Commission Annual Report, p.3, available at: <http://www.uniformlaws.org/Narrative.aspx?title=Publications> (follow "2011 Annual Report" hyperlink) (last visited Jan. 23, 2012).

³ 2009 Annual Report of the Florida Commissioners to the National Conference on Uniform State Laws, January 2010, p. 4; the report was prepared by the Office of Legislative Services for submission to the Governor and both houses of the Legislature through their respective presiding officers.

⁴ Black's Law Dictionary (9th ed. 2009).

⁵ [http://www.nccusl.org/Act.aspx?title=UCC Article 9 Amendments \(2010\)](http://www.nccusl.org/Act.aspx?title=UCC Article 9 Amendments (2010)) (last visited Jan. 21, 2012) (legislation has been introduced and is pending in Washington D.C., Kentucky, Massachusetts, Oklahoma, and Puerto Rico).

⁶ See *Matter of Glasco, Inc.*, 642 F.2d 793, 795 (5th Cir. 1981).

⁷ Black's Law Dictionary (9th ed. 2009).

Section 679.5031(1), F.S., explains what constitutes the debtor's name for purposes of a financing statement where the debtor is a registered organization,⁸ a decedent's estate, or a trust or trustee acting regarding property in trust. Under current law, a financing statement sufficiently provides the name of a debtor that is a registered organization if it provides the name as indicated on the public record of the jurisdiction where the debtor organized. If the debtor is a decedent's estate, the financing statement must provide the decedent's name and indicate that the debtor is an estate. If the debtor is a trust or trustee acting regarding property in trust, the financing statement must:

- Provide the name for the trust in its organic record or, if no name is specified, the settlor's name and additional information to distinguish the debtor from other trusts with one or more of the same settlors; and
- Indicate in the debtor's name or otherwise that the debtor is a trust or trustee acting for trust property.

In other cases, if the debtor has a name, current law requires the financing statement to provide the debtor's individual or organizational name. If the debtor does not have a name, it must provide the names of the partners, members, associates, or other persons comprising the debtor.

The bill revises standards regarding the name of a debtor to be provided on a financing statement. If the debtor is a registered organization, the financing statement sufficiently provides the name of the debtor where it lists the name of the registered organization provided on the most recent public organic record⁹ filed or issued by the registered organization's jurisdiction of organization. This also applies to a registered organization that holds collateral in trust.

Where the collateral is being administered by a personal representative of a decedent, the financing statement is sufficient if it provides the name of the decedent as the debtor and indicates that the collateral is being administered by a personal representative. The name of the decedent indicated on the order appointing the personal representative of the decedent, which was issued by a court having jurisdiction over the collateral, is sufficient as the name of the decedent.

If the collateral is held in a trust that is not a registered organization, the financing statement must indicate the name specified in the organic record of the trust and that the collateral is held in trust. If the organic record does not specify a name, the financing statement must indicate the name of the settlor or testator, additional information sufficient to distinguish the trust from other trusts that may have the same settlors or testator, and an indication that the collateral is held in a trust.

The bill also provides standards regarding the name of an individual debtor to be provided on a financing statement. If the debtor is an individual, the financing statement must provide the name on

⁸ Current law provides that a registered organization is "an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized." Section 679.1021(1)(qqq), F.S. The bill revises the definition to include a business trust that is formed or organized in a state where the public organic record of a business trust must be filed with such state.

⁹ The bill replaces all references to the "public record" with the "public organic record." It further creates a new definition for the term, as "public record" is not currently defined under the statute. The bill defines "public organic record" as:

- [A] record that is available to the public for inspection and that is:
1. A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States that amends or restates the initial record;
 2. An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state that amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or
 3. A record consisting of legislation enacted by the Legislature of a state or the Congress of the United States that forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States that amends or restates the name of the organization.

the debtor's driver's license if the license has not on its face expired. If the state has issued a non-driver's identification card in lieu of a driver's license, the name provided on the identification card may be used with the same effect as a driver's license name. If the state has issued to an individual more than one driver's license or more than one identification card, the most recent driver's license or identification card applies.

If the debtor does not have a driver's license or identification card, the financing statement must provide either the individual name of the debtor (i.e. whatever the debtor's name is under current law) or the debtor's surname and first personal name.

In other cases, if the debtor does not have a name, the financing statement must include the name of partners, members, associates, or others comprising the debtor. The names must be provided in a manner so that each name provided would be sufficient if the person named was the debtor.

The bill also defines the term "name of the settlor or testator" as follows:

- If the settlor is a registered organization, the name of the registered organization indicated on the public organic record filed with or issued or enacted by the registered organization's jurisdiction of organization; or
- In other cases, the name of the settlor or testator indicated in the trust's organic record.

Claim Concerning Inaccurate or Wrongfully Filed Record

Current law authorizes the debtor to file a correction statement: a claim that a financing statement filed against it was in fact unauthorized.¹⁰ While this filing has no legal effect on the underlying claim, it does put in the public record the debtor's claim that the financing statement was wrongfully filed.

The bill revises current law in two ways. First, the filing is no longer called a "correction statement," but is instead referred to as an "information statement." Second, the bill authorizes the secured party of record to also file an information statement if the secured party believes that an amendment to its financing statement was not authorized. The change addresses concerns of secured parties that an amendment to a different financing statement may be inadvertently filed on the secured party's financing statement because the amendment contains an error when referring to the file number of the financing statement to be amended. It is important to note that the secured party has no duty to file an information statement, even if it is aware of the unauthorized filing.

Perfection of Security Interests

"Perfection of a security interest gives constructive notice to the world of the claim or interest of the one asserting it."¹¹ Article 9 provides guidelines for the continued perfection of security interests that have been perfected according to the law of another jurisdiction.¹² Generally, a security interest perfected according to another jurisdiction, or state's law is not automatically "unperfected." Current law provides that a security interest perfected by filing continues for four months after the jurisdiction in which the debtor is located changes. However, this temporary period of perfection applies only with respect to collateral owned by the debtor at the time of the change. Even if the security interest attaches to after-acquired collateral, there is currently no perfection with respect to such new collateral unless and until the secured party perfects pursuant to the law of the new jurisdiction.

The bill provides the filer perfection for four months in collateral acquired post-move. A similar change is made with respect to a new debtor that is a successor by merger. The new rule provides for temporary perfection in collateral owned by the successor before the merger or collateral acquired by the successor within four months after the merger.

¹⁰ Section 679.518, F.S.

¹¹ *Bay Co. Sheriff's Office v. Tyndall Fed. Credit Union*, 738 So.2d 456, 458 (Fla. 1st DCA 1999).

¹² Section 679.3161, F.S.

The bill also provides various minor and stylistic changes to provisions affecting perfection of security interests.

Control of Electronic Chattel Paper

Current law provides that control of electronic chattel paper is the functional equivalent of possession of tangible chattel paper. "Chattel paper" is a record or records that show both a monetary obligation and a security interest in specific goods.¹³ "Electronic chattel paper" is "chattel paper evidenced by a record or records consisting of information stored in an electronic medium."¹⁴ Current law provides that a secured party has control of electronic chattel paper if the record comprising the chattel paper are created, stored and assigned according to six requirements.¹⁵

The bill provides a general test for establishing when a secured party has control of electronic chattel paper. Specifically, a party has control of electronic chattel paper "if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned." The bill also provides a safe harbor test that if satisfied, establishes control under the aforementioned general test. The safe harbor test is consistent with the original six requirements in current law.

Other Changes

The bill also makes the following changes to Article 9:

- Modifies the definitions of the terms "authenticate," "certificate of title," "jurisdiction of organization," and "registered organization;" and creates a definition for "public organic record."
- Makes minor revisions to s. 679.3071, F.S., relating to the location of debtors;
- Makes minor revisions to provisions governing priority of security interests;
- Makes minor revisions to provisions relating to the information that must be included in a financing statement;
- Provides additional rules regarding the enforceability of contractual provisions restricting the assignment of receivables;
- Provides various clarifying and conforming revisions to current law, and provides rules for transition to the proposed version of Article 9.
- Directs the Division of Statutory Revision to replace the phrase "this act" throughout the bill with the assigned chapter number of the act;
- Makes numerous stylistic and grammatical changes.

B. SECTION DIRECTORY:

Section 1 amends s. 679.1021, F.S., relating to definitions.

Section 2 amends s. 679.1051, F.S., relating to control of electronic chattel paper.

Section 3 amends s. 679.3071, F.S., relating to the location of the debtor.

Section 4 amends s. 679.3111, F.S., relating to the perfection of security interests in property subject to certain statutes, regulations, and treaties.

Section 5 amends s. 679.3161, F.S., relating to perfection of security interests following a change in governing law.

Section 6 amends s. 679.3171, F.S., relating to interests that take property over or take free of security interest or agricultural lien.

¹³ Section 679.1021(1)(k), F.S.

¹⁴ Section 679.1021(1)(ee), F.S.

¹⁵ See s. 679.1051, F.S.

Section 7 amends s. 679.326, F.S., relating to priority of security interests created by new debtor.

Section 8 amends s. 679.4061, F.S., relating to discharge of account debtor.

Section 9 amends s. 679.4081, F.S., relating to restrictions on assignment of promissory notes.

Section 10 amends s. 679.5021, F.S., relating to the contents of a financing statement.

Section 11 amends s. 679.5031, F.S., relating to name of debtor and secured party.

Section 12 amends s. 679.5071, F.S., relating to the effect of certain events on effectiveness of financing statement.

Section 13 amends s. 679.515, F.S., relating to the duration and effectiveness of financing statement.

Section 14 amends s. 679.516, F.S., relating to what constitutes filing.

Section 15 amends s. 679.518, F.S., relating to claim concerning inaccurate or wrongly filed record.

Section 16 amends s. 679.607 relating to collection and enforcement by secured party.

Section 17 creates ss. 679.801, 679.802, 679.803, 679.804, 679.805, 679.806, 679.807, and 679.808, F.S., to provide guidelines for transition.

Section 18 amends s. 680.1031, F.S., relating to definitions.

Section 19 provides a directive to the Division of Statutory Revision.

Section 20 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The effective date of the bill is July 1, 2013. This is consistent with the Commission's proposed amendments to Article 9. According to the Commission, the 2013 effective date is intended to allow states to adopt the amendments uniformly so the Article 9 revisions will become operative simultaneously thereby avoiding confusion with respect to interstate transactions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Nov. 16, 2011, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Directs the Division of Statutory Revision to replace the phrase "this act" throughout the bill with the assigned chapter number of the act;
- Corrects numerous minor errors, including reference errors, so that the bill is consistent with the 2010, Article 9 amendments;

The analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.