

STORAGE NAME: h0143a.fs

DATE: October 1, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
ANALYSIS**

BILL #: HB 143

RELATING TO: Warehousemen Lien/Electronic Receipt

SPONSOR(S): Representative Dockery

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) FINANCIAL SERVICES

(2)

(3)

(4)

(5)

I.

By amending Florida's Uniform Commercial Code, HB 143 allows a warehouseman to perfect a lien by issuing an electronic notice of receipt instead of the traditional written or printed warehouse receipt. Current law provides that a warehouseman has a lien on goods in his or her possession, or proceeds derived from the sale of those goods, that are covered by a warehouse receipt. Issuance of that receipt is a condition-precedent to perfecting the lien.

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

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The current Florida law providing for warehouseman liens (Section 677.209, F.S.) is a nearly verbatim enactment of a similar provision in the federal Uniform Commercial Code, U.C.C. § 7-209, and differs only in that the Florida Legislature inserted feminine pronouns in 1997 to make the language gender-neutral. (Section 625, 97-102, L.O.F.).

Section 677.209 (1), F.S., provides that a warehouseman has a lien on goods in his or her possession, or proceeds derived from the sale of those goods, that are covered by a warehouse receipt. The lien is available for charges for storage or transportation, insurance, labor, or charges in relation to the goods (both present and future), and for expenses necessary for preservation of the goods or reasonably incurred in their sale. The warehouse receipt is a condition-precedent for perfecting the lien, and the lien will not be effective unless the warehouseman issues a valid receipt. Matter of Celotex Corporation, 134 B.R. 993, 996 (Bkrcty.M.D.Fla. 1991); Richwagen v. Lillienthal, 386 So.2d 247, 250 (Fla. 4th DCA 1980)(holding that an inventory card was not a warehouse receipt, thus no statutory lien was created).

Florida Statutes define a "warehouse receipt" as "a receipt issued by a person engaged in the business of storing goods for hire." (Section 671.201 (45), F.S. (Uniform Commercial Code: General Provisions)). Although s. 677.202 (1), F.S., provides that "a warehouse receipt need not be in any particular form," the following subsection requires a receipt to include in its "written or printed terms," various items. (Section 677.202 (2), F.S.) It is unclear under the existing law whether an electronic notification of receipt containing the items required by s. 677.202 (2), F.S., is an adequate measure for perfecting a warehouseman's lien.

Currently, only Ohio and California have enacted express language making electronic notification a valid warehouseman's receipt for the purposes of perfecting a warehouseman's lien. However, according to the trade association, International Warehouse Logistics Association, legislatures in six other states are considering similar legislation, including Illinois, New Jersey, Pennsylvania, Washington, Georgia, and Texas.

According to industry proponents, the warehousing industry is moving increasingly to an electronic communications environment, particularly with larger customers, eliminating printed or written documentation. Proponents report that the majority of transactions at a warehouse do not involve issuance of paper warehouse receipts, but are handled by electronic data interchange. Many large warehouse customers not only do not want hard copy receipts, proponents say, but they also refuse to accept them. Proponents fear that they cannot perfect the lien in such a circumstance.

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C. EFFECT OF PROPOSED CHANGES:

The bill allows a warehouseman to perfect a lien by issuing an electronic notice of receipt instead of the traditional written or printed warehouse receipt.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 677.209 (1), F.S., to provide that, in addition to a warehouse receipt, an electronic notification of the receipt of goods is sufficient to serve as a notice of lien on those goods, in addition to a warehouse receipt; amends s. 677.209 (1), F.S. to provide that a warehouseman's lien amount is limited to a reasonable charge for storage of the goods covered by an electronic notification, in addition to a warehouse receipt, in cases where no amount is specified on a duly negotiated warehouse receipt.

Section 2 provides an effective date of October 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The value of a uniform law like the Uniform Commercial Code is, as the name suggests, its uniformity. Uniformity from state to state promotes business by making the regulation of commercial transactions consistent. Because of this value, legal practitioners with expert knowledge of the Code are sometimes wary of suggested changes. According to one practitioner, a potential pitfall in amending the Code without careful and thorough deliberation is the creation of unintended effects, as many parts of the Code are interrelated.

For example, HB 143 allows a warehouseman to perfect his lien by issuing an electronic notification of receipt of goods instead of a warehouse receipt. Under existing law, warehouse receipts are subject to the content requirements provided by s. 677.202 (2), F.S., and a warehouseman's lien will not be perfected unless he or she issues a warehouse receipt conforming to s. 677.202 (2), F.S. However, under HB 143, it is unclear whether the same requirements would apply to an electronic notification of receipt, as the bill creates a separate and distinct method for perfecting a lien.

Despite these concerns, Ohio recently amended its version of the Uniform Commercial Code to allow warehousemen to perfect their liens by issuing an electronic receipt. However, that legislature approached the problem by amending the General Provisions "definitions" section rather than the section providing for warehouseman liens. The section amended by the Ohio legislature corresponds with s. 671.201 (45), F.S. (General Definitions), and defines "warehouse receipt." The former Ohio statute and the current Florida statute read: "warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire." (Ohio Rev. Code Ann. § 1301.01(SS) (Anderson 1995); Section 671.201 (45), F.S.) The Ohio legislature amended this language to read: "warehouse receipt" means a WRITTEN OR ELECTRONIC receipt issued by a person engaged in the business of storing goods for hire." (1999 Ohio Laws 45.) This definition applies uniformly throughout the Code and is not limited to the section providing for warehouseman liens. Since Ohio's approach does not create a distinct method for perfecting liens and raises no questions concerning the application of related sections of the Code, it is perhaps a more benign approach.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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