

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 224

SPONSOR: Commerce & Economic Opportunities Committee and Senator Laurent

SUBJECT: Warehouseman liens

DATE: December 9, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schmeling</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This committee substitute amends Article 7 of the Uniform Commercial Code to revise the definition of “warehouse receipt” to include an electronic notification of receipt issued by a person engaged in the business of storing goods for hire, as well as a written receipt.

This committee substitute amends section 671.201, Florida Statutes.

## II. Present Situation:

Chapter 677, ss. 677.101-677.603, F.S., is titled the “Uniform Commercial Code: Documents of Title” (Article 7). The Uniform Commercial Code (UCC) serves as the foundation for commercial law in all 50 states. Mirroring the model UCC § 7-209, Florida 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 (s. 677.209(1), F.S.). A 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.

In the general provisions of the Florida UCC, s. 671.201(45), F.S., defines a “warehouse receipt” as “a receipt issued by a person engaged in the business of storing goods for hire.” 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. (See *Richwagen v. Lilienthal*, 386 So. 2d 247, 250 (Fla. 4th DCA 1980), which held that an inventory card was not a warehouse receipt, and thus no statutory lien was created.)

Section 677.202(1), F.S., provides that a “warehouse receipt need not be in any particular form,” but s. 677.202(2), F.S., requires a receipt to include in its “written or printed terms” various items. It is unclear under the existing law whether an electronic notification of receipt containing the items required by this subsection is an adequate measure for perfecting a warehouseman’s lien.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 671.201(45), F.S., to revise the definition of “warehouse receipt” to include an electronic notification of receipt issued by a person engaged in the business of storing goods for hire, as well as a written receipt.

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

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The UCC was created to facilitate interstate trade by promoting uniformity among the states in all phases of a commercial transaction. Recent changes to Florida’s version of the UCC have been made after careful deliberation by entities working in the UCC field. These entities include the

National Conference of Commissioners on Uniform State Laws (NCCUSL), the American Law Institution, the American Bar Association, and the Florida Bar, who have drafted, reviewed, and recommended such revisions to the UCC. The changes to the UCC proposed by CS/SB 224 have not been recommended by NCCUSL, and the organization cautions that simply introducing the concept of electronic notification into the UCC may not result in an instrument that can be relied upon to transfer interests in the goods covered by that instrument as a paper instrument does. A paper instrument is relevant in this context because possession of it may help establish rights to goods. Creating an electronic notification of receipt to govern the warehouseman/bailor relationship may create uncertainty to the rights in the goods in absence of language which clearly establishes protocol for electronic transactions.

NCCUSL has been working on electronic commerce issues. This year NCCUSL approved the Uniform Electronic Transactions Act (UETA). This act allows the use of electronic records and electronic signatures, and is designed to provide a solid legal framework to allow for the continued development of innovative technology to facilitate electronic transactions. In addition, the act strives to ensure that contracts and transactions are not denied enforcement because electronic media are used, and that courts accept electronic records into evidence. It attempts to avoid having the selection of paper versus electronic govern the outcome of any disputes or disagreements, and it attempts to assure that parties have the freedom to select the medium for their transactions by agreement. The Florida Legislature has not adopted a version of UETA.

#### **VIII. Amendments:**

None.