

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 218
SPONSOR: Banking and Insurance Committee and Senator Campbell
SUBJECT: Secured Transactions-Uniform Commercial Code
DATE: March 12, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	<u> </u>	<u> </u>	<u>JU</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
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6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The bill revises two provisions related to secured transactions, as part of the Florida law that incorporates provisions of the Uniform Commercial Code. The first revised provision is the creation of two additional requirements in s. 679.509(3), F.S., for filing certain amendments to financing statements. The additional requirements are that the debtor must authorize the filing of the termination statement, and that the termination statement must indicate that the debtor authorized it to be filed. The second revised provision amends s. 679.513(4), F.S., to include U.C.C. uniform language stating that the provisions of s. 679.513(4), F.S., regarding the effectiveness of a filed record, do not apply to situations covered by s. 679.510, F.S. The bill also corrects an incorrect citation in s. 679.509(3), F.S.

Article 9 of the Uniform Commercial Code governs the process of establishing and foreclosing liens against personal property. Article 9 is found at ch. 679, F.S., entitled "Uniform Commercial Code: Secured Transactions."

In the 2001 Legislative Session, the Revised Article 9 of the Uniform Commercial Code, as prepared by the National Conference of Commissioners on Uniform State Laws, with Florida modifications, was enacted (ch. 2001-198, L.O.F.). Certain errors were corrected by a subsequent enactment in 2002 (ch. 2002-242, L.O.F.).

This bill substantially amends the following sections of the Florida Statutes: 679.509 and 679.513.

II. Present Situation:

Background on Article 9 of the Uniform Commercial Code (by the National Conference of Commissioners on Uniform Laws):

Article 9 of the Uniform Commercial Code, titled Secured Transactions, governs the process of establishing and foreclosing liens against personal property, which has substantially been incorporated into Florida law in ch. 679, F.S. Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain other kinds of sales that involve what is similar to a grant of a security interest.

There are two key concepts: "attachment" and "perfection." These terms describe the two key events in the creation of a "security interest." Attachment generally occurs when the security interest is effective between the creditor and the debtor, and that usually happens when their agreement provides that it take place. Perfection occurs when the creditor establishes his or her "priority" in relation to other creditors of the debtor in the same collateral. The creditor with "priority" may use the collateral to satisfy the debtor's obligation when the debtor defaults before other creditors subsequent in priority may do so. Perfection occurs usually when a "financing statement" is filed in the appropriate public record. Generally, the first to file has the first priority, and so on.

Article 9 relies on the public record because it provides the means for creditors to determine if there is any security interest that precedes theirs--a notice function. A subsequent secured creditor is made aware that his or her grant of credit was made after a prior security interest of record. Every secured creditor has a priority over any unsecured creditor. There are various exceptions to this perfection rule. For example, filing is not the only method for perfection. Much depends upon the kind of property that is collateral. Possession of collateral by the secured party is an alternative method of perfection for many kinds of collateral. For some kinds of property, control (a defined term) either perfects the interest or provides a better priority than filing does. There are kinds of transactions for which attachment is perfection. Also, priority is not always a matter of perfecting a security interest first in time.

Florida UCC Legislation in 2001 and 2002

Chapter 679, F.S., was revised in 2001 to substantially conform to Article 9 of the UCC, with certain Florida modifications, relating to secured transactions (ch. 2001-198, L.O.F.). In 2002, the chapter was amended to correct errors in the prior year's enactment and clarified the relationship between fixtures filings and Florida real property law (ch. 2002-242, L.O.F.).

Sections 679.509 and 679.513 of the Florida Statutes are codifications of two sections of the Uniform Commercial Code, but for which Florida has different statutory language than other states, according to the Business Law Section of the Florida Bar.

Currently, under s. 679.509(3)(b), F.S., a person may file an amendment to a financing statement if the amendment is a termination statement for a financial statement as to which the secured party of record has failed to file or send a termination statement as required by s. 679.513(1) or (3), F.S. However, the cite to “s. 679.513(1)” is incorrect; the cite should be to “s. 697.513(1)”. Because Florida has, reportedly, different statutory language than other states, filing officers are treating termination statements differently than in other states. Currently, once a termination statement has been filed, the filing agent has the discretion to refuse to accept other documents. The result is that fraudulent termination statements cannot be countered by creditors.

Under current s. 679.513, F.S., once a termination statement has been filed with the filing office, the financing statement as to which the termination statement relates ceases to be effective. For the purposes of ss. 679.519(7) and 679.522(1), F.S., a termination statement relating to a financing statement that indicates the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse once it is filed with the filing office.

Currently, the text of s. 679.513(4), F.S., does not state that this subsection is not applicable to the situations provided for in s. 679.510, F.S. The exception for matters covered by s. 679.510, F.S., was eliminated during the 2002 Legislative Session.

III. Effect of Proposed Changes:

Section 1. Amends s. 679.509(3)(b), F.S., regarding the requirements for filing a termination amendment to a financing statement or an amendment that adds a debtor to a financing statement. The bill creates two additional requirements for the proper filing of a termination statement to a financing statement. The additional requirements are that the debtor must authorize the filing of the termination statement, and that the termination statement must indicate that the debtor authorized it to be filed. The proposed change would make s. 679.509(3)(b), F.S., uniform with similar U.C.C. provisions in the other 50 states, according to representatives of the Business Law Section of the Florida Bar. The bill also corrects an incorrect citation in s. 679.509(3), F.S., from “s. 679.513(1)”, a non-existent statute, to the correct citation of “s. 679.513(1).”

Section 2. Amends s. 679.513(4), F.S., regarding the effects of a termination statement, by inserting the uniform language “Except as otherwise provided in s. 679.510,”. The bill states that the provisions of s. 679.513(4) are not applicable to the situations provided for in s. 679.510, F.S.

Section 679.510, F.S., explains the effectiveness of a filed record and has three provisions. First, a filed record is effective only if filed by a person who may file it under s. 679.509, F.S. (s. 679.510(1), F.S.). Also, a record authorized by one secured party of record does not affect the financing statement with respect to the other secured parties of record. (s. 679.510(2), F.S.). Lastly, a continuation statement is ineffective if it is not filed within the 6-month period prescribed by s. 679.515(4), F.S. (s. 679.510(3), F.S.).

Section 679.513(4), F.S. explains the effects of filing a termination statement to a financing statement. A financing statement ceases to be effective once a termination statement relating to the financing statement has been filed with the filing office. For the purposes of s. 679.519(7), F.S., and 679.522(1), F.S., the filing with the filing office of a termination statement that relates

to a financing statement indicating that the debtor is a transmitting utility also has the effect of causing the financing statement to lapse. The bill states that the effects of filing a termination statement as stated by s. 679.513(4), F.S., are subject to the provisions of s. 679.510, F.S.

Section 3. Provides an effective date of July 1, 2003.

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:

The bill should better enable creditors to challenge fraudulent termination statements, consistent with uniform laws of other states.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.