

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 283 Uniform Commercial Code
SPONSOR(S): Representative Seiler
TIED BILLS: **IDEN./SIM. BILLS:** SB 218

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Banking & Securities (Sub)	5 Y, 0 N	Cutchins	Whitfield
2) Commerce			
3) Judiciary			
4)			
5)			

SUMMARY ANALYSIS

This bill adopts the uniform text of Article 9 of the Uniform Commercial Code (UCC) as adopted by the National Conference of Commissioners on Uniform State Laws, by adding a condition to the requirements for amending a financing statement under Florida's UCC. Under the provisions of this bill, if a person wanted to amend a financing statement, other than by adding collateral or another debtor, that person would have the authorization to do so if the secured party authorized it, if the amendment was a termination statement and the secured party failed to file it, *and the debtor authorized the filing with proof of that authorization in the statement.*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

This bill adds a condition to the requirements for amending a financing statement under Article 9 of the Uniform Commercial Code (UCC) established in Florida law under Chapter 679, Florida Statutes. Article 9 of the UCC governs the process of establishing and foreclosing liens against personal property. A financing statement is a record of the agreement between a debtor and the person in whose favor a security interest is created or provided for (secured party of interest) and includes the initial statement and any amendments related to it.¹ Currently, s. 679.509, F.S., sets the parameters within which a financing statement may be amended. Subsection (3) of s. 679.509, F.S., provides that [any] person may file an amendment to a financing statement if that amendment is authorized by the secured party of interest or the amendment is a termination statement that is required to be filed by the secured party of interest² but has not been filed. The recording of these transactions is an important part of establishing the perfection of a claim under the UCC.

In 2001, the Legislature, in Chapter 2001-198, Laws of Florida, adopted a major revision to Article 9 of the UCC as put forward by the National Conference of Commissioners on Uniform State Laws (NCCUSL). For the most part, that legislation used NCCUSL's uniform text. However, the language adopted in s. 679.509(3)(b), F.S., did not include the requirement that the debtor must also authorize the termination statement amendment to a financing statement and that the authorization must be indicated on the statement. There is concern on the part of some UCC practitioners that this could cause the state's registry agent (Image API, Inc., a private vendor contracted by the Department of State) to treat these amendments differently. Representatives from the Department of State indicate that the registry agent's current practice is to use the national form even though Florida's language is slightly different from the uniform text.

This bill adopts the uniform NCCUSL text in Florida law. Under the provisions of this bill, if a person wanted to amend a financing statement, other than by adding collateral or another debtor, that person would have the authorization to do so if the secured party authorized it, if the amendment was a termination statement and the secured party failed to file it, *and the debtor authorized the filing with proof of that authorization in the statement.*

C. SECTION DIRECTORY:

Section 1 amends s. 679.509(3), F.S., by adopting the uniform NCCUSL text. NOTE: The reference in s. 679.509(3)(b) to s. 679.5131(1) or (3), F.S., is incorrect in current law because that section does not exist. The reference should be to s. 679.513(1) or (3), F.S.

¹ Section 679.1021(1)(mm), F.S.

² Section 679.5131(1) or (3), F.S., incorrect reference in statute. Should refer to s. 679.513, F.S.

Section 2 provides an effective date for this act of July 1, 2003.

II. 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, does not reduce a county's authority to raise revenue and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

The reference on page one, line 19, to s. 679.5131(1) or (3), F.S., should be changed to s. 679, 513(1) or (3), F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Banking and Securities adopted two amendments to the bill.

Amendment 1 corrects a reference in current statute from 679.5131 to 679.513.

Amendment 2 amends s. 679.513(4), F.S., relating to financing statement termination statements. Currently s. 679.510, F.S., provides, in general, for the effectiveness of filed UCC records and establishes several conditions for when a record is to be considered effective. This is of great importance when parties are in disagreement as to the perfecting of a claim in commercial trade. Section 679.513(4), F.S., independently provides that a financing statement ceases to be effective when a termination statement related to it is filed. This does not take into account the general governance and conditions provided under s. 679.510, F.S., and could cause confusion as to which section governs. The uniform text adopted by NCUSL included a reference in the termination statement provision to the conditions of the general governing provision in order to provide consistency in the effectiveness of all filings authorized under the UCC. This amendment inserts a reference to the general governance section conditions into the termination statement section to mirror the uniform text language.