

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 | 15 Y, 0 N w/CS | Cutchins | Whitfield |
| 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.*

This bill also revises the termination statement provisions of the UCC by inserting a reference to the section of the statutes that provides the general governing language for UCC filings. This language mirrors the uniform text adopted by NCUSL, and will provide consistent treatment for UCC filings in Florida.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0283b.com.doc
DATE: March 18, 2003

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 interest 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 in s. 679.509(3)(b), F.S., and corrects an incorrect reference in paragraph (b)². 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.*

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

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.

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 bill inserts a reference to the general governance section conditions into the termination statement section to mirror the uniform text language.

C. SECTION DIRECTORY:

Section 1 amends s. 679.509(3), F.S., by adopting the uniform NCCUSL text, and corrects the reference in s. 679.509(3)(b) from s. 679.5131(1) or (3), F.S., to s. 679.513(1) or (3), F.S.

Section 2 amends s. amends s. 679.513(4), F.S., relating to financing statement termination statements.

Section 3 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:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on Commerce adopted the two amendments passed by the Subcommittee on Banking and Securities and incorporated those into the Committee Substitute for HB 283. The committee substitute differs from the original bill by correcting a reference in current statute from s. 679.5131, F.S., to s. 679.513, F.S. Additionally, the committee substitute amends s. 679.513(4), F.S., relating to financing statement termination statements by inserting a reference to the general governance section conditions into the termination statement section to mirror the uniform text language.