## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 283 Uniform Commercial Code
**SPONSOR(S):** Seiler
**TIED BILLS:** None **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 | | Jaroslav | Havlicak |
| 4) | | | |
| 5) | | | |

### SUMMARY ANALYSIS

This bill continues the adoption of the uniform text of Article 9 of the Uniform Commercial Code ("UCC") as adopted by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"), 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 NCCUSL, and will provide consistent treatment for UCC filings in Florida.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

| | | | |
|---|---|---|---|
| 1. Reduce government? | Yes[] | No[] | N/A[x] |
| 2. Lower taxes? | Yes[] | No[] | N/A[x] |
| 3. Expand individual freedom? | Yes[] | No[] | N/A[x] |
| 4. Increase personal responsibility? | Yes[] | No[] | N/A[x] |
| 5. Empower families? | Yes[] | No[] | N/A[x] |

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"), currently codified in Florida as ch. 679, F.S.

Article 9 of the UCC governs the process of establishing and foreclosing security interests 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 adopted a major revision to Article 9 of the UCC as put forward by the National Conference of Commissioners on Uniform State Laws ("NCCUSL").[2] 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 s. 679.509(3)(b), F.S., and corrects an incorrect reference in paragraph (b)[3]. 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] *See* s. 679.1021(1)(mm), F.S.
[2] *See* ch. 2001-198, L.O.F.
[3] The reference to section 679.5131(1) or (3), F.S., 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 includes 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 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:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 11, 2003, the House Subcommittee on Banking & Securities adopted two amendments to this bill. The first amendment corrects a reference in current statute from s. 679.5131, F.S., to s. 679.513, F.S. The second amendment 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. The Subcommittee then recommended this bill favorably.

On March 17, 2003, the House Committee on Commerce incorporated the two amendments recommended by the Subcommittee on Banking & Securities into a committee substitute. The Committee then reported this bill favorably with the committee substitute.