

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: SB 282

SPONSOR: Senator Posey

SUBJECT: Enforcement of lost, destroyed, or stolen negotiable instruments

DATE: January 20, 2004 REVISED: _____

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

I. Summary:

Senate Bill 282 eliminates the requirement that a person attempting to enforce a lost negotiable instrument must have been in possession of the instrument and entitled to enforce it at the time that the instrument was lost. The bill instead permits enforcement of a lost instrument if a person can show he or she was entitled to enforce the instrument when the instrument was lost, or they acquired ownership of the instrument from a person entitled to enforce the instrument when the instrument was lost. The bill conforms to changes made to the Uniform Commercial Code section 3-309 in 2002.

This bill substantially amends section 673.3091 of the Florida Statutes.

II. Present Situation:

Chapter 673 of the Florida Statutes contains Florida's adoption of the Uniform Commercial Code provisions with regard to negotiable instruments. Section 673.3091, F.S., governs the enforcement of lost or stolen negotiable instruments. The requirements for enforcing a lost or stolen instrument are that the person seeking enforcement was in possession and entitled to enforce the instrument when it was lost, the loss of possession is not due to transfer or lawful seizure of the instrument, and the instrument cannot reasonably be obtained.

The possession requirements of s. 673.3091, F.S., appear to create a situation whereby banks and mortgage companies have difficulty enforcing lost negotiable instruments in certain situations. In a recent Florida court decision a bank that was a mortgagee by assignment attempted to foreclose the mortgage. See *State Street Bank & Trust Co. v. Lord*, 851 So.2d 790 (Fla. 4th DCA, 2003). However, because the bank did not have the original promissory note and could not prove being in possession of the note when it was lost or destroyed, the court said that the mortgage could not

be enforced. The court admitted that its decision results “in a windfall to the mortgagor and a likely injustice to the mortgagee” and noted that the Uniform Commercial Code (UCC) had modified its language, but declared that the statutory language in Florida mandated the court’s result.

Florida has already adopted section 3-309(b) of the UCC, which requires that the person seeking enforcement of an instrument under the subsection must prove the terms of the instrument and the person’s right to enforce the instrument. *See* s. 673.3091 (2), F.S. Another provision of subsection (b) requires a court to ensure that the person required to pay the instrument is adequately protected against the losses that would occur if another person makes a claim to enforce the instrument. *Id.*

III. Effect of Proposed Changes:

Senate Bill 282 states that a person may enforce a lost or stolen instrument if that person was entitled to enforce the instrument when the instrument was lost, or the person acquired ownership of the instrument from a person entitled to enforce the instrument when the instrument was lost. The bill eliminates the requirement that a person attempting to enforce a lost negotiable instrument must have been in possession of the instrument and entitled to enforce it when the instrument was lost. The bill conforms to changes made to UCC section 3-309(a) in 2002.

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:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
