

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 151

Uniform Commercial Code

**SPONSOR(S):** Seiler

**TIED BILLS:**

**IDEN./SIM. BILLS:** CS/SB 252

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Constitution &amp; Civil Law</u>	<u>6 Y, 0 N</u>	<u>Thomas</u>	<u>Birtman</u>
2) <u>Safety &amp; Security Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
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### SUMMARY ANALYSIS

The Uniform Commercial Code governs commercial transactions. Article 1 of the Uniform Commercial Code ("UCC") provides definitions and general provisions that apply as default rules covering transactions and matters covered under different articles of the UCC. The National Conference of Commissioners on Uniform State Laws provides states with model legislation to critical areas of the law. In 2001, the Conference finalized the Revision of Uniform Commercial Code Article 1 - General Provisions. Florida has yet to adopt these updates to the UCC in its Article I counterpart, Chapter 671, Florida Statutes.

This bill contains mostly changes of a technical, non-substantive nature recommended in the 2001 revision. Several changes reflect an effort to add greater clarity. In addition, development in the law has led to the inclusion of certain changes of a substantive nature.

The bill clarifies the scope of Article 1 to expressly state that the substantive provisions of Article 1 apply only to transactions within the scope of other articles of the UCC. The bill defines the application of the federal Electronic Signatures in Global National Commerce Act, with distinctions about where the UCC is preemptive. The bill deletes the statute of frauds requirement aimed at transactions beyond the coverage of the UCC. The definition of "good faith" is revised to conform to the definition of good faith that applies in the majority of recently revised UCC articles. Finally, the bill provides that evidence of "course of performance" may be used to interpret a contract along with "course of dealing" and "usage of trade."

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

The bill has an effective date of January 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

The National Conference of Commissioners on Uniform State Laws (NCCUSL), now 115 years old, "provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of the law. NCCUSL's work supports the federal system and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state."<sup>1</sup>

The Uniform Commercial Code (UCC) is a uniform act created to harmonize the law governing commercial transactions and other financial areas. It has been adopted in every state except one, Louisiana, which has partially adopted it.<sup>2</sup> The code provides default language where contracts are silent. The UCC consists of 9 articles dealing with the following subjects in consecutively numbered articles:

- Article 1: General provisions (definitions and rules for interpretation)<sup>3</sup>
- Article 2: Sales of Goods<sup>4</sup>
  - 2A: Leases of Goods<sup>5</sup>
- Article 3: Negotiable Instruments<sup>6</sup>
- Article 4: Bank Deposits and Collections<sup>7</sup>
  - 4A: Funds transfers<sup>8</sup>
- Article 5: Letters of Credit<sup>9</sup>
- Article 6: Bulk Transfers (repealed)<sup>10</sup>
- Article 7: Bills of Lading, warehouse receipts and other documents of title<sup>11</sup>
- Article 8: Investment securities<sup>12</sup>
- Article 9: Secured Transactions (liens and security interests in personal property)<sup>13</sup>

In 2001, NCCUSL finalized the Revision of Uniform Commercial Code Article 1 - General Provisions. The 2001 revisions have been enacted in 22 states and the U.S. Virgin Islands, and bills have been

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<sup>1</sup> *Uniform Law Commissioners*, (Feb. 12, 2007) <<http://www.nccusl.org/Update/>>.

<sup>2</sup> Duke University, UCC Research Guide, <http://www.law.duke.edu/lib/researchguides/pdf/ucc.pdf>, February 12, 2007.

<sup>3</sup> Chapter 671, F.S.

<sup>4</sup> Chapter 672, F.S.

<sup>5</sup> Chapter 680, F.S.

<sup>6</sup> Chapter 673, F.S.

<sup>7</sup> Chapter 674, F.S.

<sup>8</sup> Chapter 670, F.S.

<sup>9</sup> Chapter 675, F.S.

<sup>10</sup> Former ch. 676, F.S. (repealed by s. 3, ch. 93-77, L.O.F.)

<sup>11</sup> Chapter 677, F.S.

<sup>12</sup> Chapter 678, F.S.

<sup>13</sup> Chapter 679, F.S.

filed in 7 other state legislatures.<sup>14</sup> The NCCUSL provided the following information regarding the proposed revisions to Article I:<sup>15</sup>

Article 1 of the UCC<sup>16</sup> provides definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC. As other parts of the UCC have been revised and amended to accommodate changing business practices and development in the law, these modifications need to be reflected in an updated Article 1. Thus, Article 1 contains many changes of a technical, non-substantive nature, such as reordering and renumbering sections, and adding gender neutral terminology. In addition, over the years it has been in place, certain provisions of Article 1 have been identified as confusing or imprecise. Several changes reflect an effort to add greater clarity in light of this experience. Finally, developments in the law have led to the conclusion that certain changes of a substantive nature needed to be made.

### **Substantive Issues**

Scope of Article I: Article 1 contains a relatively small number of substantive provisions, but those provisions are of fundamental importance. Occasionally courts and commentators have expressed uncertainty as to which transactions are governed by the substantive provisions. The bill amends s. 671.102, F.S., to expressly state that its provisions apply to a transaction to the extent that the transaction is governed by another chapter of the UCC.

Reasonable Time: Section 671.102, F.S., governs the purposes, rules of construction, and variations from the UCC that are made by contracts. The bill provides that where the code requires action to be taken in a “reasonable time,” a time that is not “manifestly unreasonable”<sup>17</sup> may be fixed by agreement. In addition, the bill makes grammatical changes to the language of this section.

Waiver or Renunciation of Claim or Right After a Breach: The bill amends s. 671.107, F.S., related to a waiver or renunciation of claim or right after a breach of contract occurs. Presently, a claim or right that arises out of an alleged breach of contract can be discharged, in whole or in part, without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. The bill deletes the required written waiver or renunciation signed and delivered by the aggrieved party and, instead, requires agreement of the aggrieved party in an authenticated record. Modern electronic business practices have made obsolete written requirements, therefore, an “authenticated record” is some form of authentication that can be verified by the parties.

Definitions: The bill significantly revises the definitions in Article I. However, most of these revisions are technical and grammatical in nature and are intended to clarify the definition or bring it up to date with modern commercial practice. A number of the provisions within the definitions are being relocated because they are seen as being substantive rather than purely definitional.

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<sup>14</sup> *Revised Uniform Commercial Code Article I, General Provisions (2001)*, (Feb 12, 2007) <[http://www.nccusl.org/Update/uniformact\\_factsheets/uniformacts-fs-ucc1.asp](http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-ucc1.asp)>. Florida is included in the list as one of the seven states that have proposed adopting the 2001 revisions.

<sup>15</sup> *Summary, Revised Article 1 of the Uniform Commercial Code* (Feb. 12, 2007) <[http://www.nccusl.org/Update/uniformact\\_summaries/uniformacts-s-ucc1.asp](http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-ucc1.asp)>.

<sup>16</sup> Florida’s counterpart to Article 1 is located in ch. 671, F.S.

<sup>17</sup> The courts have not provided a clear interpretation of the “manifestly unreasonable” standard. The term basically means unreasonable on its face. When the courts do use the term, they often couple it with the phrase “clearly against the weight of the evidence.” One commentator noted that though the UCC does not define it, “[t]he term probably resides on the spectrum of reasonableness somewhere between ‘unreasonable’ and ‘unconscionable’... where to place the term between those two points remains uncertain, which requires the courts to engage in line-drawing.” Timothy R. Zinnecker, *The Default Provisions of Revised Article 9 of the Uniform Commercial Code: Part I*, 54 Bus. Law. 1113, 1124 (1999).

The bill adds a new introductory sentence to the definition section to provide that all definitions in the UCC, not just those in Article 1, apply unless the context of the use of the term clearly demonstrates otherwise.

Other than minor stylistic changes, the definitions are modified as discussed below:

- *Action*: This definition is unchanged other than punctuation. This definition is derived from similar definitions in the Uniform Negotiable Instruments Law, the Uniform Sales Act; the Uniform Warehouse Receipts Act; and the Uniform Bills of Lading Act.
- *Aggrieved party*: Essentially, this definition is unchanged. The revised definition replaces the phrase “resort to” with “pursue.”
- *Agreement*: This term is defined as a bargain between parties in fact as demonstrated by their language or implied from other circumstances. The revised definition distinguishes this term from a contract by specifying that legal consequences flow from a contract while an agreement is a bargain between parties. The meaning of an agreement can be determined from the language of the parties or inferred from other circumstances.
- *Bank*: This term is revised to include a savings bank, a savings and loan association, credit union, and a trust company.
- *Bearer*: This definition is essentially unchanged and was derived from the Uniform Negotiable Instruments Law. The revised definition inserts the word “negotiable,” before instrument and makes a minor grammatical change.
- *Bill of Lading*: This definition is derived from s. 671.201(6), F.S. The reference to “airbill” has been deleted as it is obsolete and no longer necessary.
- *Branch*: This definition is unchanged.
- *Burden of establishing*: This definition is unchanged.
- *Buyer in ordinary course of business*: This definition is essentially unchanged. The first sentence of this subsection makes clear that a person who buys from a pawnbroker cannot be a buyer in the ordinary course of business. The second sentence explains what it means to buy “in the ordinary course.”
- *Conspicuous*: The current definition of conspicuous refers to a term or clause that is written in such a way that a reasonable person to whom it refers would notice it. The revised definition removes the term “clause” and adds that conspicuous terms may also be displayed or presented, in addition to being written. The revision further provides that whether a term is conspicuous is a decision for a court. The current definition includes subparagraphs (a) and (b) which outline the type of language that comprises conspicuous terms (e.g., printed headings, etc.). The revised definition makes minor grammatical changes to (a), which currently discusses headings in capitals with large font. The revised definition deletes the reference to telegrams in (b) and replaces it with a description of language in text that is larger than surrounding text or set off with symbols or other marks to call attention to the language.
- *Consumer*: This is a new definition that is being added and is derived from other portions of the UCC. The term means an individual who enters into a transaction primarily for personal, family, or household purposes.

- *Contract*: The revision distinguishes this term from an agreement and defines it as the legal obligation that stems from an agreement created under the code and supplemented by other laws.
- *Creditor*: This definition is unchanged.
- *Defendant*: The revised definition clarifies that this term also refers to a person who must defend against a cross-claim or third-party claim.
- *Delivery*: This term is currently defined as the voluntary transfer of possession of certain instruments, documents of title or chattel paper, or certificated securities. The revision deletes the reference to certificated securities in light of the more specific treatment of the matter elsewhere in the UCC.
- *Document of title*: This definition is unchanged, except “which” is changed to “that.”
- *Fault*: This term is currently defined as a wrongful act, omission, or breach. The revision adds the term “default” to the list of events constituting fault.
- *Fungible Goods*: This definition is reorganized and references to securities are deleted to reflect that other portions of the UCC no longer use the term “fungible” to describe securities.
- *Genuine*: This definition is unchanged.
- *Good faith*: This term is presently defined as honesty in fact, a subjective definition containing no element of commercial reasonableness. The bill expands this definition to include “honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.” This expanded definition is consistent with Article 2 where the definition of good faith applicable to merchants means “honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.” Over time, amendments to other Articles have incorporated the broader standard of “good faith” adopting it for all parties in Articles 3, 4, 8, and 9. Only Revised Article 5 defines “good faith” solely in terms of subjective honesty. Article 6 has been deleted from the Florida Uniform Commercial Code, and Article 7 contains no reference to “good faith.” Thus, adoption of this broader definition in Article 1 states generally the standard already applicable throughout the Code. The narrower definition in Article 5 is explicitly applicable to that chapter and will not be disturbed by this bill.
- *Holder*: This definition is reorganized for clarity.
- *Insolvency proceedings*: This definition is essentially unchanged.
- *Insolvent*: The revisions are intended to articulate the three tests of insolvency – “having ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute as to them,” “unable to pay debts as they become due,” or “insolvent within the meaning of the Federal Bankruptcy Law.”
- *Money*: This definition is slightly revised to indicate that the medium of exchange authorized or adopted by a domestic or foreign government must be current.
- *Organization*: This term currently includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity. The revised definition deletes these terms and redefines organization as “a person other than an individual.” This is the standard definition of “organization” that is used in acts prepared by the NCCUSL.

- *Party*: The revised definition makes minor grammatical definitions.
- *Person*: Presently, “person” is defined as an individual or an organization. The new definition tracks the standard definition used by the National Conference of Commissioners on Uniform State Laws. That definition includes a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity as a person.
- *Present value*: This definition is moved from s. 671.201(37)(c)3., F.S., and provides that the term means the amount as of a date certain, of one or more sums payable in the future, discounted to the date certain by use of either (1) an interest rate specified by the parties, if that rate is not manifestly unreasonable at the time the transaction is entered into; or (2) if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.
- *Purchase*: This definition is revised to include a lease transaction along with such activities as taking by sale, negotiation, or any other voluntary transaction creating an interest in property.
- *Purchaser*: This definition is unchanged.
- *Record*: This new definition provides that the term means information that is inscribed on a tangible medium, that is stored in an electronic or other medium or is retrievable in perceivable form.
- *Remedy*: This definition is unchanged.
- *Representative*: This definition is reorganized for clarity.
- *Right*: The revised definition makes a minor grammatical change.
- *Security interest*: The revised definition makes technical changes to the current statute and deletes the definition of “present value,” which is being moved to another section.
- *Send*: This definition makes minor technical changes to the current statute.
- *Signed*: This definition recognizes the growth of electronic commerce and revises the current definition to include bearing a symbol that indicates a person’s present intention to adopt or accept a writing. Because “authenticate” is now a defined term in s. 679.1021, F.S.,<sup>18</sup> the language has been changed to “intention to adopt or accept.”
- *State*: This new definition is the standard definition of the term used in acts prepared by the National Conference of Commissioners on Uniform State Laws. The term includes a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- *Surety*: This term is currently defined as a guarantor. The definition is expanded to include “other secondary obligor.”
- *Term*: This definition is essentially unchanged.

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<sup>18</sup> See s. 1, 2001-198, L.O.F.

- *Unauthorized signature:* This definition is essentially unchanged.
- *Warehouse receipt:* The revised definition deletes the requirement that a receipt be in writing. This change recognizes the increase in electronic commerce.
- *Writing:* The revised definition makes minor technical changes to provide that the term “written” has a meaning that corresponds to the current definition of “writing,” which includes printing, typewriting, or any other intentional reduction to tangible form.

The definitions of the following terms are deleted from s. 671.201, F.S.: “honor,” “airbill,” and “telegram.” The term “honor” is not used in Article I and does not need any special definition when it used elsewhere in the UCC. The terms “airbill” and “telegram” are obsolete.

Relocation of Substantive Provisions Embedded in Definitions: The NCCUSL Drafting Committee identified instances where definitions in s. 671.201, F.S., were made unnecessarily complicated by substantive provisions embedded within them. The bill extracts those substantive provisions and places them in separate sections of Article I to present them more effectively. These transferred provisions are discussed below.

*Notice and Knowledge:* The bill moves provisions relating to notice and knowledge from the definitions and places them in a newly created section, s. 671.209, F.S. The Drafting Committee believes that with this reorganization, the concepts are more clearly articulated and more easily found.

*Presumptions:* The bill moves provisions relating to presumptions from the definitions and places them in a newly created section, s. 671.21, F.S.

*Value:* Whether a person acquires rights “for value” is at present the subject of a definitional provision in current s. 671.201(44), F.S. The provision is more appropriately articulated as a free-standing section. The bill moves provisions relating to “value” to a newly created s. 671.211, F.S.

Course of Performance: Section 671.205, F.S., relates to the course of dealing and usage of trade. Presently, “course of dealing” refers to a sequence of previous conduct between parties regarding a particular transaction. “Course of dealing” may enter the agreement either by explicit provisions of the agreement or by tacit recognition.

“Usage of trade” refers to any practice or method of dealing having such regularity in a place, vocation, or trade as to justify an expectation that it will be observed with respect to a particular transaction. The UCC deals with “usage of trade” as a factor in reaching the commercial meaning of the agreement that the parties have made. The bill slightly revises this provision to provide that if such usage is embodied in a written trade code, the interpretation of the record is a question of law.

The bill adds “course of performance” to the heading of this statutory section and provides a definition of this term. The new definition of “course of performance” refers to a sequence of conduct between parties as it relates to a particular transaction. It exists if the agreement of the parties involves repeated occasions for performance by a party and the other party, with knowledge of the nature of performance and having an opportunity to object to it, accepts the performance or acquiesces in it without objection. The bill also provides that “course of performance” prevails over “course of dealing” and “usage of trade.” However, express terms in an agreement prevail over all three. Moreover, the bill provides that “course of performance” is relevant to show a waiver or modification of any term inconsistent with the “course of performance.”

Finally, the bill provides that the “course of performance” or “course of dealing” may be considered in determining the particular meaning of specific terms of an agreement, and may supplement or qualify as a term of an agreement.

Statute of Frauds<sup>19</sup>: The bill repeals s. 671.206, F.S., which contains a Statute of Frauds “for kinds of personal property not otherwise covered” under the UCC.” The Drafting Committee for the NCCUSL noted that the other Articles of the UCC make individual determinations as to writing requirements for transactions within their scope, so that the only effect of s. 671.206, F.S. is to impose a writing requirement on transactions not otherwise governed by the UCC. It was decided that it is inappropriate for Article 1 to impose that requirement on sales transactions not governed by the UCC.

Notice and Knowledge: This newly created section is derived from the substantive provisions within the definitions in s. 671.201, F.S. Under new subsection (1), unchanged from prior language, a person has notice of a fact when the person

- Has actual knowledge of the fact;
- Has received a notification of that fact; or
- From the facts and circumstances, has reason to know that the fact exists.

Subsection (2) provides that knowledge means actual knowledge. This subsection also states that “knows” has a corresponding meaning to “knowledge.” Subsection (3) provides that the words “discover” and “learn” refer to the more general concept of knowledge rather than using reason to arrive at knowledge of a particular fact. Subsection (4) provides that a person notifies or gives notice or notification to another by taking steps that are reasonable to inform the other person that s/he has come to know of a particular fact.

Subsection (5) states that a person receives notice when:

- (a) it comes to that person’s attention; or
- (b) it is delivered in a form reasonable under the circumstances at the place of business through which a contract is made.

Subsection (6) provides that “notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the person conducting [the] transaction and, . . . , from the time it would have been brought to that person’s attention” had the organization exercised due diligence. The definition describes due diligence as maintaining reasonable routines for communicating significant information to the person conducting the transaction when there is reasonable compliance with those routines. Due diligence does not require an individual acting for the organization to communicate information unless it is part of the individual’s regular duties, or the individual knows of the transaction and the transaction would be materially affected by the information.

Presumptions: This newly created section is derived from the substantive provisions within the definitions in s. 671.201(31), F.S. This new section requires that whenever the code creates a presumption of a fact or states that a fact is presumed, the trier of fact must find the existence of the fact presumed unless, and until, evidence is introduced that supports a finding of its nonexistence.

Value: This newly created section is derived from the substantive provisions within the definitions in s. 671.201(44), F.S. The new description retains much of the language in the current provision and adds that a person gives value for rights if the person acquires them:

- As a security for, or in total or partial satisfaction of, a preexisting claim;

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<sup>19</sup> The statute of frauds is defined as “a statute (based on the English Statute of Frauds) designed to prevent fraud and perjury by requiring certain contracts to be in writing and signed by the party to be charged.” Black’s Law Dictionary 1422 (7th ed. 1999).

- By accepting delivery under a preexisting contract for purchase; or
- In return for any consideration sufficient to support a simple contract.

However, the revised definition adds that a person gives value for rights if she or he acquires them in return for a binding commitment to extend credit or for the extension of immediately available credit.

Electronic Signatures: As a result of the enactment of the federal Electronic Signatures in Global National Commerce Act ("E-sign"), it is now possible to have sale contracts, mortgage instruments, and promissory notes memorialized in electronic form with the electronic signatures of the parties involved in the transaction.<sup>20</sup> This newly created section in the bill is designed to avoid preemption of state law under that federal legislation. The bill creates s. 671.212, F.S., which modifies, limits, and supersedes E-sign, but this section does not modify, limit, or supersede s. 7001(c).<sup>21</sup> That section of the act provides that

information required by law to be in writing can be made available electronically to a consumer only if he or she affirmatively consents to receive the information electronically and the business clearly and conspicuously discloses specified information to the consumer before obtaining his or her consent.<sup>22</sup>

The bill also does not authorize electronic delivery of any of the notices described in s. 7003(b) of E-sign.<sup>23</sup>

Subordinated Obligations: The bill creates s. 671.213, F.S., to address subordinated obligations, or debts that are ranked below other debts as they relate to one's obligations to creditors. The Draft Committee reports that:

Subordinated debt is typically subordinated on issue or acquisition and is evidenced by an investment security or by a negotiable or non-negotiable note. Debt is also sometimes subordinated after it arises, either by agreement between the subordinating creditor and the debtor, by agreement between two creditors of the same debtor, or by agreement of all three parties. The subordinated creditor may be a stockholder or other "insider" interested in the common debtor; the subordinated debt may consist of accounts or other rights to payment not evidenced by any instrument. All such cases are included in the terms "subordinated obligation," "subordination," and "subordinated creditor."

The bill provides that an obligation may be subordinated on issue and that a creditor may subordinate its right to performance by agreement. The bill further provides that subordination does not create a security interest against either the common debtor or a subordinated creditor.

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<sup>20</sup> The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ss. 7001 et seq., was enacted on June 30, 2000. Congress enacted the Act, "to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically." Congress imposed special requirements on any business that wants to use electronic records or signatures in consumer transactions. *Executive Summary*, (last visited Feb. 13, 2007) <<http://www.ftc.gov/os/2001/06/esign7.htm>>.

<sup>21</sup> 15 USC s. 7001(c) states that a consumer's consent to receive electronic records is valid only if the consumer has affirmatively consented and, prior to the consent, he or she was provided a clear and conspicuous statement outlining the consumer's rights.

<sup>22</sup> *Executive Summary*, note 4, *supra*.

<sup>23</sup> 15 USC s. 7003(b) excludes from E-sign "court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings" and notices of: cancellation of utility services; defaults or foreclosures or other such proceedings on a primary residence; cancellation or termination of health or life insurance; or recall of a product because of health or safety issues, or documents required to transport toxic or dangerous materials.

## Fees

The bill transfers provisions relating to existing fees, but proponents of the bill report that it is not intended to alter those fees in any manner. Section 15.091, F.S., contains a fee schedule for filing of financing statements or other documents required by ch. 679, F.S., of the UCC. However, ch. 2001-198, L.O.F., incorporated NCCUSL's revisions to Article 9 of the UCC and codified a new fee schedule for UCC filings in s. 679.525, F.S., thereby making the fee provisions in s. 15.091, F.S., no longer necessary.

However, s. 713.901(6), F.S., specifies that the fees for filings required under that section are "the same as those prescribed in s. 15.091." Section 713.901, F.S., is the "Florida Uniform Federal Lien Registration Act." The bill amends s. 713.901(6), F.S., to specify the fees charged by the Department of State that were previously indicated solely by a cross-reference to s. 15.091, F.S.

### **Non-Substantive Changes:**

The bill amends various sections for grammatical and clarifying changes that do not appear to be substantive changes. The revisions are:

- amends s. 671.106, F.S., to make minor technical changes by adding a comma and changing "shall" to "must."
- amends s. 671.202, F.S., related to prima facie evidence of authenticity and genuineness created by third party documents. The revision makes one change—replacing the phrase "shall be" with the word "is."
- amends s. 671.203, F.S., regarding the obligation of good faith. Presently, the definition reads "Every contract or duty within this code imposes an obligation of good faith in its performance or enforcement." The revised definition changes the "or" after "performance" to "and." This change ensures that the good faith standard will influence all aspects of contract creation, performance and enforcement to preserve the integrity of commercial transactions.
- amends s. 671.208, F.S., related to the option to accelerate, at will, either payment or performance under a contract. The bill makes minor grammatical changes to replace "shall" with "must," and "shall have" with "has."
- amends ss. 559.9232, 563.022, 668.50, 670.106, 670.204, 675.102, 680.518, 680.519, 680.527, and 680.528, F.S., to conform cross references.

**Effective Date:** The bill has an effective date of January 1, 2008.

### C. SECTION DIRECTORY:

Section 1 amends s. 671.101, F.S., to provide for the scope of the chapter.

Section 2 amends s. 671.102, F.S., to authorize certain timeframes to be fixed by agreement and making editorial changes.

Section 3 amends s. 671.106, F.S., to make minor grammatical changes.

Section 4 amends s. 671.107, F.S., to provide for the discharge of a claim or right under certain circumstances.

Section 5 amends s. 671.201, F.S., to provide, revise, and delete definitions.

Section 6 amends s. 671.202, F.S., to make an editorial change.

Section 7 amends s. 671.203, F.S., to make an editorial change.

Section 8 amends s. 671.204, F.S., to revise criteria determining when an action is taken within a reasonable time and seasonably.

Section 9 amends s. 671.205, F.S., to define "course of performance."

Section 10 repeals s. 671.206, F.S., relating to statute of frauds for kinds of personal property not otherwise covered.

Section 11 amends s. 671.208, F.S., to make editorial changes.

Section 12 creates s. 671.209, F.S., to provide definitions; specifying when notice, knowledge, or notification becomes effective with the exercise of due diligence.

Section 13 creates s. 671.21, F.S., to provide that whenever the code creates certain presumptions, the trier of fact must find the existence of the fact presumed unless and until evidence is introduced that supports a finding of its nonexistence.

Section 14 creates s. 671.211, F.S., to provide in what instances a person gives value for rights.

Section 15 creates s. 671.212, F.S., to provide that the code modifies, limits, and supersedes certain provisions of the federal Electronic Signatures in Global and National Commerce Act.

Section 16 creates s. 671.213, F.S., to authorize the subordination of certain obligations.

Section 17 amends s. 559.9232, F.S., to conform cross-references.

Section 18 amends s. 563.022, F.S., to conform cross-references.

Section 19 amends s. 668.50, F.S., to conform cross-references.

Section 20 amends s. 670.106, F.S., to conform cross-references.

Section 21 amends s. 670.204, F.S., to conform cross-references.

Section 22 amends s. 675.102, F.S., to conform cross-references.

Section 23 amends s. 680.518, F.S., to conform cross-references.

Section 24 amends s. 680.519, F.S., to conform cross-references.

Section 25 amends s. 680.527, F.S., to conform cross-references.

Section 26 amends s. 680.528, F.S., to conform cross-references.

Section 27 amends s. 713.901, F.S., to specify fees under the Florida Uniform Federal Lien Registration Act previously provided through cross-reference, reduce a fee and delete a cross-reference to conform to changes made by the act.

Section 28 provides an effective date of January 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues. See Fiscal Comments below.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The economic impact on the private sector is unclear. The bill should benefit the business community in that it updates the Uniform Commercial Code to reflect modern practices and will provide greater uniformity among other states.

### D. FISCAL COMMENTS:

Section 27 of the bill provides specifically for fees charged under the Florida Uniform Federal Lien Registration Act in s. 713.901, F.S. Proponents of the bill report that it was intended to move the existing fees from section 15.091, F.S., to this section without any changes to existing fees. However, the existing fee for use of a nonapproved form is \$5, but the bill provides that this fee will be only \$3. This appears to be a typographical error.

The Department of State reports that the only entity to file liens under this Act is the Internal Revenue Service when registering federal tax liens. The Department has never received a registration under this Act on a nonapproved form and, therefore, this fee has never been collected and is not expected to ever be collected. No reduction in state revenues is anticipated if the reduction in the fee for use of a nonapproved form occurs.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 27 of the bill provides specifically for fees charged under the Florida Uniform Federal Lien Registration Act in s. 713.901, F.S. Proponents of the bill report that it was intended to move the existing fees from section 15.091, F.S., to this section without any changes to existing fees. However, the existing fee for use of a nonapproved form is \$5, but the bill provides that this fee will be only \$3. This may be a typographical error.

Further, the transferred fee language is specific to fees charged under the UCC, not necessarily for fees charged under the Federal Lien Registration Act. It is recommended that the transferred fee language be modified to specifically reflect the fees being charged under the Federal Lien Registration Act.

The bill transfers the fee language from s. 15.091, F.S., to s. 713.901, F.S. This transfer makes s. 15.091, F.S., obsolete and should be repealed.

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On February 21, 2007, this bill was considered by the Committee on Constitution and Civil Law. An amendment was adopted that does 3 things:

- Removes authorization for a separate fee for electronically filing a financial statement or an amendment under the U.C.C. with the Florida Secured Transaction Registry;
- Technically revises fee language transferred in the bill from s. 15.091, F.S., to s. 713.901, F.S.; to reflect that the fees will only be charged for the registering of federal liens, and will not be used for the filing of financial statements under the U.C.C.; and
- Repeals s. 15.091, F.S., since this section will no longer be used as authorization to charge fees and will be obsolete.

The amendment does not have a fiscal impact on state or local governments. The Florida Secured Transaction Registry does not currently accept electronically filed financial statements or amendments. The Florida Secured Transaction Registry is a centralized database in which financial statements are filed to register the secured party's interest in a loan secured by non-titled property.