

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 1366

INTRODUCER: Banking and Insurance Committee and Senator Wise

SUBJECT: Uniform Commercial Code

DATE: April 16, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Cooper	CM	<b>Favorable</b>
2.	Messer	Burgess	BI	<b>Fav/CS</b>
3.	Treadwell	Maclure	JU	<b>Favorable</b>
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes
- B. AMENDMENTS.....  Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

The bill modernizes the language in ch. 677, F.S., the Florida Uniform Commercial Code (UCC) pertaining to documents of title, including warehouse receipts, bills of lading, transport documents, dock warrants, dock receipts, and orders for the delivery of goods. The modernized language recognizes electronic documents of title, which is a necessity today with the ubiquity of electronic commerce. This bill is modeled after Article 7 of the Uniform Commercial Code (UCC) as amended in 2003.

In the bill, recognition of electronic documents of title begins with the definition of “document of title,” which provides that a document of title is a business record evidencing that a person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods covered under the record. A document of title may be an “electronic document of title” stored in an electronic medium or a “tangible document of title” consisting of information inscribed on a tangible medium. Thus, a document of title is no longer required to be a tangible document, and control of an electronic document of title is treated as possessing the document of title.

In keeping with the intent to modernize the UCC, the bill provides for electronic transfer of documents of title, conversion of an electronic document of title to a tangible document or vice versa, and negotiation of an electronic document of title. The bill also revises definitions, clarifies the concept of “control” of an electronic document, and includes language to avoid preemption by the federal Electronic Signatures in Global and National Commerce Act.

Paralleling Article 7 of the UCC as amended, the bill expands the scope of application of certain UCC provisions under ch. 677, F.S., pertaining to documents of title, by applying those provisions to lease agreements, lessees, lessors, and merchants doing business with lessees.

The bill also makes many stylistic and technical changes.

This bill substantially amends the following sections of the Florida Statutes: 559.9232, 668.50, 671.201, 671.304, 672.103, 672.104, 672.310, 672.323, 672.401, 672.503, 672.505, 672.506, 672.509, 672.605, 672.705, 674.104, 674.2101, 677.102, 677.103, 677.104, 677.105, 677.201, 677.202, 677.203, 677.204, 677.205, 677.206, 677.207, 677.208, 677.209, 677.210, 677.301, 677.302, 677.303, 677.304, 677.305, 677.307, 677.308, 677.309, 677.401, 677.402, 677.403, 677.404, 677.501, 677.502, 677.503, 677.504, 677.505, 677.506, 677.507, 677.508, 677.509, 677.601, 677.602, 677.603, 678.1031, 679.1021, 679.2031, 679.2071, 679.2081, 679.3011, 649.3101, 679.3121, 679.3131, 679.3141, 679.3171, 679.338, 680.1031, 680.514, and 680.526.

This bill creates section 677.106, Florida Statutes.

## II. Present Situation:

The Uniform Commercial Code (UCC) is a comprehensive code addressing most aspects of commercial law.<sup>1</sup> The National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI) work in coordination to draft the text of the UCC.<sup>2</sup> Once a draft is endorsed by both organizations, the Uniform Law Commissioners of NCCUSL recommend that the states adopt these rules to promote consistency between the states.<sup>3</sup> However, because the UCC is a model code, it does not have legal effect unless the UCC provisions are enacted by the state legislatures.<sup>4</sup> Currently, the UCC has been enacted (with some local variations) in 49 states, the District of Columbia, the Virgin Islands, and partially in Louisiana.<sup>5</sup>

### Article 7 of the UCC

Article 7 of the UCC, which pertains to warehouse receipts, bills of lading, and other documents of title, was originally created in 1951 when two uniform acts, the Uniform Warehouse Receipts

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<sup>1</sup> J. Michael Goodson Law Library Duke University School of Law, *Research Guides*, Uniform Commercial Code (UCC) (Nov. 2008), available at <http://www.law.duke.edu/lib/researchguides/pdf/ucc.pdf> (last visited Apr. 14, 2010).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

Act and the Uniform Bills of Lading Act were combined.<sup>6</sup> Some principles from the Uniform Sales Act were also included in Article 7 of the UCC.<sup>7</sup>

Article 7 was amended in 2003, 52 years after its promulgation.<sup>8</sup> The basic principles provided for in Article 7 concerning the storage and shipment of tangible goods for commercial purposes, bailment, negotiation of documents, transfer of rights, and transfer of documents, were not changed by the 2003 amendments.<sup>9</sup> Instead, the 2003 amendments modernized Article 7 by providing new rules for electronic documents of title.<sup>10</sup>

Specifically, the key amendments to Article 7 of the UCC in 2003 provide for the:

- Recognition and definition of an “electronic document of title”;
- Modification of other definitions that relate to electronic documents of title;
- Extension of statute of fraud requirements to include electronic records and signatures;
- Modification, limitation, and supersession of the federal Electronic Signatures in Global and National Commerce Act, as permitted by the act to avoid preemption;
- Utilization of the concept of “control” instead of “possession”; and
- Conversion of an electronic document of title to a tangible document or vice versa.<sup>11</sup>

The National Conference of Commissioners on Uniform State Laws reports that 36 states have adopted Article 7 of the UCC as amended in 2003.<sup>12</sup>

## **Florida’s UCC relating to Documents of Title**

### ***General Provisions of Florida’s UCC***

General definitions for Florida’s UCC are provided under Part II, ch. 671, F.S. Included in those definitions are “document of title,” “bearer,” “bill of lading,” “holder,” “signed,” and “warehouse receipt,” which are all referenced in ch. 677, F.S., the UCC for documents of title.

“Document of title” is defined as any “document that in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers.”<sup>13</sup> A “document of title” includes bills of lading, dock warrants, dock receipts, warehouse receipts, or orders for the delivery of goods.<sup>14</sup> To be a document of title, a document must claim to be issued by or

<sup>6</sup> Uniform Law Commissioners of the National Conference of Commissioners on Uniform State Laws (NCCUSL), *Summary Uniform Commercial Code-Revised Article 7* (2003), available at [http://www.nccusl.org/update/uniformact\\_summaries/uniformacts-s-ucc7.asp](http://www.nccusl.org/update/uniformact_summaries/uniformacts-s-ucc7.asp) (last visited Apr. 14, 2010).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Uniform Law Commissioners of the National Conference of Commissioners on Uniform State Laws, *A Few Facts About The . . . Revised Uniform Commercial Code Article 7* (2003), available at [http://www.nccusl.org/Update/uniformact\\_factsheets/uniformacts-fs-ucc7.asp](http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-ucc7.asp) (last visited Apr. 14, 2010).

<sup>13</sup> Section 671.201(16), F.S.

<sup>14</sup> *Id.*

addressed to a bailee and claim to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

Parts I and II, ch. 671, F.S., provide for certain rules of construction and application and principles of interpretation which apply to all chapters of the UCC, including ch. 677, F.S., relating to documents of title.<sup>15</sup> Such rules and principles include:

- Liberal construction and application of the UCC;
- Authorization for parties to agree to vary from the UCC, unless prohibited under the UCC;
- Supplementation of the UCC by certain principles of law and equity, unless displaced by particular provisions in the code;
- Choice of law and application of law provisions;
- Liberal administration of remedies;
- *Prima facie* evidence of certain documents;
- Obligation of good faith in the enforcement or performance of a contract or duty;
- Characterization of a reasonable time or seasonable action;
- Interpretation in light of course of performance, course of dealing, or usage of trade;
- Authorization of a party to reserve rights, but not for an accord and satisfaction;
- Option to accelerate payment or performance or require collateral or additional collateral "at will";
- Interpretation of "notice," "knowledge," "discover," "learn," "notifies," and "receives";
- Application of presumptions provided for in the code;
- Interpretation as to when a person gives value for rights; and
- Subordination of obligations.

In addition, one of the provisions in Florida's UCC that applies generally to all UCC provisions relates to the federal Electronic Signatures in Global and National Commerce Act. This provision under s. 671.212, F.S., permits the code to modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act (act), 15 U.S.C. ss. 7001-7031, which is permitted in s. 103(a)(3) of the act.

Section 103(a)(3) of the act states that the provisions of s. 101 of the act do not apply to a contract or other record governed by the Uniform Commercial Code, as in effect in any state. However, s. 671.212, F.S., provides that no provision in Florida's UCC modifies, limits, or supersedes 15 U.S.C. s. 7001(c) or authorizes electronic delivery of any of the notices described in 15 U.S.C. s. 7003(b). Therefore, the provisions of 15 U.S.C. s. 7001(c), which require a consumer to consent to the use of an electronic record meant to take the place of a written record, and 15 U.S.C. s. 7003(b), which prohibits the use of electronic notice for certain documents,<sup>16</sup> still apply.

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<sup>15</sup> See s. 671.101, F.S., pertaining to the scope of ch. 671, F.S.

<sup>16</sup> The type of documents listed in 15 U.S.C. 7003(b) include court orders, notices, and official documents; notices of the cancellation of utility services; notices of default, acceleration, repossession, foreclosure or eviction for a primary residence of an individual; the cancellation or termination of health insurance or benefits or life insurance benefits; the recall of a product or material failure of a product that risks endangering health or safety; or any document required to accompany any transportation or handling of hazardous materials, pesticides or other toxic or dangerous materials.

### *General Provisions of ch. 677, F.S., Documents of Title*

Part I of ch. 677, F.S., provides definitions of certain terms and provides general rules of application for the chapter.

The defined terms include “bailee,” “consignee,” “consignor,” “delivery order,” “document,” “goods,” “issuer,” “warehouseman,” “duly negotiate,” “person entitled under the document,” “contract for sale,” “overseas,” and “receipt.”<sup>17</sup>

General rules of application for the chapter provide that:

- The provisions of ch. 677, F.S., are subject to the application of any treaty or statute of the United States, regulatory statute of this state or tariff, or classification or regulation filed or issued pursuant to such a treaty, statute, tariff, or regulation.
- A warehouse receipt, bill of lading, or other document of title is negotiable if by its terms the goods are to be delivered to the bearer or to the order of a named person; or where recognized in overseas trade, if it runs to a named person or assigns. Any other document is nonnegotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.
- The omission from either part II or part III of ch. 677, F.S., of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.

Part IV of ch. 677, F.S., provides for the general obligations associated with warehouse receipts and bills of lading. Section 677.401, F.S., states that obligations imposed under ch. 677, F.S., apply to a document of title regardless of whether:

- The document complies with the requirements of ch. 677, F.S., or of any other law or regulation regarding its issue, form or content;
- The issuer has violated laws regulating the conduct of his or her business;
- The goods covered by the document were owned by the bailee at the time the document was issued; or
- The person issuing the document does not come within the definition of a warehouseman if the document of title purports to be a warehouse receipt.

Other general rules include that a duplicate document of title is ineffective, except under certain circumstances; a bailee must deliver goods to an entitled person under a document of title; and a bailee is not required to deliver goods if the bailee establishes any of the following:

- The goods were delivered to a person whose receipt was rightful as against the claimant;
- The goods were damaged, delayed, lost, or destroyed and the bailee is not liable for such conduct;<sup>18</sup>

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<sup>17</sup> See s. 677.102, F.S., for the definitions of the listed terms.

<sup>18</sup> See s. 677.403(1)(b), F.S., stating that the burden of establishing negligence in such cases when value of such damage, delay, loss, or destruction exceeds \$10,000 is on the person entitled under the document.

- The previous sale or other disposition of the goods was done in lawful enforcement of a lien or in a warehouseman's lawful termination of storage;
- The seller exercised his or her right to stop delivery pursuant to the provisions of the chapter on sales under s. 672.705, F.S.;
- A diversion, reconsignment, or other disposition was conducted pursuant to the provisions of ch. 677, F.S., or tariff regulating such right;<sup>19</sup>
- A release or satisfaction was granted, or any other fact affording a personal defense against the claimant; or
- Any other lawful excuse.

Other general rules are provided under s. 677.404, F.S., which limits a bailee's liability when he or she receives and delivers in a certain manner; s. 677.601, F.S., which provides instructions for when a document has been lost, stolen, or destroyed; and s. 677.602, F.S., which provides for the attachment, by judicial process, of goods covered by a negotiable document.

In addition, the adequacy of a document of title to fulfill the obligations of a contract for sale or the conditions of a credit is determined under ch. 672, F.S., on sales, and under ch. 675, F.S., on letters of credit.<sup>20</sup>

### ***Negotiation and Transfer of Warehouse Receipts and Bills of Lading***

Part V of ch. 677, F.S., provides certain rules for the negotiation and transfer of warehouse receipts and bills of lading.

### **Negotiable Documents**

A negotiable document of title running to the order of a named person is negotiated by the named person's endorsement and delivery. After the named person's endorsement or endorsement to a bearer, which is a person who possesses a document of title or negotiable instrument, any person can negotiate the document of title by delivery alone. A negotiable document of title is also negotiated by delivery alone when according to the document's original terms it runs to the bearer. Negotiation of a negotiable document of title after it has been indorsed to a specified person requires endorsement by the specified person as well as delivery.<sup>21</sup>

A negotiable document of title is "duly negotiated" when it is negotiated in a certain manner to a holder who purchases it in good faith.<sup>22</sup> The holder must not have any notice of any defense against or claim to the document on the part of any person and for value, except under certain circumstances.

The transferee of a negotiable document of title has a specifically enforceable right to have his or her transferor supply any necessary endorsement, but the transfer becomes a negotiation only at the time the endorsement is supplied.<sup>23</sup> Endorsement of a nonnegotiable document does not make

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<sup>19</sup> See s. 677.303, F.S.

<sup>20</sup> Section 677.509, F.S.

<sup>21</sup> Section 677.501(3), F.S.

<sup>22</sup> Section 677.501(4), F.S.

<sup>23</sup> Section 677.506, F.S.

the document negotiable or add to the transferee's rights. The endorsement of a document of title issued by a bailee does not make the endorser liable for any default by the bailee or by previous endorsers.<sup>24</sup>

The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of any interest of such person in the goods.

### **Title and Rights**

A holder of a negotiable document of title has:

- Title to the document;
- Title to the goods; and
- All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued.

In addition, the holder acquires the issuer's obligation to hold or deliver the goods in accordance to the terms of the document free of any defense or claim by the issuer. In the case of a delivery order, the bailee's obligation to the holder begins only upon acceptance of the goods, and the holder's obligation is to ensure that the issuer and any endorser will obtain the acceptance of the bailee.

Except under certain circumstances, title and rights acquired by the holder are not defeated or impaired by the bailee's stoppage or surrender of the goods. Such title and rights are not defeated or impaired:

- Even though the negotiation or a prior negotiation constituted a breach of duty;
- Even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or
- Even though a previous sale or other transfer of the goods or document has been made to a third person.

Section 677.504, F.S., provides for other certain rights acquired or defeated. For example, a transferee of a document, whether it is negotiable or nonnegotiable, acquires limited title and rights to the document and a transferee's rights under a nonnegotiable document may be defeated in certain circumstances. A seller has the right to stop the delivery of goods pursuant to a nonnegotiable document under certain circumstances.<sup>25</sup>

In addition, rights under a document of title are defeated when a person, who before issuance of the document had a legal interest or a perfected security interest in the goods, did not:

- Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell or with power

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<sup>24</sup> Section 677.505, F.S.

<sup>25</sup> Section 677.504, F.S.

- to obtain delivery under ch. 677, F.S., or with power of disposition under the UCC or other statute or rule of law; or
- Let the bailor or the bailor's nominee procure the document of title.<sup>26</sup>

### **Warranties**

If a person, other than a mere intermediary, negotiates or transfers a document of title, the person warrants to the immediate purchaser, in addition to any warranty made in selling the goods, that:

- The document is genuine;
- He or she has no knowledge of any fact which would impair the document's validity or worth; and
- His or her negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

A collecting bank or other intermediary entrusted with documents on behalf of another or entrusted with the collection of a draft or other claim against the delivery of documents, warrants by delivery of the documents only that the bank or intermediary's own good faith and authority.

### ***Warehouse Receipts***

Part II of ch. 677, F.S., governs warehouse receipts. This part provides for the issuance, form, and alteration of warehouse receipts. The part also provides for liability, a duty of care, the defeat of title to warehouse goods, the storage of goods, termination of storage, the lien of a warehouseman, and enforcement of such a lien.

### **Issuance and Form of Warehouse Receipt**

A warehouse receipt may only be issued by a warehouseman. However, when goods are bonded per statute, an owner's receipt is treated as a warehouse receipt.<sup>27</sup>

A warehouse receipt does not have to be in a certain form.<sup>28</sup> However, for a warehouseman to avoid liability, the warehouse receipt must include:

- The location of the warehouse where the goods are stored;
- The date of issue of the receipt;
- The consecutive number of the receipt;
- A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his or her order;
- The rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt;
- A description of the goods or of the packages containing them;
- The signature of the warehouseman or his or her authorized agent;

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<sup>26</sup> Section 677.503, F.S.

<sup>27</sup> Section 677.201(2), F.S.

<sup>28</sup> Section 677.202(1), F.S.



- A statement of ownership of the goods by the warehouseman if the receipt is issued for goods owned by the warehouseman, either solely or jointly or in common with others; and
- A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (s. 677.209, F.S.), or if the amount is unknown, a statement that advances have been made or liabilities incurred and the purpose of the advances made or liabilities incurred.<sup>29</sup>

A warehouseman may insert in his or her receipt any other terms that are not contrary to the provisions of the Florida UCC and do not impair his or her obligation of delivery under s. 677.403, F.S., or his or her duty of care under s. 677.204, F.S.<sup>30</sup> Section 677.208, F.S., provides for the treatment of a negotiable warehouse receipt that has had a blank filled in or that has been altered without authority.

An issuer of a document of title, other than a bill of lading, may be liable for damages if the issuer represents that he or she has received the goods or gives a description of the goods and yet a good faith purchaser of the document does not receive the goods or the goods do not conform to the description. However, the issuer is not liable if the document conspicuously indicates that the issuer does not know whether the goods were received or conform to the description.<sup>31</sup>

### **Duty of Care and Liability**

A warehouseman has a duty of care to goods as a reasonably careful person would exercise under like circumstances, unless a higher duty of care is required under statute, and is liable for damages for loss of, or injury to, the goods caused by his or her failure to exercise such care.<sup>32</sup> However, the warehouseman is not liable for damages which could not have been avoided by the exercise of such care, unless the parties otherwise agree. The warehouse receipt or storage agreement may limit the amount of liability in case of loss or damage and set forth a specific liability per article or item, or value per unit of weight; however, such contractual limitations are subject to any statute that prohibits this type of limitation of liability.<sup>33</sup>

### **Storage of Goods**

A warehouseman may terminate storage and require the removal of goods and seek payment for providing storage after providing notice to any party having an interest in the goods. Removal of the goods must take place by the allotted time in the document of title or at least 30 days after the parties have been notified of the warehouseman's intent to sell the goods. If the goods are not removed by the interested parties by such time, they may be sold to satisfy the warehouseman's lien. A warehouseman may be permitted to sell goods in less time and with less notice to any party under certain circumstances.<sup>34</sup>

<sup>29</sup> Section 677.202(2)(i), F.S.

<sup>30</sup> Section 677.202(3), F.S.

<sup>31</sup> Section 677.203, F.S.

<sup>32</sup> Section 677.204(1), F.S.

<sup>33</sup> Section 677.204(2), F.S.

<sup>34</sup> See s. 677.206, F.S., allowing a warehouseman to provide less notice to parties and sell goods sooner if the goods have declined to a certain value or are a hazard to persons or property.

The warehouseman must deliver the goods to any person entitled to them under ch. 677, F.S., upon due demand made at any time prior to sale or other disposition.

A warehouseman must store goods covered by each warehouse receipt separately, to permit at all times, identification and delivery of those goods, unless the warehouse receipt provides otherwise. However, different lots of fungible<sup>35</sup> goods may be commingled, and such commingled goods are owned in common by the persons entitled to them. The warehouseman is severally liable to each owner for that owner's share.

### **Warehouseman's Lien**

A warehouseman may have a lien against goods for charges for storage or transportation, insurance, labor, or any charges in relation to the goods, and for expenses necessary to preserve the goods or reasonably incurred in their sale pursuant to law. A warehouseman may assert a lien on goods it did not deliver if the person whom the goods are being held for is liable for certain charges and expenses associated with other goods and the warehouse receipt states that a lien is claimed in relation to those other goods. However, a lien asserted against a person to whom a negotiable warehouse receipt is duly negotiated is more limited.<sup>36</sup>

A warehouseman may assert a lien against other parties and may, for example, reserve a security interest against a bailor for a maximum amount specified on the warehouse receipt for certain charges.<sup>37</sup> Additionally, a warehouseman's lien or security interest is effective against a person who entrusted a bailor with the goods under certain circumstances.<sup>38</sup> However, a warehouseman loses his or her lien on any goods which he or she voluntarily delivers or which he or she unjustifiably refuses to deliver.<sup>39</sup>

A warehouseman's lien may be enforced by a public or private sale of the goods as long as the goods are sold in a commercially reasonable manner and after notifying all persons known to claim an interest in the goods.<sup>40</sup> Notification of the public or private sale must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale.<sup>41</sup> A warehouseman may buy the goods at a public sale of such goods.<sup>42</sup>

However, a warehouseman's lien on goods, which are not goods stored by a merchant in the course of his or her business, may be enforced only after following strict notification requirements.<sup>43</sup>

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<sup>35</sup> Section 671.201(18), F.S., defines "fungible goods" as "goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit or goods that, by agreement, are treated as equivalents."

<sup>36</sup> Section 677.209, F.S.

<sup>37</sup> Section 677.209(2), F.S.

<sup>38</sup> Section 677.209(3), F.S.

<sup>39</sup> Section 677.209(4), F.S.

<sup>40</sup> See s. 677.210(1), F.S., stating that if the warehouseman either sells the goods in the usual manner in any recognized market, or if he or she sells at the current going price in such a market, or if he or she has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, the warehouseman has sold in a commercially reasonable manner.

<sup>41</sup> Section 677.210, F.S.

<sup>42</sup> Section 677.210(4), F.S.

<sup>43</sup> Section 677.210(2), F.S.

In the event a party having a claim to the goods satisfies the lien and pays for any other expenses the warehouseman has incurred that are associated with the goods, the goods may not be sold and must be retained in storage.

A good faith purchaser of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements under s. 677.210, F.S.<sup>44</sup>

The warehouseman may satisfy his or her lien from the proceeds of the sale of the goods but must hold the balance for delivery on demand to any person to whom he or she would have been bound to deliver the goods. The warehouseman is liable for damages caused by failure to comply with the requirements for sale under s. 677.210, F.S., and in case of willful violation is liable for conversion.<sup>45</sup>

### ***Bills of Lading***

Part III of ch. 677, F.S., governs bills of lading and provides for the issuance of bills of lading and the duty of care and liability of a carrier. Part III also provides for carrier's liens and enforcement of such liens.

### **Issuance of a Bill of Lading**

Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts and an issuer is liable for damages caused by such a violation. However, if a bill of lading is lawfully in a set of parts then the whole of the parts constitute one bill; therefore, any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.<sup>46</sup>

Instead of issuing a bill of lading to the consignor<sup>47</sup> at the place of shipment, a carrier may, at the request of the consignor, issue the bill at another place. In addition, the issuer may issue a substitute bill at a place other than the place of shipment if anyone entitled to control the goods so requests while the goods are in transit and the original bill of lading or other receipt covering such goods has been surrendered.<sup>48</sup>

### **Duty of Care and Liability**

A carrier, who issues a bill of lading, whether negotiable or nonnegotiable, must exercise the degree of care in relation to the goods which a reasonably careful person would exercise under

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<sup>44</sup> Section 677.210(5), F.S.

<sup>45</sup> See s. 812.012(2)(d)1., F.S., which provides definitions and groups the conduct of conversion with many theft-related terms including larceny, stealing, and embezzlement. However, no definition and no penalty are specifically provided for under current law for the crime of conversion. Instead, the conduct associated with conversion is classified and penalized as a theft. See also s. 812.014, F.S.

<sup>46</sup> Section 677.304, F.S.

<sup>47</sup> Section 677.102(1)(c), F.S., defines "consignor" as the person named in a bill as the person from whom the goods have been received for shipment.

<sup>48</sup> Section 677.305, F.S.

like circumstances.<sup>49</sup> This duty of care does not limit a carrier's liability under any other provision of law.

A document of title may limit a carrier's liability under certain circumstances, but no such limitation is effective with respect to the carrier's liability for conversion of goods for its own use.<sup>50</sup> The bill of lading may also include reasonable provisions as to the time and manner that claims should be presented and actions should be instituted relating to a shipment.

An issuer of a bill of lading is liable for damages if he or she has misdated the bill or misdescribed the goods or the goods were not received by the person relying on the description of the goods in the bill. However, if the document of title indicates that the issuer does not know whether any part or all of the goods were received or conform to the description, then the issuer is not liable.<sup>51</sup>

The issuer of a through bill of lading<sup>52</sup> or other document requiring an action to be performed in part by a person acting as the issuer's agent or by connecting carriers is liable to anyone entitled to recover on the document for any breach by the agent or by a connecting carrier of its obligation under the document. However, if the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.<sup>53</sup>

A person acting as the issuer's agent or as a connecting carrier who possesses the goods is subject to the obligation of the issuer. However, the agent or carrier's obligation is discharged by delivery of the goods to a named person in the document of title and does not assume liability for breach of the obligation required by the document of title by the person receiving the delivery or by the issuer, unless the breach occurs while the goods are in the carrier or agent's possession.<sup>54</sup>

### **Loading and Shipping**

Unless freight is concealed by packages, an issuer who is a common carrier loading goods must count the packages of goods, if the goods are package freight, and must ascertain the kind and quantity if the goods are bulk freight.<sup>55</sup>

When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity

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<sup>49</sup> Section 677.309(1), F.S.

<sup>50</sup> Section 677.309(2), F.S.

<sup>51</sup> Section 677.301, F.S.

<sup>52</sup> A *through* bill of lading is different from other bills of lading because a through bill involves the use of at least two different modes of transport, including road, rail, air, and sea transport. Definition of "through bill of lading" provided by BusinessDictionary.com, <http://www.businessdictionary.com/definition/through-bill-of-lading-B-L.html> (last visited Apr. 14, 2010).

<sup>53</sup> Section 677.302, F.S.

<sup>54</sup> *Id.*

<sup>55</sup> Section 677.301, F.S.

within a reasonable time after receiving the written request of the shipper to do so. In such cases “shipper’s weight” or other words of similar meaning are ineffective.<sup>56</sup>

The issuer may indicate that the goods were loaded by the shipper and if such statement is true the issuer is not liable for damages caused by the improper loading. Omission of the statement does not imply liability for such damages.<sup>57</sup>

A shipper is deemed to have guaranteed to the issuer of the bill of lading the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by him or her and the shipper must indemnify the issuer against damage caused by inaccuracies. The right of the issuer to such indemnity does not limit his or her responsibility and liability under the contract of carriage to any person other than the shipper.<sup>58</sup>

### **Lien of a Carrier**

A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of the carrier’s receipt of the goods for storage or transportation and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law.<sup>59</sup> However, a carrier’s lien against a purchaser for value of a negotiable bill of lading is limited.

A carrier’s lien is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. In addition, a carrier’s lien is effective against the consignor and any person who permitted the bailor to have control or possession of the goods, unless the carrier had notice that the bailor lacked such authority. A carrier loses his or her lien on any goods which the carrier voluntarily delivers or which he or she unjustifiably refuses to deliver.<sup>60</sup>

A carrier’s lien may be enforced by public or private sale of the goods as long as the goods are sold in a commercially reasonable manner and after notifying all persons known to claim an interest in the goods.<sup>61</sup> Notification of the public or private sale must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale.<sup>62</sup> A carrier may buy the goods at a public sale of such goods.<sup>63</sup>

In the event a party having a claim to the goods satisfies the lien and pays for any other expenses the carrier has incurred that are associated with the goods, the goods may not be sold and must be retained by the carrier.<sup>64</sup>

<sup>56</sup> Section 677.301(2), F.S.

<sup>57</sup> Section 677.301(4), F.S.

<sup>58</sup> Section 677.301(5), F.S.

<sup>59</sup> Section 677.307, F.S.

<sup>60</sup> *Id.*

<sup>61</sup> See s. 677.308(1), F.S., stating that if the carrier either sells the goods in the usual manner in any recognized market, or if he or she sells at the current going price in such a market, or if he or she has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, the carrier has sold in a commercially reasonable manner.

<sup>62</sup> Section 677.308, F.S.

<sup>63</sup> Section 677.308(3), F.S.

<sup>64</sup> Section 677.308(2), F.S.

A good faith purchaser of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of s. 677.308, F.S.<sup>65</sup>

The carrier may satisfy his or her lien from the proceeds of the sale of the goods but must hold the balance for delivery on demand to any person to whom he or she would have been bound to deliver the goods.<sup>66</sup> The carrier is liable for damages caused by failure to comply with the requirements for sale under s. 677.308, F.S., and in case of willful violation is liable for conversion.<sup>67</sup>

### III. Effect of Proposed Changes:

The bill's proposed changes to the Florida UCC would modernize the UCC pertaining to documents of title, including warehouse receipts and bills of lading, by adopting the amendments made in 2003 to the model UCC drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI). The bill's modernization of the Florida UCC contemplates electronic commerce and its effect on documents of title.

**Section 1** amends s. 559.9232, F.S., to correct a cross-reference to the definition of a "security interest," to correlate with the changes made in section 2 of the bill.

**Section 2** amends s. 671.201, F.S., to change the definitions of "bearer," "bill of lading," "conspicuous," "delivery," "document of title," "holder," and "warehouse receipt." This section of the bill also creates definitions for "notice," "notifies," "knows" or "knowledge," "discover" or "learn," and "receives."

The definition of "bearer" is changed to mean not only a person possessing a tangible negotiable instrument, but also a person in control of a negotiable electronic document.

The definition of "bill of lading" is changed to specify that the term does not include a warehouse receipt and to clarify that an issuer of a bill may be engaged directly or indirectly in the business of transporting or forwarding of goods.

The definition of "conspicuous" is changed to only require the language in the body of a record or display to be larger than surrounding text or set off by symbols or other marks, and to delete the requirement that such language be in a contrasting type, font, or color to the surrounding text.

The definition of "delivery" is changed to include the voluntary transfer of control of electronic documents. The definition is also changed to include certificated securities as a tangible instrument that may be delivered by voluntary transfer of possession.

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<sup>65</sup> Section 677.308(4), F.S.

<sup>66</sup> Section 677.308(5), F.S.

<sup>67</sup> *Supra* note 45.

The definition of “document of title” is changed to include any record<sup>68</sup> that a person possesses or controls and under which the person is entitled to receive, control, hold, and dispose of the record and goods. The definition of document of title is also changed to define an electronic document of title as a document of title evidenced by a record consisting of information stored in an electronic medium and to define a tangible document of title as a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

The definition for “holder” is changed to include a person in possession of a “negotiable tangible” document of title if the goods are deliverable either to the bearer or to the order of the person in possession, or a person “in control of a negotiable electronic document of title.”

Subsection (25) specifies the conditions which constitute “notice,” “knows” or “knowledge,” and “discover” or “learn.” Notice means a person has actual knowledge of a fact, has received a notice or notification of a fact, or from all the facts and circumstances known to the person at the time in question, has reason to know that the fact exists. A person “knows” or has “knowledge” of a fact if the person has actual knowledge of the fact. “Discover” and “learn” mean having knowledge rather than having a reason to know. This subsection of the bill also clarifies that this section of law does not determine when a notice or notification ceases to be effective.

Subsection (26) provides that a person “notifies” or “gives” notice to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of the information. This subsection also provides that a person “receives” a notice when the information comes to that person’s attention, is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location represented by that person as the place to receive the information.

Subsection (27) provides substantive law using the terms notice, knowledge, or a notice or notification as defined in subsections (25) and (26). The subsection determines when notice, knowledge, or a notice or notification received by an organization is effective. Specifically, such notice or knowledge is effective for a transaction from the time it has been brought to the attention of the individual conducting the transaction and from the time when it would have been brought to the individual’s attention if the organization had exercised due diligence. This subsection clarifies what constitutes due diligence by stating that an organization is deemed to have exercised due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. However, due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that it would be materially affected by the information.

The definition “warehouse receipt” is changed to clarify that it is a document of title.

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<sup>68</sup> Record is defined in s. 671.201(31), F.S., as information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. The same definition is also created in section 18 of the bill.

**Section 3** amends s. 668.50, F.S., to update a cross-reference.

**Section 4** amends s. 671.304, F.S., to update a cross-reference.

**Section 5** amends s. 672.103, F.S., to add the term “control” to a list of terms defined in other sections of the law.

**Section 6** amends s. 672.104, F.S., to change the definition of “financing agency.” The language “or are associated with” is added to the definition of financing agency to include instances when an electronic document of title may be associated with a draft, because such a document cannot physically accompany a draft.

**Section 7** amends s. 672.310, F.S., to provide that payment for the delivery of goods is due at the time and place at which the buyer is to receive delivery of tangible documents or at the time the buyer is to receive delivery of the electronic documents and at the seller’s place of business or, if the seller does not have a place of business, at the seller’s residence.

Current law does not include a provision for the time or place for payment when a buyer is to receive delivery of electronic documents.

**Section 8** amends s. 672.323, F.S., to make stylistic changes and clarify that a bill of lading issued in a set of parts under subsection (2) means a “tangible” bill of lading.

**Section 9** amends s. 672.401, F.S., to make stylistic changes and clarify that a title to goods passes at the time and place where the seller delivers a tangible document of title or if an electronic document of title is delivered by the seller, then title passes when the seller delivers the document.

Current law does not include a provision for the passing of title of goods when a seller delivers an electronic document of title.

**Section 10** amends s. 672.503, F.S., to make stylistic changes and change the language pertaining to written instruments to include the use of electronic instruments. Specifically, the language “written direction” is replaced in the bill by “record directing,” to provide for the tender of information stored in an electronic medium. Also, the language “or associated with” is added to paragraph (5)(b) to clarify that a draft may be “associated with” an electronic document of title, while a tangible document would accompany a draft.

Paragraph (4)(b) is amended to reference Article 9 of the UCC to reference exceptions to what may be considered a deficient tender of a document of title or record.<sup>69</sup>

**Section 11** amends s. 672.505, F.S., to make stylistic changes and provide for the possession of a tangible bill of lading and control of a bill of lading in electronic form. In addition, “of title” is added to the language “negotiable document” in subsection (2) to clarify that a seller’s powers as a holder of a document includes electronic documents of title.

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<sup>69</sup> The provisions of Article 9 of the UCC are found under ch. 679, F.S., which pertains to secured transactions.



**Section 12** amends s. 672.506, F.S., to delete unnecessary language.

**Section 13** amends s. 672.509, F.S., to clarify that risk of loss passes to the buyer on the buyer's receipt of "possession or control" of a negotiable document or after the buyer's receipt of "possession or control" of a nonnegotiable document of title. Because the new language includes "possession or control," the risk of loss provision is applicable to electronic documents of title as well as tangible documents of title.

Paragraph (2)(c) deletes a reference to a written direction and instead references a record, which includes information stored in an electronic medium.

**Section 14** amends s. 672.605, F.S., to delete unnecessary language.

**Section 15** amends s. 672.705, F.S., to make stylistic changes and provide for the possession or control of a document of title in recognition of electronic documents of title.

**Section 16** amends s. 674.104, F.S., to include in a list of terms defined in other sections of law, the term "control," which is defined under s. 677.106, F.S.

**Section 17** amends s. 674.2101, F.S., to provide for the "possession or control" of documents by a bank to recognize that such documents may be electronic documents.

**Section 18** amends s. 677.102, F.S., to amend, create, delete, and reference certain definitions relating to documents of title.

This section of the bill creates definitions for "carrier," "good faith," "person entitled under the document," "record," "shipper," and "sign." The definitions for "person entitled under the document," "record," and "sign" all are defined so as to recognize electronic documents and transactions.

The identical definition for "record" is also provided for under current law in s. 671.201(31), F.S., which applies to any use of the term throughout Florida's UCC.

The terms "bailee," "consignee," "consignor," "delivery order," "goods," "issuer," and "warehouse" are amended in this section of the bill to make stylistic changes and to recognize electronic documents of title. "Warehouse" replaces the term "warehouseman" in this section and throughout the bill.

The term "document," which is currently defined in s. 677.102(1)(e), F.S., to mean a document of title as defined under s. 671.201, F.S., is deleted in this section of the bill. The term "document of title," defined in s. 671.201, F.S., is amended in section 2 of the bill to recognize the use of electronic documents of title.

This section of the bill also deletes references to the terms "duly negotiate," "person entitled under the document," and "overseas." "Person entitled under the document" is defined in this section of the bill in a manner that recognizes electronic documents, and the existing definition is

deleted in section 43 of the bill. A reference to the definition of “overseas” is deleted in this section of the bill.<sup>70</sup>

**Section 19** amends s. 677.103, F.S., to delete references to tariffs, which according to NCCUSL no longer exist due to deregulation, and to make stylistic changes.<sup>71</sup> This section of the bill also provides that the provisions of ch. 677, F.S., do not modify or repeal any law prescribing the form or content of a document of title or the service or facilities to be provided by a bailee or regulating a bailee’s business. However, the bill provides that a violation of such a law does not affect the status of a document of title meeting the definition of document of title as provided for under s. 672.201(16), F.S.

Subsection (3) provides for the modification, limitation, and supersession of certain provisions of the federal Electronic Signatures in Global and National Commerce Act (act) to avoid any preemption issues and prohibits electronic delivery of certain types of notices under the act. The same provision is provided for under current law in s. 671.212, F.S., and applies to all provisions of the UCC.

Subsection (4) provides for a conflict of law provision requiring ch. 677, F.S., to govern when there is a conflict between the general laws of Florida and the laws provided for under ch. 677, F.S., when the matter concerns electronic transactions.

**Section 20** amends s. 677.104, F.S., to delete redundant language, delete a provision for the negotiation of a document of title in overseas trade, change a “written order” to an order in a “record” to recognize electronic documents, and to prohibit negotiation of a document of title that has a conspicuous legend stating that the document is nonnegotiable at the time that it is issued.

**Section 21** amends s. 677.105, F.S., to delete a provision relating to the construction of ch. 677, F.S., which prevents negative implication of the omission of a provision in certain parts of the chapter. Instead, this section of the bill provides for the substitution of a tangible document for an electronic document and vice versa.

Specifically, an electronic document can be substituted with a tangible document if the person entitled under the electronic document surrenders control of the document to the issuer of the document and the tangible document used in substitution contains a statement that it is being issued in substitution for the electronic document. Similarly, a tangible document being converted into an electronic document is permitted if the person entitled under the tangible document surrenders possession of the tangible document to the issuer of the document and the electronic document contains a statement that it is issued in substitution of the tangible document.

Regardless of whether a tangible document is substituted for an electronic document, or vice versa, the substituted electronic or tangible document ceases to have any effect or validity and the person procuring the issuance of the document in its new form warrants to all subsequent

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<sup>70</sup> Note: In section 34 of the bill, the word “overseas” is replaced by “international.”

<sup>71</sup> NCCUSL, *supra* note 6.

persons entitled under the document that the warrantor was a person entitled under the document when it was surrendered by the warrantor to the issuer and prior to its substitution.

**Section 22** creates s. 677.106, F.S., to provide for the control of an electronic document of title.

This section of the bill provides that “control” of an electronic document is only established when a system is employed for evidencing the transfer of interests in an electronic document. The system must reliably establish the person in control as the person to which the document was issued or transferred and the document is created, stored, and assigned in a manner that:

- A single authoritative copy of the document of title exists, which is unique, identifiable, and unalterable; unless the person asserting control consents to a change, or a copy is readily identified as a copy and not the authoritative copy, or an amendment of the authoritative copy is readily identifiable as authorized or unauthorized;
- The authoritative copy identifies the person asserting control as the person to which the document was issued or transferred, but the document must indicate such a transfer; and
- The authoritative copy is communicated and maintained by the person asserting control or the custodian of the electronic document.
- Copies of amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control.
- Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.
- Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

The provisions of this section of the bill help to ensure that parties to a transaction are working with an authentic electronic document that has not been altered without authorization and that the person has authority to act under the document.

**Section 23** amends s. 677.201, F.S., to make stylistic changes.

**Section 24** amends s. 677.202, F.S., to make stylistic changes and specify that a warehouse receipt must include a “unique identification code,” which replaces a reference to “consecutive number,” in order for a warehouse to avoid liability for damages for omitting such a code.

**Section 25** amends s. 677.203, F.S., to make stylistic changes and clarify that the language in subsection (2) stating “the party or purchaser otherwise has notice” means notice of the “nonreceipt or misdescription” of the goods subject to a document of title other than a bill of lading.

**Section 26** amends s. 677.204, F.S., to make stylistic changes and to remove the requirement that a warehouse receipt limiting liability for loss or damage set forth a specific liability per article of item or value per unit of weight. This section of the bill also changes a “written request” to a “record” to allow for the use of an electronic document by a bailor to request, within a certain time, a warehouse’s liability to be increased.

Language in this section of the bill relating to the limitation of liability contained in a warehouseman's tariff is deleted as tariffs pertaining to warehoused or shipped goods are no longer in existence according to NCCUSL.<sup>72</sup>

Subsection (3) permits reasonable provisions, as to the time and manner of presenting claims and commencing actions based on a bailment, to be included in the warehouse receipt or storage agreement.

**Section 27** amends s. 677.205, F.S., to make stylistic changes and clarifies that if the "receipt is negotiable" and has been negotiated, a buyer in the ordinary course of business may take the goods free of any claim under a warehouse receipt.

**Section 28** amends s. 677.206, F.S., to make stylistic changes and clarify that a warehouse is permitted to provide notice to a person that his or her goods, which are about to deteriorate in value, are to be sold in less than 30 days from the notice provided to the person or, if goods are to be sold to pay for a warehouse lien, in less time than is generally allowed for a sale of goods for the enforcement of a lien.<sup>73</sup>

**Section 29** amends s. 677.207, F.S., to make stylistic changes.

**Section 30** amends s. 677.208, F.S., to make stylistic changes and clarify that only a good faith purchaser of goods under a warehouse receipt containing unauthorized provisions may treat such provisions as authorized. This section of the bill also specifies that a warehouse receipt includes a tangible or electronic receipt.

**Section 31** amends s. 677.209, F.S., to make stylistic changes and add "or storage agreement" to clarify that warehouse liens attach to goods under such agreements. This section of the bill also clarifies that a warehouse lien attaches to the goods subject to a warehouse receipt or storage agreement, instead of to a person for which the goods are being held.

Subsection (3) establishes the circumstances under which a lien or security interest is not effective against a person by providing each provision found in s. 677.503(1), F.S., as amended under section 45 of the bill. Specifically, a lien or security interest is not effective if a person, who had a legal interest in the goods, did not deliver or entrust the goods or document of title covering the goods to the bailor or its nominee with:

- Actual or apparent authority to ship, store, or sell;
- Power to obtain delivery; or
- Power of disposition.

In addition, such a lien or security is not effective if the person with a legal interest did not let the bailor or its nominee procure the document.

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<sup>72</sup> See NCCUSL, *supra* note 6.

<sup>73</sup> See s. 677.210, F.S., which requires a warehouse to demand payment of a lien within 10 days of a person receiving notice of the lien amount due and a potential sale of the goods to pay for the lien. If the lien is not paid then the warehouse must advertise the sale for two consecutive weeks and the sale of the goods may not take place until at least 15 days after the first publication of the advertisement.

Subsection (4) provides for the effectiveness of a warehouse lien on household goods, meaning furniture, furnishings, or personal effects used in a dwelling.

**Section 32** amends s. 677.210, F.S., to make stylistic changes.

**Section 33** amends s. 677.301, F.S., to make stylistic and technical changes. In addition, this section of the bill removes the specification in current law that the issuer of a bill of lading is also a common carrier, which would change the law to require not only common carriers, but all issuers of a bill of lading, to count the packages of goods that are shipped in packages, ascertain the kind and quantity of goods shipped in bulk, and weigh such goods under certain circumstances.

**Section 34** amends s. 677.302, F.S., to make stylistic changes and clarify that a document is a document of title. Effectively, this change recognizes the use of electronic documents of title.

**Section 35** amends s. 677.303, F.S., to make stylistic changes, clarify that a carrier may deliver goods to a person or destination other than stated in a bill of lading without being liable for misdelivery, and provide for a consignee's possession of an electronic bill of lading as well as a tangible bill to recognize the use of electronic bills of lading.

**Section 36** amends s. 677.304, F.S., to prohibit a tangible, but not an electronic, bill of lading from being issued in a set of parts. However, a tangible bill may be issued in a set of parts if such issuance is customary in international transportation. This section of the bill also specifies that a tangible bill of lading being lawfully issued in a set of parts must contain an identification code for each part, rather than just being numbered.

This section of the bill also makes stylistic changes and clarifies that a document is a document of title to recognize the use of electronic documents of title.

**Section 37** amends s. 677.305, F.S., to make stylistic changes, provide for the surrender of "possession or control" of an outstanding bill of lading or receipt of goods to recognize the use of electronic bills of lading or receipts of goods. This section of the bill is also amended to reference s. 677.105, F.S., which provides the requirements for substituting an electronic document of title for a tangible document of title and vice versa.

**Section 38** amends s. 677.307, F.S., to make stylistic changes and permit a carrier to enforce a lien not only against goods covered by a bill of lading, but also against the proceeds of such goods in the carrier's possession.

**Section 39** amends s. 677.308, F.S., to make stylistic changes.

**Section 40** amends s. 677.309, F.S., to specify the type of document under which a carrier may limit its liability for damages. This section of the bill specifies that liability may be limited by a term in a bill of lading or transportation agreement, in certain circumstances. In addition, reasonable provisions as to the time and manner of presenting claims and commencing actions relating to the shipment may be included in a bill of lading or transportation agreement.

Various references to tariffs, which under current law in s. 677.309, F.S., are referenced to provide a point of value for limiting or raising a carrier's liability, are deleted. According to NCCUSL, tariff's related to warehousing or shipping are no longer in existence because of deregulation.<sup>74</sup>

**Section 41** amends s. 677.401, F.S., to make stylistic changes.

**Section 42** amends s. 677.402, F.S., to make stylistic changes, replace "receipt or bill" in the catch line with "document of title" to recognize the use of electronic warehouse receipts and bills of lading, and specify when rights may be conferred if there is a duplicate document of title. Specifically, it specifies that rights may be conferred under bills of lading in a set of parts that are "tangible" bills of lading. Also, rights are conferred under substitute documents under s. 677.105, F.S., as amended in section 21 of the bill.

**Section 43** amends s. 677.403, F.S., to obligate a bailee to deliver goods to a person entitled under a document of title, including electronic documents of title, unless the bailee can establish certain excuses under the law for nondelivery. One excuse, a seller exercising its right to stop delivery pursuant to s. 672.705, F.S., is extended by this section of the bill to recognize a lessor's right to stop delivery pursuant to s. 680.526, F.S.

This section of the bill deletes a definition for "person entitled under the document," but such definition is provided for in section 18 of the bill and uses the language "document of title" to recognize the use of electronic documents of title.

This section of the bill also makes stylistic and technical changes and deletes a reference to a tariff regulating the right of a bailee to not deliver goods, because according to NCCUSL such tariffs no longer exist because of deregulation.<sup>75</sup>

**Section 44** amends s. 677.404, F.S., to make stylistic changes and delete the meaning of "good faith," which includes the observation of reasonable commercial standards. Instead, this meaning is provided for in the definition of "good faith" created in section 18 of the bill.

**Section 45** amends s. 677.501, F.S., to specify that the rules governing the form of negotiation of documents provides certain requirements for negotiable tangible documents of title and certain requirements for negotiable electronic documents of title. The bill does not change the requirements for negotiation of a tangible document, but creates requirements for the negotiation of an electronic document of title.

This section of the bill specifies that, for an electronic document of title, negotiation is accomplished if:

- The document's original terms run to the order of a named person or to a bearer and the document is delivered to another person (endorsement by the named person is not required for negotiation); or

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<sup>74</sup> NCCUSL, *supra* note 6.

<sup>75</sup> *Id.*

- The document's original terms run to the order of a named person and the named person has control of the document.
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Paragraph (2)(c) provides that a document is “duly negotiated” if it is negotiated to a holder that purchases for value the document in good faith, without notice of any defense against or claim to the document by another person, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

Subsection (3) clarifies that endorsement of a nonnegotiable document of title does not make the document negotiable or add to the transferee's rights. Adding the words “of title” to “document” recognizes the use of electronic documents of title.

**Section 46** amends s. 677.502, F.S., to make stylistic changes, clarify that a document is a document of title to recognize electronic documents of title, and specify that title and rights to goods are not impaired if any person has been deprived of possession of a negotiable tangible document or “control of a negotiable electronic document” to also recognize the use of electronic documents.

**Section 47** amends s. 677.503, F.S., to specify that a document of title does not confer a right to goods against certain persons who did not deliver goods or a document of title with power of disposition under not only ss. 672.403 and 679.320, F.S., but also under ss. 680.304(2), 680.305(2), 679.320, or s. 679.321(3), F.S. Effectively, this provision includes disposition powers allocated to buyers buying in the ordinary course of business, sublessees leasing from merchant lessors or lessees, and a lessee of goods having a secured interest by the lessor.

This section of the bill also contains stylistic changes.

**Section 48** amends s. 677.504, F.S., to make stylistic and technical corrections and specify that a document is a document of title to recognize electronic documents of title. Additionally, this section of the bill provides that the rights of a transferee may be defeated not only by a creditor of a seller under s. 672.402, F.S., but also by a creditor or lessor in possession of goods subject to a lease contract pursuant to s. 680.308, F.S., or by a lessee from the transferor in the ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights.

Subsection (4) also provides that not only may delivery of the goods be stopped by a seller exercising rights under s. 672.705, F.S., but also by a lessor pursuant to s. 680.526, F.S.

**Section 49** amends s. 677.505, F.S., to specify that endorsement of a “tangible,” document of title issued by a bailee does not make the endorser liable for default by the bailee or a previous endorser.

**Section 50** amends s. 677.506, F.S., to specify the transferee of a “tangible” document of title has a specifically enforceable right to require a transferor to supply an endorsement.

**Section 51** amends s. 677.507, F.S., to substitute the word “delivers” for “transfers” to recognize the use of electronic documents of title and make stylistic changes.

**Section 52** amends s. 677.508, F.S., to make stylistic changes and replace document with “document of title” to recognize the use of electronic documents.

**Section 53** amends s. 677.509, F.S., to make stylistic changes, replace document with “document of title” to recognize the use of electronic documents, and provide that determination of the adequacy of a document of title to fulfill the obligations of a contract for lease is determined under ch. 680, F.S.

Current law only provides for the determination of adequacy of documents of title to fulfill obligations for contracts for sale or for letters of credit.

**Section 54** amends s. 677.601, F.S., to make stylistic changes, replace document with “document of title” to recognize the use of electronic documents, and provide for possession or control of a document to address the nonsurrender of a tangible or electronic document.

This section of the bill also clarifies that a court may award payment of a bailee’s reasonable costs and fees for any action concerning a lost, stolen, or destroyed document of title.

Subsection (2) deletes a reference to a tariff.<sup>76</sup>

**Section 55** amends s. 677.602, F.S., to make stylistic changes, replace document with “document of title” to recognize the use of electronic documents, and provide for surrender of the “possession or control” of a document of title to recognize the use of electronic documents.

**Section 56** amends s. 677.603, F.S., to make stylistic changes.

**Section 57** amends s. 678.1031, F.S., to provide that a document of title is not a financial asset unless s. 678.1021(1)(i)2., F.S., applies, which defines a “financial asset,” in relevant part, to mean “an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment.”

**Section 58** amends s. 679.1021, F.S., to include in a list of referenced definitions the term “control” under s. 677.106, F.S., and “issuer” under s. 677.102, F.S.

**Section 59** amends s. 679.2031, F.S., to include in a list of collateral “electronic documents.”

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<sup>76</sup> Note: NCCUSL reports that tariffs pertaining to warehousing and shipping no longer exist because of deregulation. See NCCUSL, *supra* note 6.



This section of the bill also includes that a secured party has control of such electronic documents under s. 677.106, F.S., which is created in section 22 of the bill to provide for control of electronic documents of title.

**Section 60** amends s. 679.2071, F.S., to reference s. 677.106, F.S., when providing for a secured party's possession or control of collateral. Section 677.106, F.S., is created in section 22 of the bill to provide for control of electronic documents of title.

**Section 61** amends s. 679.2081, F.S., to provide for additional duties of a secured party having control of an electronic document of title as collateral. Specifically, a secured party must:

- Give control of the document to the debtor or its designated custodian;
- Communicate to a designated custodian of the document who is maintaining the document for the secured party that the custodian is released from any obligation to comply with original instructions of the secured party and to instead comply with the debtor's instructions; and
- Take appropriate action to enable the debtor or its custodian to make copies or revisions to the authenticated copy of the document of title which add or change an identified assignee of the authoritative copy without the consent of the secured party.

**Section 62** amends s. 679.3011, F.S., to specify that if "tangible" negotiable documents are located in a jurisdiction, then the local law of that jurisdiction governs the perfection of certain security interest.

**Section 63** amends s. 679.3101, F.S., to provide not only for the possession of certificated securities, documents, goods, or instruments, but also the "control" of such securities, documents, goods, or instruments to recognize the use of electronic documents or instruments.

This section of the bill also provides that a filing of a financing statement is not necessary to perfect a security interest in electronic documents, as well as other documents, which are perfected by control.

**Section 64** amends s. 679.3121, F.S., to provide not only for the possession, but also the "control" of a document to establish when such a document is perfected.

**Section 65** amends s. 679.3131, F.S., to specify that a secured party may perfect a security interest in "tangible" negotiable documents, among others, by taking possession of collateral.

**Section 66** amends s. 679.3141, F.S., to provide for the perfection of electronic documents as collateral by "control" of such documents under s. 677.106, F.S. Section 677.106, F.S., is created in section 22 of the bill to provide for control of electronic documents of title.

**Section 67** amends s. 679.3171, F.S., to specify that a buyer of "tangible" documents takes free of a security interest or agricultural lien under certain circumstances and that a licensee of a general intangible or a buyer of "electronic documents" takes free of a security interest under certain circumstances.

**Section 68** amends s. 679.338, F.S., to specify that a purchaser takes free of a security interest or agricultural lien if the purchaser gives value and receives delivery of a “tangible” document as collateral.

**Section 69** amends s. 680.1031, F.S., to make stylistic changes.

**Section 70** amends s. 680.514, F.S., to make stylistic changes.

**Section 71** amends s. 680.526, F.S., to make a stylistic change.

**Section 72** provides an effective date of July 1, 2010.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because this bill modernizes language in the Uniform Commercial Code (UCC) pertaining to documents of title to recognize the utility of electronic commerce, business transactions may become less cumbersome allowing for added efficiencies. In addition, because many other states have adopted the revised model UCC pertaining to documents of title and businesses in those states are familiar with those provisions, they may be more comfortable doing business in Florida.

C. Government Sector Impact:

None.

#### **VI. Technical Deficiencies:**

On lines 1624 and 1625, the bill states that “[a] document of title is not a financial asset unless s. 678.1021(1)(i)2. applies.” Section 678.1021(1)(i)2., F.S., is a portion of a definition of a

“financial asset.” It is unclear how this portion of a definition would “apply” to this substantive provision. For clarity, the provision could be revised to read: “A document of title is not a financial asset unless it satisfies the definition under s. 678.1021(1)(i)2.”

## **VII. Related Issues:**

Lines 173 through 187 of the bill provide for substantive law in a section of law intended for definitions, which may be problematic for a person conducting research who is not aware that such a substantive provision is in a “definitions” section of law.

## **VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

### **CS by Banking and Insurance on April 7, 2010:**

This committee substitute makes technical changes to correct incorrect wording and incorrect cross references.

The committee substitute also clarifies the procedures for which a warehouse may terminate a storage agreement that has expired. Specifically, the language provides that a “nonnegotiable warehouse receipt” may state the period at which the storage contract terminates, at which point the warehouseman may remove the items from storage and recoup removal costs from the person on whose account the goods were held.

This amendment also removes the provision in the original bill that eased notice requirements for enforcing warehouse liens. This provision of the amendment maintains the current statute that provides that a warehouse may enforce its warehouseman’s lien only if all persons known to claim an interest in the goods are notified via hand delivery or registered or certified letter to their last known address.

- B. **Amendments:**

None.