

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Banking and Insurance Committee

BILL: SB 2716

INTRODUCER: Senator Aronberg

SUBJECT: Uniform Commercial Code

DATE: April 23, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gordon</u>	<u>Cooper</u>	<u>CM</u>	<u>Favorable</u>
2.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends Article 1 of the Uniform Commercial Code (UCC or code), which is codified in chs. 670-680, F.S., and makes certain changes to the Florida Secured Transaction Registry (FSTR or registry) in several respects, including the following:

- Revising, deleting and providing new definitions;
- Revising and amending the statutes to recognize changing business practices, particularly as they reflect terms and practices arising from electronic commerce;
- Clarifying the scope of Article 1 to encompass only transactions within the scope of other articles of the UCC;
- Defining the application of supplemental laws to the UCC such as the Electronic Signatures in Global and National Commerce Act (E-sign);
- Revising the definition of good faith to conform to the definition of that term as used in the majority of the recently revised UCC articles;
- Providing that evidence of “course of performance” may be used to interpret a contract along with “course of dealing” and “usage of trade”;
- Repealing the existing Florida Secured Transaction Registry (FSTR) and redefining that term to mean a centralized database for filing financial statements to register a secured party’s interest in a loan secured by non-titled property;
- Replacing statutory references that referred to the monetary amount of UCC filing fees charged by the Department of State with the actual dollar amount of those fees; and
- Reducing certain fees.

This bill creates the following sections of the Florida Statutes: 671.209, 671.210, 671.211, 671.212, and 671.213.

This bill amends the following sections of the Florida Statutes: 15.16, 285.20, 319.27, 559.9232, 563.022, 668.50, 670.106, 670.204, 671.101, 671.102, 671.106, 671.107, 671.201, 671.202, 671.203, 671.204, 671.205, 671.208, 671.301, 675.102, 679.1021, 679.5011, 679.5021, 679.512, 679.516, 769.519, 679.520, 679.523, 679.525, 680.1031, 680.518, 680.519, 680.527, 680.528, and 713.901.

This bill repeals the following section of the Florida Statutes: 15.091, 671.206, 679.521, 679.526, and 679.527.

II. Present Situation:

Uniform Commercial Code

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. The code provides default language where contracts are silent. The code consists of 9 articles dealing with the following subjects in consecutively numbered articles:

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

In 2001, the National Conference of Commissioners on Uniform State Laws (NCCUSL) finalized the Revision of Uniform Commercial Code Article 1, which governs the general provisions of the UCC. Currently the act has been adopted in 14 states and the U.S. Virgin Islands and has been filed in the legislatures of 8 additional states.

The NCCUSL summarized its revisions to the UCC in the following manner:

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.

¹ Duke University, UCC Research Guide, <http://www.law.duke.edu/lib/researchguides/pdf/ucc.pdf>, 31 March 2006.

The first substantive change is intended to clarify the scope of Article 1. Section 1-102 now expressly states that the substantive rules of Article 1 apply only to transactions within the scope of other articles of the UCC. The statute of frauds requirement aimed at transactions beyond the coverage of the UCC has been deleted. Second, amended Section 1-103 clarifies the application of supplemental principles of law, with clearer distinctions about where the UCC is preemptive. Third, the definition of "good faith" found in 1-201 is revised to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing". This change conforms to the definition of good faith that applies in all of the recently revised UCC articles except Revised Article 5. Finally, evidence of "course of performance" may be used to interpret a contract along with course of dealing and usage of trade.²

Florida Secured Transaction Registry

Section 679.527, F.S., establishes the Florida Secured Transaction Registry (FSTR or registry). The FSTR is a centralized database where financial statements are filed to register a secured party's interest in a loan secured by non-titled property (e.g., liens on personal property). The database is primarily used by lenders and not the general public.

In 2001, the Department of State (department) began a privatization project to transfer the secured transactions filing process using the FSTR and associated file maintenance to a private contractor. However, the department retained sole and exclusive ownership of the materials and records of the registry. The department also has the right to reclaim the registry if the private contractor does not perform the contract or becomes insolvent.

As the department began its privatization efforts, NCCUSL revised Article 9 of the UCC and created an "open-drawer" filing system. This new system essentially permits the filing of *any* document related to secured transactions and removes the ability of filing offices to reject filings that are inappropriate. More specifically, prior to this change, secured transaction documents were required to contain the signature of the debtor before they could be filed. After the NCCUSL revision, this was no longer necessary, thereby increasing the number of filings that did not necessarily create a legitimate security interest.³

According to the Department of State and the Florida Bankers' Association, an organization representing approximately 300 lending institutions in the state, the privatization process that started in 2001 has been successful. Those representatives further indicate that, because of this level of success, complete privatization should be permitted. Therefore, statutory provisions requiring continuing oversight by the department are no longer necessary.

III. Effect of Proposed Changes:

Section 1 amends s. 15.16, F.S., to delete a reference to ch. 679, F.S. This change removes a provision that requires that certain documents be filed with the Department of State, which conforms to a subsequent change in the bill deleting the current FSTR.

² NCCUSL, *Revised Article 1 of the Uniform Commercial Code*, http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-ucc1.asp, 31 March 2006.

³ Wisconsin Lawyer, *Financing Statements Under Revised UCC Article 9*, 74 Aug. Wis. Law. 14, 55-56 (2001). Representatives of the department indicate that this change created an additional burden on them to track filings that were not necessary to the process of recording security interests generally.

Section 2 amends s. 285.20, F.S., which requires the governing body of the Seminole Tribe of Florida or the Miccosukee Tribe of Indians⁴ to file certain records with the central filing office. The bill deletes a portion of the statute which describes the central filing office as an office that may be established from time to time under the Uniform Commercial Code. Revised s. 679.5011(3), F.S., section 20 of the bill, describes the filing office as the Florida Secured Transaction Registry or the centralized database for filing all initial financing statements, amendments, assignments and statements of change authorized to be filed under the code.

Section 3 amends s. 671.101, F.S., to define the scope of Florida's UCC.

Currently s. 671.101, F.S., only provides that chs. 670-680, F.S., may be cited as the "Uniform Commercial Code." This bill clarifies that ch. 671, F.S., applies to a transaction to the extent that the transaction is governed by another chapter of this code.

Section 4 amends s. 671.102, F.S., which governs the purposes, rules of construction and variations from the UCC that are made by agreement. The bill makes editorial changes to the language of this section.

Article 1 of the UCC contains few substantive rules, but those rules underpin the code. Courts and legal commentators have expressed some uncertainty regarding which transactions are governed by the substantive rules. In order to resolve the confusion, s. 671.102, F.S., which outlines those rules is amended to make explicit that the substantive rules apply only to transactions within the scope of the other Articles.

In addition, the bill explicitly permits a timeframe related to the performance of a contract to be fixed by agreement as long as the time set is not manifestly unreasonable. This provision is added to paragraph (2)(b), which states that the obligations of good faith, diligence, reasonableness, and care may not be disclaimed by agreement, but that parties may generally determine standards for performance of those obligations as long as not manifestly unreasonable.

Section 5 amends s. 671.106, F.S., to make minor technical changes, such as adding a comma and changing "shall" to "must."

Section 6 amends s. 671.107, F.S., related to a waiver or renunciation of claim or right after a breach of contract occurs. Currently, under this statute, 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. This expressly requires that the aggrieved party *agree* to discharge any claims or rights arising from the breach and also requires that the agreement take the form of an "authenticated record" (one that can be verified).

Section 7 amends s. 671.201, F.S., which provides general definitions for terms used in the code. This bill adds several new definitions and revises existing ones. The new terms include:

⁴ Both the Seminole and Miccosukee Tribe of Indians are sovereign nations which require special rules.

- **Consumer** refers to an individual who enters into a transaction primarily for personal, family, or household purposes.
- **Present value** is 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 an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, 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. The current statute defines this term in s. 671.201(37), F.S., related to security interests.
- **Record** is a term describing information that is inscribed on a tangible medium or that is stored in an electronic or other medium or is retrievable in perceivable form
- **State** describes 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.

Several terms are revised in the following manner:

- **Aggrieved party**: This term is currently defined as a party entitled to resort to a remedy. 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 which can be determined from their language 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**: The revised definition inserts the word “negotiable,” before instrument and makes a minor grammatical change.
- **Bill of lading**: This definition deletes the reference to airbills.
- **Buyer in ordinary course of business**: The revised definition makes minor grammatical changes to the definition.
- **Conspicuous**: The current definition of conspicuous refers to a term or clause that is written in such a way that a reasonable person against whom it would operate would notice it. The revised definition removes clauses and adds that the terms may be displayed or presented. The revision further provides that whether a term is conspicuous is a decision for a court. The current definition also includes subparagraphs (a) and (b) which outline the type of language that comprise conspicuous terms. The revised definition makes minor grammatical changes to (a), which currently discusses heading in capitals with large font; however, 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.
- **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.
- **Defendant**: The revised definition clarifies that a person who must defend against a cross-claim or third-party claim is also contemplated by the definition.

- **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.
- **Fault:** This term is currently defined as a wrongful act, omission or breach. The revision adds the term default to the definition.
- **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.
- **Good faith:** Currently, this term is defined as honesty in fact in the conduct or transaction concerned. The term is revised to reflect the broader standard of good faith in Article 2 of the UCC to mean, “honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.” This broader definition reflects the standard already applicable throughout the code.
- **Holder:** This definition is reorganized for clarity.
- **Insolvent:** The revised definition makes minor grammatical changes.
- **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 simplifies the definition to mean “a person other than an individual.” This is the standard definition used in acts prepared by the National Conference of Commissioners on Uniform State Laws.
- **Party:** The revised definition makes minor grammatical definitions.
- **Person:** Currently, “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. The revised 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.
- **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.
- **Representative:** This definition retains the same language, but 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 including deleting the definition of “present value.”
- **Send:** This definition makes minor technical changes to the current statute.
- **Signed:** This definition recognizes the growth of e-commerce and revises the current definition to include bearing a symbol that indicates a person’s present intention to adopt or accept a writing.
- **Surety:** This term is currently defined as a guarantor. The definition is slightly expanded to include “other secondary obligor.”
- **Term:** The revised definition makes minor grammatical changes.
- **Unauthorized signature:** The revised definition contains minor technical changes.

- **Warehouse receipt:** The revised definition deletes the requirement that a receipt be written in recognition of 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,” “notice,” “notifies or gives notice,” “presumption or presumed,” “telegram,” and “value.” A new statutory provision, s. 67.209, F.S., is created to define the terms “notice” and “knowledge.” In addition, new provisions are created to define “presumptions,” s. 671.210, F.S., and “value,” s. 671.211, F.S.

Section 8 amends s. 671.202, F.S., related to prima facie evidence by third party documents. The revision makes one change—replacing the phrase “shall be” with the word “is.”

Section 9 amends s. 671.203, F.S., regarding the obligation of good faith. Currently the definition states: “Every contract or duty within this code imposes an obligation of good faith in its performance or enforcement.” The revised definition changes the “and” to “or.” This change ensures that the good faith standard permeates all aspects of contract creation, performance and enforcement to preserve the integrity of commercial transactions.

Section 10 amends s. 671.204, F.S., regarding when actions taken related to contracts occur within a reasonable timeframe. The bill revises this section to emphasize that reasonableness depends on the nature, purpose and circumstances of the action. This change ensures that the particular context of the transaction controls reasonableness.

Section 11 amends s. 671.205, F.S., related to course of dealing and usage of trade.

The bill adds course of performance to the heading of this statutory section and provides a definition. According to this new definition, a “course of performance” refers to a sequence of conduct between parties that 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. Moreover, the bill provides that a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

Currently, course of dealing, refers to a sequence of previous conduct between parties regarding a particular transaction. The bill revises the description to be a sequence of conduct concerning previous transactions, rather than previous conduct.

The bill also provides that the course of performance or course of dealing may be looked to for the particular meaning of specific terms of an agreement and may supplement or qualify as a term of an agreement.

Currently, 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 bill slightly revises this provision to reflect that a usage may be embodied in a written trade code or similar record, rather than similar writing.

Section 12 repeals s. 671.206, F.S., relating to the statute of frauds for kinds of personal property not otherwise covered under the code. Drafters of this bill indicate that other articles of the UCC delineate requirements for writings necessary to comply with those articles. This section of law imposed a writing requirement on sales transactions not governed by the UCC, and is, therefore, unnecessary.

Section 13 revises s. 671.208, F.S., related to the option to accelerate either payment or performance under a contract at will. The bill makes minor grammar changes to replace “shall” with “must” and “shall have” with “has.”

Section 14 creates s. 671.209, F.S., to define “notice” and “knowledge.” Subsection (1) provides that a person has notice of a fact if the person:

- Has actual knowledge of it;
- Has received a notice or notification of it; or
- From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

Subsection (2) provides that knowledge means actual knowledge and that “knows” has a corresponding meaning. Subsection (3) provides that the words “discover” and “learn” refer to the more general concept of knowledge rather than reason to know 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 whether the other person actually comes 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 defines 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.

Section 15 creates s. 671.210, F.S., to address presumptions. This term is currently defined 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.

Section 16 creates s. 671.211, F.S., to describe the circumstances under which a person gives value for rights. This term is currently defined in s. 671.201(44), F.S. The description retains much of the language in the current provision and states 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;
- 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 whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection.

Section 17 creates s. 671.212, F.S., regarding electronic signatures. As a result of the enactment of the Electronic Signatures in Global National Commerce Act (E-sign)⁵ at the federal level, it is now possible to have sales contracts, mortgage instruments, and promissory notes memorialized in electronic form with the electronic signatures of the parties involved in the transaction.

This bill is designed to avoid preemption of state law by the federal legislation. This section of the bill modifies, limits and supersedes E-sign, but does not modify, limit or supersede s. 7001(c)⁶ of the act. 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.⁷

The bill also does not authorize electronic delivery of any of the notices described in s. 7003(b) of E-sign.⁸

⁵ 15 USC s 7001, et. seq. Congress enacted this law on June 30, 2000 “to facilitate the use of electronic records and signature in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically.” Electronic Signatures in Global National Commerce Act, *The Consumer Consent Provision in Section 101(c)(1)(C)(iii)*, Executive Summary, <http://www.ftc.gov/os/2001/06/esign7.htm>. 3 April 2006.

⁶ 15 USC 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.

⁷ Executive Summary, note 4, *supra*.

⁸ 15 USC 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.

Section 18 creates s. 671.213, F.S., to address subordinated obligations, or debts that are ranked below other debts in regard to one's obligations to creditors. Subordinated debt is usually subordinated at the time of issue or acquisition and is evidenced by an investment security or negotiable or non-negotiable note. Debt may also be subordinated after it arises by agreement between the creditor and 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 account or other rights to payment not evidenced by any instrument.

Subordination agreements are enforceable between parties to a contract; and in bankruptcy of the common debtor dividends otherwise payable to the subordinated creditor are turned over to the superior 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 as against either the common debtor or a subordinated creditor.

Section 19 amends s. 671.301, F.S., to change the effective date of this act from January 1, 1980 to January 1, 2007.

Section 20 amends s. 671.5011, F.S., related to a filing office. This section defines "Florida Secured Transaction Registry" to mean the centralized database in which all initial financing statements, amendments, assignments and other statements of change authorized under the chapter are filed, maintained, and retrieved. The term does not include documents filed under this chapter with the clerk of circuit court.

This section also requires certain financial statements to be filed with the central filing office and authorizes the registry to certify a copy of certain financing statements.

Section 21 amends s. 679.525, F.S., to reduce the amount of certain processing fees and authorize the registry to use the fees collected to fund its operations.

Section 22 repeals ss. 15.091, 679.521, 679.526 and 679.527, F.S.

Currently s. 15.091, F.S., specifies the non-refundable processing fees for filing any financing statement or other writing required or permitted to be filed under ch. 679, F.S., of the UCC. This bill relocates these fees to s. 713.901, F.S., related to the Florida Uniform Federal Lien Registration Act and places them in subsection (6) of that statutory provision. Currently, s. 713.901, F.S., makes reference to these fees through the use of cross-references rather than explicitly stating the fees. This bill specifies the exact fees.

Section 679.521, F.S., provides that the Secretary of State shall develop or approve forms for use in filing information related to secured transactions. Section 679.526, F.S., provides that the Department of State (department) may adopt and publish rules to administer ch. 679, governing secured transactions. Section 679.527, F.S., created the Florida Secured Transaction Registry (FSTR) and defined the department's role regarding the FSTR.

In 2001, the Department of State began a 5 year project to privatize the filing of secured transaction documents. Representatives of the Department of State and the Florida Bankers Association indicate this process has been successful. In order to complete privatization during this fifth year of the project, both entities indicate that statutory provisions requiring the Department of State to oversee and control the filing process should be removed. Section 679.521, F.S., is one such provision.

Section 23 amends s. 319.27, F.S., related to notice of liens, to conform cross-references.

Section 24 amends s. 559.9232, F.S., related to rental purchase agreements, to conform cross-references.

Section 25 amends s. 563.022, F.S., related to beer distributors and manufacturers, to conform cross-references.

Section 26 amends s. 668.50, F.S., related to the Uniform Electronic Transaction Act, to conform cross-references.

Section 27 amends s. 670.106, F.S., related to the receipt of payment orders, to conform cross-references.

Section 28 amends s. 670.204, F.S., related to refund of payments and unauthorized payment orders to conform cross-references.

Section 29 amends s. 675.102, F.S., related to the scope of Article 5 (Letter of Credit), to conform cross-references.

Section 30 amends s. 679.1021, F.S., related to an index of definitions, to conform cross-references. This section also deletes the definition of “filing office rule” which is no longer necessary given the bill’s changes to the FSTR.

Section 31 amends s. 679.5021, F.S., related to the contents of financing statements, to conform cross-references.

Section 32 amends s. 679.512, F.S., related to amendments of financing statements, to conform cross-references.

Section 33 amends s. 679.516, F.S., related to filings, to conform cross-references.

Section 34 amends s. 679.519, F.S., related to indexing records, to conform cross-references.

Section 35 amends s. 679.520, F.S., related to acceptance and refusal to accept records, to conform cross-references.

Section 36 amends s. 679.523, F.S., related to the sale or license of records stored with the filing office, to conform cross-references.

Section 37 amends s. 680.1031, F.S., related to definitions, to conform cross-references.

Section 38 amends s. 680.518, F.S., related to substituting goods, to conform cross-references.

Section 39 amends s. 680.519, F.S., related to lessee damages for nondelivery, repudiation, default or breach of warranty, to conform cross-references.

Section 40 amends s. 680.527, F.S., related to lessor's rights to dispose of goods, to conform cross references.

Section 41 amends s. 680.528, F.S., related to lessor's damages for nonacceptance or repudiation, to conform cross references.

Section 42 amends s. 713.901, F.S., related to the Florida Uniform Federal Lien Registration Act to specify the fees charged by the Department of State which were previously indicated solely by cross-references. This section also reduces the fee for filing and deletes cross-references to conform to changes made by this act.

Section 43 provides an effective date of January 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill will reduce several of the filing fees in the following manner:

Description of Processing Fee	Current Fee	Revised Fee
Initial financing statement	\$25 for first page	\$13 for first page
An amendment	\$12 for first page	\$6 for first page
Indexing	\$3 per additional name indexed	\$2 per additional name indexed
Use of a nonapproved form	\$5	\$3
Additional page attached to a record	\$3	\$2
A financing statement communicated electronically by an approved method	\$15 with no additional fees	\$8 with no additional fees
Filing an amendment communicated electronically by an approved method	\$5 with no additional fees for multiple names or attached pages	\$3 with no additional fee for multiple names or attached pages
For a certified copy of a financing statement and any and all associated amendments	\$30	\$15

Currently, these fees are collected by the private vendor that has contract with the department to privatize the FSTR. These fees are deposited into a joint account held between the contractor and the department. Pursuant to contract, the vendor keeps 37.55 percent of each fee paid and deposits 62.45 percent of the fee into the State Treasury account which hold General Revenue funds.

If this proposed legislation is enacted, the department estimates a reduction of \$2.5 million in General Revenue funds for the next 3 fiscal years.

B. Private Sector Impact:

The department indicates that this bill will ease the burden of doing business in Florida by reducing UCC filing fees by roughly 50 percent. The department anticipates that this reduction in fees will be passed on from the lending institutions to the consumer.

C. Government Sector Impact:

The department indicates that the reduction of fees will not have a negative fiscal impact on their operations, as the statutory provisions that imposed responsibility on the department for the FSTR are deleted.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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