

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1135 Contracts
SPONSOR(S): Poppell
TIED BILLS: None IDEN./SIM. BILLS: None

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, 8 Y, 0 N, As CS, DeZego, De La Paz.

SUMMARY ANALYSIS

A contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable by law. This bill provides that all contracts for goods or services must disclose the following:

- Any conditions placed on the right to terminate the contract, including provisions which provide for a right to cure.
Any conditions or procedures relating to breach of a contract or remedies for such breach, including arbitration provisions.

The disclosures must be conspicuous, in bold type and be placed within a separate paragraph in the contract. In addition, this bill provides that a contract with such disclosers must provide a space in the immediate proximity of the disclosure provisions for signatures of all parties to specifically acknowledge having read each of the disclosure provisions.

This bill does not appear to have a fiscal impact on state or local governments. This bill appears to have a minimal negative fiscal impact on the private sector.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

A contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable by law.<sup>1</sup> The breach of a contract or agreement by a signer can result in the breaching party being sued by the other party to compel the breaching party to abide by the contract or to pay money instead of performing the obligations of the contract.<sup>2</sup>

##### Statutes of Frauds

Florida law requires certain contracts to be in writing to be enforceable. Contracts required to be in writing include in part the following:

- A contract that cannot be performed within one year;<sup>3</sup>
- A promise to guaranty or answer for the debt of another;<sup>4</sup>
- A contract for sale of real property;<sup>5</sup>
- A contract to lease real property for longer than one year;<sup>6</sup>
- An agreement for the sale of goods (only) in excess of \$500;<sup>7</sup>
- An agreement to submit a dispute(s) to arbitration;<sup>8</sup>
- An agreement for purchase or lease of materials or services with a condominium association;<sup>9</sup> and
- A credit agreement.<sup>10</sup>

---

<sup>1</sup> Black's Law Dictionary, pg. 139 (Second Pocket Edition 2001).

<sup>2</sup> See

<http://www.floridabar.org/tfb/TFBConsum.nsf/0a92a6dc28e76ae58525700a005d0d53/6a653200b74c8a2085257405007a3ac3?OpenDocument>. Last accessed March 24, 2009.

<sup>3</sup> Section 725.01, F.S.

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

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

<sup>6</sup> Section 689.01, F.S.

<sup>7</sup> Section 672.201(1), F.S.

<sup>8</sup> Section 682.02, F.S.

<sup>9</sup> Section 718.3026, F.S.

<sup>10</sup> Section 687.0304(2), F.S.

## Contracts for Sale of Goods

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 Louisiana, which has partially adopted it.<sup>11</sup> The code provides default language where contracts are silent. The UCC consists of 9 articles with Article 2 dealing with the Sale of Goods.<sup>12</sup> Under the UCC, "goods" is defined to mean all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid<sup>13</sup>, investment securities, and things in action<sup>14</sup>. In addition, the goods also include the unborn young of animals and growing crops and other identified things attached to realty.<sup>15</sup>

### **Effect of Bill**

This bill provides that all contracts for goods or services must disclose the following:

- Any conditions placed on the right to terminate the contract, including provisions which provide for a right to cure.
- Any conditions or procedures relating to breach of a contract or remedies for such breach, including arbitration provisions.

Therefore, contracts used by small businesses, large businesses, or anyone else for the sale of goods or services in Florida must provide these disclosures.

The disclosures under this bill must be conspicuous which is defined as written, displayed, or presented that a reasonable person against whom it is to operate ought to have noticed it. In addition, all disclosures must be in bold type and be within a separate paragraph in the contract.

In addition, this bill provides that a contract with such disclosers must provide a space in the immediate proximity of the disclosure provisions for signatures of all parties to specifically acknowledge having read each of the disclosure provisions. Failure to provide such spaces for signatures and to obtain the signatures of all parties renders the contract provision void and unenforceable.

### **B. SECTION DIRECTORY:**

Section 1 provides for disclosure of certain contract provisions.

Section 2 provides an effective date of July 1, 2009 for contracts entered into on or after that date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

---

<sup>11</sup> Duke University, UCC Research Guide, <http://www.law.duke.edu/lib/researching/pdf/ucc.pdf>. Last accessed March 24, 2009.

<sup>12</sup> Chapter 672, F.S.

<sup>13</sup> UCC 2-105, Comment 1 provides that "[g]oods is intended to cover the sale of money when money is being treated as a commodity but not to include it when money is the medium of payment."

<sup>14</sup> A "thing in action" or a "chose in action" is a proprietary right in personam (against a person), such as a debt owed by another person, a share in a joint-stock company, or a claim for damages in tort. Black's Law Dictionary, pg. 99 (Second Pocket Edition 2001).

<sup>15</sup> Section 672.105, F.S.

None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

To the extent that businesses and individuals will have to change their current contract forms for all goods and services, there appears to be a corresponding minimal negative fiscal impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 24, 2009, the Civil Justice & Courts Policy Committee adopted a strike-all amendment to this bill. The amendment removed all provisions under the bill and provided requirements for disclosure on all contracts for goods and services. The bill was then reported favorably. This analysis is drafted to the bill as amended.