HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 731 Uniform Commercial Code
SPONSOR(S): Carroll
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1366

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		Bond	De La Paz
2)	Policy Council			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Uniform Commercial Code is a set of uniform laws regulating various business transactions and trade. The drafts of the code are developed by the Uniform Law Commissioners, a group of scholars and business representatives. The term "uniform" refers how the separate states of the Union have separately enacted the various parts of the Uniform Commercial Code in laws that uniform to one another.

Article 7 of the Uniform Commercial Code regulates documents of title. Documents of title are used to specify ownership of goods as they travel through commerce. Historically, business has used a paper system for documents of title.

This bill adopts the revised Article 7 updating the article and creating a means for electronic records that business may use in lieu of paper documents of title.

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

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:

The Uniform Commercial Code is a set of uniform laws regulating various business transactions and trade. The drafts of the code are developed by the Uniform Law Commissioners, a group of scholars and business representatives. The term "uniform" refers how the separate states of the Union have separately enacted the various parts of the Uniform Commercial Code in laws that uniform to one another.

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The Uniform Law Commissioners have developed a revised Article 7 for adoption by the states. To date, 36 states have adopted the revised Article 7. The commissioners have written this explanation of documents of title and the draft changes[1]:

Revision in 2003

The original Article 7 of the Uniform Commercial Code, "Warehouse Receipts, Bills of Lading and Other Documents of Title," combined two earlier uniform acts, the Uniform Warehouse Receipts Act (1906) and the Uniform Bills of Lading Act (1909), with some principles from the Uniform Sales Act (which became Article 2-Sales of the UCC). Article 7 had not been revisited after the 1951 promulgation of the original Uniform Commercial Code until 2003, a period of 52 years. The longevity of the principles of warehouse receipts and bills of lading suggests very successful law and law-making as it pertains to the commercial storage and shipment of goods. The basic principles do not change basically in the 2003 revision. But there are reasons to readdress this area of the commercial law in 2003, which shall be discussed a little later. First, it is necessary to establish some of the basics.

Introduction to Documents of Title

The storage and shipment of tangible goods for commercial purposes has been going on for centuries. The physical side of the business is carried on by entities that provide

[1] http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-ucc7.asp

warehouses (warehousemen) and entities that carry the goods from place of origin to destination (common carriers). These are tangible, visible businesses. What is not tangible and visible is the transfer of rights in the goods while they are stored and/or shipped. The common law provided the rules of bailment. The terminology of bailor and bailee is still incorporated in the Uniform Act. As the law developed, the transfer of rights came to depend upon the transfer of specific documents of title. The transfer of the documents from one person to another became the transfer of the rights. The title documents were warehouseman's receipts on the storage/warehouse side, and the bill of lading on the carrier side. The original uniform acts and the 2003 revision all incorporate these basics.

One of the important principles carried forward into the 2003 revision is that of negotiability. Free transfer of interests is an important policy norm throughout the UCC. In Article 7, documents of title may be negotiable. Whether a document is negotiable or non-negotiable depends upon how it identifies the transferee and how it is transferred. A negotiable document may be one of two kinds of paper documents, bearer paper or order paper. A document made out to bearer may be transferred from one person to another by simple delivery of possession. The delivery transfers the rights to the goods (therefore the title) to the transferee. Order paper is made out to a specific person. After initial delivery to the person named on the document, it may be negotiated to another person by the indorsement of the named person and delivery of possession to that other person. The rights to the goods (and therefore the title) pass with the negotiation to the transferee.

Documents of title may also be made non-negotiable. This is primarily done by a statement on the face of the instrument. Non-negotiable documents of title may also be assigned or transferred. The difference between negotiable and non-negotiable documents is the rights that they may transfer. A non-negotiable document of title transfers only the actual interests of the transferor. A negotiable document of title may transfer more than the actual interests of the transferor. If negotiated, for example, it transfers free of any claims against the issuer of the document. A non-negotiable document is not free of such claims.

Negotiation as a concept exists to make commerce in goods possible. Goods would not be transferred if the purchaser always has to look behind the transaction to see who may come after the goods after the transfer is complete. Negotiation erases the peril. The principle enunciated in Article 7 is consistent with other parts of the UCC governing notes, drafts, checks and investment securities.

Electronic Documents of Title

Article 7 governs other important aspects of the transfer of rights in goods when stored or shipped, such as the liens of warehousemen and carriers and their enforcement and allocation of risk of loss of the goods either in storage or transit, but the issue of negotiation has been its single most important aspect, up to the revisions in 2003. Something very important has happened to change the way we look at the principle of negotiation. That something is computers, electronic communications and the ability to create electronic documents of title. Computers have been accused and applauded for their impact on commerce and business. Their impact on storage and shipment of goods is profound. Federal law has actually recognized electronic documents for some time, but electronic documents of title cannot be substituted one to one with tangible documents of title. Their characteristics in electronic form are not the same as their characteristics in tangible form.

The tangible form is a written document on paper with signatures of issuers and subsequent transferors. The individual document is a unique token of the rights and interests it represents. Even if there is a copy, there is always the original. This is not so with electronic documents. Originals and copies are indistinguishable from each other in electronic form. Signatures in the sense of an individual's scribing them uniquely on a piece of paper cannot be equally duplicated in an electronic document. Transferors and transferees, who are remote from each other when tangible documents are transferred, are not remote from each other in electronic media. Electronic communications can occur between any two persons anywhere in the world. Yet, it is difficult for each participant in an electronic communication to verify or authenticate the identity of the other party. To have the effective electronic documents that commerce demands, new concepts have to be introduced into the law. The concept of negotiation as we have known it in American law cannot apply in electronic media. The great addition to Article 7, therefore, is the new rules for electronic documents of title.

These rules must deal with distinct issues: recognition of electronic documents of title; statute of fraud extensions; establishment of the unique original in electronic form (sometimes thought of as authentication); and interchangeability between electronic and tangible documents of title. In addition, the rules for electronic documents of title must fit as seamlessly as possible into the existing system governing tangible documents of title. The law should avoid skewing the choice between tangible and electronic documents of title in the favor of either form. Only the actual marketplace should determine users' choices. Revised Article 7 deals with these issues and meets the test of seamless insertion into the existing law.

Recognition of Electronic Documents of Title

Recognition of electronic documents of title begins in the definition of "Document of Title:" "An electronic document of title is evidence by a record consisting of information stored in an electronic medium." Other definitions have been modified to accord with this root definition. For example, "Holder" is defined to include: "a person in control of a negotiable electronic document of title." Electronic documents of title become the equal to tangible documents of title.

Statute of Frauds Requirements

Revised Article 7 extends statute of fraud requirements to include electronic records and signatures. Any writing requirement that relates to enforceability of a document is a statute of frauds requirement. Article 7 treats electronic records and signatures as the equivalent of paper documents and written, manual signatures. This initially occurs in new definitions of "record" and "sign." A record is "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 term "sign" is defined to "execute or adopt a tangible symbol" and "to attach or logically associate with the record an electronic sound, symbol or process." Within Revised Article 7, wherever the term "writing" or an equivalent may have been used before revision, the term "record" is uniformly used. When a document is required to be signed anywhere in Revised Article 7, electronic signing meets the test.

In addition, Revised Article 7 provides language stating expressly that it modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act. This express language, permitted in the federal act, avoids any issue of federal preemption. The federal statute allows specific tailoring for the purposes of incorporating electronic records and signatures into state law.

Establishing the Unique Token

It is not possible to transfer an electronic document of title in the same manner as a tangible document of title, particularly in terms of negotiating it. It cannot be guaranteed that a transfer directly from one person to the next by delivery and/or signature will transfer the authentic original document of title. An electronic alternative to the tangible system is necessary. To accomplish the equivalent system for electronic documents of title, Article 7 adapts the concept of "control" to the purpose. It is not a brand-new concept. It initially was developed in Article 8 of the Uniform Commercial Code for investment securities in the indirect holding system. The 1999 revisions to Article 9 adapted the concept further for secured transactions. Further adaptation of the concept occurred in Section 16 of the Uniform Electronic Transactions Act for promissory notes. This latter adaptation is most important for Revised Article 7, because the issues of negotiation for promissory notes are very similar to those for documents of title.

A person has control of a document of title for Article 7 purposes "if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred." Such a system exists when it establishes a "single authoritative copy ...which is unique, identifiable and ... unalterable." The authoritative copy must identify the person in control or the next person to whom the document has transferred. The person in control determines to whom the document is next transferred. Further, the standard requires that copies that are not authoritative, including copies of the authoritative copy, must be readily identifiable as not being the authoritative copy.

There is more than one way to meet this set of standards, unlike negotiation of a paper document, which occurs in one way only. One way to establish the single authoritative document is to have a single custodian of the electronic record, who enters all transfers of the document and identifies the person in control on its records, records that for all who want to know is the source of the single authoritative copy. In such a system, the person in control notifies the custodian of any transfer or authorized change in the document, who then notates its records appropriately and notifies the person in control and other relevant parties of the action. A transfer would obviously shift control from transferor to transferee. The transferee would become the new person in control.

Encryption technology may provide other methods for meeting these standards. Some kind of hybrid system of encryption and custodian may arise. UCC Article 7 prescribes no system per se and more than one system may develop over time. It is not possible to predict what technology may finally bring to electronic transfer systems. Revised Article 7 allows the technology to develop without need to amend it later when a new kind of technology comes along.

Interchangeability

UCC Article 7 provides for an electronic system of transfer for electronic documents of title and for the traditional paper system of documents of title which includes negotiable documents of title. There are dual tracks. Control is the operative term with electronic documents and negotiation is the operative term for tangible documents of title. With respect to the transfer of rights in a particular group of goods, can electronic documents be converted to tangible documents and vice versa? UCC Article 7 provides for such conversions. An electronic document may be converted when the person in control surrenders control to the issuer, which then issues a tangible document of title containing a statement that it substitutes for the electronic document. The same kind of process will convert a tangible document to an electronic one. The person entitled to enforce a tangible document surrenders possession to the issuer. The electronic document must also state that it is a substitute for the tangible document. Without the ability to convert from tangible to electronic documents, this system would not work.

This bill:

- Amends Article 7 of the Uniform Commercial Code to allow (not require) electronic means for documenting title to goods in commerce, in lieu of paper documents. Paper documents of title can be converted to electronic, and electronic can be converted to paper, in order to accommodate the needs of different shippers and warehouses.

- Corrects language and usage throughout Article 7, without substantive change.
- Amends other articles of the Uniform Commercial Code to conform, without substantive change.

B. SECTION DIRECTORY:

Section 1 amends s. 559.9232, F.S., to correct a cross-reference.

Section 2 amends s. 671.201, F.S, regarding definitions applicable to the Uniform Commercial Code.

Section 3 amends s. 672.103, F.S., regarding definitions applicable to Article 2 of the Uniform Commercial Code (Sales).

Section 4 amends s. 672.104, F.S., regarding definitions applicable to Article 2 of the Uniform Commercial Code (Sales).

Section 5 amends s. 672.310, F.S., regarding delivery of goods.

Section 6 amends s. 672.323, F.S., regarding bills of lading in international shipments.

Section 7 amends s. 672.401, F.S., regarding transfer of title to tangible goods.

Section 8 amends s. 672.503, F.S., regarding tender of delivery to tangible goods.

Section 9 amends s. 672.505, F.S., regarding shipment under reservation.

Section 10 amends s. 672.506, F.S., regarding rights of a financing agency.

Section 11 amends s. 672.509, F.S., regarding risk of loss of goods in shipment.

Section 12 amends s. 672.605, F.S., regarding waiver of a buyer's objection.

Section 13 amends s. 672.705, F.S., regarding stoppage of delivery.

Section 14 amends s. 674.104, F.S., regarding definitions applicable to Article 4 of the Uniform Commercial Code (bank deposits and collections).

Section 15 amends s. 674.2101, F.S., regarding security interest in bank deposits.

Section 16 amends s. 677.102, F.S., regarding definitions applicable to Article 7 of the Uniform Commercial Code (documents of title).

Section 17 amends s. 677.103, F.S., regarding relationship between law on documents of title and international law.

Section 18 amends s. 677.104, F.S., regarding negotiable documents of title.

Section 19 amends s. 677.105, F.S., regarding reissuance of a document of title in an alternative medium.

Section 20 creates s. 677.106, F.S., regarding control of an electronic document of title.

Section 21 amends s. 677.201, F.S., regarding issuance of a warehouse receipt.

Section 22 amends s. 677.202, F.S., regarding forms of warehouse receipts.

Section 23 amends s. 677.203, F.S., regarding liability for nonreceipt or misdescription in a document of title.

Section 24 amends s. 677.204, F.S., regarding duty of care and limitations on liability.

Section 25 amends s. 677.205, F.S., regarding title under warehouse receipt.

Section 26 amends s. 677.206, F.S., regarding termination of storage at the option of the warehouse.

Section 27 amends s. 677.207, F.S., regarding separation of goods.

Section 28 amends s. 677.208, F.S., regarding altered warehouse receipts.

Section 29 amends s. 677.209, F.S., regarding warehouse lien.

Section 30 amends s. 677.210, F.S., regarding enforcement of warehouse lien.

Section 31 amends s. 677.301, F.S. regarding liability for nonreceipt or misdescription.

Section 32 amends s. 677.302, F.S., regarding through bills of lading.

Section 33 amends s. 677.303, F.S., regarding diversion and reconsignment of goods.

Section 34 amends s. 677.304, F.S., regarding bills of lading in a set.

Section 35 amends s. 677.305, F.S., regarding destination bills.

Section 36 amends s. 677.307, F.S., regarding lien of a carrier.

Section 37 amends s. 677.308, F.S., regarding enforcement of a carrier's lien.

Section 38 amends s. 677.309, F.S., regarding duty or care and limitation of a carrier's lien.

Section 39 amends s. 677.401, F.S., regarding irregularities in issue of a receipt of bill.

Section 40 amends s. 677.402, F.S., regarding duplicate documents of title.

Section 41 amends s. 677.403, F.S., regarding obligation of a bailee.

Section 42 amends s. 677.404, F.S. regarding a limitation on liability upon good faith delivery of goods.

Section 43 amends s. 677.501, F.S., regarding "due negotiation".

Section 44 amends s. 677.502, F.S., regarding the rights acquired by due negotiation.

Section 45 amends s. 677.503, F.S., regarding defeat of a document of title.

Section 46 amends s. 677.504, F.S., regarding rights acquired in the absence of due negotiation.

Section 47 amends s. 677.505, F.S., regarding whether an indorser is a guarantor for other parties.

Section 48 amends s. 677.506, F.S., regarding delivery without indorsement.

Section 49 amends s. 677.507, F.S., regarding warranties on negotiation or delivery of document of title.

Section 50 amends s. 677.508, F.S., regarding warranties of a collecting bank.

Section 51 amends s. 677.509, F.S., regarding compliance with a commercial contract.

Section 52 amends s. 677.601, F.S., regarding lost, stolen and destroyed documents of title.

Section 53 amends s. 677.602, F.S., regarding judicial process against goods covered by a negotiable document of title.

Section 54 amends s. 677.603, F.S., regarding conflicting claims against goods.

Section 55 amends s. 678.1031, F.S., regarding whether a document of title is a financial asset.

Section 56 amends s. 679.1021, F.S., regarding definitions applicable to Article 9 of the Uniform Commercial Code (secured transactions).

Section 57 amends s. 679.2031, F.S., regarding attachment and enforcement of a security interest.

Section 58 amends s. 679.2071, F.S., regarding rights and duties of secured party in possession.

Section 59 amends s. 679.2081, F.S., regarding additional duties of a secured party having control of collateral.

Section 60 amends s. 679.3011, F.S., regarding perfection and priority of security interests.

Section 61 amends s. 679.3101, F.S., regarding agricultural liens.

Section 62 amends s. 679.3121, F.S., regarding perfection of security interest in various items.

Section 63 amends s. 679.3131, F.S., regarding when possession or delivery can perfect a security interest without a filing.

Section 64 amends s. 679.3141, F.S., regarding perfection by control.

Section 65 amends s. 679.3171, F.S., regarding priority of certain security interests.

Section 66 amends s. 679.338, F.S., regarding priority of certain security interests.

Section 67 amends s. 680.1031, F.S., regarding definitions applicable to Article 10 of the Uniform Commercial Code (leases).

Section 68 amends s. 680.514, F.S., regarding waiver of a lessee's objections.

Section 69 amends s. 680.526, F.S., regarding lessor's stoppage of delivery in transit.

Section 70 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill is anticipated to lower the cost of doing business. It is not anticipated that this bill will have any negative economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a