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House of Representatives, Florida Senate &, "Session Law 87-256" (1987). *Staff Analysis*. 710.
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Date: June 11, 1987HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
FINAL STAFF ANALYSISENACTED BILL #: HB 357RELATING TO: Secured TransactionsSPONSOR(S): Representative TrammellEFFECTIVE DATE: July 1, 1987

BECAME LAW: _____

CHAPTER 87-, LAWS OF FLORIDACOMPANION BILL(S): SB 416OTHER COMMITTEES OF REFERENCE: (1) None

(2) _____

I. SUMMARY:

This bill provides that a new Uniform Commercial Code filing is not necessary when collateral is transferred by a debtor. This clarifies existing law which is silent on this subject.

A. Current Law & Present Situation:

Chapter 679, Florida Statutes, contains the Secured Transactions provisions of the Uniform Commercial Code (UCC). Part III addresses the rights of third parties, priority rights of security interests. In 1979, the Legislature substantially revised Chapter 679 by adopting, in large part, the 1972 revisions to Article 9 of the Uniform Commercial Code. The revisions prescribing the formal requisites of financing statements and their amendments were adopted and codified as section 679.402, Florida Statutes. The last sentence in section 679.402(6), Florida Statutes, was deleted; however, as it was felt to be in conflict with another section of the code, section 679.307, F.S. Section 679.307, F.S., protects buyers of collateral by allowing them to take it free and clear of all security interests.

Apparently the absence of the sentence in section 679.402(6), F.S., has given rise to confusion as to legislative intent. Filing, perfection and priority problems have arisen when collateral has been transferred. Florida case law is

unsettled on this point. It has been argued that the Legislature, by excluding the language, did not intend filed financing statements to remain effective after transfer of collateral by the debtor.

B. Effect of Proposed Changes:

This bill inserts into section 679.402(6), Florida Statutes, the sentence that was not included in the 1979 amendments to Article 9. The inserted language make it clear that a new filing would not be necessary when collateral has been transferred from one debtor to another. By enacting this language, confusion as to legislative intent should be eliminated as should questions regarding priority of secured interests. Any person searching the condition of the ownership of a debtor would have to make inquiry as to the debtor source and would have to search in the name of a former owner if necessary.

II. ECONOMIC IMPACT:

A. Public:

To the extent this legislation eliminates confusion as to intent, litigation to determine priority of security interests should be reduced.

B. Government:

A reduction of the workload in the Secretary of State's office should occur as a result of the need for fewer filings.

III. STATE COMPREHENSIVE PLAN IMPACT:

This bill is consistent with the state goal of requiring governments to economically and efficiently provide public services (section 187.201(20)(a), F.S.) and the goal of promoting an economic climate which provides economic stability (section 187.201(21)(a), F.S.).

IV. COMMENTS:

The Corporation and Commercial Law section of the Florida Bar (the drafters of the 1979 revisions to Article 9) are advocating the need for this change in light of the difficulties experienced since enactment of the 1979 revisions. They now feel that it will not conflict with section 679.307, F.S.

V. LEGISLATIVE HISTORY:

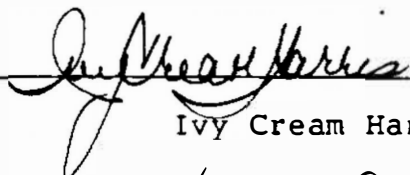
A. Enacted Bill:

House Bill 357 was prefiled by Representative Trammell on March 3, 1987 and referred to the Committee on Commerce. On April 15, the Subcommittee on General Commerce favorably recommended the bill and on April 23, the Full Commerce Committee did likewise. The House passed the bill by a vote of 97-10 on May 4 (HJ 00341) and sent it to the Senate which referred it to the Committee on Judiciary-Civil. On June 5, it was withdrawn from committee, substituted for Senate Bill 416 and passed by the Senate, 39-0 (SJ 00881).


B. Disposition of Companion:

Senate Bill 416 was prefiled by Senator Langley on March 11, 1987 and referred to the Committee on Judiciary-Civil. The committee reported the bill out favorably on April 16 and it went to the Calendar. On June 5, when the similar House bill was substituted, this bill was laid on the table (SJ 00881).

VI. PREPARED BY:


Ivy Cream Harris

VII. STAFF DIRECTOR:


H. Fred Varn