

1989

Session Law 89-224

Florida Senate & House of Representatives

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S 452 GENERAL BILL/1ST ENG by Dudley (Similar H 265)

Farming Operations/Security Interest; provides for perfection of security interest in certain equipment used in farming operations by filing in office of Dept. of State. Amends 679.401. Appropriation: \$83,341. Effective Date: 10/01/89.

03/10/89 SENATE Prefiled
03/24/89 SENATE Referred to Commerce; Governmental Operations
04/04/89 SENATE Introduced, referred to Commerce; Governmental Operations -SJ 45; On Committee agenda—Commerce, 04/05/89, 3:15 pm, Room-A-(LL-37)—No meeting, lack of quorum
04/06/89 SENATE On Committee agenda—Commerce, 04/10/89, 2:00 pm, Room-A-(LL-37)
04/10/89 SENATE Comm. Report: Favorable by Commerce -SJ 116
04/11/89 SENATE Now in Governmental Operations -SJ 116
04/14/89 SENATE On Committee agenda—Governmental Operations, 04/18/89, 3:45 pm, Room-H-(428); Extension of time granted Committee Governmental Operations
04/18/89 SENATE Comm. Report: Favorable by Governmental Operations, placed on Calendar -SJ 180
05/02/89 SENATE Placed on Special Order Calendar -SJ 242; Passed; YEAS 39 NAYS 0 -SJ 249
05/09/89 HOUSE In Messages
05/16/89 HOUSE Received, referred to Appropriations -HJ 489
05/24/89 HOUSE Withdrawn from Appropriations -HJ 626; Placed on Calendar
05/26/89 HOUSE Substituted for HB 265 -HJ 677; Read second time; Amendments adopted; Read third time; Passed as amended; YEAS 109 NAYS 0 -HJ 677
05/26/89 SENATE In Messages
05/30/89 SENATE Concurred; Passed as amended; YEAS 37 NAYS 0 -SJ 569
05/30/89 Ordered engrossed, then enrolled -SJ 569
06/12/89 Signed by Officers and presented to Governor
06/28/89 Became Law without Governor's Signature; Chapter No. 89-224

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

REVISED: _____

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Jones</u>	<u>Wilkes</u>	1. <u>COM</u>	<u>Favorable</u>
2. <u>Kane</u> <i>AK</i>	<u>Stengle</u> <i>MS</i>	2. <u>GO</u>	<u>Favorable</u>
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Uniform Commercial Code;
Perfecting Security in
Farm Equipment

BILL NO. AND SPONSOR:

SB 452 by
Senator Dudley

I. SUMMARY:

A. Present Situation:

The Uniform Commercial Code (UCC) on Secured Transactions, which is contained in ch. 679, F.S., includes within its provisions the procedures by which security interests in personal property or fixtures may be perfected. Typically a lender or seller will seek to obtain a security interest in property when the property serves as collateral for a loan. In most cases, the security interest is perfected upon filing a financing statement at a location provided by law.

The proper place for filing a financing statement to perfect an interest in collateral depends first upon the type of collateral, as provided by s. 679.401, F.S. If the collateral is farm equipment, farm products, accounts, or general intangibles arising from or related to the sale of farm products, the financing statement must be filed locally with the clerk of the appropriate circuit court, either in the county of the debtor's place of business, the debtor's residence, or the county of the location of the collateral, depending upon whether or not the debtor is a resident of the state. Most of the other types of collateral are not so specifically enumerated in the statutes. For these "other cases," as provided in s. 679.401(1)(c), F.S., filing is with the Department of State in Tallahassee. Pursuant to s. 679.401(3), F.S., in most cases, a local filing which is in the proper place remains effective even when there is a change in the debtor's residence, place of business, or other criteria that controlled the original filing.

The filing location for farm equipment has changed twice in the last decade. Originally, the place for filing for farm-related collateral was local, and depended upon the debtor's residence and the location of the collateral, as provided by current law. In 1979, extensive revisions were made to update Florida's Uniform Commercial Code, in response to changes in the Official Text of the Uniform Commercial Code as drafted. Chapter 79-398, L.O.F., required enumerated collateral relating to farming operations, including farm equipment, to be centrally filed with the Secretary of State. Duplicate filing for crops, both locally and with the Secretary of State, was required.

The sponsor's notes to ch. 79-398, L.O.F., indicate that the change was intended to simplify filing rules by providing that all filings except those related to real estate be filed centrally, rather than dispersed among the counties. The stated reason for the change was the elimination of the confusion that could result from local filings that were dependent on a debtor's residence, which might be difficult to ascertain and which is subject to change. A central filing system was deemed best for consumers and farmers.

Chapter 80-29, L.O.F., however, returned the place of filing for certain farm-related collateral, including farm equipment, to the counties, as provided prior to 1979. Section 679.401(6), F.S., operates to validate those filings made with the Department of State between the effective date of the 1979 changes and the effective date of the additional changes in 1980.

B. Effect of Proposed Changes:

The place of filing to perfect an interest in farm equipment to be used as collateral would be changed from local filing, i.e. with the clerk of the circuit court in the appropriate county, to the Department of State in Tallahassee. This would be accomplished by deleting the reference to the term "farm equipment" from s. 679.401(1)(a), F.S., which designates the appropriate places of local filing for certain farm-related collateral. Farm equipment would be included within the provisions for filing for "other cases" in s. 679.401(1)(c), F.S.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Agricultural lenders would generally incur a cost, which cannot be determined, in having to go outside of their counties in order to reach the central filing office in Tallahassee. The change would allow the lenders, however, to perfect their liens and locate the farm equipment liens of others more readily and presumably with less expense. In addition, since the burden is on lenders to notify all potential buyers of their liens, central filing would ease this burden.

The statutorily-established fees for filing financing statements, searching records, and copying documents are comparable for the offices of the clerks of the circuit courts, and for the Department of State, which can be seen as follows:

	<u>Filing Financing Statements</u>	<u>Searching Records</u>	<u>Copying Documents</u>
Dept. of State (s. 15.901, F.S.)	\$5.25/1st page \$2/each add'l page	\$7.50 (automated)	\$1/page
Clerk of Circuit Court (s. 28.24, F.S., 1988 Supp.)	\$5/1st page* \$4/each add'l page	\$1/1-year search	\$1/page

*Plus a \$1 service charge

Financing statements may be researched at the Department of State in several ways: by hand and copied at \$1 per page; over the telephone at no charge, for which the department provides no documentation; by a request for a computer search, which results in a printout for the requester, at the fee stated above; and by personal computer through the public access system at a charge of \$25 per hour.

B. Government:

The Department of State estimates that the change would result in an additional 22,000 filings per year with the department. The department estimates that the additional filings would generate revenue and require expenditures as indicated on the chart which follows.

	<u>1989-90</u>	<u>1990-91</u>	<u>1991-92</u>
Revenue (22,000 x \$5.25*)	\$115,500	\$115,500	\$115,500
LESS:			
Operating Capital Outlay	-38,700	-0-	-0-
Salaries	-34,703	-34,703	-34,703
Other Expenditures	<u>-9,938</u>	<u>-9,938</u>	<u>-9,938</u>
EXCESS REVENUE	\$ 32,159	\$ 70,859	\$ 70,859

*Assumes that each document filed is one page

Thus, it can be seen that the change would have a positive impact in revenue to the department.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

STORAGE NAME: s452-f.com
DATE: 07/06/89

**HOUSE OF REPRESENTATIVES
COMMERCE COMMITTEE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: SB 452
RELATING TO: Uniform Commercial Code
SPONSOR(S): Senator Dudley
EFFECTIVE DATE: October 1, 1989
DATE BECAME LAW: June 28, 1989
CHAPTER #: 89-224, Laws of Florida
COMPANION BILL(S): HB 265
OTHER COMMITTEES OF REFERENCE: (1) Governmental Operations
(2)

I. SUMMARY:

This bill changes the location for filing a financing statement in order to perfect a security interest on farming equipment from the office of the clerk of the circuit court to a central office within the Department of State.

A. PRESENT SITUATION:

The Uniform Commercial Code (UCC) includes within its provisions general procedures by which security interests in property may be perfected. Typically a lender or seller obtains a security interest in property when the property serves as a collateral for a loan. Generally that interest is protected or perfected upon filing the financing statement with the clerk of the circuit court or the Department of State.

Pursuant to s. 679.401, F.S., the proper place for a secured party to file a financing statement to perfect an interest in collateral, depends on the type of collateral in question. If the collateral is farm equipment, farm products, accounts or general intangibles arising from or related to the sale of farm products by the farmer, the financing statement must be filed with the office of the clerk of the circuit court in the county of the debtor's place of business, or where his chief executive office is located, or if the debtor is not a Florida resident, in the county where the collateral is located.

The place to file when the collateral is farm equipment has changed several times in the last few years. Originally, the place to file was in the local counties. In 1979, collateral, other than crops, minerals, oil or gas, and farm equipment, was

statutorily required to be filed with the Department of State. Then in 1980, the law was amended again to move the place to file certain collaterals, among them farm equipment, back to the local counties.

B. EFFECT OF PROPOSED CHANGES:

This bill would change the place of filing a financing statement secured by farm equipment as collateral from the appropriate clerk of the circuit court to the office of the Department of State.

The Department of State estimates that the bill would result in an additional 22,000 filings with the department each year.

C. SECTION-BY-SECTION ANALYSIS:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

Current estimates by the Department of State indicate that the additional 22,000 filings per year will generate the following revenue and expenditures:

1. Non-recurring or First Year Start-Up Effects:

Revenue (22,000 x 5.25)		\$115,500
Operating capital outlay ..	\$ 38,700	
Salaries	38,700	
Other Expenditures	<u>9,938</u>	
Total Expenses	\$ <u>87,338</u>	
Excess Revenue		\$ 32,159

2. Recurring or Annualized Continuation Effects:

Revenue		\$115,500
Salaries	\$ 34,703	
Other Expenditures	<u>9,938</u>	
Total Expenses	\$ <u>44,641</u>	
Excess Revenue		\$ 70,859

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

Additional funding required for the Department of State.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

A decrease in local filing would mean a corresponding decrease in staffing needs. Those counties in which a large volume of farming takes place would likely experience a commensurate large relief as opposed to counties with a relatively low volume of farming.

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

An indeterminate cost to the secured parties, generally agricultural lenders, would be involved in having to go outside their counties in order to reach the central filing office in Tallahassee.

2. Direct Private Sector Benefits:

The change would allow the lenders to perfect their liens and locate the liens of others on farm equipment more readily and thus reduce their risks in these transactions. Since the burden is on the lenders to notify all potential buyers of their lien, central filing would ease this burden by making all necessary information available from one place.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

None

IV. COMMENTS:

1. Note that "farming equipment" as it appears in the text of this bill means equipment used in the farming process such as tractors, which, by nature are presumed to stay on the farm and are thus considered non-movable goods. By contrast, other goods which in some contexts could be called "equipment" such as a xerox or a personal computer, are already presently required to be filed centrally.

2. This bill does not on its face clearly show that the effect of the bill is to transfer the place of filing to the Department of State. This is because s. 679.041(1)(c), F.S., which makes this clear, is omitted from the bill. While perhaps not constitutionally necessary, an amendment to add this paragraph to the bill might be advisable.

V. LEGISLATIVE HISTORY:

A. ENACTED BILL:

Senate Bill 452 was prefiled on 3/10/89 by Senator Dudley. On 4/18/89 the Senate Subcommittee on Government Operations reported favorably and placed on the Calendar (SJ 00249). On 5/09/89 this bill was sent to the House, where, on 5/26/89 it was substituted for HB 265 (HJ 00677), amended and passed as amended. On 5/30/89 this bill passed the Senate by a vote of 37-0 and was ordered engrossed then enrolled (SJ 00569). On 6/12/89 SB 452 was signed by the Officers and presented to the Governor. On June 28 the bill became law, Chapter 89-224.

B. DISPOSITION OF COMPANION:

House Bill 265 was prefiled on 2/9/89 by Representative Harris. This bill was referred to Commerce Committee on 2/13/89 and subreferred to Subcommittee on Banking and Commerce on 3/16/89. Subcommittee recommended favorably on 4/05/89 and on 4/13/89 the Commerce Committee reported favorably and placed on the calendar (HJ 00225). On 4/13/89 this bill was referred to Appropriations (00225) and subreferred to Subcommittee on General Government. On 5/22/89 the Appropriations Committee reported the bill favorably with two amendments and it was placed on the calendar (HJ 00567). On 5/26/89 the House substituted this bill with SB452. SB 452 passed by a vote of 37-0 (SJ 00569) on 5/30/89.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

John Carbo

Staff Director:

William Leary

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director: