

SENATE THIRD READING  
SB 95 (Roth)  
As Amended April 13, 2023  
Majority vote

## SUMMARY

Revises and recasts California's version of the Uniform Commercial Code to reflect recent updates developed by the Uniform Law Commission related to the treatment of digital assets.

### Major Provisions

- 1) Modifies the definition of several terms currently utilized in the Uniform Commercial Code so that the following terms now reflect references to digital assets.
- 2) Defines "electronic" as relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- 3) Defines "hybrid transaction" as a single transaction involving the sale of goods in addition to one of the following:
  - a) The provision of services;
  - b) The lease of other goods; or
  - c) The sale, lease, or license of property other than goods.
- 4) Provides that a purchaser has control of an authoritative electronic copy of a record evidencing chattel paper, if the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded satisfies each of the following conditions:
  - a) It enables the purchaser readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;
  - b) It enables the purchaser readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of the authoritative electronic copy; and
  - c) It gives the purchaser the exclusive power to prevent others from adding or changing an identified assignee of the authoritative electronic copy, and transfer control of the authoritative electronic copy.
- 5) Provides that a person has control of electronic money if each of the following conditions is satisfied:
  - a) The electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded gives the person power to avail themselves of substantially all of the benefit of the money and exclusive power to prevent others from availing themselves of the money while retaining the ability to transfer the money; and

- b) The electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in a).
- 6) Provides that if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper, even if the transaction does not bear any relation to the chattel paper's jurisdiction, as specified.
  - 7) Provides that a secured party may perfect a security interest in chattel paper by taking possession of each authoritative tangible copy of the record evidencing the chattel paper and obtaining control of each authoritative electronic copy of the electronic record evidencing the chattel paper.
  - 8) Provides that a secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later, both of the following conditions are satisfied:
    - a) The person is a debtor or obligor; and
    - b) The secured party knows that the information of a person to whom a duty is owed is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.
  - 9) Provides jurisdictional defaults for which local law applies in a matter relating to a controllable electronic record.
  - 10) Defines the following:
    - a) "Controllable electronic record" to mean a record stored in an electronic medium that can be subjected to control, but does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic money, investment property, or a transferable record;
    - b) "Qualifying purchaser" to mean a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record; and
    - c) "Transferable record" to mean a note as defined by the Uniform Commercial Code.
  - 11) Provides that a purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

- 12) Provides that a qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.
- 13) Provides that a person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded, satisfies each of the following conditions:
  - a) The record gives the person the power to avail itself of substantially all the benefit from the electronic record;
  - b) The record gives the person the exclusive power to prevent others from availing themselves of the benefit of the record, while permitting the person to transfer control of the electronic record; and
  - c) The record enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number.
- 14) Provides that an account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying either of the following:
  - a) The person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or
  - b) A person that formerly had control of the controllable electronic record, as specified.
- 15) Makes various other conforming changes to the Uniform Commercial Code and remedies numerous cross references.
- 16) Adopts provisions related to the transition from existing law to the new Uniform Commercial Code as modified by this bill.

## COMMENTS

The Uniform Commercial Code was first created in 1953, and adopted in California in 1963. The Code is created by the Uniform Law Commission, a national organization of legal experts, and is designed to provide a standardized set of laws governing commercial transactions between all 50 states. The Uniform Commercial Code is drafted in a broad manner to cover an array of commercial transactions, including sales of goods, property leases, bank deposits, secured transactions, and investment securities. The Code establishes a series of rules for transactions, including the obligations of each party in a commercial transaction. Since the original enactment of the Uniform Commercial Code, it has been updated numerous times to reflect changes in technology and business practices. Indeed, unlike many uniform laws created by the Uniform Law Commission, the Uniform Commercial Code is regularly updated by the Permanent Editorial Board for the Uniform Commercial Code. Notably, the Code was substantially updated in 1990, 2002, and 2010 as a result of significant shocks to the financial industry.

Recognizing the growing use of digital assets in commercial transactions, the Uniform Law Commission approved a new section of the Uniform Commercial Code to govern how transactions involving digital assets should be handled. This bill reflects the recommendations of the Uniform Law Commission adopted in 2022. Of note, this bill would update the Uniform

Commercial Code to address the negotiability of digital currencies; the rights and obligations associated with electronic payments; electronic signature rules and standards; secured lending using digital currencies; and securities involving digital currencies. Additionally, major provisions of this bill address the transfer of digital assets in order to bring certainty to ownership rights of digital assets. Finally, the bill makes numerous technical, conforming, and definitional changes throughout the Uniform Commercial Code to reflect the new provisions related to digital assets.

### **According to the Author**

The California Commercial Code has not been updated to keep pace with technological developments, including digital assets. Participants in the markets using and trading in these assets have raised concerns about the lack of definitive commercial law rules for transactions involving digital assets, thus inhibiting the use of these assets in transactions. Senate Bill 95 addresses these concerns in a practical way by providing rules that relate to the sales of and security interests in a wide range of electronic payment rights, the negotiability of and security interests in virtual currencies, and security interests in electronic money. California is a leader in technology-based industries. As such, it is important for the California Legislature to adopt Senate Bill 95. The amendments to the California Commercial Code made by Senate Bill 95 will improve the predictability of transactions involving digital assets and allow those assets to be used more confidently and efficiently by California businesses in commerce.

### **Arguments in Support**

This measure is supported by the California Credit Union League. In support, they write the following:

In 2022, the Uniform Law Commission and the American Law Institute finalized amendments to the model UCC, which were approved and recommended for enactment by all 50 states. The 2022 UCC amendments include rules relating to negotiability for virtual currencies, certain electronic payment rights, secured lending against virtual currencies, and security interests in electronic money, such as central bank digital currencies. Notably for credit unions in California, amendments to the model UCC 4A section on Funds Transfers would allow for electronic signatures on wire transfer agreements and request forms. With more and more financial services offered online in this increasingly digital world, these amendments would provide credit union members with greater efficiency and practicality by no longer requiring a wet signature.

On behalf of our nearly 220-member credit unions in California, we thank Senator Roth for his efforts to keep pace with legal and technological developments and encourage uniformity across the United States by updating the California Commercial Code through SB 95 to reflect the 2022 model UCC amendments.

### **Arguments in Opposition**

No opposition on file.

## **FISCAL COMMENTS**

None

## VOTES

### SENATE FLOOR: 39-1-0

**YES:** Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hurtado, Jones, Laird, Limón, McGuire, Menjivar, Min, Newman, Nguyen, Niello, Ochoa Bogh, Padilla, Portantino, Roth, Rubio, Seyarto, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener  
**NO:** Wilk

### ASM JUDICIARY: 8-0-3

**YES:** Maienschein, Connolly, Haney, Kalra, Pacheco, Papan, Reyes, Robert Rivas  
**ABS, ABST OR NV:** Essayli, Dixon, Sanchez

## UPDATED

VERSION: April 13, 2023

CONSULTANT: Nicholas Liedtke / JUD. / (916) 319-2334

FN: 0001061