

Date of Hearing: June 6, 2023

ASSEMBLY COMMITTEE ON JUDICIARY

Brian Maienschein, Chair

SB 95 (Roth) – As Amended April 13, 2023

SENATE VOTE: 39-1

SUBJECT: UNIFORM COMMERCIAL CODE: DIGITAL ASSET TRANSACTIONS

KEY ISSUE: SHOULD CALIFORNIA ADOPT THE UNIFORM LAW COMMISSION'S RECOMMENDED UPDATES TO THE UNIFORM COMMERCIAL CODE ADDRESSING DIGITAL ASSETS?

SYNOPSIS

Since 1963, California law has included provisions of the Uniform Commercial Code, a nationally recommended set of laws governing all commercial transactions proposed by the Uniform Law Commission. The Uniform Commercial Code is designed to provide a standard set of laws governing commercial transactions across all 50 states to avoid confusion and to facilitate market consistency between states. Since the Uniform Commercial Code was first proposed in 1953, it has been regularly updated to reflect changing business practices to ensure that the Code can be drafted in a manner that best protects consumers. To that end, in 2022, the Uniform Law Commission released a comprehensive update to the Uniform Commercial Code to reflect the growth of digital assets and crypto currencies. This noncontroversial bill would simply codify those recommendations.

This measure is supported by the California Credit Union League. The League highlights the helpful new language in the Uniform Commercial Code related to digital signatures, as well as the need to provide legal clarity as it relates to commercial transactions involving digital currencies. This measure has no known opposition and passed the Senate with bipartisan support.

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. Specifically, **this bill:**

- 1) Modifies the definition of several terms currently utilized in the Uniform Commercial Code so that the following terms will now be defined as follows:
 - a) "Conspicuous" now means a term written, displayed, or presented so that, based on the totality of the circumstances, a reasonable person against whom it is to operate ought to have noticed it;
 - b) "Delivery" now includes deliveries with respect to electronic document of title, which means voluntary transfer of control, and, with respect to tangible documents of title or authoritative tangible copies of a record evidencing chattel paper, voluntary transfer of possession;

- c) “Holder” now includes the person in control, except as specified, of a negotiable electronic document of title;
 - d) “Money” now excludes an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government;
 - e) “Person” now excludes a corporation and includes a protected series, however denominated, of an entity if the protected series is established under law other than the Uniform Commercial Code that limits, or limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series;
 - f) “Send” now applies to a record or notification to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances, or to cause the record or notification to be received within the time it would have been received if properly sent; and
 - g) “Sign” now means, with present intent to authenticate or adopt a record, to execute or adopt a tangible symbol, or to attach to or logically associate with the record an electronic symbol, sound, or process, as specified.
- 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) Makes numerous technical changes throughout the Uniform Commercial Code including:
 - a) Clarifying provisions relating to hybrid transactions;
 - b) Replacing references to a “writing” with references to a “record,” and, in certain contexts, replacing references to “authenticated” records with those to “signed” records;
 - c) Adopting rules for electronic check deposits;
 - d) Expanding requirements relating to the security of electronic platforms and the systems holding electronic documents; and
 - e) Modifying provisions relating to secured transactions to better address electronic documents and records, authoritative electronic copies, deposit accounts, electronic money, and related issues of control and secured parties.

- 5) 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.
- 6) 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).
- 7) 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.
- 8) 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.
- 9) 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.
- 10) Provides jurisdictional defaults for which local law applies in a matter relating to a controllable electronic record.
- 11) 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.
- 12) 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.
- 13) 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.
- 14) 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.
- 15) 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.

- 16) Makes various other conforming changes to the Uniform Commercial Code and remedies numerous cross references.
- 17) Adopts provisions related to the transition from existing law to the new Uniform Commercial Code as modified by this bill.

EXISTING LAW:

- 1) Establishes the Uniform Commercial Code that governs most commercial transactions and is enacted throughout the Commercial Code. (Corporations Code Section 1101 *et seq.*)
- 2) Defines, for the purpose of the Uniform Commercial Code, “conspicuous,” with reference to a term, to mean terms so written, displayed, or presented that a reasonable person against whom it is to operate ought to have noticed it, and that conspicuous terms include both the following:
 - a) Headings in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
 - b) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language. (Commercial Code Section 1201 (b)(10).)
- 3) Provides that whether or not a term is conspicuous is a question for the court. (*Ibid.*)
- 4) Defines, for the purpose of the Uniform Commercial Code, “delivery” to mean with respect to an instrument, a document of title, or chattel paper means voluntary transfer of possession. (Commercial Code 1201 Section (b)(15).)
- 5) Defines, for the purpose of the Uniform Commercial Code, “holder” to mean either of the following:
 - a) The person in possession of a negotiable instrument that is payable either to the bearer or to an identified person that is the person in possession; or
 - b) The person in possession of a document of title if the goods are deliverable either to the bearer or to the order of the person in possession. (Commercial Code Section 1201 (b)(21).)
- 6) Defines, for the purpose of the Uniform Commercial Code, “money” to mean a medium of exchange currently authorized or adopted by a domestic or foreign government, including a monetary unit of account established by an intergovernmental organization or by an agreement between two or more countries. (Commercial Code Section 1201 (b)(24).)
- 7) Defines, for the purpose of the Uniform Commercial Code, “person” to mean an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity. (Commercial Code Section 1201 (b)(27).)

- 8) Defines, for the purpose of the Uniform Commercial Code, “send,” when in connection with a writing, record, or notice, to mean either of the following:
 - a) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed or, if there is none, to any address reasonable under the circumstances; or
 - b) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent. (Commercial Code Section 1201 (b)(36).)
- 9) Defines, for the purpose of the Uniform Commercial Code, “signed” to include using any symbol executed or adopted with present intention to adopt or accept a writing. (Commercial Code Section 1201 (b)(37).)
- 10) Provides for the general provisions that govern transactions and sets forth circumstances in which parties may agree to which jurisdiction’s law applies or to terms other than those set forth in the Uniform Commercial Code, as specified. (Commercial Code Sections 1204 and 1301 *et seq.*)
- 11) Establishes, for transactions in goods, the default terms and standards surrounding offers, acceptances, and the performance of contracts for transactions in goods. (Commercial Code Section 2106 *et seq.*)
- 12) Establishes, for negotiable instruments, definitions and default situations in which a person is liable for or entitled to enforce an instrument. (Commercial Code Sections 3105, 3401, 3604.)
- 13) Provides that, as it relates to letters of credit and associated transactions, the liability of an issuer, nominated person, or adviser for action or omission is governed by the jurisdiction chosen by a signed, authenticated record, and that the chosen jurisdiction need not bear any relation to the transaction; and if the parties do not so agree to a jurisdiction, the jurisdiction that applies is governed by the law of the jurisdiction in which the person is located. (Commercial Code Section 5116.)
- 14) Establishes rules for the control of a document of title including what conditions a system employed for evidencing the transfer of interest in an electronic title is sufficient to establish that control. (Commercial Code Section 7106.)
- 15) Requires, for purposes of enforcement of leases covered by the Uniform Commercial Code, the presence of a signed writing in specified circumstances and details the evidentiary effect of signed writings. (Commercial Code Section 10201 *et seq.*)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: The Uniform Commercial Code is a “comprehensive set of laws governing all commercial transactions in the United States.” (Uniform Law Commission, *Uniform Commercial Code Summary*, <https://www.uniformlaws.org/acts/ucc>.) The Code is developed, and updated, by the Uniform Law Commission and is then subsequently adopted by individual states in order to ensure that commercial transactions are generally governed in a standard manner between

jurisdictions. In 2022, the Uniform Law Commission updated the Uniform Commercial Code to better reflect transactions involving digital assets. This highly technical, yet non-controversial, measure would enact the 2022 reforms into California's version of the Uniform Commercial Code. In support of this measure, the author states:

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.

Background on the Uniform Commercial Code. 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.

This bill. 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.

Addressing digital transactions should enhance consumer protections. Over the last year, the bankruptcy of several crypto currencies and crypto exchanges, most notably the FTX Exchange, highlights the risk associated with transacting business in digital currencies. Indeed, consumers have lost millions of dollars of actual assets as a result of crypto bankruptcies. For example, when the Celsius Network (a crypto currency exchange) went bankrupt, the company claimed all

digital assets stored on its platform belonged to the company and not the account holders. (*In re Celsius Network LLC* (Bankr. S.D.N.Y. 2023) 647 B.E. 631, 637.) Somewhat surprisingly, in the absence of clear law to the contrary, the bankruptcy court agreed with the company and left the account holders with nothing. (*Ibid.*)

To the extent that the additions to the Uniform Commercial Code proposed by this bill provide some standard rules governing digital assets, this bill will provide new protection for consumers. Additionally, the bill is crafted to be adaptable as technology changes in the future to ensure tech entrepreneurs cannot avoid regulation. For example, the bill's definition of "controllable record" is crafted to both provide immediate certainty as to who owns digital assets at different points during a transaction, as well as to adapt to changes in technology in the future.

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.

REGISTERED SUPPORT / OPPOSITION:

Support

California Credit Union League

Opposition

None on file

Analysis Prepared by: Nicholas Liedtke / JUD. / (916) 319-2334