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THIRD READING

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Bill No: SB 95  
Author: Roth (D)  
Amended: 4/13/23  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 9-1, 4/11/23  
AYES: Umberg, Allen, Ashby, Durazo, Laird, McGuire, Min, Niello, Wiener  
NOES: Wilk  
NO VOTE RECORDED: Stern

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**SUBJECT:** Commercial transactions

**SOURCE:** California Commission on Uniform State Laws

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**DIGEST:** This bill amends the California Uniform Commercial Code (CUCC) to conform with recommendations made by the Uniform Law Commission, focusing primarily on the treatment of digital assets.

**ANALYSIS:**

Existing law:

- 1) Establishes the California Uniform Commercial Code (CUCC), which generally governs commercial transactions with the goal of simplifying, clarifying, and modernizing the law relating to those transactions. (*See generally* Cal. U. Com. Code.)<sup>1</sup>
- 2) Provides general provisions for transactions, except as otherwise provided in specified divisions, 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 CUCC. (§§ 1204, 1301, 1302, 1306.)

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<sup>1</sup> All statutory references in this analysis are to the California Uniform Commercial Code unless otherwise stated.

This bill:

- 1) Updates various existing provisions of the CUCC to bring California in line with 2022 amendments recommended by the national Uniform Law Commission (ULC), of which California's Uniform Law Commission is a member.
- 2) Adds Division 12, which applies to transactions involving “controllable electronic records” that include cryptocurrencies and non-fungible tokens (NFTs).

## Comments

This bill amends the CUCC to incorporate the ULC's 2022 amendments at the recommendation of the CCUSL.<sup>2</sup> As explained by the ULC:

The [2022] amendments [to the UCC] respond to market concerns about the lack of definitive commercial rules for transactions involving digital assets, especially relating to (a) negotiability for virtual (non-fiat) currencies, (b) certain electronic payment rights, (c) secured lending against virtual (non-fiat) currencies, and (d) security interests in electronic (fiat) money, such as central bank digital currencies. The amendments also address other technological developments affecting electronic chattel paper, negotiable instruments, payment systems, electronic documents of title, and sales and leases of goods...

The amendments address only state commercial law rules. They do not address the federal or state regulation or taxation of digital assets or money transmitter or anti-money laundering laws. The amendments defer to law outside of the UCC to answer many questions concerning digital assets.<sup>3</sup>

As the ULC notes, this bill's major change is the addition of Division 12, which governs the transfer of property rights in digital assets, referred to as “controllable records” in the bill. The provisions in the new Division 12 are intended to bring certainty to digital asset transactions and clarify the rules regarding ownership and control. The definition of “controllable record” is broad and technology-neutral,

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<sup>2</sup> The bill is nearly identical to the model propounded by the UCL, however the bill makes nonsubstantive changes to reflect the state's formatting and style usage.

<sup>3</sup> ULC, *A Summary of the 2022 Amendments to the Uniform Commercial Code* (Jul. 21, 2022), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=2a18c952-5db5-ca16-2274-8c7531990903&forceDialog=0>, pp. 1-2. All links in this analysis are current as of April 13, 2023.

rather than referring specifically to assets using blockchain technology, so that Division 12 will continue to apply to digital assets using technologies developed in the future. Many individual opponents have raised concerns that, by codifying rules for transactions involving non-governmental currencies and fiat digital currencies that have been adopted by some countries, this bill will facilitate the federal government's adoption of a central bank digital currency and the elimination of paper money in the United States. This is not, however, how the CUCC works, and many digital asset companies actually encourage the adoption of the 2022 amendments.<sup>4</sup>

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified 4/13/23)

California Commission on Uniform State Laws  
California Credit Union League

**OPPOSITION:** (Verified 4/13/23)

39 individuals

**ARGUMENTS IN SUPPORT:** According to the California Commission on Uniform State Laws:

The UCC and the California Commercial Code have not kept updated recently to keep pace with technological developments, including digital assets. The markets using and trading in these emerging assets want definitive commercial law rules for transactions involving digital assets. The amendments adopted by the UCL in 2022 address these concerns through changes to the law involving the sales of 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, such as central bank digital currencies. The amendments also address other technological developments affecting electronic chattel paper, electronic equivalents of paper negotiable

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<sup>4</sup> See, e.g., Ossowski, *In Attempt to Stop CBDCs, States Are Rejecting Seeming Pro-Bitcoin Legislation*, Bitcoin Policy Institute (Mar. 22, 2023), <https://www.btcpolicy.org/articles/in-attempt-to-stop-cbdcs-states-are-rejecting-ostensibly-pro-bitcoin-legislation>.

instruments, payment systems, electronic documents of title, and sales and lease of goods.

Prepared by: Allison Whitt Meredith / JUD. / (916) 651-4113  
4/14/23 13:24:40

**\*\*\*\* END \*\*\*\***