

Amendment to HB 584

1 Amend the bill by replacing section 36 with the following:

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3 36 After-Acquired Property; Future Advances. Amend RSA 382-A:9-204(b) to read as follows:

4 (b) When after-acquired property clause not effective. Subject to subsection ~~[(e)]~~ **(b.1)**, a
5 security interest does not attach under a term constituting an after-acquired property clause to:

6 (1) consumer goods, other than an accession when given as additional security,
7 unless the debtor acquires rights in them within 10 days after the secured party gives value; or

8 (2) a commercial tort claim.

9 **(b.1) Limitation on subsection (b). Subsection (b) does not prevent a security**
10 **interest from attaching:**

11 (1) **to consumer goods as proceeds under Section 9-315(a) or commingled**
12 **goods under Section 336(c);**

13 (2) **to a commercial tort claim as proceeds under Section 9-315(a); or**

14 (3) **under an after-acquired property clause to property that is proceeds of**
15 **consumer goods or a commercial tort claim.**

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17 Amend the bill by replacing section 51 with the following:

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19 51 Buyers that Receive Delivery. Amend RSA 382-A:9-317(b) to read as follows:

20 (b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer
21 **other than a secured party**, of goods, instruments, tangible documents, or a certificated security
22 takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of
23 the collateral without knowledge of the security interest or agricultural lien and before it is
24 perfected.

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26 Amend the bill by replacing section 82 with the following:

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28 82 Definitions. Amend RSA 382-A:12-102(a)(3) to read as follows:

29 (3) "Transferable record" ~~[means]~~ **has the meaning provided for that term in:**

30 (A) ~~["Transferable record" as defined in]~~ **Section 201(a)(1) of the Electronic**
31 **Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., as amended; or**

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1 (B) "Transferable record" as defined in Uniform Electronic Transactions Act
2 Section 16(a).

3
4 Amend the introductory paragraph RSA 382-A:12-106(b) as inserted by section 86 of the bill by
5 replacing it with the following:

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7 (b) **Content and** Effect of notification. Subject to subsection (d), ~~[an]~~ **the** account debtor
8 may not discharge its obligation by paying a person that formerly had control of the controllable
9 electronic record if the account debtor receives a notification that:

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11 Amend the bill by replacing section 87 with the following:

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13 87 Governing Law. Amend RSA 382-A: 12-107(b) to read as follows:

14 (b) Governing law: Section ~~[12-106]~~ **12-107. For a controllable electronic record**
15 **that evidences a controllable account or controllable payment intangible**, the local law of the
16 controllable electronic record's jurisdiction for a controllable electronic record that evidences a
17 controllable account or controllable payment intangible governs a matter covered by Section 12-106
18 unless an effective agreement determines that the local law of another jurisdiction governs.

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20 Amend the bill by replacing section 88 with the following:

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22 88 Applicability; Relations; Rights. Amend RSA 382-A:12-107(d)-(f) to read as follows:

23 (d) Applicability of Article 12. If subsection (c)(5) applies and Article 12 is not in effect
24 in the District of Columbia without material modification, the governing law for a matter covered by
25 this article is the law of the District of Columbia as though Article 12 were in effect in the District of
26 Columbia without material modification. In this *sub*-section, "Article 12" means **Article 12 of**
27 **Uniform Commercial Code Amendments (2022)** ~~[Controllable Electronic Records (with Conforming~~
28 ~~Amendments to Articles 1 and 9), 2022 Official Text]~~.

29 (e) Relation of **matter or** transaction to controllable electronic record's jurisdiction not
30 necessary. ~~[Subsections (b) through (d) apply even if a transaction]~~ **To the extent subsections (a)**
31 **and (b) provide that the local law of the controllable electronic record's jurisdiction**
32 **governs a matter covered by this article, that law governs even if the matter or a**
33 **transaction to which the matter relates** does not bear any relation to the controllable electronic
34 record's jurisdiction.

35 (f) Rights of purchasers determined at time of purchase. The rights acquired **under**
36 **Section 12-104** by a purchaser or [a] qualifying purchaser ~~[under Section 12-104]~~ are governed by
37 the law applicable under this section at the time of purchase.

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Amend RSA 382-A:13-102(b) as inserted by section 90 of the bill by replacing it with the following:

(b) Definitions in other Articles. The following definitions in other articles of the Uniform Commercial Code apply to this article.

"Controllable account". Section 9-102.

"Controllable electronic record". Section 12-102.

"Controllable payment intangible". Section 9-102.

"Financing statement". Section 9-102.

Amend RSA 382-A:13-305(c) as inserted by section 91 of the bill by replacing it with the following:

(c) Determination of certain priorities on adjustment date. On the adjustment date, to the extent the priorities determined by Article 9 as amended by this act modify the priorities established before the effective date of this article, the priorities of claims to Article 12 property established before the effective date of this article shall cease to apply.

Amend the bill by inserting after section 91 the following and renumbering the original section 92 to read as 108:

92 Money; Definition. Amend RSA 382-A:1-201(b)(24) to read as follows:

(24) "Money" means a medium of exchange that is currently authorized or adopted by a domestic or foreign government **and is not in an electronic form**. ~~[The term does not include 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 a government, or organization or pursuant to such an agreement.]~~

93 Money; Definition. Amend RSA 382-A:9-102(a)(54A) to read as follows:

(54A) "Money" has the meaning provided in Section 1-201(24), but the term does not include (i) a deposit account ~~or (ii) money in an electronic form that cannot be subjected to control under Section 9-105A~~.

94 No Requirement to Acknowledge or Confirm; No Duties. Amend RSA 382-A:9-107B(a) to read as follows:

(a) No requirement to acknowledge. A person that has control under Section 9-104[.] **or** 9-105[~~or 9-105A~~] is not required to acknowledge that it has or will obtain control on behalf of another person.

95 Attachment and Enforceability of a Security Interest. Amend RSA 382-A:9-203(b) to read as follows:

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1 (b) Enforceability. Except as otherwise provided in subsections (c) through (i), a security
2 interest is enforceable against the debtor and third parties with respect to the collateral only if:

3 (1) value has been given;

4 (2) the debtor has rights in the collateral or the power to transfer rights in the
5 collateral to a secured party; and

6 (3) one of the following conditions is met:

7 (A) the debtor has ~~[authenticated]~~ **signed** a security agreement that provides a
8 description of the collateral and, if the security interest covers timber to be cut, a description of the
9 land concerned;

10 (B) the collateral is not a certificated security and is in the possession of the
11 secured party under Section 9-313 pursuant to the debtor's security agreement;

12 (C) the collateral is a certificated security in registered form and the security
13 certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's
14 security agreement; ~~[or]~~

15 (D) the collateral is **controllable accounts, controllable electronic records,**
16 **controllable payment intangibles,** deposit accounts, electronic ~~[chattel paper]~~ **documents,**
17 investment property, **or** letter-of-credit rights, ~~[or electronic documents,]~~ and the secured party has
18 control under Section 7-106, 9-104, ~~[9-105,]~~ 9-106, ~~[or]~~ 9-107, **or 9-107A** pursuant to the debtor's
19 security agreement; **or**

20 **(E) the collateral is chattel paper and the secured party has possession**
21 **and control under Section 9-314A pursuant to the debtor's security agreement.**

22 96 Duties and Rights When Secured Party in Possession or Control. Amend the introductory
23 paragraph of RSA 382-A:9-207(c) to read as follows:

24 (c) Duties and rights when secured party in possession or control. Except as otherwise
25 provided in subsection (d), a secured party having possession of collateral or control of collateral
26 under Section 7-106, 9-104, 9-105, ~~[9-105A,]~~ 9-106, 9-107, or 9-107A:

27 97 Additional Duties of Secured Party Having Control of Collateral. Amend RSA 382-A:9-
28 208(b)(6)-(8) to read as follows:

29 (6) a secured party having control under Section 7-106 of an authoritative copy of an
30 electronic document of title shall transfer control of the authoritative copy to the debtor or a person
31 designated by the debtor; **and**

32 (7) ~~[a secured party having control under Section 9-105A of electronic money shall~~
33 ~~transfer control of the electronic money to the debtor or a person designated by the debtor; and~~

34 (8) a secured party having control under Section 12-105 of a controllable electronic
35 record shall transfer control of the controllable electronic record to the debtor or a person designated
36 by the debtor.

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1 98 Law Governing Perfection and Priority of Security Interests. Amend the introductory
2 paragraph of RSA 382-A:9-301(3) to read as follows:

3 (3) Except as otherwise provided in paragraph (4), while tangible negotiable
4 documents, goods, instruments, or [~~tangible~~] money is located in a jurisdiction, the local law of that
5 jurisdiction governs:

6 99 Perfection of Security Interests. Amend RSA 382-A:9-312(b)(2)-(4) to read as follows:

7 (2) and except as otherwise provided in Section 9-308(d), a security interest in a
8 letter-of-credit right may be perfected only by control under Section 9-314; **and**

9 (3) a security interest in [~~tangible~~] money may be perfected only by the secured
10 party's taking possession under Section 9-313[~~; and~~

11 (~~4) a security interest in electronic money may be perfected only by control under~~
12 ~~Section 9-314].~~

13 100 Perfection by Possession or Delivery. Amend RSA 382-A:9-313(a) to read as follows:

14 (a) Perfection by possession or delivery. Except as otherwise provided in subsection (b),
15 a secured party may perfect a security interest in goods, instruments, negotiable tangible
16 documents, or [~~tangible~~] money, by taking possession of the collateral. A secured party may perfect
17 a security interest in certificated securities by taking delivery of the certificated securities under
18 Section 8-301.

19 101 Perfection by Control. Amend RSA 382-A:9-314(a) and (b) to read as follows:

20 382-A:9-314 Perfection by Control.

21 (a) Perfection by control. A security interest in controllable accounts, controllable
22 electronic records, controllable payment intangibles, deposit accounts, electronic documents,
23 [~~electronic money,~~] investment property, or letter-of-credit rights may be perfected by control of the
24 collateral under Section 7-106, 9-104, [~~9-105A,~~] 9-106, 9-107, or 9-107A.

25 (b) Specified collateral: time of perfection by control; continuation of perfection. A
26 security interest in controllable accounts, controllable electronic records, controllable payment
27 intangibles, deposit accounts, electronic documents, [~~electronic money,~~] or letter-of-credit rights is
28 perfected by control under Section 7-106, 9-104, [~~9-105A,~~] 9-107, or 9-107A when the secured party
29 obtains control and remains perfected by control only while the secured party retains control.

30 102 Licensees and Buyers of Certain Collateral. Amend RSA 382-A:9-317(d) to read as follows:

31 (d) Licensees and buyers of certain collateral. Subject to subsections (f), (g), (h), and (i) a
32 licensee of a general intangible or a buyer, other than a secured party, of collateral other than[
33 ~~electronic money, tangible documents,~~] goods, instruments, **tangible documents**, or a certificated
34 security takes free of a security interest if the licensee or buyer gives value without knowledge of the
35 security interest and before it is perfected.

36 103 Transfer of Money; Transfer of Funds from Deposit Account. Amend RSA 382-A:9-332 to
37 read as follows:

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1 382-A:9-332 Transfer of Money; Transfer of Funds From Deposit Account.

2 (a) Transferee of [~~tangible~~] money. A transferee of [~~tangible~~] money takes the money
3 free of a security interest if the transferee receives [~~delivery~~] **possession** of the money without
4 acting in collusion with the debtor in violating the rights of the secured party.

5 (b) [~~Transferee of electronic money. A transferee of electronic money takes the money~~
6 ~~free of a security interest if the transferee obtains control of the money without acting in collusion~~
7 ~~with the debtor in violating the rights of the secured party.~~

8 (e)] Transferee of funds from deposit account. A transferee of funds from a deposit
9 account takes the funds free of a security interest in the deposit account if the transferee receives
10 the funds without acting in collusion with the debtor in violating the rights of the secured party.

11 104 Rights and Duties of Secured Party in Possession or Control. Amend RSA 382-A:9-601(b) to
12 read as follows:

13 (b) Rights and duties of secured party in possession or control. A secured party in
14 possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-106, [~~or~~] 9-107, **or**
15 **9-107A** has the rights and duties provided in Section 9-207.

16 105 Definitions Controllable Electronic Records. Amend RSA 382-A:12-102(a)(1) to read as
17 follows:

18 (1) "Controllable electronic record" means a record stored in an electronic medium
19 that can be subjected to control under Section 12-105. The term does not include a controllable
20 account, a controllable payment intangible, a deposit account, an electronic copy of a record
21 evidencing chattel paper, an electronic document of title, [~~electronic money,~~] investment property,
22 [~~or~~] a transferable record, **or an electronic record that is currently authorized or adopted by a**
23 **domestic or foreign government and is not a medium of exchange that was recorded and**
24 **transferable in a system that existed and operated for the medium of exchange before the**
25 **medium of exchange was authorized or adopted by a government.**

26 106 Definitions in Article 9. Amend RSA 382-A:12-102(b) to read as follows:

27 (b) Definitions in Article 9. The definitions in Article 9 of "account debtor", "controllable
28 account", "controllable payment intangible", "chattel paper", "deposit account", [~~electronic money,~~]
29 and "investment property" apply to this article.

30 107 Repeal. The following are repealed:

31 I. RSA 382-A:9-102(a)(31)(A), relative to electronic money.

32 II. RSA 382-A:9-102(a)(79A), relative to tangible money.

33 III. RSA 382-A:9-105A, relative to control of electronic money.