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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Demetriou and T. Young.

Austin C. Strohacker, Attorney

SUMMARY

- Prohibits central bank digital currencies (CBDCs) from being treated as money under the Ohio Uniform Commercial Code (UCC).

DETAILED ANALYSIS

Central bank digital currency overview

A central bank digital currency (CBDC) is a digital form of central bank money that is widely available to the general public. Central bank money is money that is a liability of a central bank. In the United States, central bank money includes only physical money issued by the Federal Reserve and digital balances held by commercial banks at the Federal Reserve.[1]

Digital currencies are means of payment that exists in purely electronic form and are not physically tangible like a dollar bill or coin. Unlike the balance of an online bank account, digital currencies cannot be withdrawn to take on a physical form. Cryptocurrencies such as Bitcoin are an example of digital currency. An American CBDC would differ from existing digital currencies because it would be a liability of the Federal Reserve, not of a commercial bank.[2]

The Federal Reserve has made no decision on whether to adopt a CBDC and is currently exploring whether and how a CBDC "could improve on an already safe and efficient U.S. domestic payments system."[3] Eleven countries and territories have launched CBDCs: the

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[1] See, the Federal Reserve, Frequently Asked Questions, which is available by conducting a keyword search on the Fed's website: federalreserve.gov.

[2] See, Investopedia, Digital Money, which is available by conducting a keyword search on Investopedia's website: Investopedia.com.

[3] See, The Federal Reserve, Central Bank Digital Currency (CBDC), which is available by conducting a keyword search on the Fed's website: federalreserve.gov.

Bahamas, Antigua and Barbuda, St. Kitts and Nevis, Monserrat, Dominica, Saint Lucia, St. Vincent and the Grenadines, Grenada, and Nigeria. Additionally, 18 countries currently have a CBDC pilot program, and 32 others have a pilot program in development.[4]

Prohibition on CBDCs

The bill excludes CBDCs from the Ohio Uniform Commercial Code's (UCC) definition of money. Ohio's UCC regulates commercial and secured transactions in the state. The UCC currently defines money as "a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries."[5]

The bill defines CBDCs as "a digital currency, digital medium of exchange, or digital monetary unit of account issued by the United States federal reserve system, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is made directly available to a consumer by such entities. The term includes a digital currency, digital medium of exchange, or digital monetary unit of account issued by the United States federal reserve system, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is processed or validated directly by such entities."[6]

Thus, provisions relating to money in the Ohio UCC would not apply to CBDCs issued by a foreign country or a domestic CBDC, if the Federal Reserve determines to issue one in the future.

COMMENT

Article I, Section 8, Clause 5 of the U.S. Constitution, gives Congress the power to "coin money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures." In addition, Article I, Section 10, Clause 1, explicitly prohibits states from coining money. The U.S. Supreme Court construes these provisions to mean that Congress has exclusive power to regulate every phase of currency.[7] Accordingly, the bill might be vulnerable to challenge under the Supremacy Clause of the U.S. Constitution.[8]

In addition, the bill might implicate the Dormant Commerce Clause of the U.S. Constitution, if a court finds that it unduly restricts interstate commerce.[9] The U.S. Supreme Court has consistently held that the Dormant Commerce Clause "prevents the States from

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[4] See, Atlantic Council's CBDC tracker, which is available on Atlantic Council's website: atlanticcouncil.org.

[5] R.C. 1301.201(B)(25).

[6] R.C. 1301.201(B)(10).

[7] *Norman v. Baltimore & O.R. Co.*, 294 U.S. 240, 304 (1935).

[8] U.S. Const., art. VI, clause 2.

[9] U.S. Const., art. I, sec. 8, clause 3.

adopting protectionist measures and thus preserves the national market for goods and services."[10]

HISTORY

Action	Date
Introduced	04-20-23

ANHB0155IN-135/ts

[10] *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 139 S.Ct. 2449, 2459 (2019).