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136<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by House Judiciary

**Primary Sponsors:** Reps. Isaacsohn and A. Mathews

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### SUMMARY

- Establishes a new Uniform Commercial Code (UCC) Article 12 to provide rules for transactions involving certain new types of digital assets named controllable electronic records (CERs).
- Outlines how a person obtains control of a CER.
- Provides that a person with control can be anonymous, but must be positively identifiable in some manner, such as the use of a cryptographic key.
- Revises UCC Article 9 to facilitate the use of digital assets as collateral for loans.
- Establishes that a lender with control of digital assets has a perfected security interest with priority over the interests of any other lenders who do not have control.
- Provides rules for “controllable accounts” and “controllable payment intangibles,” which are digital versions of a tethered asset, e.g., a promissory note in electronic form rather than in a writing.
- Adds protections to parties who accept in good faith digital assets in exchange for value without knowledge of any other property claim to the assets.
- Authorizes parties to a transaction involving digital assets to choose the law that applies to their transaction for commercial law purposes and incorporate the choice into their CER or the system in which the CER is recorded.
- Requires that if the parties do not choose a governing law in the CER or system, the law of the District of Columbia will apply.
- Modifies the definition of chattel paper to refer to the right to payment evidenced by the record, rather than to the record itself.

- Revises the definition of money under UCC Article 1 and species that governmentally created forms of money may be tangible or electronic and that preexisting virtual currencies are not “money” for purposes of the UCC.
- Establishes rules for hybrid transactions that are combination of a sale or lease of goods and contracts for services.
- Makes changes to the law governing negotiable Instruments under UCC Article 3 to clarify that a choice-of-law or choice-of-forum clause included in an instrument does not affect the negotiability of the instrument, and that an image of a negotiable instrument may be substituted for the actual instrument in accordance with federal banking regulations.
- Makes technical changes to various UCC provisions to replace terms that applied only to transactions on paper.
- Establishes transition rules for the new UCC amendments.

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## DETAILED ANALYSIS

### General overview

The Uniform Commercial Code (UCC) is a comprehensive set of laws governing all commercial transactions. The laws are drafted by the nonpartisan, Uniform Law Commission, which publishes model laws for states to adopt. The bill reflects the 2022 amendments to the UCC, which adds a new Article 12 addressing digital assets (e.g., cryptocurrency and nonfungible tokens (NFTs)). Under the new Article 12, these intangible assets are called controllable electronic records (CERs). The bill also addresses the concept of “controlling” a CER, which is roughly analogous to possession of a tangible asset. A person with control can “spend” the CER and transfer it to another person in exchange for goods or services.

The bill also updates Article 9 of the UCC to address security interests in CERs and to facilitate the use of a CER as the collateral for a loan. The bill provides rules for “controllable accounts” and “controllable payment intangibles,” which are digital versions of a tethered asset, e.g., a promissory note in electronic form rather than in a writing. The bill makes other related changes to the UCC.<sup>1</sup>

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<sup>1</sup> Uniform Law Commission, “[Summary of the 2022 Amendments to the Uniform Commercial Code](https://www.uniformlaws.org),” which can be found at [www.uniformlaws.org](https://www.uniformlaws.org), under the tab “Acts” go to “Uniform Commercial Code.”

## Controllable electronic records – new UCC Article 12

The bill creates a new UCC Article 12 for CERs, defined as a record stored in an electronic medium that can be subjected to control as specified under “**Control of CER**,” below. The term 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.<sup>2</sup> If an electronic record is not susceptible to control, it is not a CER for the purposes of the bill. CER also excludes digital assets that are already subject to other commercial laws or any other articles of the UCC. The bill specifies that if there is a conflict between the new UCC Article 12 and UCC Article 9, which addresses secured transactions, then Article 9 governs. In addition, a transaction subject to UCC Article 12 is subject to any applicable rule of law that establishes a different rule for consumers.<sup>3</sup>

The bill provides rules for controllable accounts and controllable payment intangibles, which are digital assets tethered to a CER. Under the bill a **controllable account** is an account evidenced by a CER that provides that the account debtor undertakes to pay the person that has control of the controllable account record. **Controllable payment intangible** is defined as a payment intangible evidenced by a CER that provides that the account debtor undertakes to pay the person that has control of the CER.<sup>4</sup>

### Rights in CERs, controllable accounts, and controllable payment intangibles

The bill establishes that the rights obtained in the acquisition and purchase of a controllable account, or a controllable payment intangible are the same as for CERs. The bill specifies that a purchaser of a CER acquires all rights in the CER that the transferor had or had power to transfer, except that a purchaser of a limited interest in a CER acquires rights only to the extent of the interest purchased. To determine whether the purchaser of a controllable account or a controllable payment intangible is a qualifying purchaser, the purchaser obtains control of the account or payment intangible if it obtains control of the CER that evidences the account or payment intangible. **Qualifying purchaser** is defined as a purchaser of a CER or an interest in a CER that obtains control of the CER for value, in good faith, and without notice of claim of a property right in the CER.<sup>5</sup>

A qualifying purchaser acquires its rights in the CER free of a claim of a property right in the CER. Except as otherwise provided by law, a qualifying purchaser takes a right to payment, right to performance, or other interest in property evidenced by the CER subject to a claim of a property right in the right of payment, right to performance, or other interest in the property.

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<sup>2</sup> R.C. 1314.102(A).

<sup>3</sup> R.C. 1314.103.

<sup>4</sup> R.C. 1309.102(A)(27)(b) and (c) and 1309.104(C); See also, [Summary of the 2022 Amendments to the Uniform Commercial Code](#).

<sup>5</sup> R.C. 1314.102(B) and 1314.104(A), (B), and (D).

The bill protects the qualifying purchaser and prohibits legal actions against a qualifying purchaser based on both a purchase by the qualifying purchaser of a CER and a claim of a property right in another CER, whether the action is framed in conversion, replevin, constructive trust, equitable lien, or other theory. The bill also explicitly states that filing a financing statement under UCC Article 9 does not perfect a security interest in a CER.<sup>6</sup> The rules for perfecting a security interest in a CER can be found under “**Perfection of security interests in CERs, controllable accounts, controllable payment intangibles,**” below.

### Control of CER

To qualify as a CER, an electronic record must be subject to control. The bill specifies that a person has control of a CER 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 does both of the following:

- Gives the person both (1) the power to avail itself of substantially all the benefits from the electronic record, and (2) the exclusive power to do both of the following:
  - Prevent others from availing themselves of substantially all the benefits from the electronic record;
  - Transfer control of the electronic record to another person or cause another person to obtain control of another CER as a result of the transfer of the electronic record.
- Enables the person to readily identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified above.

The power to control an electronic record is presumed to be exclusive. The power is considered exclusive even if the CER limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control or a modification of benefits afforded by the electronic record, or the power is shared with another person. The power to control an electronic record is not exclusive if both of the following apply:

- The person can exercise the power only if the power is also exercised by the same person;
- The other person either:
  - Can exercise the power without exercise of the power by the person;
  - Is the transferor to the person of an interest in the CER or a controllable account or controllable payment intangible evidenced by the CER.

A person has control of a CER if another person, other than the transferor to the person of an interest in the CER or a controllable account or controllable payment intangible evidenced by the CER either:

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<sup>6</sup> R.C. 1314.104(E) through (H).

- Has control of the electronic record and acknowledges that it has control on behalf of the person;
- Obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.

A person is not required to acknowledge that it has control on behalf of another person. If a person acknowledges that it has or will obtain control on behalf of another person, unless otherwise specified by law, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.<sup>7</sup>

### **Discharge of account debtor on controllable account or controllable payment intangible**

Under the new UCC Article 12, the person with control over an electronic record has the right to receive payments from the account debtor (a person that owes money). The bill outlines how an account debtor can fulfill their payment obligation by paying the person who has control of the underlying CER. An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying either (1) the person having control of the CER that evidences the controllable account or controllable payment intangible, or (2) except when provided a notification, as described below, a person that formerly had control of the CER.<sup>8</sup>

#### **Notification of transfer of control – requiring transfer of payment**

The account debtor cannot discharge its obligation by paying a person that formerly had control of the CER if the account debtor receives a notification that complies with all of the following:

- Is signed by a person that formerly had control or the person to which control was transferred;
- Reasonably identifies the controllable account or controllable payment intangible;
- Notifies the account debtor that control of the CER that evidences the controllable account or controllable payment intangible was transferred;
- Identifies the transferee in any reasonably way, including by name, identifying number, cryptographic key, office, or account number;
- Provides a commercially reasonable method by which the account debtor is to pay the transferee.

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<sup>7</sup> R.C. 1314.105.

<sup>8</sup> R.C. 1314.106(A).

After receipt of a notification, the account debtor may discharge its obligation by paying in accordance with the notification and cannot discharge the obligation by paying a person that formerly had control.<sup>9</sup>

### **Ineffective notification**

However, the bill specifies that the notification is ineffective if any of the following apply:

- Unless, before the notification is sent, the account debtor and the person that, at that time, had control of the CER agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred. (*This right cannot be modified or waived.*)
- To the extent an agreement between the account debtor and seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective by another law.
- At the option of the account debtor, if the notification notifies the account debtor to divide a payment, make less than the full amount of an installment or other periodic payment, or pay any part of a payment by more than one method or to more than one person. (*This right cannot be modified or waived.*)<sup>10</sup>

### **Proof that control has been transferred**

If requested by the account debtor, the person giving the notification reasonably must furnish reasonable proof, using the method in the agreement, that control of the CER has been transferred. Unless the person complies with the request, the account debtor may discharge its obligations by paying a person that formerly had control, even if the account debtor has received proper notification. (*Note: This right cannot be modified or waived.*) A person furnishes reasonable proof that control has been transferred if the person demonstrates, using the method in the agreement, that the transferee has the power to do all of the following:

- Avail itself of substantially all the benefit from the CER;
- Prevent others from availing themselves of substantially all the benefit from the CER;
- Transfer the powers specified in the two bullets described above to another person.<sup>11</sup>

A secured party, within ten days after receiving a demand by the debtor, must send to an account debtor that has received the notification of an assignment to the secured party as assignee a signed record that releases the account debtor from any further obligation to the secured party. The traditional rules on when the debtor can still pay the original assignor instead of the assignee, and when the assignee's notification becomes effective, requiring payment to

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<sup>9</sup> R.C. 1314.106(B) and (C).

<sup>10</sup> R.C. 1314.106(D).

<sup>11</sup> R.C. 1314.106(E) and (F).

them instead, under UCC Article 9, Section 406 do not apply to a controllable account or controllable payment intangible.<sup>12</sup>

### **No modification except for consumer debt**

The bill specifies these discharge and notification requirements do not apply when there is a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes. In addition, for all other situations, an account debtor may not waive or vary its rights wherever noted above.<sup>13</sup>

### **Governing law**

The bill provides guidance for what law applies to CERs. The bill specifies that the local law of a CER's jurisdiction governs, except for a CER that evidences a controllable account or controllable payment intangible. In that case, the local law of the CER's jurisdiction governs a matter covered by the provision under **"Discharge of account debtor on controllable account or controllable payment intangible,"** unless an effective agreement determines that the local law of another jurisdiction governs.<sup>14</sup>

The following rules determine a CER's jurisdiction:

- If the CER, or a record attached to or logically associated with the CER and readily available for review, expressly provides that a particular jurisdiction is the CER's jurisdiction for purposes of the UCC, that jurisdiction governs.
- If there is no choice of law provided, as described above, and the rules of the system in which the CER is recorded and readily available for review expressly provide that a particular jurisdiction is the CER's jurisdiction for purposes of the UCC, that jurisdiction is the CER's jurisdiction.
- If neither of the jurisdictional rules described above apply and the CER, or a record attached to or logically associated with the CER that is readily available for review, expressly provides that the CER is governed by the law of a particular jurisdiction, that jurisdiction is the CER's jurisdiction.
- If none of the jurisdictional rules described above apply and the rules of the system in which the CER is recorded are readily accessible for review and expressly provide that the CER or the system is governed by the law of a particular jurisdiction, that jurisdiction is the CER's jurisdiction.
- If none of the jurisdictional rules described above apply, the CER's jurisdiction is the District of Columbia.

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<sup>12</sup> R.C. 1309.209 and 1309.406(L).

<sup>13</sup> R.C. 1314.106(G) and (H).

<sup>14</sup> R.C. 1314.107(A) and (B).



If the last jurisdictional rule described above applies, and UCC Article 12 is not in effect in the District of Columbia without material modification, the governing law for a matter covered by UCC Article 12 is the law of the District of Columbia as though UCC Article 12 were in effect in the District of Columbia without material modification. To the extent that the local law of the CER's jurisdiction governs a matter covered by UCC Article 12, that law governs even if the matter or transaction to which the matter relates does not bear any relation to the CER's jurisdiction.

The rights acquired by a purchaser or qualifying purchaser are governed by the law applicable, as described above, at the time of purchase.<sup>15</sup>

## **UCC Article 9, secured transactions amendments**

UCC Article 9, the rules governing secured transactions, provides the governing rules for any transaction that combines a debt with a creditor's interest in a debtor's personal property. The bill makes changes to UCC Article 9 to facilitate the use of digital assets as collateral for loans. According to the Uniform Law Commission, under current law, there is no effective way for a lender to perfect a security interest in digital assets except by filing a financing statement, and there is no way to ensure priority of the security interest without obtaining a release or subordination from all other secured parties, if those parties are even disclosed. According to the Uniform Law Commission, the amended UCC Article 9 is meant to provide that a lender with control of digital assets has a perfected security interest with priority over the interests of any other lender who do not have control.<sup>16</sup>

### **Control of deposit account**

Under current law, changed in part by the bill, a secured party has control of a deposit account if (1) the secured party is the bank with the deposit account, (2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor, or (3) the secured party becomes the bank's customer with respect to the deposit account. The bill modifies the second method of establishing control of a deposit account by swapping the term "authenticated record" with "signed record." In addition, the bill adds that a secured party has control of a deposit if another person other than the debtor (1) has control of the deposit account and acknowledges that it has control on behalf of the secured party, or (2) obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party. Under continuing law, a secured party that meets any of the foregoing standards has control of a deposit account, even if the debtor retains the right to direct the disposition of funds from the deposit account.<sup>17</sup>

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<sup>15</sup> R.C. 1314.107(C) through (F).

<sup>16</sup> UCC, 2022 Amendments "[Act Summary](#)."

<sup>17</sup> R.C. 1309.104.

## Control of electronic copy of record evidencing chattel paper

The bill revises the definition of chattel paper. Under the bill, **chattel paper** means either of the following:

- A right to payment of a monetary obligation secured by specific goods, if the right to payment and security agreement are evidenced by a record;
- A right to payment of a monetary obligation owed by a lessee under a lease agreement with respect to specific goods and a monetary obligation owed by the lessee in connection with the transaction giving rise to the lease, if both the right to payment and lease agreement are evidenced by a record and the predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of goods.

The term does not include a right to payment arising out of a charter or other contract involving the use or hire of a vessel, or a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.<sup>18</sup>

Under current law, changed in part by the bill, a secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests reliably establishes the secured party as the person to which the chattel paper was assigned. The bill establishes that a purchaser, instead of secured party, has control of an authoritative electronic copy of a record evidencing chattel paper if a system employed for evidencing the assignment of interests in the chattel paper reliably establishes the purchaser as the person to which the authoritative electronic copy was assigned.<sup>19</sup>

Under continuing law, a system satisfies such control if the record or records comprising evidencing the chattel paper are created, stored, and assigned in such a manner that meets all of the following:

- A single authoritative copy of the record or records exists that is unique, identifiable, and, except as otherwise provided below, unalterable;
- The authoritative copy identifies the purchaser as the assignee of the record or records;
- The authoritative copy is communicated to and maintained by the purchaser or its designated custodian;
- Copies or amendments that add or change an identified assignee of the authoritative copy may be made only with the consent of the purchaser;
- Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy;
- Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

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<sup>18</sup> R.C. 1309.102(A)(11).

<sup>19</sup> R.C. 1309.105(A).

The bill adds that a system can also satisfy 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 meets all of the following:

- Enables the purchaser to readily identify each electronic copy as either an authoritative copy or a nonauthoritative copy;
- Enables the purchaser to readily identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of the authoritative electronic copy;
- Gives the purchaser 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.<sup>20</sup>

### **Exclusive power and shared exclusive power**

The bill specifies that power is exclusive even if the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the authoritative electronic copy or has a protocol programmed to cause a change, including a transfer or loss of control. The power is also exclusive if the power is shared with another person. A power of a purchaser is not shared with another person and not exclusive if the other person can exercise power without exercise of the power of the purchase or is the transferor to the purchaser of an interest in the chattel paper.<sup>21</sup>

A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if another person, other than the transferor to the purchaser of an interest in the chattel paper, has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser, or obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.<sup>22</sup>

### **Control of electronic money**

The bill amends Article 1 of the UCC and the definition of money, specifying that governmental created forms of money may be tangible or electronic and that preexisting virtual currencies are not money for purposes of the UCC. Existing law 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. The bill specifies that money 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

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<sup>20</sup> R.C. 1309.105(C) and (F).

<sup>21</sup> R.C. 1309.105(D) and (E).

<sup>22</sup> R.C. 1309.105(G).

adopted by the government.<sup>23</sup> The bill also adds a definition for electronic money, which is defined as money in electronic form.<sup>24</sup>

The bill establishes how a person obtains control of electronic money. Under the bill, two things must be true to presume a person has control of electronic money. First, 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 the power to avail itself of substantially all the benefits from the electronic money and the exclusive power prevent others from availing themselves of substantially all the benefit from the electronic money, the exclusive power to transfer control of the electronic money to another person or cause another person to obtain control of other electronic money as a result of the transfer of the electronic money. Second, the electronic money enables the person to readily identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers described above.<sup>25</sup> The power is exclusive if either the electronic money limits the use of the electronic money or has a protocol programmed to cause a change, including a transfer or loss of control, or the power is shared with another person, or both.<sup>26</sup>

A power is not exclusive if the person can exercise the power only if the power is also exercised by the other person and the other person either can exercise the power without the exercise of the power by the person or is the transferor to the person of an interest in the electronic money.<sup>27</sup> A person has control of electronic money if another person, other than the transferor to the person of an interest in the electronic money, either has control of the electronic money and acknowledges that it has control on behalf of the person, or obtains control of the electronic money after having acknowledged that it will obtain control of the electronic money on behalf of the person.<sup>28</sup>

### **Control of CER, controllable account, or controllable payment intangible**

Under the bill, a secured party has control of a CER as described under “**Control of CER,**” above. A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the CER that evidences the controllable account or controllable payment intangible.<sup>29</sup>

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<sup>23</sup> R.C. 1301.201(B)(24).

<sup>24</sup> R.C. 1309.102(A)(31) and (54) and 1309.111.

<sup>25</sup> R.C. 1309.111(A) and (D).

<sup>26</sup> R.C. 1309.111(B).

<sup>27</sup> R.C. 1309.111(C).

<sup>28</sup> R.C. 1309.111(E).

<sup>29</sup> R.C. 1309.112.

## **No requirement to acknowledge or confirm, no duties**

A person that has control of a deposit account or an electronic copy of record evidencing chattel paper is not required to acknowledge that it has control on behalf of another person. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or other applicable law provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.<sup>30</sup>

## **Attaching a security interest to collateral**

The bill adds conforming changes to other parts of UCC Article 9, including the attachment and enforceability of security interest as it attaches to collateral that is a controllable account, CER, or controllable payment intangible. The bill specifies that a security interest attaches to chattel paper when the secured party has possession and control pursuant to the debtor's security agreement.<sup>31</sup>

## **After-acquired property; future advances**

Under continuing law, a security agreement may create or provide for a security interest in collateral acquired after the fact. Under current law, a security interest does not attach under a term constituting an after-acquired property clause to (1) consumer goods other than accessions when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value, or (2) a commercial tort claim. The bill specifies that this rule does not prevent a security interest from attaching to any of the following:

- To consumer goods as certain proceeds of collateral under UCC Article 9, Section 315 or as commingled goods under UCC Article 9, Section 336;
- To a commercial tort claim as proceeds under UCC Article 9, Section 315;
- Under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.<sup>32</sup>

## **Rights and duties of secured party having control of collateral**

Under continuing law, in cases where there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value, after receiving an authenticated demand (the bill changes this to signed demand, see "**Miscellaneous**," below) from the debtor, the secured party is obligated to release control of the collateral within ten days. Generally, continuing law provides that a secured party other than a buyer having possession or control of collateral: (1) may hold as additional security any proceeds, except money or funds, received from the collateral, (2) must apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor, and (3) may create a security interest in the collateral. Under the bill, these rights apply to collateral

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<sup>30</sup> R.C. 1309.113.

<sup>31</sup> R.C. 1309.203.

<sup>32</sup> R.C. 1309.204.

consisting of electronic money, CERs, controllable accounts, and controllable payment intangibles.<sup>33</sup>

Under current law, a secured party, other than the buyer, having control of electronic chattel paper or a secured party of an electronic document must do all of the following:

- Communicate the authoritative copy of the electronic chattel paper or electronic document to the debtor or its designated custodian.
- If the debtor designates a custodian with which the authoritative copy of the electronic chattel paper or electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor.
- Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party.

The bill, instead, requires the secured party, other than a buyer, having control of an authoritative electronic copy of a record evidencing chattel paper or the secured party having control of an authoritative electronic copy of an electronic document to transfer control of the electronic copy to the debtor or a person designated by the debtor. Similarly, under the bill, a secured party having control of electronic money must transfer control of the electronic money to the debtor or a person designated by the debtor; and a secured party having control of a CER, other than a buyer of a controllable account or a controllable payment intangible evidenced by the CER, must transfer control of the CER to the debtor or a person designated by the debtor.<sup>34</sup> The bill adds conforming changes to require the secured party to notify the debtor of the assignment.

### **Law governing perfection and priority of security interests in deposit accounts and investment property**

Under continuing law, the local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank. The bill adds that the jurisdictional rule applies even if the transaction does not bear any relation to the bank's jurisdiction.<sup>35</sup> Similarly, under continuing law, to determine the law governing perfection and priority of security interests in investment property, the state where the issuer or securities intermediary is located generally governs. The bill adds that the continuing law rules apply even if the transaction does not bear any relation to the jurisdiction.<sup>36</sup>

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<sup>33</sup> R.C. 1309.207(C).

<sup>34</sup> R.C. 1309.208.

<sup>35</sup> R.C. 1309.304.

<sup>36</sup> R.C.1309.305(A)(5).

## **Perfection of security interests in CERs, controllable accounts, controllable payment intangibles**

The bill specifies that a security interest in controllable accounts, CERs, and controllable payment intangibles may be perfected by filing. Under continuing law, a security interest in money, which the bill specifies as “tangible” money may be perfected only by the secured party taking possession. The bill specifies that a security interest in electronic money may be perfected only by control.<sup>37</sup>

Under the bill, a security interest in controllable accounts, CERs, controllable payment intangibles, and electronic money may be perfected by control of the collateral. The security interest is perfected by control not earlier than the time the secured party obtains control and remains perfected by control only while the secured party retains control.<sup>38</sup> The same provisions relating to perfection and continued perfection under continuing law for investment property, deposit accounts, letter of credit rights, electronic chattel paper, or electronic documents apply under the bill to controllable accounts, CERs, controllable payment intangibles, and electronic money.<sup>39</sup>

The bill specifies that the filing of a financing statement is not necessary to perfect a security interest in controllable accounts, CERs, controllable payment intangibles, or in chattel paper when it is perfected by possession and control.<sup>40</sup>

### **Priority**

Under the bill, a buyer, other than a secured party, of chattel paper takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and (1) receives delivery of each authoritative copy of the record evidencing the chattel paper, and (2) if each authoritative electronic copy of the record evidencing the chattel paper can be subjected to control, obtains control of each authoritative electronic copy.

A buyer of an electronic document takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and, if each authoritative electronic copy of the document can be subjected to control, obtains control of each authoritative electronic copy. A buyer of a CER takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the CER. A buyer, other than a secured party, of a controllable account or a controllable payment intangible takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable account or controllable payment intangible.<sup>41</sup>

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<sup>37</sup> R.C. 1309.312(A) and (B)(4).

<sup>38</sup> R.C. 1309.314.

<sup>39</sup> R.C. 1309.316.

<sup>40</sup> R.C. 1309.310(B)(8).

<sup>41</sup> R.C. 1309.317(F) to (I).

## **Priority of purchaser of chattel paper or instrument**

Under current law, a purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed merely as proceeds of inventory subject to a security interest if both of the following apply:

- In good faith in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control;
- The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

Instead, under the bill, a purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed merely as proceeds of inventory subject to a security interest if both of the following apply:

- In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value, takes possession of each authoritative tangible copy of the record evidencing the chattel paper, and obtains control of each authoritative electronic copy of the record evidencing the chattel paper;
- The authoritative copies of the record evidencing the chattel paper do not indicate that the chattel paper has been assigned to an identified assignee other than the purchaser.

Additionally, under current law, a purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party. Under the bill, a purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value, takes possession of each authoritative tangible copy of the record evidencing the chattel paper, and obtains control of each authoritative electronic copy of the record evidencing the chattel paper in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

Under continuing law, if the chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.<sup>42</sup>

## **Transfer of money**

The bill specifies that a transferee of electronic money takes the money free of a security interest if the transferee obtains control of the money without acting in collusion with the debtor in violating the rights of the secured party.<sup>43</sup>

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<sup>42</sup> R.C. 1309.330(A), (B), and (F).

<sup>43</sup> R.C. 1309.332(C).



## **Law governing perfection and priority of security interests in chattel paper**

Under the bill, 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. The following rules determine the chattel paper's jurisdiction:

- If the authoritative electronic copy of a recording evidencing chattel paper, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that a particular jurisdiction is the chattel paper's jurisdiction for purposes of the UCC, that jurisdiction is the chattel paper's jurisdiction.
- If the first jurisdictional rule does not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is the chattel paper's jurisdiction for purposes of the UCC, that jurisdiction is the chattel paper's jurisdiction.
- If neither of the first two jurisdictional rules apply and the authoritative electronic copy, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.
- If none of the jurisdictional rules described above apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that the chattel paper or the system is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.
- If none of the jurisdictional rules described above apply, the chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while the authoritative tangible copy of the record is located in a jurisdiction, the local law of that jurisdiction governs both the perfection of a security interest in the chattel paper by possession and the effect of perfection and nonperfection and the priority of a security interest in the chattel paper. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in the chattel paper by filing.<sup>44</sup>

## **Law governing perfection and priority of security interests in controllable accounts, CERs, and controllable payment intangibles**

The local law of the CER's jurisdiction specified in "**Governing Law**," above governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a

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<sup>44</sup> R.C. 1309.343.

CER, as well as a security interest in a controllable account or controllable payment intangible governed by the CER. Except that the local law of the jurisdiction in which the debtor is located governs both the (1) perfection of a security interest in a controllable account, CER, or controllable payment intangible by filing, and (2) automatic perfection of a security interest in a controllable payment intangible created by the sale of the controllable payment intangible.<sup>45</sup>

### **Perfection by possession and control of chattel paper**

Under the bill, 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. A security interest is perfected not earlier than the time the secured party takes possession and obtains control and remains perfected only while the secured party retains possession and control. Continuing law under UCC Article 9, section 313 applies to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.<sup>46</sup>

### **Priority of security interest in controllable account, CER, and controllable payment intangible**

The bill specifies that a security interest in a controllable account, CER, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.<sup>47</sup>

### **Unknown debtor or secondary obligor**

Under current law, changed in part in the bill, a secured party does not owe a duty based on its status as secured party to either of the following:

- To a person who is a debtor or obligor, unless the secured party knows that the person is a debtor or obligor, the identity of the person, and how to communicate with the person;
- To a secured party or lienholder who has filed a financing statement against a person, unless the secured party knows that the person is a debtor and the identity of the person.

The bill adds 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, CER, or controllable payment intangible, or at a time the security interest attaches to the collateral, whichever is later, the person is a debtor or obligor and the secured party knows that the information listed in the first bullet, above, relating to the person 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.<sup>48</sup>

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<sup>45</sup> R.C. 1309.301 and 1309.344.

<sup>46</sup> R.C. 1309.310, 1309.313, and 1309.345.

<sup>47</sup> R.C. 1309.346.

<sup>48</sup> R.C. 1309.605.

## Notification before disposition of collateral

Continuing law outlines the required content and form of notification before the secured party can dispose of collateral. The bill provides specific instructions for what should be included in the form, but does not seem to make any substantive changes. A similar requirement and different form is used for consumer good transactions.

The bill modifies the form to incorporate the new requirements for digital assets. Under continuing law, the notification must include a statement that says “If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at (telephone number) or write us at (secured party’s address) and request a written explanation.” The bill requires that the secured party include the electronic communication method to contact them and also specifies that the written explanation can include a writing or the electronic record. The bill outlines specific instructions for the form.<sup>49</sup>

## Hybrid transactions

Articles 2 and 2A of the UCC apply to the sale and lease of goods, respectively, and not to contracts for services. The bill provides a framework for hybrid transactions, which involve both the sale of goods and the provision of services. The bill provides that, absent an agreement, the UCC rules will apply to a hybrid transaction if the sale or lease of goods is the predominant purpose of the transaction. If the sale of services or provision of other property predominates, the UCC rules will apply only to aspects of the transaction that involve the sale or lease of goods. Whether or not the lease of goods aspects of the transaction predominate, the finance lease provisions of Article 2A will apply to those aspects of the transaction. The bill defines **hybrid transaction** as a single transaction involving a sale of goods and any of the following: (1) the provision of services, (2) a lease of other goods, or (3) a sale, lease, or license of property other than goods.<sup>50</sup> The bill defines **hybrid lease** as a single transaction involving a lease of goods and one or more of the following: (1) the provision of services, (2) sale of other goods, or (3) a sale, lease, or license of property other than goods.<sup>51</sup>

## Control of electronic document of title

The bill amends Article 7 of the UCC by specifically addressing electronic documents of title. The bill defines what constitutes control over an electronic document of title. It outlines the conditions under which a person is considered to have control, essentially establishing who is legally entitled to exercise the rights associated with that document. Under the bill, a person has control of an electronic document of title, if an authoritative electronic copy of the document, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded does all of the following:

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<sup>49</sup> R.C. 1309.613 and 1309.614.

<sup>50</sup> R.C. 1302.01(A)(15), 1302.02.

<sup>51</sup> R.C. 1310.01(A)(8)(b) and 1310.02(A)(2).

- Enables the person to readily identify each electronic copy as either an authoritative or nonauthoritative copy;
- Enables the person to readily identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the person to which each authoritative electronic copy was issued or transferred;
- Gives the person exclusive power to prevent others from adding or changing the person to which each authoritative electronic copy has been issued or transferred, and transfer control of each authoritative electronic copy.

The power is exclusive even if the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the document of title or has a protocol that is programmed to cause a change, including a transfer or loss of control. The power is exclusive for the purposes of Article 7 even if it is shared with another.

The person's power is not exclusive if (1) the person can exercise the power only if the power is also exercised by the other person, and (2) the other person either can exercise the power without exercise of the power by the person or is the transferor to the person of an interest in the document of title. A person has control of an electronic document of title if another person, other than the transferor to the person of an interest in the document, either (1) has control of the document and acknowledges that it has control on behalf of the person, or (2) obtains control of the document after having acknowledged that it will obtain control of the document on behalf of the person.

A person that has control is not required to acknowledge that it has control on behalf of another person. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or other law provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any person.<sup>52</sup>

## Negotiable instruments

The bill contains several changes to UCC Article 3 addressing negotiable instruments. First, the amendments make clear that a choice-of-law or choice-of-forum clause contained in the instrument does not affect the negotiability of the instrument. Second, the amendments provide that, if agreed by the payee, an item may be issued by a maker or drawer by transmission of an image of the item and information describing the item if the image and information permits the depository bank to process the item as an electronic check under federal regulation (i.e., photos of the front and back of a check). Third, the amendments provide that a check destroyed following a remote deposit of the instrument does not discharge the obligation evidenced by the instrument.<sup>53</sup>

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<sup>52</sup> R.C. 1307.106.

<sup>53</sup> R.C. 1303.01(A)(7)(b), 1303.41, 1303.69, 1305.15, and 1308.05.

## Miscellaneous

Under the bill, several “writing” requirements in the UCC are changed to “record” requirements where the effect is to facilitate electronic commerce. The requirements for an “instrument” in Articles 3 and 9 to be in a writing is not changed. There are corresponding changes to the definition of “signed,” which is expanded to apply not only to a signature in a writing but also to an electronic signature. This definition applies throughout the UCC where an electronic record is permitted.

A new sentence is added to the definition of “person” to provide that a protected series of a series organization (such as a limited liability company that established protected series) is a person under the UCC. The protected series is a person separate from the series organization or from another protected series of the series organization.

The amendments clarify that, if a letter of credit issued by a bank states in its governing law, a branch of a bank is still considered as a separate bank for purposes of UCC Article 5.

The bill modifies the definition of “control” in UCC Article 7 to be similar to the definition of control for electronic chattel paper. Throughout the UCC, the word “authenticate” is replaced by the word “sign.”<sup>54</sup> The bill makes other conforming and technical changes.<sup>55</sup>

## Transitional provisions

Under the transitional provisions a security interest that is enforceable and perfected under the pre-amendment rules, but would no longer be enforceable or perfected on the effective date of the amendments if those rules were applied, remains enforceable without further action until the “adjustment date” and remains perfected without further action until the earlier of the adjustment date or the date on which perfection would lapse under the pre-amendment rules. The bill defines the adjustment date as the later of July 1, 2025. or one year after the effective date of the bill.

Generally, a transaction validly entered into before the effective date and the rights, duties, and interests following from the transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by law other than UCC or, if applicable, the UCC as it existed before the effective date of the amendments.<sup>56</sup>

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<sup>54</sup> R.C. 1301.201(B)(37), 1301.306, 1302.04, 1302.05, 1302.06, 1302.08, 1302.12, 1305.03, 1305.15, 1309.102, 1309.104, 1309.203, 1309.208, 1309.209, 1309.210, 1309.312, 1309.313, 1309.324, 1309.334, 1309.341, 1309.404, 1309.406, 1309.509, 1309.513, 1309.608, 1309.611, 1309.615, 1309.616, 1309.619, 1309.620, 1309.621, 1309.624, 1310.08, 1310.09, 1310.10, 1310.12, and 1310.15.

<sup>55</sup> R.C. 1301.101, 1301.102, 1301.103, 1301.104, 1301.105, 1301.106, 1301.201, 1301.204, 1301.205, 1301.206, 1301.301, 1301.302, 1301.304, 1301.305, 1301.306, 1303.03, 1304.51, 1304.56, 1304.57, 1304.58, 1304.62, 1304.63, 1304.65, 1304.66, 1304.72, 1307.102, 1308.01, 1308.02, 1308.05, 1308.17, 1308.24, 1309.323, and 1311.55.

<sup>56</sup> R.C. 1316.201.

The bill provides guidelines for the transition to the amendments for a transaction, lien, or other interest in property entered into, created, or acquired before the effective date of the amendment, security interests perfected and for those unperfected before the effective date of the amendments, the effectiveness of an action taken before the effective date of the amendments, and the priority of conflicting claims to collateral.<sup>57</sup> The bill also specifies the rules for priority of claims when priority rules of UCC Article 9 do not apply.<sup>58</sup>

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## HISTORY

Action	Date
Introduced	03-24-25
Reported, H. Judiciary	10-29-25

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<sup>57</sup> R.C. 1316.301, 1316.303, 1316.304, and 1316.305.

<sup>58</sup> R.C. 1316.306.