SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
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SB 95 (Roth)
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AWM

SUBJECT

Commercial transactions

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.

EXECUTIVE SUMMARY

The Uniform Law Commission (ULC) is a national organization that, with input from stakeholders and states, drafts uniform legislation to encourage uniformity in various areas of law. One such uniform statutory scheme is the Uniform Commercial Code (UCC), which California has enacted as the CUCC. The CUCC, in concert with the UCCs adopted by the 49 other states, provide a uniform set of rules that apply in a variety of commercial transactions.

In 2022, the ULC drafted and recommended amendments to the UCC. The amendments make a variety of modernizing changes to the existing UCC and introduce an entirely new division to govern transactions involving digital assets, referred to in the amendments as "controllable electronic records." The provisions relating to digital assets are intended to provide certainty in what has thus far been an unregulated and unpredictable commercial space.

California's representative to the ULC, the California Commission on Uniform State Laws, has recommended that California adopt the 2022 amendments into the CUCC. This bill adopts the 2022 amendments in their entirety. The author has agreed to very minor technical amendments to clarify definitions and correct cross-references.

This bill is sponsored by the California Commission on Uniform State Laws (CCUSL) and is supported by the California Credit Union League. The bill is opposed by 34 individuals.

PROPOSED CHANGES TO THE LAW

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.)[1]

2) Defines terms used throughout the CUCC, including:
   a) "Conspicuous," with respect to a term, means so written, displayed, or presented that a reasonable person against whom it is to operate ought to have noticed it. Whether a term is conspicuous is a question for the court. Conspicuous terms include both of the following:
      i. A heading 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.
      ii. 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. (§ 1201(b)(10).)
   b) "Delivery," with respect to an instrument, a document of title, or chattel paper means voluntary transfer of possession. (§ 1201(b)(15).)
   c) "Holder" means (1) 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 (2) 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. (§ 1201(b)(21).)
   d) "Money" means 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. (§ 1201(b)(24).)
   e) "Person" means 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. (§ 1201(b)(27).)
   f) "Send," in connection with a writing, record, or notice, means:

[1] All statutory references in this analysis are to the California Uniform Commercial Code unless otherwise stated.

   i. 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
   ii. In any other way to cause to be received any record or notice within the time it would have arrived if properly sent. (§ 1201(b)(36).)
 g) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing. (§ 1201(b)(37).)

3) 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.)

4) Establishes Division 2 of the CUCC, which applies to transactions in goods; it does not apply to any transaction which, although in the form of an unconditional contract to sell or present sale, is intended to operate only as a security transaction, nor does this division impair or repeal any statute regulating sales to consumers, farmers, or other specified classes of buyers. (§ 2102.)

5) Establishes, for transactions covered by Division 2, default terms and standards surrounding offers, acceptances, and the performance of contracts for transactions in goods, including:
   a) Default meanings for the terms "contract," agreement, "conforming," "termination," and "cancellation." (§ 2106.)
   b) A codified statute of frauds, which provides that a contract for the sale of goods of $500 or more is enforceable only if the agreement is in writing and signed by the party against whom the agreement is to be enforced, except as otherwise specified. (§ 2201.)
   c) Default terms for when offers or agreements are made in writing. (§§ 2205, 2209.)

6) Establishes Division 3 of the CUCC, which applies to negotiable instruments; it does not apply to money, to payment orders governed by Division 11, or to securities governed by Division 8. (§ 3102.)

7) Establishes, for instruments covered by Division 3, certain definitions and default situations in which a person is liable for or entitled to enforce an instrument, including:
   a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person. (§ 3105(a).)

   b) Providing that a person is not liable on an instrument unless (1) the person signed the instrument, or (2) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person, as specified. (§ 3401.)
   c) Providing that a person is entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (1) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (2) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing. (§ 3604.)

8) Establishes Division 5 of the CUCC, which applies to letters of credit and to certain rights and obligations arising out of transactions and letters of credit. (§ 5103.)
   a) Provides that 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. (5116.)

9) Establishes Division 7 of the CUCC, which applies to documents of title. (§ 7101.)

10) Establishes, for documents of title covered by Division 7, certain definitions and rules relating to control of a document of title, including:
   a) Definitions of "record" and "sign." (§ 7102.)
   b) Providing when a person has control of an electronic document of title and under what conditions a system employed for evidencing the transfer of interest in an electronic title is sufficient to establish that control. (§ 7106.)

11) Establishes Division 8 of the CUCC, which applies to investment securities. (§ 8101.)

12) Establishes, for investment securities covered by Division 8, certain definitions and rules relating to investment securities, including:
   a) Defining "communicate" and providing that certain definitions within Division 8 apply to specified sections in other divisions. (§ 8102(a)(6), (b).)
   b) Defining which investment documents qualify as securities governed by Division 8. (§ 8103.)
   c) Providing when a purchaser has "control" of a security or security entitlement and restricting the actions an issuer or securities intermediary may enter into without the consent of the registered owner or entitlement holder. (§ 8106.)

d) Providing that the jurisdiction of the security issuer, the security intermediary, or the jurisdiction in which a security is located will govern, as specified. (§ 8110.)
e) Defining a "protected purchaser" of a security. (§ 8303.)

13) Establishes Division 9 of the CUCC, which governs secured transactions, which, except as otherwise specified, includes a transaction that creates a security interest in personal property or fixtures by contract; an agricultural lien; a sale of accounts, chattel paper, payment intangibles, or promissory notes; a consignment; and specified security interests. (§ 9109.)

14) Establishes, for secured transactions covered by Division 9, certain definitions and rules relating to secured transactions, including:
    a) Definitions for "account," "account debtor," "accounting," "authenticate," "chattel paper," "electronic chattel paper," "instrument," "payment intangible," "proposal," "send," in connection with a record or notification, and "tangible chattel paper"; and incorporates certain other definitions from other divisions. (§ 9102.)
    b) Providing default terms relating to, among other things, secured parties, order of priority of interest, defaults, and banks holding accounts in which a party has a secured interest. (*See generally* CUCC, div. 9.)

15) Establishes Division 10 of the CUCC, which applies to any transaction that creates a lease. (§ 10102.)

16) Establishes, for leases covered by Division 10, certain definitions and rules relating to secured transactions, including:
    a) Definitions of terms, including types of leases. (§ 10103.)
    b) Requires, for purposes of enforcement of leases covered by Division 10, a signed writing in specified circumstances and the evidentiary effect of signed writings. (§§ 10201, 10202, 10205, 10208.)

17) Establishes Division 11 of the CUCC, which applies to funds transfers, defined as the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. (§§ 11102, 11104.)

18) Establishes, for funds transfers covered by Division 11, certain definitions and rules relating to funds transfers, including:
    a) Various transactions in which an instruction or agreement may be accomplished or transmitted orally, electronically, or in writing. (§ 11103, 11202, 11203, 11207, 11208, 11210, 11211, 11305.)
    b) Defines "security procedure" as a procedure established by agreement of a customer and receiving bank for purposes of verifying or identifying errors in payment orders, and which may require the use of algorithms, identifying

words or numbers, or other similar security devices; comparison of signatures is not by itself a security procedure. (§ 11201.)

This bill:

1) Modifies certain terms defined for use throughout the CUCC, including:
   a) "Conspicuous" is redefined to mean 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" is modified to include 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" is modified to include the person in control, except as specified, of a negotiable electronic document of title.
   d) "Money" is modified to exclude 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" is modified to exclude a corporation and to include a protected series, however denominated, of an entity if the protected series is established under law other than this 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" is modified to apply in connection with a record or notification (1) 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 (2) to cause the record or notification to be received within the time it would have been received if properly sent under (1).
   g) "Sign" is modified to mean, with present intent to authenticate or adopt a record, (1) to execute or adopt a tangible symbol, or (2) to attach to or logically associate with the record an electronic symbol, sound, or process. "Signed, " "signing," and "signature" have corresponding meanings.

2) Defines, for purpose of the CUCC, "electronic" as relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

3) Updates various provisions of Divisions 1, 2, 3, 5, 7, 9, 10, and 11, including but not limited to:
   a) Modifying 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) Adding rules for electronic check deposits.
d) Updating rules regarding the location of a bank or branch for jurisdictional purposes.
e) Expanding requirements relating to the security of electronic platforms and the systems holding electronic documents.
f) 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.
g) Expands measures relating to the perfection of security interests to account for the modifications in 3)(f).
h) Modifies existing provisions of Article 9 to account for the additions to Division 12.
i) Modifies certain procedures and requirements for transactions involving collateral.

4) Adds to the CUCC Division 12, which applies to controllable electronic records.

5) Adds cross-references to Division 12 throughout the CUCC as needed for consistency.

6) Defines, for purposes of Division 12, the following:
   a) "Controllable electronic record" is a record stored in an electronic medium that can be subjected to control under 8). 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.
   b) "Qualifying purchaser" is 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.
   c) "Transferable record" is the term as defined under 15 U.S.C. § 7021(a)(1) or subsection (a) of section 16 of the Uniform Electronic Transactions Act.
   d) "Value" has the meaning set forth in section 3303 of the CUCC, as if references in that subdivision to an "instrument" were references to a controllable account, controllable electronic record, or controllable payment intangible.
   e) "Account debtor," "controllable account," "controllable payment intangible," "chattel paper," "deposit account," "electronic money," and "investment property" have the same meaning as in Division 9 of the CUCC.

7) Provides that if there is a conflict between Division 12 and Division 9, Division 9 governs, and that a transaction subject to Division 12 is also subject to:
   a) Any applicable rule of law that establishes a different rule for consumers.
   b) Any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit.
   c) Any consumer-protection statute or regulation.

8) Defines circumstances under which a person has control of a controllable account, a controllable payment intangible, and a controllable electronic record.

9) Provides jurisdictional defaults for which local law applies in a matter relating to a controllable electronic record.

10) Adds Division 17 to the CUCC, which implements transitional provisions for the implementation of Division 12, particularly addressing the interplay between Division 9 and Division 12.

COMMENTS

1. Author's comment

According to the author:

> 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.

2. Background: the UCC, the CUCC, and the rise of digital assets

a. The UCC and the CUCC

The UCC "is a comprehensive set of laws governing all commercial transactions in the United States."[2] The UCC was developed as a joint project between the Uniform Law Commission (ULC) and the American Law Institute to create a comprehensive set of laws governing commercial transactions.[3] Every state in the country has adopted the UCC (or portions of it), which promotes uniformity in commercial transactions across the country.[4]

California adopted the UCC as the CUCC in 1963.[5] The California Commission on Uniform State Laws (CCUSL), which represents California on the ULC, has the responsibility of reviewing uniform law proposals, "bring[ing] about, as far as practicable, the passage of the various uniform acts recommended by" the ULC, and "devis[ing] and recommend[ing] additional legislation or action as is deemed necessary."[6] In other words, the ULC is responsible for contributing in the drafting of uniform law proposals at a national level and, if they determine that the proposals are worthwhile, recommending that the Legislature adopt those uniform proposals. The CCUSL is the sponsor of this bill.

b. Digital assets

There is no universally agreed-upon definition of "digital assets," but, generally speaking, a digital asset is a representation of value that exists only in digital form. Digital assets include virtual currencies (also known as cryptocurrency) and non-fungible tokens (NFTs), and are often created and stored through blockchain technology.[7]

While conducting transactions and storing value through digital means is not new, digital assets are novel because they exist *only* digitally. A person with a bank account can check their account balance on their phone and see the value of the account presented digitally, but an account holder can also go to a bank and obtain a physical

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[2] ULC, *Uniform Commercial Code Summary*, https://www.uniformlaws.org/acts/ucc. All links in this analysis are current as of April 7, 2023.
[3] *Ibid.*
[4] *Ibid.*
[5] Stats. 1963, ch. 819, p. 1849.
[6] Gov. Code, § 10281.
[7] A handful of countries have either adopted an existing cryptocurrency as a national currency or introduced their own national digital currencies. (*E.g.*, Mims, *Central-Bank Digital Currencies Are Coming – Whether Countries Are Ready or Not*, Wall Street Journal (Jan. 16, 2023). Because the CUCC deals with government-backed digital money differently than digital assets not backed by a government, this discussion excludes nationally backed digital currencies.

representation of their holdings, e.g., actual United States dollars.[8] A person with Bitcoin in their digital wallet, however, can do no such thing; the value exists only as the unique digital signature, and the only way to exchange the representation of value for some other asset is to transfer it digitally. This distinction—between a digital representation of a physical asset and a digital representation that, itself, is the asset—is the key to this bill.

While existing commercial laws, including the CUCC, have been expanded to cover transactions conducted electronically and transactions involving digital representations of physical assets,[9] the law has not yet caught up to cover transactions involving digital assets. As such, there is no default set of rules for digital asset transactions. The lack of rules might not have been disastrous if participants in the digital assets market were all sophisticated parties, but digital assets were famously marketed to the public at large as smart investments.[10]

One issue that was not made clear to the public at large is that digital asset "wallets" and other platforms that store digital assets are not subject to the same basic premise as banks, i.e., that when a person deposits monies in a bank, the bank does not take ownership of the money when it takes possession. It might seem self-evident that a business offering to hold assets for a person should not take ownership of those assets, but in the absence of regulations to that effect, digital asset storage platforms were able to write their own rules.

Perhaps unsurprisingly, this has turned out poorly for consumers. For example, when Celsius Network—a cryptocurrency exchange and digital wallet—filed for bankruptcy protection, it argued that all the digital assets stored in its accounts were the property of Celsius, not the individual account holders.[11] The court agreed.[12] Celsius's terms of use, set forth in a clickwrap agreement, stated that Celsius held all right and title to the digital assets held in its accounts, including ownership rights; because there were no laws or regulations protecting account holders' property, the terms of use governed.[13] As a result, consumers' digital assets totaling $4.2 billion were lost to Celsius.[14]

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[8] As a practical matter, the amount of U.S. currency in circulation is far lower than the amount of U.S. currency represented digitally in banks (*see* Federal Reserve Statistical Release, Factors Affecting Reserve Balances (Mar. 9, 2023), https://www.federalreserve.gov/releases/h41/20230309/), but in this hypothetical there's no ongoing bank run.

[9] E.g., AB 502 (Wagner, Ch. 531, Stats. 2013).

[10] *See, e.g.*, Bloomberg Editors, *Crypto in Retirement Accounts? Are You Kidding?*, Washington Post (May 27, 2022), https://www.washingtonpost.com/business/crypto-in-retirement-accounts-are-you-kidding/2022/05/26/90c0bc5a-dcf4-11ec-bc35-a91d0a94923b_story.html.

[11] *In re Celsius Network LLC* (Bankr. S.D.N.Y. 2023) 647 B.E. 631, 637.

[12] *Ibid.*

[13] *Ibid.*

[14] *Ibid.*

Some digital asset companies, in response to outcry, have modified their terms of use to avoid such results. Coinbase, for example, states in its terms of use that digital assets held in its digital wallet will be treated as financial assets covered by Division 8 of the CUCC, giving consumers the protections afforded by those laws.[15] But not all digital asset companies have done so, and in the absence of laws or regulations to the contrary, there will continue to be significant uncertainty surrounding the legal status of digital asset transactions.

3. <u>This bill implements the 2022 ULC amendments in the CUCC, including adding a division addressing acquisition and purchase rights in digital assets</u>

This bill amends the CUCC to incorporate the ULC's 2022 amendments at the recommendation of the CCUSL.[16] 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.[17]

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, rather than referring specifically to assets using blockchain technology, so that Division 12 will continue to

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[15] Coinbase, User Agreement, § 2.7.2, https://www.coinbase.com/legal/user_agreement/united_states (last updated Mar. 10, 2023).

[16] 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.

[17] 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.

apply to digital assets using technologies developed in the future.[18] The bill also clarifies that, if there is a conflict between Division 12 and the existing Division 9 (covering secured transactions), Division 9 governs, to further promote consistency.

In addition to the addition of Division 12, the bill makes minor changes throughout the CUCC to modernize the CUCC, many with respect to transactions conducted electronically. For example, the definitions of "sign" and "send" have been modified to better reflect the availability of electronic signatures and electronic transmissions. The bill also makes changes to better clarify questions of ownership and control of assets in which the ownership is represented in an electronic document of title (distinct from digital assets because there could be a physical analogue), to address concerns similar to those raised with digital assets. The California Credit Union League, writing in support, notes that the amendments allowing electronic signatures on wire transfer agreements and request forms will promote efficiency and practicality in wire transfers.

4. Amendments

The author has agreed to minor amendments to correct cross-references and make conforming changes. The amendments are as follows:

Amendment 1

In the title, in line 10, strike out "9326.1," and insert "9326.1)"

Amendment 2

On page 32, in line 28, strike out "He or she deals" and insert "They deal"

Amendment 3

On page 32, in line 30, strike out "He or she is" and insert "They are"

[18] There has been a moderate kerfuffle in some circles over whether the 2022 amendments are intended to help the federal government adopt a Central Bank Digital Currency (CBDC) and discourage the use of nongovernmental digital assets. (*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.) This concern appears to arise from a belief that the 2022 amendments' changes to the definition of "money" to include state-backed digital currencies (which already exist in several countries), and to account for countries that have adopted Bitcoin as a governmental currency, will somehow hamper the use of nongovernmental digital assets and will facilitate the creation of a CBDC in the United States. (*Ibid.*) While the wisdom of widespread adoption of nongovernmental digital assets is beyond the scope of this analysis, suffice it to say that the digital asset industry itself, including Bitcoin, believes that the 2022 amendments will help, not hinder, commercial transactions involving digital assets (*ibid*), and there is no connection between the UCC's definition of "money" and the federal government's authority on whether, and in what form, to offer U.S. currency.

Amendment 4

On page 32, in line 31, strike out "He or she is" and insert "They are"

Amendment 5

On page 73, in line 17, strike out "of the chattel", strike out line 18, and insert:

under Section 9105 of each authoritative electronic copy of the record evidencing the chattel paper.

Amendment 6

On page 85, in line 11, after the third comma insert "9105.1,"

Amendment 7

On page 90, in line 5, strike out "]"

Amendment 8

On page 96, in line 28, strike out "vehicle" and insert "vehicle)"

Amendment 9

On page 123, in line 4, strike out "Act." and insert "Act of any state whose law is applicable."

5. Arguments in support

According to the bill's sponsor, 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 instruments, payment systems, electronic documents of title, and sales and lease of goods.

SUPPORT

California Commission on Uniform State Laws (sponsor)
California Credit Union League

OPPOSITION

34 individuals

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2269 (Grayson, 2022) would have established a licensing and regulatory framework, administered by the Department of Financial Protection and Innovation, for specified digital financial asset business activities. AB 2269 was vetoed by Governor Newsom, who stated in his veto message that it was premature to enact a licensing structure without considering efforts made pursuant to an executive order and potential federal action in the digital financial asset space.

AB 1469 (Calderon, 2019) would have added statutory regimes for regulating virtual currency business activity and protecting persons who do business with virtual currency businesses to the Commercial Code. AB 1469 died in the Assembly on Banking and Finance Committee.

AB 502 (Wagner, Ch. 531, Stats. 2013) amended certain provisions of Division 9 of the CUCC (dealing with secured transactions) and related laws to, among other things, clarify rules regarding electronic chattel paper, collateral, and the perfection of a security interest.

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