

ONE HUNDRED EIGHTH LEGISLATURE - FIRST SESSION - 2023
COMMITTEE STATEMENT (CORRECTED)
LB94

Hearing Date: Monday January 23, 2023
Committee On: Banking, Commerce and Insurance
Introducer: Slama
One Liner: Adopt and change provisions for controllable electronic records under the Uniform Commercial Code

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, Slama, von Gillern

Nay:

Absent:

Present Not Voting:

Testimony:

Proponents:

Tori Osborne
Don Swanson
Ben Orzeske
Bob Hallstrom

Representing:

Legislative Aide to Senator Slama
Nebraska Uniform Law Commission
Nebraska Uniform Law Commission
Nebraska Bankers Association

Opponents:

Representing:

Neutral:

Representing:

* ADA Accomodation Written Testimony

Summary of purpose and/or changes:

The bill would amend a number of sections to the Uniform Commercial Code. The bill would provide as follows:

Reason for Adoption

The Uniform Commercial Code "UCC" governs commercial transactions and the granting and perfection of security interests in personal property. The UCC is updated periodically to keep up with new types of personal property and evolving markets. In this vein the Uniform Law Commission in July 2022 approved amendments to adopt a new Article 12 and to make accompanying amendments to UCC Article 9 creating a new category of assets, "controllable electronic records" for transactions and security interests in digital assets.

Security Interest in Digital Assets – Nebraska Law, Prior to July 1, 2022

Prior to July 1, 2022, UCC Article 9 did not provide for a separate class of "digital assets." As a result, a security interest in digital assets was typically perfected by filing a UCC-1 financing statement against "general intangibles," or by the filing of a

UCC-1 or by taking control of "investment property" under UCC Article 8.

2021 Passage of LB 649-Nebraska Financial Innovation Act

With the adoption of LB 649, the then-existing draft of the Uniform Law Commission's "ULC" proposed UCC Article 12 was adopted and took effect on July 1, 2022. While similar in many respects to the final version of UCC Article 12 recommended for adoption by the ULC in July of 2022, there are a number of changes that need to be adopted to bring Nebraska law into conformity with the final version of UCC Article 12 recommended for adoption by the ULC.

Existing UCC Section 12-101(A) reflects the fact that the 2021 Legislature acknowledged that they were adopting the then-current draft of UCC Article 12 and includes "intent" language that "the Nebraska Legislature will review and adopt conforming amendments to the provisions of the Uniform Commercial Code on controllable electronic records to remain consistent with the language and intent of the final proposal of the Joint Committee on the Uniform Commercial Code and Emerging Technologies of the Uniform Law Commission." LB 94 contains provisions of the final version of the ULC Joint Committee referenced above in accordance with the legislative intent set forth in LB 649.

Definition of Controllable Electronic Record (CER)

A CER is defined as a record or information in electronic form that is susceptible to control. The definition is intended to cover many forms of property created through the use of blockchain technology that exist today or that may exist in the future. Examples of a CER include virtual currency like Bitcoin, non-fungible tokens and digital assets with embedded payment rights.

Control of a CER

A CER must be subject to control. UCC Article 12 and the related amendments define control, as follows:

The nonexclusive power to enjoy substantially all the benefits of the CER;

The exclusive power to prevent others from enjoying substantially all the benefits of the CER;

The exclusive power to transfer control or to cause another person to get control of the CER; and;

The ability of the person in control to identify itself to a third-party as the person having control (can be accomplished through the use of the cryptographic key or account number).

Attachment of Security Interest

The security interest attaches to CER's when: 1) value has been given; 2) the debtor has rights in the collateral or the power to transfer rights; and 3) the secured party has control of the CER.

Perfection of Security Interest

UCC Article 12 provides for a security interest in a CER to be perfected by "control" (or by filing a financing statement) and for his security interest perfected by "control" to have a priority over a security interest in the CER perfected only by the filing of a financing statement.

Applicability and Savings Clause under LB 649

The version of UCC Article 12 contained within LB 649, which took effect on July 1, 2022, contained "applicability" provisions and a "savings clause" which limited the applicability of "new" UCC Article 12 to transactions involving a CER arising on or after July 1, 2022. The "savings clause" provided protections for pre-July 1, 2022, security interests in digital assets perfected under the existing UCC by allowing them to be governed by and enforceable under the existing provisions of the UCC.

Special Transitional Rule

Since Nebraska established provisions for the granting and perfection of security interests in CERs with the passage of LB 649, which took effect on July 1, 2022, and which will remain in effect until the provisions of LB 94 become operative, the Special Transitional Rule contained within proposed UCC 12A-202 (Section 101 of LB 94) is required. UCC 12A-202

represents the only revision to the final version of UCC Article 12 recommended for adoption by the ULC Joint Committee.

The Special Transitional Rule provides that current UCC Article 12 applies to any transaction involving a CER that arose on or after July 21, 2022, and prior to the operative date of LB 94. The Special Transitional Rule further provides that any transaction involving a CER that arose prior to July 1, 2022, and the rights, obligations, and interests flowing from that transaction are to be governed by the laws in effect prior to July 1, 2022, as if LB 649 (UCC Article 12) had not occurred and may be terminated, completed, consummated or enforced under that pre-existing statute.

Explanation of amendments:

Julie Slama, Chairperson