

HCS HB 1165 -- UNIFORM COMMERCIAL CODE

SPONSOR: Hicks

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on General Laws by a vote of 7 to 4, with 5 present.

The following is a summary of the House Committee Substitute for HB 1165.

The revisions to the Uniform Commercial Code (UCC) are focused primarily in the following areas: digital assets, controllable electronic records; chattel paper; bundled or hybrid transactions, consisting of the sale or lease of goods together with the sale, lease, or licensing of other property and the provision of services as an integrated transaction; documents of title; payment systems; miscellaneous UCC amendments; and consumer issues.

GENERAL PROVISIONS (Sections 400.1-201 to 400.1-306)

The definition of "person" is amended to include a protected series established under non-UCC law. Several definitions have been included or revised. The definition of "money" excludes any medium of exchange in electronic form. The term "electronic" is defined to mean technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. There is also a revised definition of "conspicuous" and definitions of "send" and "sign" which address records other than writings.

SALES AND LEASES (Sections 400.2-102 to 400.2A-205)

The bill clarifies the provisions relating to hybrid transactions and changes the current references to "writing" or "written" communication to refer instead to a "record." The bill defines a "hybrid lease" to mean a single transaction that involves lease of goods and provision of services; a sale of other goods; or a sale, lease, or license of property other than goods.

The bill also defines "hybrid lease" and the application of the sections to a hybrid lease. In a hybrid lease, if the lease-of-goods aspects do not predominate only the provisions that relate primarily to the lease-of-goods aspects of the transaction apply. The bill includes provisions that apply if the lease is a finance lease and for promises of the lessee in a finance lease. If the lease-of-goods aspects predominate, Sections 400.2-102 to 400.2A-205, RSMo, would apply to the transaction, but do not preclude the application of other laws that do not relate to the lease of goods.

NEGOTIABLE INSTRUMENTS, BANK DEPOSITS AND COLLECTIONS (Sections 400.3-104 to 400.4A-305)

This bill includes changes to negotiability, remote deposit capture, statements of account, definition of payment order, and security procedures. The bill replaces references to a "writing" with references to a "record".

LETTERS OF CREDIT (Section 400.5-116)

Currently, for the purpose of jurisdiction, choice of law and recognition of interbranch letters of credit, the branches of a bank are considered separate juridical entities and a bank is located at the place where its relevant branch is located. The bill clarifies that a branch of a bank is considered to be the address indicated in the branch's undertaking. If more than one address is indicated, the branch is considered to be located at the address from which the undertaking was issued.

DOCUMENTS OF TITLE (400.7-102 to 400.7-106)

Currently, subsection (a) of Section 400.7-106 sets forth the general test for control in that the system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred. Subsections (b) and (c) of Section 400.7-106 contain a system to be able to demonstrate and identify, at any point in time, the person entitled under the electronic document. The system in subsection (b) requires the existence of only one authoritative copy of the document but the system in subsection (c) allows for either a single authoritative copy or multiple authoritative copies.

The bill includes provisions relating to exclusivity of powers in subsections (d) and (e) of Section 400.7-106, a presumption of exclusivity of powers in subsection (f) of Section 400.7-106, and a new subsection (g) in Section 400.7-106 on control through another person.

INVESTMENT SECURITIES (Sections 400.8-102 to 400.8-303)

This bill incorporates definitions contained in other sections in the bill to investment securities. The bill specifies the right of "control" to mean that the purchaser has taken whatever steps are necessary, given the manner in which the securities or other financial assets are held, to place itself in a position where it can have the securities or other financial assets sold, without further action by the owner, registered owner, entitlement holder,

transferor, or other person with an interest in the securities or other financial assets.

In addition, the bill specifies the means by which a purchaser can obtain control of a security entitlement. Currently, a purchaser has control if it is the entitlement holder; if the securities intermediary has agreed to act on entitlement orders originated by the purchaser if no further consent by the entitlement holder is required. As specified in the bill, a purchaser may obtain control if another person has control and the person acknowledges that it has control on the purchaser's behalf.

SECURED TRANSACTIONS (Sections 400.9-102 to 400.9-628)

The bill contains new definitions of the terms "assignee", "assignor", "controllable account", "controllable payment intangible", and "money". It also modifies existing definitions such as "account".

The bill relates to security interests in controllable electronic records and in the rights to payment that are embedded in the controllable electronic records, controllable accounts, and controllable payment intangibles. As specified in the bill, perfection is the enforceability against third parties of security interests in these assets. Perfection may be achieved by a secured party obtaining control of the asset or filing a financing statement in the appropriate jurisdiction's filing office. A security interest perfected by control has priority over a security interest perfected by filing.

The bill redefines "chattel paper", such as installment sale contracts and personal property leases, as the right to payment of a monetary obligation that is secured by a security interest in specific goods or owed under a lease of specific goods, if the right to payment and interest in the goods are evidenced by a record. The revised definition more accurately reflects the distinction between the seller's or lessor's right to payment and the record evidencing that right. The revised definition also resolves uncertainty that has arisen when goods are leased as part of a hybrid transaction involving services or non-goods property as well as specific goods. This bill addresses additional issues relating to hybrid transactions, and provides an amended definition of "control" of an authoritative electronic copy of a record evidencing chattel paper, which reflects a more accurate and technologically flexible approach. A security interest in chattel paper may be perfected by taking possession of the authoritative tangible copies, and obtaining control of the electronic authoritative copies, if any.

The term "money", as defined in the bill, applies throughout the UCC unless otherwise provided. The bill provides that perfection of a security interest in electronic money, a subset of money, as original collateral must be by control, not filing. The bill includes a revised definition of "money" that excludes deposit accounts and money in an electronic form that cannot be subjected to control. The bill updates and clarifies the take-free rules for transferees of both electronic money and tangible money and transferees of funds from deposit accounts.

This bill includes detailed provisions on control relating to control of deposit accounts, control of authoritative electronic copy of record evidencing chattel paper, and control of electronic money.

The bill revises the form and instructions for providing notification of disposition of collateral for a consumer-goods transaction and for non consumer-goods transaction.

CONTROLLABLE ELECTRONIC RECORDS (Sections 400.12-101 to 400.12-107)

The bill defines the terms "controllable electronic record", "qualifying purchaser", "transferable record", and "value". The terms "electronic" and "record" that are defined in Section 400.1-201 have been incorporated which provides for a more expansive definition of "electronic record". However, the definition of "electronic record" contains some exclusions.

If there is a conflict between the sections governing the controllable electronic records and the sections governing secured transactions, the latter controls. The provisions of Section 400.12-104 apply to controllable accounts and controllable payment intangibles in the same manner that they apply to controllable electronic records. The purchaser obtains control by obtaining control of the controllable electronic record that evidences the account or payment intangible. Under subsection (c) of Section 400.12-104, the resolution of questions concerning the transfer of rights in a controllable electronic record, such as the acts that must be taken to effectuate a transfer of rights and the scope of the rights that a transferee acquires, is determined by other law. Subsections (d) through (h) of Section 400.12-104, contain important exceptions to subsection (c).

The bill includes provisions that examine control. An electronic record is a "controllable electronic record" under Sections 400.12-101 to 400.12-107 only if it can be subjected to control under Section 400.12-105, and only a person having control of a controllable electronic record is eligible to become a qualifying purchaser and so to take free of claims of a property interest in

the controllable electronic record, or any controllable account or controllable payment intangible evidenced by the controllable electronic record, and to be protected by the "no-action" rule. Controllable electronic record does not include an electronic record currently authorized or adopted by a government and is not a medium of exchange in a system that existed and operated for such exchange prior to authorization or adoption by a government.

The bill includes provisions governing the meaning of exclusive power, when the power is not shared with another person, the presumption of exclusivity of certain powers, and control through another person. The bill explains the requirements on how an account debtor on a controllable account or controllable payment intangible may discharge its obligation.

The bill provides that the local law of a controllable electronic record's jurisdiction governs a matter that is covered by Sections 400.12-101 to 400.12-107. If the choice of law refers to a jurisdiction that has adopted Sections 400.12-101 to 400.12-107, those matters would include the interpretation and application of these sections, including its definitions. The bill designates the District of Columbia as the location of a debtor that otherwise would be located in a jurisdiction whose law does not provide for a generally applicable system of public notice, such as filing or registration, for nonpossessory security interests. This designation also assumes that the District of Columbia will have adopted Article 12 and the conforming amendments to Articles 1 and 9 in substantially the uniform version, without material modification of the official text.

TRANSITIONAL PROVISIONS FOR UCC AMENDMENTS (Sections 400.199-101 to 400.199-306)

As specified in the bill, several material changes in the law would be given effect one year after a uniform effective date. The bill includes a uniform adjustment date which is July 1, 2025 on which several material provisions will apply, particularly new priority rules that would override pre-effective date established priorities.

The following is a summary of the public testimony from the committee hearing. The testimony was based on the introduced version of the bill.

PROPOSERS: Supporters say that this updates and modernizes Missouri's commercial code, incorporating recently finalized amendments to the Uniform Commercial Code (UCC), including updating terminology and certain transactional requirements. This is

important to empower Missouri to cooperate in areas of law with other states where uniformity is necessary. The UCC is important and broad, touching on nearly every transaction. Having a uniform and up-to-date UCC that aligns with other states is critical to ensure smooth, consistent, and reliable business transactions. This bill represents the first major set of amendments to the UCC in 12 years. This update is now necessary due to technology changes and advancements. This update to the UCC now contemplates virtual currency and other unique electronic records that may come in the future. This bill provides an important structure for industry to grow in a positive and productive way. This bill gives finality and certainty to transactions, which will encourage business growth.

Testifying in person for the bill were Representative Hicks; Missouri Credit Union Association; Ben Orzeske, Uniform Law Commission; and the Missouri Bankers Association.

OPPONENTS: There was no opposition voiced to the committee.

Written testimony has been submitted for this bill. The full written testimony and witnesses testifying online can be found under Testimony on the bill page on the House website.