

HB 2780 -- COMMERCIAL TRANSACTIONS

SPONSOR: Hicks

COMMITTEE ACTION: Voted "Do Pass" by the Special Committee on Public Policy by a vote of 5 to 2. Voted "Do Pass" by the Standing Committee on Rules- Administrative Oversight by a vote of 5 to 0 and 1 present.

This bill revises and creates provisions relating to commercial transactions.

PROHIBITION OF CENTRAL BANK DIGITAL CURRENCY (Section 34.700, RSMo.)

The bill prohibits public entities from accepting payments using any central bank digital currency. Furthermore, public entities are prohibited from participating in any test of central bank digital currency by any Federal Reserve branch. A central bank digital currency is defined as a digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is made directly available to a consumer by such entities. The term includes a digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is processed or validated directly by such entities.

UNIFORM COMMERCIAL CODE DEFINITIONS (Sections 400.1 to 100.201)

This bill modifies definitions, including, "conspicuous", "delivery", "holder", "money", "person", "send", and "sign" are revised. New definitions are created and creates new definitions for the terms "central bank digital currency" and "electronic".

Additionally, all references to "writing" or "writings" in the UCC are changed to "record" or "records".

SALES AND LEASES (Sections 400.2-102 to 400.2A-208)

The bill makes hybrid transactions subject to the UCC under certain circumstances as specified in the bill. Specifically, if the aspects relating to the sale of goods predominate in the sale, the UCC applies to the transaction, provided that it does not preclude the application of other law as applicable, in the case of aspects of the transaction that do not relate to the sale of goods. If the aspects of the transaction that relate to the sale of goods do not

predominate, the UCC only applies to those aspects of the transaction that relate to the sale of goods.

A "hybrid transaction" is defined as a single transaction involving a sale of goods and (1) the provision of services; (2) a lease of other goods; or (3) a sale, lease, or license of property other than goods.

LETTERS OF CREDIT (Sections 400.5 to 400.116)

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 provides 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.

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

Currently, a person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to whom the electronic document was issued or transferred.

A system satisfies this current provision, and a person has control of the 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:

- (1) Enables the person readily to:
 - (a) Identify each electronic copy as either an authoritative copy or a nonauthoritative copy;
 - (b) 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; and
- (2) Gives the person exclusive power, as described in the bill, to:
 - (a) Prevent others from adding or changing the person to which each authoritative electronic copy has been issued or transferred; and

(b) Transfer control of each authoritative electronic copy.

Provisions are also created establishing when a person has control of an electronic document of title on behalf of another person.

INVESTMENT SECURITIES (Sections 400.8-102 to 400.8-803)

For purposes of security entitlements, a purchaser has control of a security entitlement if another person other than a transferor to the purchaser has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.

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

The term "authenticate" is replaced with the term "sign" throughout the article. Additionally, new definitions are created for "assignee", "assignor", "chattel paper", "controllable account", "controllable payment intangible", "electronic money", and "money".

The bill includes provisions relating 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. Perfection, meaning the enforceability against third parties of security interests in an asset, 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.

"Chattel paper" is redefined as the right to payment of a monetary obligation 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 bill addresses matters relating to hybrid transactions and revises the definition of "control" of an authoritative electronic copy of a record evidencing chattel paper. 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.

Perfection of a security interest in electronic money, a subset of money, as original collateral must be by control, not filing. The bill revises the definition of "money" by excluding deposit accounts and money in an electronic form that cannot be subjected to control. The "take-free" rules for transferees of both

electronic money and tangible money and transferees of funds from deposit accounts are revised, as are control of deposit accounts, control of an authoritative electronic copy of record evidencing chattel paper, and control of electronic money.

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

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

A "controllable electronic record" is defined as a record stored in an electronic medium that can be subjected to control.

If sections governing the controllable electronic records and the sections governing secured transactions conflict, the latter controls. The article applies to controllable accounts and controllable payment intangibles in the same manner that it applies to controllable electronic records.

Except as otherwise provided by law, 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 law other than this article.

The bill creates provisions relating to when a person has control of and exclusive power over a controllable electronic record and the manner in which account debtors may discharge its obligations with respect to a controllable account or controllable payment intangible.

The local law of a controllable electronic record's jurisdiction governs a matter that is covered by this article. If the choice of law refers to a jurisdiction that has adopted this article, those matters include the interpretation and application of these sections, including 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.

TRANSITIONAL PROVISIONS (Sections 400.199-101 to 400.199-306)

This bill takes effect August 28, 2024, but provisions are created allowing for a transition period during which the lender's priority established on the effective date of this bill will be maintained. A uniform adjustment date of July 1, 2025, is included, at which time several material provisions will take effect, particularly new

priority rules that would override established priorities prior to the effective date of this bill.

This bill is the same as SB 1352 (2024).

PROPOSERS: Supporters say that the financial services industry continues to evolve into the digital age, and more people are utilizing digital signature technology to document their loan transactions. Although this digital signature technology allows people to legally enforce their loans, many types of digitally-signed loans are not eligible for collateral pledging to the bank because the current UCC does not include a framework for secured lenders like the bank to control those digital assets. The new UCC provisions contained in this bill create this framework and, if adopted, would enable our members to pledge types of loan collateral to the bank that are currently ineligible. This would help our Missouri members and their communities because it would allow them to more easily obtain the critical bank liquidity they rely on to run their businesses. Several states already have this legislation passed or currently under consideration.

Testifying in person for the bill were Representative Hicks; The Missouri Bar; Benjam Orzeske, Uniform Law Commission; Jeff Wade; and Missouri Bankers Association.

OPPOSERS: 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.