LEGISLATIVE COMMITTEE MINUTES

HB1503

Bill as Introduced

HB 1503-FN - AS AMENDED BY THE HOUSE

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2022 SESSION

22-2784
08/04

HOUSE BILL ***1503-FN***

AN ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

SPONSORS: Rep. Ammon, Hills. 40; Rep. Alexander Jr., Hills. 6; Rep. Osborne, Rock. 4; Rep. Warden, Hills. 15; Rep. Edwards, Rock. 4; Rep. Berezhny, Graf. 9; Rep. Baxter, Rock. 20; Rep. White, Merr. 20; Sen. Avard, Dist 12

COMMITTEE: Commerce and Consumer Affairs

AMENDED ANALYSIS

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws.

This bill also adopts the Uniform Commercial Code on controllable electronic records.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Paragraph; Uniform Securities Act; Definitions; Open Blockchain Token. Amend RSA 421-B:1-102 by inserting after paragraph (35) the following new paragraph:

(35-a) "Open blockchain token" means a digital unit which is:

(A) Created:

(i) In response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(ii) By deploying computer code to a blockchain network that allows for the creation of digital tokens or other units; or

(iii) Using any combination of the methods specified in subparagraphs (i) and (ii) of this paragraph;

(B) Recorded in a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature, especially relating to the supply of units and their distribution; and

(C) Capable of being traded or transferred between persons without an intermediary or custodian of value.

2 New Paragraph; Uniform Securities Act; Exempt Transaction; Open Blockchain Token. Amend RSA 421-B:2-202 by inserting after paragraph (24) the following new paragraph:

(25) A purchase or sale of an open blockchain token if all of the following are met:

(A) The issuer or seller of the token, or the registered agent of the developer or seller, files a notice of intent with the secretary of state, as specified in subsection (D) of this section;

(B) The purpose of the token is for a consumptive purpose, which shall only be exchangeable for, or provided for the receipt of, goods, services or content, including rights of access to goods, services or content; and

(C) The issuer or seller of the token did not sell the token to the initial buyer as a financial investment. For purposes of this subsection, a developer seller of the token will be deemed not to have sold the token to the initial buyer as a financial investment if:

(i) The issuer or seller did not market the token as a financial investment; and

(ii) At least one of the following is true:

(a) The issuer or seller of the token reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

(b) The token has a consumptive purpose that is available at the time of sale and can be used at or near the time of sale for use for a consumptive purpose;

(c) If the token does not have a consumptive purpose available at the time of sale, the initial buyer of the token is prevented from reselling the token until the token is available for use for a consumptive purpose; or

(d) The issuer or seller takes other reasonable precautions to prevent buyers from purchasing the token as a financial investment.

(D) The issuer, seller or person who facilitates the exchange of an open blockchain token, or the registered agent of the applicable person, files a notice of intent with the secretary of state prior to offering or selling the tokens in this state. The notice of intent shall contain the name of the person acting as an issuer, seller or facilitator, the contact information of the person or the registered agent of the person, and a statement that any marketing or advertising materials, including web sites offering or selling open blockchain tokens, will contain a disclosure that the tokens are not registered as securities pursuant to a transaction exemption under RSA 421-B, the New Hampshire Uniform Securities Act. The notice shall also specify whether the person will be acting as an issuer, seller or facilitator. A form shall be made available by the office of the secretary of state on its Internet website for this purpose. The secretary of state shall charge a fee of $100 per filing.

3 New Subparagraph; Uniform Securities Act; Broker-Dealer Registration Requirements and Exemption. Amend RSA 421-B:4-401(b) by inserting after subparagraph (2) the following new subparagraph:

(3)(A) Except as otherwise provided by RSA 421-B:5-511, a person who exclusively facilitates the exchange of an open blockchain token if all of the following are met:

(i) The person, or the registered agent of the person, files a notice of intent with the secretary of state, as specified in RSA 421-B:2-202(26)(d);

(ii) The person has a reasonable and good faith belief that a token subject to exchange conforms to the requirements of paragraphs RSA 421-B:2-202(25)(a)-(c); and

(iii) The person takes reasonably prompt action to terminate the exchange of a token that does not conform to the requirements of this subsection.

4 New Section; Uniform Securities Act; Liability of Issuers, Seller, and Others Who Facilitate Exchange of Open Blockchain Tokens. Amend RSA 421-B by inserting after section 5-510 the following new section:

421-B:5-511 Liability of Issuers, Sellers, and Others Who Facilitate Exchange of Open Blockchain Tokens. Notwithstanding any other provision of law, an issuer, seller, or a person who facilitates the exchange of an open blockchain token is subject to the provisions of RSA 421-B:5-501

through RSA 421-B:5-503 and RSA 421-B:5-505 through RSA 421-B:5-510 only to the extent necessary to carry out those sections. The secretary of state shall have the authority provided under RSA 421-B:6-601 through RSA 421-B:6-613 to determine compliance with the provisions of this section, including whether a person qualifies for the exemptions set forth in this section. The evidentiary burdens specified in RSA 421-B:5-503 shall apply in any proceeding initiated by the secretary of state pursuant to this subsection.

5 Statement of Intent.

I. The Joint Committee on the Uniform Commercial Code and Emerging Technologies of the Uniform Law Commission has developed draft Uniform Commercial Code provisions governing certain digital assets, specifically those that fall within the definition of "controllable electronic records." The current draft has been extensively vetted by those who understand and participate in digital transactions.

II. Adoption of the Uniform Law Commission's draft by the New Hampshire general court will create a considerable advantage for New Hampshire to lead in emerging industries utilizing blockchain, digital ledger technology, virtual currencies, and other digital assets and would provide a sensible framework and legal certainty for transactions of controllable electronic records. In subsequent sessions, if necessary, the New Hampshire general court 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.

6 New Subdivision; Uniform Commercial Code; Article 12; Controllable Electronic Records. Amend RSA 382-A by inserting after section 9-809 the following new subdivision:

ARTICLE 12

CONTROLLABLE ELECTRONIC RECORDS

382-A:12-101 Short Title. This article may be cited as Uniform Commercial Code-Controllable Electronic Records.

382-A:12-102 Definitions.

(a) In this article:

(1) "Controllable electronic record" means an electronic record that can be subjected to control under RSA 382-A:12-105. Except as otherwise provided or the context otherwise requires, the term includes a controllable account or a controllable payment intangible evidenced by a controllable electronic record. The term does not include deposit accounts, electronic chattel paper, electronic documents of title, intangible money, investment property, or "transferable records", as defined in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7021(a)(1) or as defined in RSA 294-E:16, I.

(2) "Electronic record" means a record stored in an electronic medium.

(b) The definitions of "account debtor," "authenticate," "controllable account," "controllable payment intangible," "deposit account," "electronic chattel paper," "intangible money," "investment property," and "proceeds" in Article 9 apply to this article.

(c) "Value" has the meaning provided in RSA 382-A:3-303(a).

382-A:12-103 Scope.

(a) This article applies to controllable electronic records, controllable accounts, and controllable payment intangibles.

(b) If there is conflict between this article and Article 9, Article 9 governs.

(c) A transaction subject to this article is subject to any applicable rule of law that establishes a different rule for consumers and: (i) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection statute or regulation.

382-A:12-104 Rights in Controllable Electronic Records.

(a) In this section, "qualifying purchaser" means a purchaser of a controllable electronic record or an interest in the 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.

(b) Except as provided in this section, law other than this article determines whether a person acquires a right in a controllable electronic record and the right, if any, the person acquires.

(c) A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer.

(d) A purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

(e) A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(f) Except as provided in subsection (e) or law other than this article, a qualifying purchaser takes a right to payment, right to performance, or interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

(g) An action based on a claim of a property right in a controllable electronic record, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a qualifying purchaser of any controllable electronic record.

(h) Filing of a financing statement under Article 9 is not notice of a claim of a property right in a controllable electronic record.

382-A:12-105 Control of Controllable Electronic Record.

(a) A person has control of a controllable electronic record if:

(1) the controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, gives the person:

(A) the power to avail itself of substantially all the benefit from the controllable electronic record; and

(B) subject to subsection (b), the exclusive power to:

(i) prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(ii) transfer control of the controllable electronic record to another person or cause another person to obtain control of a controllable electronic record that is derived from the controllable electronic record; and

(2) the controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, enables the person to readily identify itself in any way as having the powers specified in paragraph (1), including by name, identifying number, cryptographic key, office, or account number.

(b) A power specified in subsection (a)(1) is exclusive, even if:

(1) the controllable electronic record or the system in which the controllable electronic record is recorded, if any, limits the use to which the controllable electronic record may be put or has a protocol that is programmed to result in a transfer of control; or

(2) the person has agreed to share the power with another person.

382-A:12-106 Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible.

(a) Except as provided in this section, an account debtor on a controllable account or controllable payment intangible may discharge its obligation:

(1) by paying the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2) by paying a person that formerly had control of the controllable electronic record.

(b) Subject to subsections (d) and (h), an account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1) is authenticated by a person that formerly had control or the person to which control was transferred;

(2) reasonably identifies the controllable account or controllable payment intangible;

(3) notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5) provides a commercially reasonable method by which the account debtor is to pay the transferee.

(c) After receipt of a notification that complies with subsection (b), the account debtor may discharge its obligation only by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(d) Subject to subsection (h), notification is ineffective under subsection (b):

(1) unless, before the notification is sent, the account debtor and the person that at that time had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in an authenticated record to a commercially reasonable method by which a person can furnish reasonable proof that control has been transferred;

(2) to the extent that an agreement between the account debtor and the seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) 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 any required payment, or pay any portions of a payment by more than one method or to more than one person.

(e) Subject to subsection (h), if requested by the account debtor, the person giving the notification shall seasonably furnish reasonable proof, using the agreed method, that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (b).

(f) A person furnishes reasonable proof that control has been transferred if the person demonstrates, using the agreed method, that the transferee has the power to avail itself of substantially all the benefit from the controllable electronic record, prevent others from availing themselves of substantially all the benefit from the controllable electronic record, and transfer these powers to another person.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (d)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

382-A:12-107 Governing Law.

(a) Except as provided in subsection (b) and (d), the local law of a controllable electronic record's jurisdiction governs the matters covered by this article.

(b) The local law of a controllable electronic record's jurisdiction governs the matters covered by RSA 382-A:12-106 unless an agreement effective under RSA 382-A:1-301(a) determines that the local law of another jurisdiction governs such matters.

(c) The following rules determine a controllable electronic record's jurisdiction for purposes of this section:

(1) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the UCC, that jurisdiction is the controllable electronic record's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the UCC, that jurisdiction is the controllable electronic record's jurisdiction.

(3) If none of the preceding paragraphs applies and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(4) If none of the preceding paragraphs applies and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(5) If none of the preceding paragraphs applies, the controllable electronic record's jurisdiction is the jurisdiction in which the transferor is located.

(d) If paragraph (5) of subsection (c) applies and the location of the transferor cannot be readily determined, the transferor is deemed to be located in New Hampshire.

(e) Subsection (c) applies even if a transaction does not bear any relation to the controllable electronic record's jurisdiction determined under paragraphs (c)(1)-(4).

(f) Except as provided in subsection (d), the location of the transferor for purposes of paragraph (c)(5) is determined under RSA 382-A:9-307.

(g) The rights acquired by a purchaser or a qualifying purchaser under RSA 382-A:12-104 are governed by the law applicable under this section as determined at the time of that person's purchase.

7 Secured Transactions; Definitions; Account. Amend RSA 382-A:9-102(a)(2) to read as follows:

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered,

(iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes ***controllable accounts and*** health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

8 New Subparagraph; Secured Transactions; Definitions; Controllable Account; Controllable Payment Intangible. Amend RSA 382-A:9-102(a) by inserting after subparagraph (27) the following new subparagraphs:

(27A) "Controllable account" means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under RSA 382-A:12-105 of the controllable electronic record.

(27B) "Controllable payment intangible" means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under RSA 382-A:12-105 of the controllable electronic record.

9 Secured Transactions; Definitions; Payment Intangible. Amend RSA 382-A:9-102(a)(61) to read as follows:

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. ***This term includes controllable payment intangibles.***

10 Secured Transactions; Control; Other Articles. Amend RSA 382-A:9-102(b) to read as follows:

(b) "Control" as provided in Section 7-106 and the following definitions in other articles apply to this article:

"Applicant" Section 5-102.

"Beneficiary" Section 5-102.

"Broker" Section 8-102.

"Certificated security" Section 8-102.

"Check" Section 3-104.

"Clearing corporation" Section 8-102.

"Contract for sale" Section 2-106.

"Controllable electronic record" Section 12-102.

"Customer" Section 4-104.
"Entitlement holder" Section 8-102.
"Financial asset" Section 8-102.
"Holder in due course" Section 3-302.
"Issuer" (with respect to a letter of credit or letter-of-credit right) Section 5-102.
"Issuer" (with respect to a security) Section 8-201.
"Issuer" (with respect to documents of title) Section 7-102.
"Lease" Section 2A-103.
"Lease agreement" Section 2A-103.
"Lease contract" Section 2A-103.
"Leasehold interest" Section 2A-103.
"Lessee" Section 2A-103.
"Lessee in ordinary course of business" Section 2A-103.
"Lessor" Section 2A-103.
"Lessor's residual interest" Section 2A-103.
"Letter of credit" Section 5-102.
"Merchant" Section 2-104.
"Negotiable instrument" Section 3-104.
"Nominated person" Section 5-102.
"Note" Section 3-104.
"Proceeds of a letter of credit" Section 5-114.
"Prove" Section 3-103.
"Qualifying purchaser" Section 12-104.
"Sale" Section 2-106.
"Securities account" Section 8-501.
"Securities intermediary" Section 8-102.
"Security" Section 8-102.
"Security certificate" Section 8-102.
"Security entitlement" Section 8-102.
"Uncertificated security" Section 8-102.

11 New Section; Secured Transactions; Control of Controllable Electronic Record. Amend RSA 382-A by inserting after section 9-107 the following new section:

382-A:9-107A Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible.

(a) A secured party has control of a controllable electronic record as provided in RSA 382-A:12-105.

(b) A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

12 Secured Transactions; Attachment and Enforceability of Security Interest. Amend the introductory paragraph of RSA 382-A:9-203(b) to read as follows:

(b) Enforceability. Except as otherwise provided in subsections (c) through [~~(i)~~] ***(j)***, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

13 Secured Transactions; Attachment and Enforceability. Amend RSA 382-A:9-203(b)(3)(D) to read as follows:

(D) the collateral is deposit accounts, electronic chattel paper, ***electronic documents,*** investment property, ***or*** letter-of-credit rights, [~~or electronic documents,~~] and the secured party has control under Section 7-106, 9-104, 9-105, 9-106, [~~or~~] 9-107***, or 9-107A*** pursuant to the debtor's security agreement.

14 New Subparagraph; Secured Transactions; Controllable Accounts. Amend RSA 382-A:9-203 by inserting after subparagraph (i) the following new subparagraph:

(j) Controllable account or controllable payment intangible. The attachment of a security interest in a controllable electronic record that evidences a controllable account or controllable payment intangible is also attachment of a security interest in the controllable account or controllable payment intangible.

15 Secured Transactions; Rights and Duties of Secured Party Having Possession or Control of Collateral. Amend the introductory paragraph of RSA 382-A:9-207(c) to read as follows:

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-106, [~~or~~] 9-107***, or 9-107A***:

16 Secured Transactions; Additional Duties of Secured Part Having Control of Collateral. Amend RSA 382-A:9-208(b)(5)-(6) to read as follows:

(5) a secured party having control of a letter-of-credit right under Section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; [~~and~~]

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the 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; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party[~~.~~]***; and***

(7) a secured party having control of a controllable electronic record shall transfer control of the controllable electronic record to the debtor or to a person designated by the debtor.

17 Secured Transactions; Law Governing Perfection and Priority of Security Interests. Amend the introductory paragraph of RSA RSA 382-A:9-301 to read as follows:

Except as otherwise provided in Sections 9-303 through[~~—9-306~~] ***9-306A***, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

18 New Section; Law Governing Perfection and Priority of Security Interests in Controllable Electronic Records. Amend RSA 382-A by inserting after section 9-306 the following new section:

382-A:9-306A Law Governing Perfection and Priority of Security Interests in Controllable Electronic Records.

(a) Governing law; general rules. Except as provided in subsection (b), perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record is governed by:

(1) the local law of the controllable electronic record's jurisdiction as specified in RSA 382-A:12-107(c)(1) through (4); or

(2) if non of those paragraphs applies, the local law of the jurisdiction in which the debtor is located.

(b) Governing law; perfection by filing. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in a controllable electronic record intangibles by filing.

(c) Location of the debtor. If the location of the debtor cannot readily be determined, the debtor is deemed to be in this state.

19 New Paragraph; Secured Transactions; When Security Interest or Agricultural Lien is Perfected. Amend RSA 382-A:9-308 by inserting after paragraph (g) the following new paragraph:

(h) Controllable account or controllable payment intangible. Perfection of a security interest in a controllable electronic record that evidences a controllable account or controllable payment intangible also perfects a security interest in the controllable account or controllable payment intangible.

20 Filing to Perfect Security Interest or Agricultural Lien. Amend RSA 382-A:9-310(b)(8) to read as follows:

(8) in ***controllable electronic records,*** deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 9-314;

21 Perfection of Security Interests in Chattel Paper. Amend the section heading of RSA 382-A:312 through 9-312(a) to read as follows:

382-A:9-312 Perfection of Security Interests in ***Controllable Electronic Records,*** Chattel Paper, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(a) Perfection by filing permitted. A security interest in chattel paper, ***controllable electronic records,*** negotiable documents, instruments, or investment property may be perfected by filing.

22 Secured Transactions; Perfection by Control. Amend RSA 382-A:9-314(a)-(b) to read as follows:

(a) Perfection by control. A security interest in investment property, deposit accounts, letter-of-credit rights, ***controllable electronic records,*** electronic chattel paper, or electronic documents may be perfected by control of the collateral under Section 7-106, 9-104, 9-105, 9-106, [~~or~~] 9-107***, or 9-107A.***

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in ***controllable electronic records,*** deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under Section 7-106, 9-104, 9-105, [~~or~~] 9-107***, or 9-107A*** when the secured party obtains control and remains perfected by control only while the secured party retains control.

23 Secured Transactions; Effect of Change in Governing Law. Amend the introductory paragraph of RSA 382-A:9-316(a) to read as follows:

(a) General rule: effect on perfection of change in governing law. A security interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1)***,*** [~~or~~] 9-305(c)***, or 9-306A(a)(2) or (b)*** remains perfected until the earliest of:

24 New paragraphs; Secured Transactions; Change in Jurisdiction. Amend RSA 382-A:9-316 by inserting after paragraph (f) the following new paragraphs:

(fA) Chane in jurisdiction of controllable accounts, controllable electronic records, or controllable payment intangibles. A security interest that is perfected pursuant to the law designated in Section 9-306A(a)(1) remains perfected until the expiration of four months after a change of the applicable law to another jurisdiction.

(fB) Subsection (fA) security interest perfected or unperfected under law of new jurisdiction. If a security interest described in subsection (fA) becomes perfected under the law of the other jurisdiction before the end of the period described in that subsection, it remains perfected

thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

25 New Section; Priority of Security Interests in Controllable Electronic Record. Amend RSA 382-A by inserting after section 9-326 the following new section:

382-A:9-326A Priority of Security Interests in Controllable Electronic Record. A security interest in a controllable electronic record held by a secured party having control of the controllable electronic record has priority over a conflicting security interest held by a secured party that does not have control.

26 Secured Transactions; Priority of Rights of Purchasers. Amend RSA 382-A:9-331 to read as follows:

382-A:9-331 Priority of Rights of Purchasers of Instruments, Documents, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements Under Article 8 ***and Controllable Electronic Records Under Article 12.***

(a) Rights under Articles 3, 7, [~~and~~] 8, ***and 12*** not limited. This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, [~~or~~] a protected purchaser of a security ***or a qualifying purchaser as defined in section 12-104 of a controllable electronic record.*** These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, [~~and~~] 8, ***and 12.***

(b) Protection under Article 8 ***and 12.*** This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8 ***or 12.***

(c) Filing not notice. Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

27 Secured Transactions; Discharge of Account Debtor. Amend RSA 382-A:9-406 to read as follows:

382-A:9-406 Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.

(a) Discharge of account debtor; effect of notification. Subject to subsections (b) through [~~(i)~~] ***(k)***, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. Subject to subsection (h) ***and (k)***, notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to subsection (h) ***and (k)***, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale ***of a controllable payment intangible and a sale*** pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(f) Legal restrictions on assignment generally ineffective. Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subsection (b)(3) not waivable. Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. This section does not apply to:

(1) an assignment of a health-care-insurance receivable; or

(2) an assignment or transfer of or creation of a security interest in:

(A) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Â section 104(a)(1) or (2), as amended from time to time; or

(B) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Â section 1396p(d)(4), as amended from time to time.

(j) Section prevails over inconsistent law. Except as otherwise provided in subsection (i), this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(k) Inapplicability of certain subsections. Subsections (a) through (c) and (g) do not apply to a controllable account or controllable payment intangible.

28 Secured Transactions; Restrictions on Assignment of Promissory Notes. Amend RSA 382-A:9-408(b) to read as follows:

(b) Applicability of subsection (a) to sales of certain rights to payment. Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale ***of a controllable payment intangible and a sale*** pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

29 Secured Transactions; Rights After Default. Amend RSA 382-A:9-601(b) to read as follows:

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-106, [~~or~~] 9-107***, or 9-107A*** has the rights and duties provided in Section 9-207.

30 Secured Transactions; Unknown Debtor or Secondary Obligor. Amend RSA 382-A:9-605 to read as follows:

382-A:9-605 Unknown Debtor or Secondary Obligor.

(a) Subject to subsection (b), A secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(b) Subsection (a) does not apply to a secured party that, at the time the secured party's security interest attaches to a controllable electronic record has notice that the nature of the collateral or the system in which the collateral is recorded, if any, would prevent the secured party from acquiring the knowledge specified in that subsection.

31 Secured Transactions; Nonliability and Limitation on Liability of a Secured Party. Amend RSA 382-A:9-628 to read as follows:

382-A:9-628 Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.

(a) Limitation of liability of secured party for noncompliance with article. Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. ***Subject to section (f),*** a secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under Section 9-625(c)(2) for its failure to comply with Section 9-616.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under Section 9-625(c)(2) more than once with respect to any one secured obligation.

(f) Section (b) does not apply to a secured party that, at the time the secured party's security interest attaches to a controllable electronic record has notice that the nature of the collateral or the system in which the collateral is recorded, if any, would prevent the secured party from acquiring the knowledge specified in that subsection.

32 General Provisions; Value. Amend the introductory paragraph of RSA 382-A:1-204 to read as follows:

Except as otherwise provided in Articles 3, 4, [~~and~~] 5, ***and 12*** a person gives value for rights if the person acquires them:

33 Uniform Commercial Code; Article 12-Controllable Electronic Records; Department of State and Banking Department; Reporting Requirement. On or before November 1, 2022, the secretary of state, in consultation with the bank commissioner, shall submit a report to the general court regarding implementation of section 1 of this act and the status of Article 12 as finalized and adopted by the Uniform Law Commission. The report shall include any proposed legislation required to implement UCC article 12 in New Hampshire, including but not limited to changes to other UCC articles required by the addition. The report shall be submitted to the speaker of the house of representatives, the senate president, the chairperson of the house commerce and consumer affairs committee, the chairperson of the senate commerce committee, and the governor.

34 Effective Date.

I. Section 2 of this act shall take effect January 1, 2023.

II. The remainder of this act shall take effect upon its passage.

LBA
22-2784
Amended 3/22/22

HB 1503-FN- FISCAL NOTE

AS AMENDED BY THE HOUSE (AMENDMENT #2022-0828h)

AN ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

FISCAL IMPACT:

The Legislative Budget Assistant has determined that this legislation, as amended, has a total fiscal impact of less than $10,000 in each of the fiscal years 2022 through 2025.

AGENCIES CONTACTED:

Department of State

LBA
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Department of State

HB 1503-FN - AS AMENDED BY THE SENATE

15Mar2022... 0828h
04/28/2022 1661s

2022 SESSION

22-2784
08/04

HOUSE BILL ***1503-FN***

AN ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

SPONSORS: Rep. Ammon, Hills. 40; Rep. Alexander Jr., Hills. 6; Rep. Osborne, Rock. 4; Rep. Warden, Hills. 15; Rep. Edwards, Rock. 4; Rep. Berezhny, Graf. 9; Rep. Baxter, Rock. 20; Rep. White, Merr. 20; Sen. Avard, Dist 12

COMMITTEE: Commerce and Consumer Affairs

AMENDED ANALYSIS

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws.

This bill also adopts the Uniform Commercial Code on controllable electronic records.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 1503-FN - AS AMENDED BY THE SENATE

15Mar2022... 0828h
04/28/2022 1661s

22-2784
08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Paragraph; Uniform Securities Act; Definitions; Open Blockchain Token. Amend RSA 421-B:1-102 by inserting after paragraph (35) the following new paragraph:

(35-a) "Open blockchain token" means a digital unit which is:

(A) Created:

(i) In response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(ii) By deploying computer code to a blockchain network that allows for the creation of digital tokens or other units; or

(iii) Using any combination of the methods specified in subparagraphs (i) and (ii) of this paragraph;

(B) Recorded in a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature, especially relating to the supply of units and their distribution; and

(C) Capable of being traded or transferred between persons without an intermediary or custodian of value.

2 New Paragraph; Uniform Securities Act; Exempt Transaction; Open Blockchain Token. Amend RSA 421-B:2-202 by inserting after paragraph (24) the following new paragraph:

(25) A purchase or sale of an open blockchain token if all of the following are met:

(A) The issuer or seller of the token, or the registered agent of the developer or seller, files a notice of intent with the secretary of state, as specified in subsection (D) of this section;

(B) The purpose of the token is for a consumptive purpose, which shall only be exchangeable for, or provided for the receipt of, goods, services or content, including rights of access to goods, services or content; and

(C) The issuer or seller of the token did not sell the token to the initial buyer as a financial investment. For purposes of this subsection, a developer seller of the token will be deemed not to have sold the token to the initial buyer as a financial investment if:

(i) The issuer or seller did not market the token as a financial investment; and

(ii) At least one of the following is true:

(a) The issuer or seller of the token reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

(b) The token has a consumptive purpose that is available at the time of sale and can be used at or near the time of sale for use for a consumptive purpose;

(c) If the token does not have a consumptive purpose available at the time of sale, the initial buyer of the token is prevented from reselling the token until the token is available for use for a consumptive purpose; or

(d) The issuer or seller takes other reasonable precautions to prevent buyers from purchasing the token as a financial investment.

(D) The issuer, seller or person who facilitates the exchange of an open blockchain token, or the registered agent of the applicable person, files a notice of intent with the secretary of state prior to offering or selling the tokens in this state. The notice of intent shall contain the name of the person acting as an issuer, seller or facilitator, the contact information of the person or the registered agent of the person, and a statement that any marketing or advertising materials, including web sites offering or selling open blockchain tokens, will contain a disclosure that the tokens are not registered as securities pursuant to a transaction exemption under RSA 421-B, the New Hampshire Uniform Securities Act. The notice shall also specify whether the person will be acting as an issuer, seller or facilitator. A form shall be made available by the office of the secretary of state on its Internet website for this purpose. The secretary of state shall charge a fee of $100 per filing.

3 New Subparagraph; Uniform Securities Act; Broker-Dealer Registration Requirements and Exemption. Amend RSA 421-B:4-401(b) by inserting after subparagraph (2) the following new subparagraph:

(3)(A) Except as otherwise provided by RSA 421-B:5-511, a person who exclusively facilitates the exchange of an open blockchain token if all of the following are met:

(i) The person, or the registered agent of the person, files a notice of intent with the secretary of state, as specified in RSA 421-B:2-202(26)(d);

(ii) The person has a reasonable and good faith belief that a token subject to exchange conforms to the requirements of paragraphs RSA 421-B:2-202(25)(a)-(c); and

(iii) The person takes reasonably prompt action to terminate the exchange of a token that does not conform to the requirements of this subsection.

4 New Section; Uniform Securities Act; Liability of Issuers, Seller, and Others Who Facilitate Exchange of Open Blockchain Tokens. Amend RSA 421-B by inserting after section 5-510 the following new section:

421-B:5-511 Liability of Issuers, Sellers, and Others Who Facilitate Exchange of Open Blockchain Tokens. Notwithstanding any other provision of law, an issuer, seller, or a person who facilitates the exchange of an open blockchain token is subject to the provisions of RSA 421-B:5-501

through RSA 421-B:5-503 and RSA 421-B:5-505 through RSA 421-B:5-510 only to the extent necessary to carry out those sections. The secretary of state shall have the authority provided under RSA 421-B:6-601 through RSA 421-B:6-613 to determine compliance with the provisions of this section, including whether a person qualifies for the exemptions set forth in this section. The evidentiary burdens specified in RSA 421-B:5-503 shall apply in any proceeding initiated by the secretary of state pursuant to this subsection.

5 Statement of Intent.

I. The Joint Committee on the Uniform Commercial Code and Emerging Technologies of the Uniform Law Commission has developed draft Uniform Commercial Code provisions governing certain digital assets, specifically those that fall within the definition of "controllable electronic records." The current draft has been extensively vetted by those who understand and participate in digital transactions.

II. Adoption of the Uniform Law Commission's draft by the New Hampshire general court will create a considerable advantage for New Hampshire to lead in emerging industries utilizing blockchain, digital ledger technology, virtual currencies, and other digital assets and would provide a sensible framework and legal certainty for transactions of controllable electronic records. In subsequent sessions, if necessary, the New Hampshire general court 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.

6 New Subdivision; Uniform Commercial Code; Article 12; Controllable Electronic Records. Amend RSA 382-A by inserting after section 9-809 the following new subdivision:

ARTICLE 12

CONTROLLABLE ELECTRONIC RECORDS

382-A:12-101 Short Title. This article may be cited as Uniform Commercial Code-Controllable Electronic Records.

382-A:12-102 Definitions.

(a) In this article:

(1) "Controllable electronic record" means an electronic record that can be subjected to control under RSA 382-A:12-105. Except as otherwise provided or the context otherwise requires, the term includes a controllable account or a controllable payment intangible evidenced by a controllable electronic record. The term does not include deposit accounts, electronic chattel paper, electronic documents of title, intangible money, investment property, or "transferable records", as defined in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7021(a)(1) or as defined in RSA 294-E:16, I.

(2) "Electronic record" means a record stored in an electronic medium.

(b) The definitions of "account debtor," "authenticate," "controllable account," "controllable payment intangible," "deposit account," "electronic chattel paper," "intangible money," "investment property," and "proceeds" in Article 9 apply to this article.

(c) "Value" has the meaning provided in RSA 382-A:3-303(a).

382-A:12-103 Scope.

(a) This article applies to controllable electronic records, controllable accounts, and controllable payment intangibles.

(b) If there is conflict between this article and Article 9, Article 9 governs.

(c) A transaction subject to this article is subject to any applicable rule of law that establishes a different rule for consumers and: (i) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection statute or regulation.

382-A:12-104 Rights in Controllable Electronic Records.

(a) In this section, "qualifying purchaser" means a purchaser of a controllable electronic record or an interest in the 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.

(b) Except as provided in this section, law other than this article determines whether a person acquires a right in a controllable electronic record and the right, if any, the person acquires.

(c) A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer.

(d) A purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

(e) A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(f) Except as provided in subsection (e) or law other than this article, a qualifying purchaser takes a right to payment, right to performance, or interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

(g) An action based on a claim of a property right in a controllable electronic record, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a qualifying purchaser of any controllable electronic record.

(h) Filing of a financing statement under Article 9 is not notice of a claim of a property right in a controllable electronic record.

382-A:12-105 Control of Controllable Electronic Record.

(a) A person has control of a controllable electronic record if:

(1) the controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, gives the person:

(A) the power to avail itself of substantially all the benefit from the controllable electronic record; and

(B) subject to subsection (b), the exclusive power to:

(i) prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(ii) transfer control of the controllable electronic record to another person or cause another person to obtain control of a controllable electronic record that is derived from the controllable electronic record; and

(2) the controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, enables the person to readily identify itself in any way as having the powers specified in paragraph (1), including by name, identifying number, cryptographic key, office, or account number.

(b) A power specified in subsection (a)(1) is exclusive, even if:

(1) the controllable electronic record or the system in which the controllable electronic record is recorded, if any, limits the use to which the controllable electronic record may be put or has a protocol that is programmed to result in a transfer of control; or

(2) the person has agreed to share the power with another person.

382-A:12-106 Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible.

(a) Except as provided in this section, an account debtor on a controllable account or controllable payment intangible may discharge its obligation:

(1) by paying the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2) by paying a person that formerly had control of the controllable electronic record.

(b) Subject to subsections (d) and (h), an account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1) is authenticated by a person that formerly had control or the person to which control was transferred;

(2) reasonably identifies the controllable account or controllable payment intangible;

(3) notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5) provides a commercially reasonable method by which the account debtor is to pay the transferee.

(c) After receipt of a notification that complies with subsection (b), the account debtor may discharge its obligation only by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(d) Subject to subsection (h), notification is ineffective under subsection (b):

(1) unless, before the notification is sent, the account debtor and the person that at that time had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in an authenticated record to a commercially reasonable method by which a person can furnish reasonable proof that control has been transferred;

(2) to the extent that an agreement between the account debtor and the seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) 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 any required payment, or pay any portions of a payment by more than one method or to more than one person.

(e) Subject to subsection (h), if requested by the account debtor, the person giving the notification shall seasonably furnish reasonable proof, using the agreed method, that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (b).

(f) A person furnishes reasonable proof that control has been transferred if the person demonstrates, using the agreed method, that the transferee has the power to avail itself of substantially all the benefit from the controllable electronic record, prevent others from availing themselves of substantially all the benefit from the controllable electronic record, and transfer these powers to another person.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (d)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

382-A:12-107 Governing Law.

(a) Except as provided in subsection (b) and (d), the local law of a controllable electronic record's jurisdiction governs the matters covered by this article.

(b) The local law of a controllable electronic record's jurisdiction governs the matters covered by RSA 382-A:12-106 unless an agreement effective under RSA 382-A:1-301(a) determines that the local law of another jurisdiction governs such matters.

(c) The following rules determine a controllable electronic record's jurisdiction for purposes of this section:

(1) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the UCC, that jurisdiction is the controllable electronic record's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the UCC, that jurisdiction is the controllable electronic record's jurisdiction.

(3) If none of the preceding paragraphs applies and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(4) If none of the preceding paragraphs applies and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(5) If none of the preceding paragraphs applies, the controllable electronic record's jurisdiction is the jurisdiction in which the transferor is located.

(d) If paragraph (5) of subsection (c) applies and the location of the transferor cannot be readily determined, the transferor is deemed to be located in New Hampshire.

(e) Subsection (c) applies even if a transaction does not bear any relation to the controllable electronic record's jurisdiction determined under paragraphs (c)(1)-(4).

(f) Except as provided in subsection (d), the location of the transferor for purposes of paragraph (c)(5) is determined under RSA 382-A:9-307.

(g) The rights acquired by a purchaser or a qualifying purchaser under RSA 382-A:12-104 are governed by the law applicable under this section as determined at the time of that person's purchase.

7 Secured Transactions; Definitions; Account. Amend RSA 382-A:9-102(a)(2) to read as follows:

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered,

(iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes ***controllable accounts and*** health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

8 New Subparagraph; Secured Transactions; Definitions; Controllable Account; Controllable Payment Intangible. Amend RSA 382-A:9-102(a) by inserting after subparagraph (27) the following new subparagraphs:

(27A) "Controllable account" means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under RSA 382-A:12-105 of the controllable electronic record.

(27B) "Controllable payment intangible" means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under RSA 382-A:12-105 of the controllable electronic record.

9 Secured Transactions; Definitions; Payment Intangible. Amend RSA 382-A:9-102(a)(61) to read as follows:

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. ***This term includes controllable payment intangibles.***

10 Secured Transactions; Control; Other Articles. Amend RSA 382-A:9-102(b) to read as follows:

(b) "Control" as provided in Section 7-106 and the following definitions in other articles apply to this article:

"Applicant" Section 5-102.

"Beneficiary" Section 5-102.

"Broker" Section 8-102.

"Certificated security" Section 8-102.

"Check" Section 3-104.

"Clearing corporation" Section 8-102.

"Contract for sale" Section 2-106.

"Controllable electronic record" Section 12-102.

"Customer" Section 4-104.
"Entitlement holder" Section 8-102.
"Financial asset" Section 8-102.
"Holder in due course" Section 3-302.
"Issuer" (with respect to a letter of credit or letter-of-credit right) Section 5-102.
"Issuer" (with respect to a security) Section 8-201.
"Issuer" (with respect to documents of title) Section 7-102.
"Lease" Section 2A-103.
"Lease agreement" Section 2A-103.
"Lease contract" Section 2A-103.
"Leasehold interest" Section 2A-103.
"Lessee" Section 2A-103.
"Lessee in ordinary course of business" Section 2A-103.
"Lessor" Section 2A-103.
"Lessor's residual interest" Section 2A-103.
"Letter of credit" Section 5-102.
"Merchant" Section 2-104.
"Negotiable instrument" Section 3-104.
"Nominated person" Section 5-102.
"Note" Section 3-104.
"Proceeds of a letter of credit" Section 5-114.
"Prove" Section 3-103.
"Qualifying purchaser" Section 12-104.
"Sale" Section 2-106.
"Securities account" Section 8-501.
"Securities intermediary" Section 8-102.
"Security" Section 8-102.
"Security certificate" Section 8-102.
"Security entitlement" Section 8-102.
"Uncertificated security" Section 8-102.

11 New Section; Secured Transactions; Control of Controllable Electronic Record. Amend RSA 382-A by inserting after section 9-107 the following new section:

382-A:9-107A Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible.

(a) A secured party has control of a controllable electronic record as provided in RSA 382-A:12-105.

(b) A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

12 Secured Transactions; Attachment and Enforceability of Security Interest. Amend the introductory paragraph of RSA 382-A:9-203(b) to read as follows:

(b) Enforceability. Except as otherwise provided in subsections (c) through [~~(i)~~] ***(j)***, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

13 Secured Transactions; Attachment and Enforceability. Amend RSA 382-A:9-203(b)(3)(D) to read as follows:

(D) the collateral is deposit accounts, electronic chattel paper, ***electronic documents,*** investment property, ***or*** letter-of-credit rights, [~~or electronic documents,~~] and the secured party has control under Section 7-106, 9-104, 9-105, 9-106, [~~or~~] 9-107***, or 9-107A*** pursuant to the debtor's security agreement.

14 New Subparagraph; Secured Transactions; Controllable Accounts. Amend RSA 382-A:9-203 by inserting after subparagraph (i) the following new subparagraph:

(j) Controllable account or controllable payment intangible. The attachment of a security interest in a controllable electronic record that evidences a controllable account or controllable payment intangible is also attachment of a security interest in the controllable account or controllable payment intangible.

15 Secured Transactions; Rights and Duties of Secured Party Having Possession or Control of Collateral. Amend the introductory paragraph of RSA 382-A:9-207(c) to read as follows:

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-106, [~~or~~] 9-107***, or 9-107A***:

16 Secured Transactions; Additional Duties of Secured Part Having Control of Collateral. Amend RSA 382-A:9-208(b)(5)-(6) to read as follows:

(5) a secured party having control of a letter-of-credit right under Section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; [~~and~~]

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the 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; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party[~~.~~]***; and***

(7) a secured party having control of a controllable electronic record shall transfer control of the controllable electronic record to the debtor or to a person designated by the debtor.

17 Secured Transactions; Law Governing Perfection and Priority of Security Interests. Amend the introductory paragraph of RSA RSA 382-A:9-301 to read as follows:

Except as otherwise provided in Sections 9-303 through[~~—9-306~~] ***9-306A***, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

18 New Section; Law Governing Perfection and Priority of Security Interests in Controllable Electronic Records. Amend RSA 382-A by inserting after section 9-306 the following new section:

382-A:9-306A Law Governing Perfection and Priority of Security Interests in Controllable Electronic Records.

(a) Governing law; general rules. Except as provided in subsection (b), perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record is governed by:

(1) the local law of the controllable electronic record's jurisdiction as specified in RSA 382-A:12-107(c)(1) through (4); or

(2) if non of those paragraphs applies, the local law of the jurisdiction in which the debtor is located.

(b) Governing law; perfection by filing. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in a controllable electronic record intangibles by filing.

(c) Location of the debtor. If the location of the debtor cannot readily be determined, the debtor is deemed to be in this state.

19 New Paragraph; Secured Transactions; When Security Interest or Agricultural Lien is Perfected. Amend RSA 382-A:9-308 by inserting after paragraph (g) the following new paragraph:

(h) Controllable account or controllable payment intangible. Perfection of a security interest in a controllable electronic record that evidences a controllable account or controllable payment intangible also perfects a security interest in the controllable account or controllable payment intangible.

20 Filing to Perfect Security Interest or Agricultural Lien. Amend RSA 382-A:9-310(b)(8) to read as follows:

(8) in ***controllable electronic records,*** deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 9-314;

21 Perfection of Security Interests in Chattel Paper. Amend the section heading of RSA 382-A:312 through 9-312(a) to read as follows:

382-A:9-312 Perfection of Security Interests in ***Controllable Electronic Records,*** Chattel Paper, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(a) Perfection by filing permitted. A security interest in chattel paper, ***controllable electronic records,*** negotiable documents, instruments, or investment property may be perfected by filing.

22 Secured Transactions; Perfection by Control. Amend RSA 382-A:9-314(a)-(b) to read as follows:

(a) Perfection by control. A security interest in investment property, deposit accounts, letter-of-credit rights, ***controllable electronic records,*** electronic chattel paper, or electronic documents may be perfected by control of the collateral under Section 7-106, 9-104, 9-105, 9-106, [~~or~~] 9-107***, or 9-107A.***

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in ***controllable electronic records,*** deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under Section 7-106, 9-104, 9-105, [~~or~~] 9-107***, or 9-107A*** when the secured party obtains control and remains perfected by control only while the secured party retains control.

23 Secured Transactions; Effect of Change in Governing Law. Amend the introductory paragraph of RSA 382-A:9-316(a) to read as follows:

(a) General rule: effect on perfection of change in governing law. A security interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1), [~~or~~] 9-305(c)***, or 9-306A(a)(2) or (b)*** remains perfected until the earliest of:

24 New paragraphs; Secured Transactions; Change in Jurisdiction. Amend RSA 382-A:9-316 by inserting after paragraph (f) the following new paragraphs:

(fA) Chane in jurisdiction of controllable accounts, controllable electronic records, or controllable payment intangibles. A security interest that is perfected pursuant to the law designated in Section 9-306A(a)(1) remains perfected until the expiration of four months after a change of the applicable law to another jurisdiction.

(fB) Subsection (fA) security interest perfected or unperfected under law of new jurisdiction. If a security interest described in subsection (fA) becomes perfected under the law of the other jurisdiction before the end of the period described in that subsection, it remains perfected

thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

25 New Section; Priority of Security Interests in Controllable Electronic Record. Amend RSA 382-A by inserting after section 9-326 the following new section:

382-A:9-326A Priority of Security Interests in Controllable Electronic Record. A security interest in a controllable electronic record held by a secured party having control of the controllable electronic record has priority over a conflicting security interest held by a secured party that does not have control.

26 Secured Transactions; Priority of Rights of Purchasers. Amend RSA 382-A:9-331 to read as follows:

382-A:9-331 Priority of Rights of Purchasers of Instruments, Documents, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements Under Article 8 ***and Controllable Electronic Records Under Article 12.***

(a) Rights under Articles 3, 7, [~~and~~] 8, ***and 12*** not limited. This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, [~~or~~] a protected purchaser of a security ***or a qualifying purchaser as defined in section 12-104 of a controllable electronic record.*** These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, [~~and~~] 8, ***and 12.***

(b) Protection under Article 8 ***and 12.*** This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8 ***or 12.***

(c) Filing not notice. Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

27 Secured Transactions; Discharge of Account Debtor. Amend RSA 382-A:9-406 to read as follows:

382-A:9-406 Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.

(a) Discharge of account debtor; effect of notification. Subject to subsections (b) through [~~(i)~~] ***(k)***, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. Subject to subsection (h) ***and (k)***, notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to subsection (h) ***and (k)***, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale ***of a controllable payment intangible and a sale*** pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(f) Legal restrictions on assignment generally ineffective. Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subsection (b)(3) not waivable. Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. This section does not apply to:

(1) an assignment of a health-care-insurance receivable; or

(2) an assignment or transfer of or creation of a security interest in:

(A) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Â section 104(a)(1) or (2), as amended from time to time; or

(B) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Â section 1396p(d)(4), as amended from time to time.

(j) Section prevails over inconsistent law. Except as otherwise provided in subsection (i), this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(k) Inapplicability of certain subsections. Subsections (a) through (c) and (g) do not apply to a controllable account or controllable payment intangible.

28 Secured Transactions; Restrictions on Assignment of Promissory Notes. Amend RSA 382-A:9-408(b) to read as follows:

(b) Applicability of subsection (a) to sales of certain rights to payment. Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale ***of a controllable payment intangible and a sale*** pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

29 Secured Transactions; Rights After Default. Amend RSA 382-A:9-601(b) to read as follows:

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-106, [~~or~~] 9-107***, or 9-107A*** has the rights and duties provided in Section 9-207.

30 Secured Transactions; Unknown Debtor or Secondary Obligor. Amend RSA 382-A:9-605 to read as follows:

382-A:9-605 Unknown Debtor or Secondary Obligor.

(a) Subject to subsection (b), A secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(b) Subsection (a) does not apply to a secured party that, at the time the secured party's security interest attaches to a controllable electronic record has notice that the nature of the collateral or the system in which the collateral is recorded, if any, would prevent the secured party from acquiring the knowledge specified in that subsection.

31 Secured Transactions; Nonliability and Limitation on Liability of a Secured Party. Amend RSA 382-A:9-628 to read as follows:

382-A:9-628 Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.

(a) Limitation of liability of secured party for noncompliance with article. Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. ***Subject to section (f),*** a secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under Section 9-625(c)(2) for its failure to comply with Section 9-616.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under Section 9-625(c)(2) more than once with respect to any one secured obligation.

(f) Section (b) does not apply to a secured party that, at the time the secured party's security interest attaches to a controllable electronic record has notice that the nature of the collateral or the system in which the collateral is recorded, if any, would prevent the secured party from acquiring the knowledge specified in that subsection.

32 General Provisions; Value. Amend the introductory paragraph of RSA 382-A:1-204 to read as follows:

Except as otherwise provided in Articles 3, 4, [~~and~~] 5, ***and 12*** a person gives value for rights if the person acquires them:

33 Uniform Commercial Code; Article 12-Controllable Electronic Records; Department of State and Banking Department; Reporting Requirement. On or before November 1, 2022, the secretary of state, in consultation with the bank commissioner, shall submit a report to the general court regarding implementation of section 1 of this act and the status of Article 12 as finalized and adopted by the Uniform Law Commission. The report shall include any proposed legislation required to implement UCC article 12 in New Hampshire, including but not limited to changes to other UCC articles required by the addition. The report shall be submitted to the speaker of the house of representatives, the senate president, the chairperson of the house commerce and consumer affairs committee, the chairperson of the senate commerce committee, and the governor.

34 Effective Date. This act shall take effect January 1, 2025.

LBA
22-2784
Amended 5/2/22

HB 1503-FN- FISCAL NOTE

AS AMENDED BY THE SENATE (AMENDMENT #2022-1661s)

AN ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

FISCAL IMPACT:

The Legislative Budget Assistant has determined that this legislation, as amended, has a total fiscal impact of less than $10,000 in each of the fiscal years 2022 through 2025.

AGENCIES CONTACTED:

Department of State

HB 1503-FN - AS AMENDED BY THE SENATE

15Mar2022... 0828h
04/28/2022 1661s

2022 SESSION

22-2784
08/04

HOUSE BILL ***1503-FN***

AN ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

SPONSORS: Rep. Ammon, Hills. 40; Rep. Alexander Jr., Hills. 6; Rep. Osborne, Rock. 4; Rep. Warden, Hills. 15; Rep. Edwards, Rock. 4; Rep. Berezhny, Graf. 9; Rep. Baxter, Rock. 20; Rep. White, Merr. 20; Sen. Avard, Dist 12

HOUSE COMMITTEE: Commerce and Consumer Affairs OTP/A 14-4
SENATE COMMERCE: OTP/A 4-0

AMENDED ANALYSIS

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws.

This bill also adopts the Uniform Commercial Code on controllable electronic records.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 1503-FN - AS AMENDED BY THE SENATE

15Mar2022... 0828h
04/28/2022 1661s

22-2784
08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Paragraph; Uniform Securities Act; Definitions; Open Blockchain Token. Amend RSA 421-B:1-102 by inserting after paragraph (35) the following new paragraph:

(35-a) "Open blockchain token" means a digital unit which is:

(A) Created:

(i) In response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(ii) By deploying computer code to a blockchain network that allows for the creation of digital tokens or other units; or

(iii) Using any combination of the methods specified in subparagraphs (i) and (ii) of this paragraph;

(B) Recorded in a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature, especially relating to the supply of units and their distribution; and

(C) Capable of being traded or transferred between persons without an intermediary or custodian of value.

2 New Paragraph; Uniform Securities Act; Exempt Transaction; Open Blockchain Token. Amend RSA 421-B:2-202 by inserting after paragraph (24) the following new paragraph:

(25) A purchase or sale of an open blockchain token if all of the following are met:

(A) The issuer or seller of the token, or the registered agent of the developer or seller, files a notice of intent with the secretary of state, as specified in subsection (D) of this section;

(B) The purpose of the token is for a consumptive purpose, which shall only be exchangeable for, or provided for the receipt of, goods, services or content, including rights of access to goods, services or content; and

(C) The issuer or seller of the token did not sell the token to the initial buyer as a financial investment. For purposes of this subsection, a developer seller of the token will be deemed not to have sold the token to the initial buyer as a financial investment if:

(i) The issuer or seller did not market the token as a financial investment; and

(ii) At least one of the following is true:

(a) The issuer or seller of the token reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

(b) The token has a consumptive purpose that is available at the time of sale and can be used at or near the time of sale for use for a consumptive purpose;

(c) If the token does not have a consumptive purpose available at the time of sale, the initial buyer of the token is prevented from reselling the token until the token is available for use for a consumptive purpose; or

(d) The issuer or seller takes other reasonable precautions to prevent buyers from purchasing the token as a financial investment.

(D) The issuer, seller or person who facilitates the exchange of an open blockchain token, or the registered agent of the applicable person, files a notice of intent with the secretary of state prior to offering or selling the tokens in this state. The notice of intent shall contain the name of the person acting as an issuer, seller or facilitator, the contact information of the person or the registered agent of the person, and a statement that any marketing or advertising materials, including web sites offering or selling open blockchain tokens, will contain a disclosure that the tokens are not registered as securities pursuant to a transaction exemption under RSA 421-B, the New Hampshire Uniform Securities Act. The notice shall also specify whether the person will be acting as an issuer, seller or facilitator. A form shall be made available by the office of the secretary of state on its Internet website for this purpose. The secretary of state shall charge a fee of $100 per filing.

3 New Subparagraph; Uniform Securities Act; Broker-Dealer Registration Requirements and Exemption. Amend RSA 421-B:4-401(b) by inserting after subparagraph (2) the following new subparagraph:

(3)(A) Except as otherwise provided by RSA 421-B:5-511, a person who exclusively facilitates the exchange of an open blockchain token if all of the following are met:

(i) The person, or the registered agent of the person, files a notice of intent with the secretary of state, as specified in RSA 421-B:2-202(26)(d);

(ii) The person has a reasonable and good faith belief that a token subject to exchange conforms to the requirements of paragraphs RSA 421-B:2-202(25)(a)-(c); and

(iii) The person takes reasonably prompt action to terminate the exchange of a token that does not conform to the requirements of this subsection.

4 New Section; Uniform Securities Act; Liability of Issuers, Seller, and Others Who Facilitate Exchange of Open Blockchain Tokens. Amend RSA 421-B by inserting after section 5-510 the following new section:

421-B:5-511 Liability of Issuers, Sellers, and Others Who Facilitate Exchange of Open Blockchain Tokens. Notwithstanding any other provision of law, an issuer, seller, or a person who facilitates the exchange of an open blockchain token is subject to the provisions of RSA 421-B:5-501

through RSA 421-B:5-503 and RSA 421-B:5-505 through RSA 421-B:5-510 only to the extent necessary to carry out those sections. The secretary of state shall have the authority provided under RSA 421-B:6-601 through RSA 421-B:6-613 to determine compliance with the provisions of this section, including whether a person qualifies for the exemptions set forth in this section. The evidentiary burdens specified in RSA 421-B:5-503 shall apply in any proceeding initiated by the secretary of state pursuant to this subsection.

5 Statement of Intent.

I. The Joint Committee on the Uniform Commercial Code and Emerging Technologies of the Uniform Law Commission has developed draft Uniform Commercial Code provisions governing certain digital assets, specifically those that fall within the definition of "controllable electronic records." The current draft has been extensively vetted by those who understand and participate in digital transactions.

II. Adoption of the Uniform Law Commission's draft by the New Hampshire general court will create a considerable advantage for New Hampshire to lead in emerging industries utilizing blockchain, digital ledger technology, virtual currencies, and other digital assets and would provide a sensible framework and legal certainty for transactions of controllable electronic records. In subsequent sessions, if necessary, the New Hampshire general court 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.

6 New Subdivision; Uniform Commercial Code; Article 12; Controllable Electronic Records. Amend RSA 382-A by inserting after section 9-809 the following new subdivision:

ARTICLE 12

CONTROLLABLE ELECTRONIC RECORDS

382-A:12-101 Short Title. This article may be cited as Uniform Commercial Code-Controllable Electronic Records.

382-A:12-102 Definitions.

(a) In this article:

(1) "Controllable electronic record" means an electronic record that can be subjected to control under RSA 382-A:12-105. Except as otherwise provided or the context otherwise requires, the term includes a controllable account or a controllable payment intangible evidenced by a controllable electronic record. The term does not include deposit accounts, electronic chattel paper, electronic documents of title, intangible money, investment property, or "transferable records", as defined in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7021(a)(1) or as defined in RSA 294-E:16, I.

(2) "Electronic record" means a record stored in an electronic medium.

(b) The definitions of "account debtor," "authenticate," "controllable account," "controllable payment intangible," "deposit account," "electronic chattel paper," "intangible money," "investment property," and "proceeds" in Article 9 apply to this article.

(c) "Value" has the meaning provided in RSA 382-A:3-303(a).

382-A:12-103 Scope.

(a) This article applies to controllable electronic records, controllable accounts, and controllable payment intangibles.

(b) If there is conflict between this article and Article 9, Article 9 governs.

(c) A transaction subject to this article is subject to any applicable rule of law that establishes a different rule for consumers and: (i) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection statute or regulation.

382-A:12-104 Rights in Controllable Electronic Records.

(a) In this section, "qualifying purchaser" means a purchaser of a controllable electronic record or an interest in the 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.

(b) Except as provided in this section, law other than this article determines whether a person acquires a right in a controllable electronic record and the right, if any, the person acquires.

(c) A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer.

(d) A purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

(e) A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(f) Except as provided in subsection (e) or law other than this article, a qualifying purchaser takes a right to payment, right to performance, or interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

(g) An action based on a claim of a property right in a controllable electronic record, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a qualifying purchaser of any controllable electronic record.

(h) Filing of a financing statement under Article 9 is not notice of a claim of a property right in a controllable electronic record.

382-A:12-105 Control of Controllable Electronic Record.

(a) A person has control of a controllable electronic record if:

(1) the controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, gives the person:

(A) the power to avail itself of substantially all the benefit from the controllable electronic record; and

(B) subject to subsection (b), the exclusive power to:

(i) prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(ii) transfer control of the controllable electronic record to another person or cause another person to obtain control of a controllable electronic record that is derived from the controllable electronic record; and

(2) the controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, enables the person to readily identify itself in any way as having the powers specified in paragraph (1), including by name, identifying number, cryptographic key, office, or account number.

(b) A power specified in subsection (a)(1) is exclusive, even if:

(1) the controllable electronic record or the system in which the controllable electronic record is recorded, if any, limits the use to which the controllable electronic record may be put or has a protocol that is programmed to result in a transfer of control; or

(2) the person has agreed to share the power with another person.

382-A:12-106 Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible.

(a) Except as provided in this section, an account debtor on a controllable account or controllable payment intangible may discharge its obligation:

(1) by paying the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2) by paying a person that formerly had control of the controllable electronic record.

(b) Subject to subsections (d) and (h), an account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1) is authenticated by a person that formerly had control or the person to which control was transferred;

(2) reasonably identifies the controllable account or controllable payment intangible;

(3) notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5) provides a commercially reasonable method by which the account debtor is to pay the transferee.

(c) After receipt of a notification that complies with subsection (b), the account debtor may discharge its obligation only by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(d) Subject to subsection (h), notification is ineffective under subsection (b):

(1) unless, before the notification is sent, the account debtor and the person that at that time had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in an authenticated record to a commercially reasonable method by which a person can furnish reasonable proof that control has been transferred;

(2) to the extent that an agreement between the account debtor and the seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) 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 any required payment, or pay any portions of a payment by more than one method or to more than one person.

(e) Subject to subsection (h), if requested by the account debtor, the person giving the notification shall seasonably furnish reasonable proof, using the agreed method, that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (b).

(f) A person furnishes reasonable proof that control has been transferred if the person demonstrates, using the agreed method, that the transferee has the power to avail itself of substantially all the benefit from the controllable electronic record, prevent others from availing themselves of substantially all the benefit from the controllable electronic record, and transfer these powers to another person.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (d)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

382-A:12-107 Governing Law.

(a) Except as provided in subsection (b) and (d), the local law of a controllable electronic record's jurisdiction governs the matters covered by this article.

(b) The local law of a controllable electronic record's jurisdiction governs the matters covered by RSA 382-A:12-106 unless an agreement effective under RSA 382-A:1-301(a) determines that the local law of another jurisdiction governs such matters.

(c) The following rules determine a controllable electronic record's jurisdiction for purposes of this section:

(1) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the UCC, that jurisdiction is the controllable electronic record's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the UCC, that jurisdiction is the controllable electronic record's jurisdiction.

(3) If none of the preceding paragraphs applies and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(4) If none of the preceding paragraphs applies and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(5) If none of the preceding paragraphs applies, the controllable electronic record's jurisdiction is the jurisdiction in which the transferor is located.

(d) If paragraph (5) of subsection (c) applies and the location of the transferor cannot be readily determined, the transferor is deemed to be located in New Hampshire.

(e) Subsection (c) applies even if a transaction does not bear any relation to the controllable electronic record's jurisdiction determined under paragraphs (c)(1)-(4).

(f) Except as provided in subsection (d), the location of the transferor for purposes of paragraph (c)(5) is determined under RSA 382-A:9-307.

(g) The rights acquired by a purchaser or a qualifying purchaser under RSA 382-A:12-104 are governed by the law applicable under this section as determined at the time of that person's purchase.

7 Secured Transactions; Definitions; Account. Amend RSA 382-A:9-102(a)(2) to read as follows:

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered,

(iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes ***controllable accounts and*** health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

8 New Subparagraph; Secured Transactions; Definitions; Controllable Account; Controllable Payment Intangible. Amend RSA 382-A:9-102(a) by inserting after subparagraph (27) the following new subparagraphs:

(27A) "Controllable account" means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under RSA 382-A:12-105 of the controllable electronic record.

(27B) "Controllable payment intangible" means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under RSA 382-A:12-105 of the controllable electronic record.

9 Secured Transactions; Definitions; Payment Intangible. Amend RSA 382-A:9-102(a)(61) to read as follows:

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. ***This term includes controllable payment intangibles.***

10 Secured Transactions; Control; Other Articles. Amend RSA 382-A:9-102(b) to read as follows:

(b) "Control" as provided in Section 7-106 and the following definitions in other articles apply to this article:

"Applicant" Section 5-102.

"Beneficiary" Section 5-102.

"Broker" Section 8-102.

"Certificated security" Section 8-102.

"Check" Section 3-104.

"Clearing corporation" Section 8-102.

"Contract for sale" Section 2-106.

"Controllable electronic record" Section 12-102.

"Customer" Section 4-104.
"Entitlement holder" Section 8-102.
"Financial asset" Section 8-102.
"Holder in due course" Section 3-302.
"Issuer" (with respect to a letter of credit or letter-of-credit right) Section 5-102.
"Issuer" (with respect to a security) Section 8-201.
"Issuer" (with respect to documents of title) Section 7-102.
"Lease" Section 2A-103.
"Lease agreement" Section 2A-103.
"Lease contract" Section 2A-103.
"Leasehold interest" Section 2A-103.
"Lessee" Section 2A-103.
"Lessee in ordinary course of business" Section 2A-103.
"Lessor" Section 2A-103.
"Lessor's residual interest" Section 2A-103.
"Letter of credit" Section 5-102.
"Merchant" Section 2-104.
"Negotiable instrument" Section 3-104.
"Nominated person" Section 5-102.
"Note" Section 3-104.
"Proceeds of a letter of credit" Section 5-114.
"Prove" Section 3-103.
"Qualifying purchaser" Section 12-104.
"Sale" Section 2-106.
"Securities account" Section 8-501.
"Securities intermediary" Section 8-102.
"Security" Section 8-102.
"Security certificate" Section 8-102.
"Security entitlement" Section 8-102.
"Uncertificated security" Section 8-102.

11 New Section; Secured Transactions; Control of Controllable Electronic Record. Amend RSA 382-A by inserting after section 9-107 the following new section:

382-A:9-107A Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible.

(a) A secured party has control of a controllable electronic record as provided in RSA 382-A:12-105.

(b) A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

12 Secured Transactions; Attachment and Enforceability of Security Interest. Amend the introductory paragraph of RSA 382-A:9-203(b) to read as follows:

(b) Enforceability. Except as otherwise provided in subsections (c) through [~~(i)~~] ***(j)***, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

13 Secured Transactions; Attachment and Enforceability. Amend RSA 382-A:9-203(b)(3)(D) to read as follows:

(D) the collateral is deposit accounts, electronic chattel paper, ***electronic documents,*** investment property, ***or*** letter-of-credit rights, [~~or electronic documents,~~] and the secured party has control under Section 7-106, 9-104, 9-105, 9-106, [~~or~~] 9-107***, or 9-107A*** pursuant to the debtor's security agreement.

14 New Subparagraph; Secured Transactions; Controllable Accounts. Amend RSA 382-A:9-203 by inserting after subparagraph (i) the following new subparagraph:

(j) Controllable account or controllable payment intangible. The attachment of a security interest in a controllable electronic record that evidences a controllable account or controllable payment intangible is also attachment of a security interest in the controllable account or controllable payment intangible.

15 Secured Transactions; Rights and Duties of Secured Party Having Possession or Control of Collateral. Amend the introductory paragraph of RSA 382-A:9-207(c) to read as follows:

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-106, [~~or~~] 9-107***, or 9-107A***:

16 Secured Transactions; Additional Duties of Secured Part Having Control of Collateral. Amend RSA 382-A:9-208(b)(5)-(6) to read as follows:

(5) a secured party having control of a letter-of-credit right under Section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; [~~and~~]

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the 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; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party[~~.~~]***; and***

(7) a secured party having control of a controllable electronic record shall transfer control of the controllable electronic record to the debtor or to a person designated by the debtor.

17 Secured Transactions; Law Governing Perfection and Priority of Security Interests. Amend the introductory paragraph of RSA RSA 382-A:9-301 to read as follows:

Except as otherwise provided in Sections 9-303 through[~~—9-306~~] ***9-306A***, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

18 New Section; Law Governing Perfection and Priority of Security Interests in Controllable Electronic Records. Amend RSA 382-A by inserting after section 9-306 the following new section:

382-A:9-306A Law Governing Perfection and Priority of Security Interests in Controllable Electronic Records.

(a) Governing law; general rules. Except as provided in subsection (b), perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record is governed by:

(1) the local law of the controllable electronic record's jurisdiction as specified in RSA 382-A:12-107(c)(1) through (4); or

(2) if non of those paragraphs applies, the local law of the jurisdiction in which the debtor is located.

(b) Governing law; perfection by filing. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in a controllable electronic record intangibles by filing.

(c) Location of the debtor. If the location of the debtor cannot readily be determined, the debtor is deemed to be in this state.

19 New Paragraph; Secured Transactions; When Security Interest or Agricultural Lien is Perfected. Amend RSA 382-A:9-308 by inserting after paragraph (g) the following new paragraph:

(h) Controllable account or controllable payment intangible. Perfection of a security interest in a controllable electronic record that evidences a controllable account or controllable payment intangible also perfects a security interest in the controllable account or controllable payment intangible.

20 Filing to Perfect Security Interest or Agricultural Lien. Amend RSA 382-A:9-310(b)(8) to read as follows:

(8) in ***controllable electronic records,*** deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 9-314;

21 Perfection of Security Interests in Chattel Paper. Amend the section heading of RSA 382-A:312 through 9-312(a) to read as follows:

382-A:9-312 Perfection of Security Interests in ***Controllable Electronic Records,*** Chattel Paper, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(a) Perfection by filing permitted. A security interest in chattel paper, ***controllable electronic records,*** negotiable documents, instruments, or investment property may be perfected by filing.

22 Secured Transactions; Perfection by Control. Amend RSA 382-A:9-314(a)-(b) to read as follows:

(a) Perfection by control. A security interest in investment property, deposit accounts, letter-of-credit rights, ***controllable electronic records,*** electronic chattel paper, or electronic documents may be perfected by control of the collateral under Section 7-106, 9-104, 9-105, 9-106, [~~or~~] 9-107, ***or 9-107A***.

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in ***controllable electronic records,*** deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under Section 7-106, 9-104, 9-105, [~~or~~] 9-107, ***or 9-107A*** when the secured party obtains control and remains perfected by control only while the secured party retains control.

23 Secured Transactions; Effect of Change in Governing Law. Amend the introductory paragraph of RSA 382-A:9-316(a) to read as follows:

(a) General rule: effect on perfection of change in governing law. A security interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1), [~~or~~] 9-305(c), ***or 9-306A(a)(2) or (b)*** remains perfected until the earliest of:

24 New paragraphs; Secured Transactions; Change in Jurisdiction. Amend RSA 382-A:9-316 by inserting after paragraph (f) the following new paragraphs:

(fA) Chane in jurisdiction of controllable accounts, controllable electronic records, or controllable payment intangibles. A security interest that is perfected pursuant to the law designated in Section 9-306A(a)(1) remains perfected until the expiration of four months after a change of the applicable law to another jurisdiction.

(fB) Subsection (fA) security interest perfected or unperfected under law of new jurisdiction. If a security interest described in subsection (fA) becomes perfected under the law of the other jurisdiction before the end of the period described in that subsection, it remains perfected

thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

25 New Section; Priority of Security Interests in Controllable Electronic Record. Amend RSA 382-A by inserting after section 9-326 the following new section:

382-A:9-326A Priority of Security Interests in Controllable Electronic Record. A security interest in a controllable electronic record held by a secured party having control of the controllable electronic record has priority over a conflicting security interest held by a secured party that does not have control.

26 Secured Transactions; Priority of Rights of Purchasers. Amend RSA 382-A:9-331 to read as follows:

382-A:9-331 Priority of Rights of Purchasers of Instruments, Documents, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements Under Article 8 ***and Controllable Electronic Records Under Article 12.***

(a) Rights under Articles 3, 7, [~~and~~] 8, ***and 12*** not limited. This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, [~~or~~] a protected purchaser of a security ***or a qualifying purchaser as defined in section 12-104 of a controllable electronic record***. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, [~~and~~] 8, ***and 12.***

(b) Protection under Article 8 ***and 12.*** This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8 ***or 12.***

(c) Filing not notice. Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

27 Secured Transactions; Discharge of Account Debtor. Amend RSA 382-A:9-406 to read as follows:

382-A:9-406 Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.

(a) Discharge of account debtor; effect of notification. Subject to subsections (b) through [~~(i)~~] ***(k)***, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. Subject to subsection (h) ***and (k)***, notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to subsection (h) ***and (k)***, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale ***of a controllable payment intangible and a sale*** pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(f) Legal restrictions on assignment generally ineffective. Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subsection (b)(3) not waivable. Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. This section does not apply to:

(1) an assignment of a health-care-insurance receivable; or

(2) an assignment or transfer of or creation of a security interest in:

(A) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Â section 104(a)(1) or (2), as amended from time to time; or

(B) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Â section 1396p(d)(4), as amended from time to time.

(j) Section prevails over inconsistent law. Except as otherwise provided in subsection (i), this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(k) Inapplicability of certain subsections. Subsections (a) through (c) and (g) do not apply to a controllable account or controllable payment intangible.

28 Secured Transactions; Restrictions on Assignment of Promissory Notes. Amend RSA 382-A:9-408(b) to read as follows:

(b) Applicability of subsection (a) to sales of certain rights to payment. Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale ***of a controllable payment intangible and a sale*** pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

29 Secured Transactions; Rights After Default. Amend RSA 382-A:9-601(b) to read as follows:

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-106, [~~or~~] 9-107***, or 9-107A*** has the rights and duties provided in Section 9-207.

30 Secured Transactions; Unknown Debtor or Secondary Obligor. Amend RSA 382-A:9-605 to read as follows:

382-A:9-605 Unknown Debtor or Secondary Obligor.

(a) Subject to subsection (b), A secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(b) Subsection (a) does not apply to a secured party that, at the time the secured party's security interest attaches to a controllable electronic record has notice that the nature of the collateral or the system in which the collateral is recorded, if any, would prevent the secured party from acquiring the knowledge specified in that subsection.

31 Secured Transactions; Nonliability and Limitation on Liability of a Secured Party. Amend RSA 382-A:9-628 to read as follows:

382-A:9-628 Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.

(a) Limitation of liability of secured party for noncompliance with article. Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. ***Subject to section (f),*** a secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under Section 9-625(c)(2) for its failure to comply with Section 9-616.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under Section 9-625(c)(2) more than once with respect to any one secured obligation.

(f) Section (b) does not apply to a secured party that, at the time the secured party's security interest attaches to a controllable electronic record has notice that the nature of the collateral or the system in which the collateral is recorded, if any, would prevent the secured party from acquiring the knowledge specified in that subsection.

32 General Provisions; Value. Amend the introductory paragraph of RSA 382-A:1-204 to read as follows:

Except as otherwise provided in Articles 3, 4, [~~and~~] 5, ***and 12*** a person gives value for rights if the person acquires them:

33 Uniform Commercial Code; Article 12-Controllable Electronic Records; Department of State and Banking Department; Reporting Requirement. On or before November 1, 2022, the secretary of state, in consultation with the bank commissioner, shall submit a report to the general court regarding implementation of section 1 of this act and the status of Article 12 as finalized and adopted by the Uniform Law Commission. The report shall include any proposed legislation required to implement UCC article 12 in New Hampshire, including but not limited to changes to other UCC articles required by the addition. The report shall be submitted to the speaker of the house of representatives, the senate president, the chairperson of the house commerce and consumer affairs committee, the chairperson of the senate commerce committee, and the governor.

34 Effective Date. This act shall take effect January 1, 2025.

LBA
22-2784
Amended 3/22/22

HB 1503-FN- FISCAL NOTE

AS AMENDED BY THE HOUSE (AMENDMENT #2022-0828h)

AN ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

FISCAL IMPACT:

The Legislative Budget Assistant has determined that this legislation, as amended, has a total fiscal impact of less than $10,000 in each of the fiscal years 2022 through 2025.

AGENCIES CONTACTED:

Department of State

LBA
22-2784
Amended 5/9/22

HB 1503-FN FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENTS #2022-1939s and #2022-1974s)

AN ACT adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and establishing state procurement policies intended to promote the use of American materials.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

METHODOLOGY:

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws. This bill also adopts the Uniform Commercial Code on controllable electronic records. Lastly, this bill requires the use of American made steel products in all public works projects where the state administers the contract and the contract involves at least $1,000,000 state dollars.

The Department of State has determined the portion of the bill dealing with open blockchain tokens and the adoption of the Uniform Commercial Code on controllable electronic records has a total fiscal impact of less than $10,000 in each of the fiscal years for 2024 through 2025.

The Department of Administrative Services state there will be an indeterminable impact to state General fund expenditures for the portion of the bill requiring the use of American made steal products in all public works projects. The Department states the cost impacts of using American manufactured iron, steel and manufactured goods is indeterminable due to wide-ranging price fluctuations for these goods, supply-chain shortages, and United States imposed tariffs.

AGENCIES CONTACTED:

Department of State and Department of Administrative Services

HB 1503-FN - AS AMENDED BY THE SENATE

15Mar2022... 0828h
04/28/2022 1661s
05/05/2022 1939s
05/05/2022 1974s

2022 SESSION

22-2784
08/04

HOUSE BILL ***1503-FN***

AN ACT adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and establishing state procurement policies intended to promote the use of American materials.

SPONSORS: Rep. Ammon, Hills. 40; Rep. Alexander Jr., Hills. 6; Rep. Osborne, Rock. 4; Rep. Warden, Hills. 15; Rep. Edwards, Rock. 4; Rep. Berezhny, Graf. 9; Rep. Baxter, Rock. 20; Rep. White, Merr. 20; Sen. Avard, Dist 12

COMMITTEE: Commerce and Consumer Affairs

AMENDED ANALYSIS

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws. This bill also adopts the Uniform Commercial Code on controllable electronic records. This bill also establishes the requirement, as well as waiver and fraud processes, for the use of American made steel products in all public works projects where the state administers the contract and the contract involves at least $1,000,000 state dollars.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 1503-FN - AS AMENDED BY THE SENATE

15Mar2022... 0828h
04/28/2022 1661s
05/05/2022 1939s
05/05/2022 1974s

22-2784
08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and establishing state procurement policies intended to promote the use of American materials.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Statement of Intent.

I. The Joint Committee on the Uniform Commercial Code and Emerging Technologies of the Uniform Law Commission has developed draft Uniform Commercial Code provisions governing certain digital assets, specifically those that fall within the definition of "controllable electronic records." The current draft has been extensively vetted by those who understand and participate in digital transactions.

II. Adoption of the Uniform Law Commission's draft by the New Hampshire general court will create a considerable advantage for New Hampshire to lead in emerging industries utilizing blockchain, digital ledger technology, virtual currencies, and other digital assets and would provide a sensible framework and legal certainty for transactions of controllable electronic records. In subsequent sessions, if necessary, the New Hampshire general court 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.

2 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(10) to read as follows:

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. [~~Conspicuous terms include the following:~~

~~(A) 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; and~~

~~(B) 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.~~]

3 New Paragraph; Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b) by inserting after paragraph (16) the following new paragraph:

(16A) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

4 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(21) to read as follows:

(21) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control, ***other than pursuant to Section 7-106(d),*** of a negotiable electronic document of title.

5 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(24) to read as follows:

(24) "Money" means a medium of exchange ***that is*** 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 term 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 adopted by a government, or organization or pursuant to such an agreement.***

6 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(27) to read as follows:

(27) "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. ***The term includes a protected series, however denominated, of an entity if the protected series is established under law other than this chapter 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.***

7 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(37) to read as follows:

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing ***and, with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record. "Sign" and "Signature" have corresponding meanings.***

8 Uniform Commercial Code; Definitions. Amend the introductory paragraph of RSA 382-A:1-204 to read as follows:

Except as otherwise provided in Articles 3, 4,[~~and~~] 5, ***6, and 12,*** a person gives value for rights if the person acquires them:

9 Uniform Commercial Code; Sales; Scope. RSA 382-A:2-102 is repealed and reenacted to read as follows:

(1) Unless the context otherwise requires and except as provided in subsections (3) and (4), this Article applies to transactions in goods.

(2) If the goods aspects of a hybrid transaction predominate, this Article applies to the transaction.

(3) If the goods aspects of a hybrid transaction do not predominate, the provisions of this Article which relate primarily to the goods aspects of the transaction and not to the transaction as a whole apply.

(4) This article 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 Article impair or repeal any statute regulating sales to consumers, farmers, or other specified classes of buyers.

(5) This Section does not preclude in appropriate circumstances the application of other law to the aspects of a hybrid transaction which do not relate to the goods even if the goods aspects of the transaction predominate.

10 Uniform Commercial Code; Sales; Definitions. RSA 382-A:2-106 is repealed and reenacted to read as follows:

382-A:2-106 Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; "Cancellation".

(1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2–401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

(5) "Hybrid transaction" means a single transaction involving a sale of goods and a sale, lease, or license of other property or the provision of services.

11 Uniform Commercial Code; Sales; Statute of Frauds. RSA 382-A:2-201 is repealed and reenacted to read as follows:

382-A:2-201 Formal Requirements; Statute of Frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A record is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such record.

(2) Between merchants if within a reasonable time a record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless a record containing a notice of objection to its contents is given with 10 days after it is received.

12 Uniform Commercial Code; Sales; Final Written Expression. Amend RSA 382-A:2-202 to read as follows:

382-A:2-202 Final Written Expression; Parol or Extrinsic Evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a [~~writing~~] ***record*** intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of performance, course of dealing, or usage of trade (Section 1-303); and

(b) by evidence of consistent additional terms unless the court finds the [~~writing~~] ***record*** to have been intended also as a complete and exclusive statement of the terms of the agreement.

13 Uniform Commercial Code; Sales; Seals Inoperative. Amend RSA 382-A:2-203 to read as follows:

382-A:2-203 Seals Inoperative. The affixing of a seal to a [~~writing~~] ***record*** evidencing a contract for sale or an offer to buy or sell goods does not constitute the [~~writing~~] ***record*** a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

14 Uniform Commercial Code; Sales; Firm Offers. Amend RSA 382-A:2-205 to read as follows:

382-A:2-205 Firm Offers. An offer by a merchant to buy or sell goods in a signed [~~writing~~] ***writing*** which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

15 Uniform Commercial Code; Sales; Modification, Recission, and Waiver. Amend RSA 382-A:2-209(2) to read as follows:

(2) A signed agreement which excludes modification or rescission except by a signed [~~writing~~] ***record*** cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

16 Uniform Commercial Code; Leases; Scope. RSA 382-A:2A-102 is repealed and reenacted to read as follows:

382-A:2A-102 Scope.

(1) Except as provided in subsection (3), this article applies to any transaction, regardless of form, that creates a lease.

(2) If the lease-of-goods aspects of a hybrid lease predominate, this article applies to the transaction.

(3) If the lease-of-goods aspects of a hybrid lease do not predominate:

(A) only the provisions of this article which relate primarily to the lease-of-goods aspects of the transaction and not to the transaction as a whole apply;

(B) RSA 382-A:2A-209 applies if the lease is a finance lease; and

(C) RSA 382-A:2A-407 applies to the promises of a person that is the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods.

(4) This Section does not preclude the application in appropriate circumstances of other law to the aspects of a hybrid lease which do not relate to the lease of goods even if the lease-of-goods aspects of the transaction predominate.

17 New Subparagraph; Definitions; Uniform Commercial Code; Leases; Definitions. Amend RSA 382-A:2A-103 by inserting after subparagraph (1)(h) the following new subparagraph:

(hh) "Hybrid lease" means a single transaction involving a lease of goods and:

(i) the provision of services;

(ii) a sale of other goods; or

(iii) a sale, lease, or license of property other than goods.

18 Uniform Commercial Code; Leases; Statute of Frauds. Amend RSA 382-A:2A-201 to read as follows:

382-A:2A-201 Statute of Frauds.

(1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000; or

(b) there is a [~~writing~~] ***record***, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A [~~writing~~] ***record*** is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable: .

(a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a [~~writing~~] ***record*** signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) a reasonable lease term.

19 Uniform Commercial Code; Leases; Final Written Expression. Amend RSA 382-A:2A-202 to read as follows:

382-A:2A-202 Final Written Expression; Parol or Extrinsic Evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a [~~writing~~] ***record*** intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade or by course of performance; and

(b) by evidence of consistent additional terms unless the court finds the [~~writing~~] ***record*** to have been intended also as a complete and exclusive statement of the terms of the agreement.

20 Uniform Commercial Code; Leases; Seals Inoperative. Amend RSA 382-A:2A-203 to read as follows:

382-A:2A-203 Seals Inoperative. The affixing of a seal to a [~~writing~~] ***record*** evidencing a lease contract or an offer to enter into a lease contract does not render the [~~writing~~] ***record*** a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

21 Uniform Commercial Code; Leases; Firm Offers. Amend RSA 382-A:2A-205 to read as follows:

382-A:2A-205 Firm Offers. An offer by a merchant to lease goods to or from another person in a signed [~~writing~~] ***record*** that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

22 Uniform Commercial Code; Leases; Modification, Recission, and Waiver. Amend RSA 382-A:2A-208(2) to read as follows:

(2) A signed lease agreement that excludes modification or rescission except by a signed [~~writing~~] ***record*** may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

23 Uniform Commercial Code; Negotiable Instruments. Amend RSA 382-A:3-104(3) to read as follows:

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, [~~or~~] (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor***; (iv) a term that specifies the law that governs the promise or order; or (v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.***

24 Uniform Commercial Code; Negotiable Instruments; Issue of Instrument. Amend RSA 382-A:3-105(a) to read as follows:

(a) "Issue" means***:***

(1) 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***; or***

(2) if agreed by the payee, first transmission by the drawer to the payee of an image of an item and information derived from the item in a manner that enables the depository bank to collect the item by transferring or presenting under federal law an electronic check.

25 Uniform Commercial Code; Negotiable Instruments; Discharge by Cancellation or Renunciation. Amend RSA 382-A:3-604 to read as follows:

382-A:3-604 Discharge by Cancellation or Renunciation.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) 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 (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed [~~writing~~] ***record. The obligation of a party to pay a check is not discharged solely by the destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made, and subsequently, the information and image are transmitted for payment.***

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement

26 Uniform Commercial Code; Funds Transfers; Payment Order. Amend the introductory paragraph of RSA 382-A:4A-103(a)(1) to read as follows:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, [~~electronically~~], or in [~~writing~~] ***a record***, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

27 Uniform Commercial Code; Funds Transfers; Security Procedure. Amend RSA 382-A:4A-201 to read as follows:

382-A:4A-201 Security Procedure. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure ***may impose an obligation on the receiving bank or the customer and*** may require the use of algorithms or other codes, identifying words***,*** [~~or~~] numbers, ***symbols, sounds or biometrics,*** encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer ***or requiring that a payment order be sent from a known email address, IP address or phone number*** is not by itself a security procedure.

28 Uniform Commercial Code; Funds Transfers; Authorized and Verified Payment Orders. Amend RSA 382-A:4A-202(a)-(c) to read as follows:

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with ***the bank's obligation under*** the security procedure and any [~~written~~] agreement or instruction of the customer***, evidenced by a record,***

restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates [~~a written~~] ***an*** agreement ***evidenced by a record*** with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in [~~writing~~] ***a record*** to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the ***bank's obligations under the*** security procedure chosen by the customer.

29 Uniform Commercial Code; Funds Transfers; Unenforceability of Certain Verified Payment Orders. Amend RSA 382-A:4A-203(a)(1) to read as follows:

(1) By express [~~written~~] agreement ***evidenced by a record***, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

30 Uniform Commercial Code; Funds Transfers; Misdescription of Beneficiary. Amend RSA 382-A:4A-207(c)(2) to read as follows:

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a [~~writing~~] ***record*** stating the information to which the notice relates.

31 Uniform Commercial Code; Funds Transfer; Misdescription of Intermediary Bank or Beneficiary's Bank. Amend RSA 382-A:4A-208(b)(2) to read as follows:

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the

sender, before the payment order was accepted, signed a [~~writing~~] ***record*** stating the information to which the notice relates.

32 Uniform Commercial Code; Funds Transfers; Rejection of Payment Order. Amend RSA 382-A:4A-210(a) to read as follows:

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally[~~, electronically, or in writing~~] ***or in a record***. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

33 Uniform Commercial Code; Funds Transfer; Cancellation and Amendment of Payment Order. Amend RSA 382-A:4A-211(a) to read as follows:

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally[~~, electronically, or in writing~~] ***or in a record***. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

34 Uniform Commercial Code; Letters of Credit; Choice of Law and Forum. Amend RSA 382-A:5-116(c)-(e) to read as follows:

(c) ***For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under subsection (d).***

(d) A branch of a bank is considered to be located at 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.

(e) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 5-103(c).

[~~(d)~~] *(f)* If there is conflict between this article and Article 3, 4, 4A, or 9, this article governs.

[~~(e)~~] *(g)* The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

35 Uniform Commercial Code; Documents of Title; Control of Electronic Document of Title. Amend RSA 382-A:7-106(b) to read as follows:

(b) A system satisfies subsection (a), and a person[~~is deemed to have~~] ***has*** control of an electronic document of title, if the document is created, stored, and [~~assigned~~] ***transferred*** in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified [~~assignee~~] ***transferee*** of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) A system satisfies subsection (a) and a person has control of an electronic document of title if an 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 to readily identify each electronic copy as an authoritative copy or nonauthoritative copy;

(2) enables the person readily to 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

(3) gives the person exclusive power, subject to subsection (h) to:

(A) prevent others from altering the person to which each authoritative electronic copy has been issued or transferred; and

(B) transfer control of each authoritative electronic copy.

(d) If a person has the powers that are specified in subsection (c)(3), the powers are presumed to be exclusive.

(e) A person has control of an electronic document of title if another person, other than the transferor of an interest in the document:

(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.

(f) A person that has control under this section is not required to acknowledge that it has or will obtain control on behalf of another person.

(g) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.

(h) A power is exclusive under subsection (c)(3), even if:

(1) the authoritative electronic copy, a record attached to or logically associated with the electronic copy or a system in which the electronic copy is recorded limits the use of the document or has a protocol that is programmed to cause a change, including a transfer or loss of control; or

(2) the person shares the power with another person.

36 Uniform Commercial Code; Investment Securities; Definitions. Amend RSA 382-A:8-102(6)(i) to read as follows:

(i) send a signed [~~writing~~] ***record***; or

37 Uniform Commercial Code; Investment Securities; Definitions. Amend RSA 382-A:8-106(d)-(g) to read as follows:

(d) A purchaser has "control" of a security entitlement if:

(1) the purchaser becomes the entitlement holder;

(2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(3) another person [~~has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser~~] ***other than the transferor of an interest in the security entitlement:***

(A) has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or

(B) obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c) or (d) has control even if the registered owner in the case of subsection (c) or the entitlement holder in the case of subsection (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of a purchaser.

(i) If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the purchaser and is not required to confirm the acknowledgment to another person.

38 Uniform Commercial Code; Investment Securities; Protected Purchaser. Amend RSA 382-A:8-303(b) to read as follows:

(b) [~~In addition to acquiring the rights of a purchaser, a~~] ***A*** protected purchaser also acquires its interest in the security free of any adverse claim.

39 Uniform Commercial Code; Investment Securities; Acquisition of Security Entitlement from Securities Intermediary. Amend RSA 382-A:8-501(d) to read as follows:

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the [~~other~~] person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

40 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(2) to read as follows:

(2) "Account", except as used in "account for", ***"account to," "account statement," "customer's account," "on account of," "statement of account," and paragraphs (14) and (29)*** means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a

secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes ***controllable accounts and*** health-care-insurance receivables. The term does not include (i) [~~rights to payment evidenced by chattel paper or an instrument~~] ***chattel paper***, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card***, or (vii) rights to payment evidenced by an instrument.***

41 New Paragraphs; Definitions; Uniform Commercial Code; Secured Transactions; Assignee. Amend RSA 382-A:9-102 by inserting after paragraph (6) the following new paragraphs:

(6A) "Assignee" means a person:

(A) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not an obligation to be secured is outstanding; or

(B) to which an account, chattel paper, payment intangible, or promissory note has been sold.

(6B) "Assignor" means a person that:

(A) under a security agreement creates or provides for a security interest that secures an obligation; or

(B) sells an account, chattel paper, payment intangible, or promissory note.

42 Uniform Commercial Code; Secured Transactions; Definitions. RSA 382-A:9-102(11) is repealed and reenacted to read as follows:

(11) "Chattel paper" means:

(A) 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; or

(B) 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:

(i) the right to payment and lease agreement are evidenced by a record; and

(ii) the predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

The term does not include (i) a right to payment arising out of a charter or other contract involving the use or hire of a vessel or (ii) 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.

43 New Paragraphs; Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102 by inserting after paragraph 27 the following new paragraphs:

(27A) "Controllable account" means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that under Section 12-105 has control of the controllable electronic record.

(27B) "Controllable payment intangible" means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that under Section 12-105 has control of the controllable electronic record.

44 New Paragraph; Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102 by inserting after paragraph 31 the following new paragraph:

(31A) "Electronic money" means money in an electronic form.

45 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(42) to read as follows:

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes ***controllable electronic records,*** payment intangibles and software.

46 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(47) to read as follows:

(47) "Instrument" means a negotiable instrument (defined in Section 3-104), or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, [~~or~~] (iii) writings that evidence 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***, or (iv) writings that evidence chattel paper***.

47 New Paragraph; Definitions; Money; Secured Transactions; UCC. Amend RSA 382-A:9-102 by inserting after paragraph (54) the following new paragraph:

(54A) "Money" has the meaning provided in Section 1-201(24), but the term does not include (i) a deposit account or (ii) money in an electronic form that cannot be subjected to control under Section 9-105A.

48 Definitions; Payment Intangible; Secured Transactions; UCC. Amend RSA 382-A:9-102(61) to read as follows:

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. ***The term includes a controllable payment intangible.***

49 New Paragraph; Definitions; Tangible Money; Secured Transactions; UCC. Amend RSA 382-A:9-102 by inserting after paragraph (79) the following new paragraph:

(79A) "Tangible money" means money in a tangible form.

50 Definitions; Controllable Electronic Record; Qualified Purchaser; Secured Transactions; UCC. Amend RSA 382-A:9-102(b) to read as follows:

(b) "Control" as provided in Section 7-106 and the following definitions in other articles apply to this article:

"Applicant" Section 5-102.

"Beneficiary" Section 5-102.

"Broker" Section 8-102.

"Certificated security" Section 8-102.

"Check" Section 3-104.

"Clearing corporation" Section 8-102.

"Contract for sale" Section 2-106.

"Controllable electronic record" Section 12-102.

"Customer" Section 4-104.

"Entitlement holder" Section 8-102.

"Financial asset" Section 8-102.

"Holder in due course" Section 3-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right) Section 5-102.

"Issuer" (with respect to a security) Section 8-201.

"Issuer" (with respect to documents of title) Section 7-102.

"Lease" Section 2A-103.

"Lease agreement" Section 2A-103.

"Lease contract" Section 2A-103.

"Leasehold interest" Section 2A-103.

"Lessee" Section 2A-103.

"Lessee in ordinary course of business" Section 2A-103.

"Lessor" Section 2A-103.

"Lessor's residual interest" Section 2A-103.

"Letter of credit" Section 5-102.

"Merchant" Section 2-104.

"Negotiable instrument" Section 3-104.

"Nominated person" Section 5-102.

"Note" Section 3-104.

"Proceeds of a letter of credit" Section 5-114.

"Prove" Section 3-103.

"Qualifying purchaser" Section 12-102.

"Sale" Section 2-106.

"Securities account" Section 8-501.

"Securities intermediary" Section 8-102.

"Security" Section 8-102.

"Security certificate" Section 8-102.

"Security entitlement" Section 8-102.

"Uncertificated security" Section 8-102.

51 Control of Deposit Account; Secured Transactions; UCC. Amend RSA 382-A:9-104 to read as follows:

382-A:9-104 Control of Deposit Account.

(a) Requirements for control. A secured party has control of a deposit account if:

(1) the secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party, and bank have agreed in [~~an authenticated~~] ***a signed*** 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***; or***

(4) another person, other than the debtor:

(A) has control of the deposit account and acknowledges that it has control on behalf of the secured party; or

(B) obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party.

(b) Debtor's right to direct disposition. A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

52 Control of Electronic Copy of Record Evidencing Chattel Paper; Secured Transactions; UCC. RSA 382-A:9-105 is repealed and reenacted to read as follows:

382-A:9-105 Control of Electronic Copy of Record Evidencing Chattel Paper.

(a) General rule: control of electronic copy of record evidencing chattel paper. A purchaser has control of each 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 chattel paper was assigned.

(b) Single authoritative copy. A system satisfies subsection (a) if the record or records evidencing the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the purchaser as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the purchaser or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the purchaser;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) One or more authoritative copies. A system satisfies subsection (a) and a purchaser has control of an electronic copy of a record evidencing chattel paper if:

(1) the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(A) enables the person readily to identify each electronic copy as an authoritative copy or nonauthoritative copy;

(B) enables the purchaser readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of each authoritative electronic copy; and

(C) gives the purchaser exclusive power, subject to subsection (d), to:

(i) prevent others from adding or changing an identified assignee of each authoritative electronic copy; and

(ii) transfer control of each authoritative electronic copy; or

(2) another person, other than the debtor:

(A) has control of each authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(B) obtains control of each authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

(d) Presumption of exclusivity of certain powers. If a person has the powers that are specified in subsection (c)(1)(C), the powers are presumed to be exclusive.

(e) Meaning of exclusive. A power is exclusive under subsection (b)(1)(C), even if:

(1) the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the purchaser shares the power with another person.

53 New Section; Control of Electronic Money. Amend RSA 382-A by inserting after section 9-105 the following new section:

382-A: 9-105A Control of Electronic Money.

(a) General rule: control of electronic money. A person has control of electronic money if:

(1) 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:

(A) the power to avail itself of substantially all the benefit from the electronic money; and

(B) exclusive power, subject to subsection (b), to:

(i) prevent others from availing themselves of substantially all the benefit from the electronic money; and

(ii) 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; and

(2) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers under paragraph (1).

(b) Presumption of exclusivity of certain powers. If a person has the powers that are specified in subsection (a)(1)(B), the powers are presumed to be exclusive.

(c) Control through another person. A person has control of electronic money if another person, other than the transferor of an interest in the electronic money:

(1) has control of the electronic money and acknowledges that it has control on behalf of the person, or

(2) obtains control of the electronic money after having acknowledged that it will obtain control of the electronic money on behalf of the person.

(d) Meaning of exclusive. A power is exclusive under subsection (a)(1)(B), even if:

(1) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded limits the use of the electronic money or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the person shares the power with another person.

54 New Sections; Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible; Nor Requirement to Confirm; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 107 the following new sections:

382-A:9-107A Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible.

(a) Control under Section 12-105. A secured party has control of a controllable electronic record as provided in Section 12-105.

(b) Control of controllable account and controllable payment intangible. A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

382-A:9-107B No Requirement to Acknowledge or Confirm; No Duties.

(a) No requirement to acknowledge. A person that has control under Section 9-104, 9-105, or 9-105A is not required to acknowledge that it has or will obtain control on behalf of another person.

(b) No duties or confirmation. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.

55 Attachment and Enforceability of Security Interest; Secured Transactions; UCC. Amend RSA 382-A:9-203(b)(3) to read as follows:

(3) one of the following conditions is met:

(A) the debtor has [~~authenticated~~] ***signed*** a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement; [~~or~~]

(D) the collateral is ***controllable accounts, controllable electronic records, controllable payment intangibles,*** deposit accounts, [~~electronic chattel paper,~~] ***electronic documents, electronic money,*** investment property, ***or*** letter-of-credit rights[~~, or electronic documents,~~] and the secured party has control under Section 7-106, 9-104, 9-105, ***9-105A,*** 9-106, [~~or~~] 9-107, ***or 9-107A*** pursuant to the debtor's security agreement***; or***

(E) the collateral is chattel paper and the secured party has possession and control under Section 9-314A pursuant to the debtor's security agreement.

56 Attachment and Enforceability; Secured Transactions; UCC. Amend RSA 382-A:9-203(b)-(c) to read as follows:

(b) When after-acquired property clause not effective. ***Subject to subsection (c),*** a security interest does not attach under a term constituting an after-acquired property clause to:

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) a commercial tort claim.

(c) ***Limitation on subsection (b). Subsection (b) does not prevent a security interest from attaching:***

(1) to consumer goods as proceeds under Section 9-315(a) or commingled goods under section 9-336(c);

(2) to a commercial tort claim as proceeds under Section 9-315(a); or

(3) under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.

(d) Future advances and other value. A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

57 Duties and Rights; Secured Party in Control; Secured Transactions; UCC. Amend the introductory paragraph of RSA 382-A:9-207(c) to read as follows:

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, ***9-105A,*** 9-106, [~~or~~] 9-107***, or 9-107A***:

58 Additional Duties of Secured Party; Secured Transactions; UCC. Amend RSA 382-A:9-208(b) to read as follows:

(b) Duties of secured party after receiving demand from debtor. Within 10 days after receiving[~~an authenticated~~] ***a signed*** demand by the debtor:

(1) a secured party having control of a deposit account under Section 9-104(a)(2) shall send to the bank with which the deposit account is maintained [~~an authenticated~~]***a signed*** statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under Section 9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control [~~of electronic chattel paper~~] under Section 9-105 ***of an electronic copy of a record evidencing chattel paper*** shall ***transfer control of the electronic copy to the debtor or a person designated by the debtor;*** [~~:~~]

[~~(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;~~

~~(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper 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; and~~

~~(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;~~]

(4) a secured party having control of investment property under Section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an [~~authenticated record~~] ***a signed record*** that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under Section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party [~~an authenticated~~] ***a signed*** release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; [~~and~~

~~(6) a secured party having control of an electronic document shall:~~

~~(A) give control of the electronic document to the debtor or its designated custodian;~~

~~(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the 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; and~~

~~(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.~~]

(6) a secured party having control under Section 7-106 of an authoritative copy of an electronic document of title shall transfer control of the authoritative copy to the debtor or a person designated by the debtor;

(7) a secured party having control under Section 9-105A of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor; and

(8) a secured party having control under Section 12-105 of a controllable electronic record shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

59 Law Governing Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-301 to read as follows:

382-A:9-301 Law Governing Perfection and Priority of Security Interests. Except as otherwise provided in Sections 9-303 through [~~9-306~~] ***9-306B***, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, ***or tangible*** money[~~, or tangible chattel paper~~] is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

60 New Sections; Chattel Paper Evidenced by Authoritative Electronic Copy. Amend RSA 382-A by inserting after section 9-306 the following new sections:

382-A:9-306A Law Governing Perfection and Priority of Security Interests in Chattel Paper.

(a) Chattel paper evidenced by authoritative electronic copy. Except as provided in subsection (e), 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 electronic chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper.

(b) Electronic Chattel Paper's Jurisdiction. The following rules determine the electronic chattel paper's jurisdiction under this section:

(1) If the authoritative electronic copy of chattel paper, or a record attached to or logically associated with the electronic copy which is readily available for review, expressly provides that a particular jurisdiction is the electronic chattel paper's jurisdiction for purposes of this part, this article, or the [Uniform Commercial Code], that jurisdiction is the electronic chattel paper's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the electronic copy is recorded are readily available for review and expressly provide that a particular

jurisdiction is the controllable electronic record's jurisdiction for purposes of this part, this article, or the [Uniform Commercial Code], that jurisdiction is the electronic chattel paper's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the electronic copy, or a record attached to or logically associated with the electronic copy which is readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction is the electronic chattel paper's jurisdiction.

(4) If paragraphs (1) through (3) do not apply and the rules of the system in which the 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 electronic chattel paper's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the electronic chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

(c) Relation of transaction to electronic chattel paper's jurisdiction not necessary. Subsections (a) and (b) apply even if a transaction does not bear any relation to the electronic chattel paper's jurisdiction.

(d) Chattel paper evidenced by authoritative tangible copy. If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while an authoritative tangible copy of a record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the chattel paper by possession under Section 9-314A; and

(B) the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(e) When perfection governed by law of jurisdiction where debtor is located. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

382-A:9-306B Law Governing Perfection and Priority of Security Interests in Controllable Accounts, Controllable Electronic Records, and Controllable Payment Intangibles.

(a) Governing law: general rules. Except as provided in subsection (b), the local law of the controllable electronic record's jurisdiction as specified in Section 12-107(c) and (d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable account, controllable electronic record, or controllable payment intangible.

(b) When perfection governed by law of jurisdiction where debtor is located. The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and

(2) automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible.

61 When Filing Required; Secured Transactions; UCC. Amend RSA 382-A:9-310(b)(8)-(10) to read as follows:

(8) in ***controllable accounts, controllable electronic records, controllable payment intangibles,*** deposit accounts, [~~electronic chattel paper,~~] electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 9-314;

(9) ***in chattel paper which is perfected by possession and control under Section 9-314A;***

(10) in proceeds which is perfected under Section 9-315; or

[~~(10)~~] ***(11)*** that is perfected under Section 9-316.

62 Perfection of Security Interests; Secured Transactions; UCC. Amend RSA 382-A:9-312 to read as follows:

382-A:9-312 Perfection of Security Interests in Chattel Paper, ***Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles,*** Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(a) Perfection by filing permitted. A security interest in chattel paper, [~~negotiable documents,~~] ***controllable accounts, controllable electronic records, controllable payment intangibles,*** instruments, [~~or~~] investment property***, or negotiable documents*** may be perfected by filing.

(b) Control or possession of certain collateral. Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under Section 9-314;

(2) and except as otherwise provided in Section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314; [~~and~~]

(3) a security interest in ***tangible*** money may be perfected only by the secured party's taking possession under Section 9-313***; and***

(4) a security interest in electronic money may be perfected only by control under Section 9-314.

(c) Goods covered by negotiable document. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) Goods covered by nonnegotiable document. While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) Temporary perfection: new value. A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under [~~an authenticated~~] ***a signed*** security agreement.

(f) Temporary perfection: goods or documents made available to debtor. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) Temporary perfection: delivery of security certificate or instrument to debtor. A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) Expiration of temporary perfection. After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

63 Possession By Secured Party Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-313(a) to read as follows:

(a) Perfection by possession or delivery. Except as otherwise provided in subsection (b), a secured party may perfect a security interest in [~~tangible negotiable documents,~~] goods, instruments, ***negotiable tangible documents, or tangible*** money, [~~or tangible chattel paper~~] by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8-301.

64 Possession by a Secured Party; Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-313(c) to read as follows:

(c) Collateral in possession of person other than debtor. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession [~~authenticates~~] ***signs*** a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having [~~authenticated~~] ***signed*** a record acknowledging that it will hold possession of collateral for the secured party's benefit.

65 Perfection by Control; Secured Transactions; UCC. Amend RSA 382-A:9-314(a)-(b) to read as follows:

(a) Perfection by control. A security interest in[~~investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents~~] ***controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, or letter-of-credit rights*** may be perfected by control of the collateral under Section 7-106, 9-104, [~~9-105,~~] ***9-105A,*** 9-106,[~~or~~] 9-107, ***or 9-107A.***

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in ***controllable accounts, controllable electronic records, controllable payment intangibles,*** deposit accounts,[~~electronic chattel paper, letter-of-credit rights, or~~] electronic documents, ***electronic money, or letter-of-credit rights*** is perfected by control under Section 7-106, 9-104, [~~9-105,~~] ***9-105A,*** [~~or~~] 9-107, ***or 9-107A*** when the secured party obtains control and remains perfected by control only while the secured party retains control.

66 New Section; Perfection by Possession; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 9-314 the following new section:

9-314A Perfection by Possession and Control of Chattel Paper.

(a) Perfection by possession and control. 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.

(b) Time of perfection; continuation of perfection. A security interest is perfected under subsection (a) when the secured party takes possession and obtains control and remains perfected under subsection (a) only while the secured party retains possession and control.

(c) Application of Section 9-313 to Perfection by Possession of Chattel Paper. Section 9-313(c) and (f) through (i) applies to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

67 Continued Perfection of Security Interest; Secured Transactions; UCC. Amend the introductory paragraph of RSA 382-A:9-316(a) to read as follows:

(a) General rule: effect on perfection of change in governing law. A security interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1), [~~or~~] 9-305(c), ***9-306A(e), or 9-306B(b)*** remains perfected until the earliest of:

68 Continued Perfection of Security Interest; Secured Transactions; UCC. Amend RSA 382-A:9-316(f) to read as follows:

(f) Change in jurisdiction of ***controllable electronic record,*** bank, issuer, nominated person, securities intermediary, or commodity intermediary. A security interest in ***controllable accounts, controllable electronic records, controllable payment intangibles, chattle paper,*** deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the ***controllable electronic record's jurisdiction, the electronic chattel paper's jurisdiction, the*** bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) the time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of 4 months after a change of the applicable jurisdiction to another jurisdiction.

69 Interest that Take Priority Over or Take Free of Security Interest or Agricultural Lien; Secured Transactions; UCC. Amend RSA 382-A:9-317 to read as follows:

382-A:9-317 Interests That Take Priority Over or Take Free of Security Interest or Agricultural Lien.

(a) Conflicting security interests and rights of lien creditors. A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under Section 9-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in Section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer[~~, other than a secured party,~~] of [~~tangible chattel paper, tangible documents,~~] goods, instruments, ***tangible documents,*** or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives

delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. ***Subject to subsections (f), (g), (h), and (i)*** a licensee of a general intangible or a buyer, other than a secured party, of collateral other than [~~tangible chattel paper,~~] ***electronic money,*** tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. Except as otherwise provided in Sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

(f) Buyers of chattel paper. 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 tangible 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 under Section 9-105, obtains control of each authoritative electronic copy.

(g) Buyers of electronic documents. 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 under Section 7-106, obtains control of each authoritative electronic copy.

(h) Buyers of controllable electronic records. A buyer of a controllable electronic record 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 electronic record.

(i) Buyers of controllable accounts and controllable payment intangibles. 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.

70 New Section; Priority of Security Interests; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 9-326 the following new section:

382-A:9-326A Priority of Security Interests in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible. A security interest in a controllable account, controllable electronic record, 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.

71 Priority of Purchaser of Chattel Paper or Instrument;Secured Transactions; UCC. Amend RSA 382-A:9-330(a)-(b) to read as follows:

(a) Purchaser's priority: security interest claimed merely as proceeds. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of ***each authoritative tangible copy of the record evidencing*** the chattel paper [~~or~~] ***and*** obtains control ***under RSA 382-A:9-105*** of ***each authoritative electronic copy of the record evidencing*** the chattel paper [~~under Section 9-105~~]; and

(2) the [~~chattel paper does~~] ***authoritative copies of the record evidencing the chattel paper do*** not indicate that [~~it has~~] ***the copies have*** been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority: other security interests. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of ***each authoritative tangible copy of the record evidencing*** the chattel paper [~~or~~] ***and*** obtains control ***under RSA 382-A:9-105*** of ***each authoritative electronic copy of the record evidencing*** the chattel paper [~~under Section 9-105~~] 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.

72 Priority Rights of Purchasers; Secured Transactions; UCC. Amend RSA 382-A:9-331 to read as follows:

382-A:9-331 Priority of Rights of Purchasers of ***Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles,*** Instruments, Documents, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements ***and Protections Against Assertions of Claims*** Under [~~Article 8~~] ***Articles 8 and 12.***

(a) Rights under Articles 3, 7, [~~and~~] 8, ***and 12*** not limited. This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security, ***or a qualifying purchaser of a controllable account, controllable electronic record, or controllable payment intangible.*** These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, [~~and~~] 8, ***and 12.***

(b) Protection under [~~Article 8~~] ***Articles 8 and 12.*** This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under [~~Article 8~~] ***Articles 8 and 12.***

(c) Filing not notice. Filing under this article does not constitute notice of a claim or defense to the holders, [~~or~~] purchasers, or persons described in subsections (a) and (b).

73 Transfer of Money; Transfer of Funds; Secured Transactions; UCC. Amend RSA 382-A:9-332 to read as follows:

382-A:9-332 Transfer of Money; Transfer of Funds From Deposit Account.

(a) Transferee of ***tangible*** money. A transferee of ***tangible*** money takes the money free of a security interest [~~unless the transferee acts~~] ***if the transferee receives delivery of the money without acting*** in collusion with the debtor in violating the rights of the secured party.

(b) ***Transferee of electronic money. 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.***

(c) Transferee of funds from deposit account. A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account [~~unless the transferee acts~~] ***if the transferee receives the funds without acting*** in collusion with the debtor in violating the rights of the secured party.

74 Discharge of Account Debtor; Secured Transactions; UCC. Amend RSA 382-A:9-406 to read as follows:

382-A:9-406 Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.

(a) Discharge of account debtor; effect of notification. Subject to subsections (b) through (i) ***and (l)***, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, [~~authenticated~~] ***signed*** by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. Subject to [~~subsection (h)~~] ***subsections (h) and (l)***, notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to [~~subsection (h)~~] ***subsections (h) and (l)***, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(f) Legal restrictions on assignment generally ineffective. Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subsection (b)(3) not waivable. Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. This section does not apply to:

(1) an assignment of a health-care-insurance receivable; or

(2) an assignment or transfer of or creation of a security interest in:

(A) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C.A § 104(a)(1) or (2), as amended from time to time; or

(B) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C.A § 1396p(d)(4), as amended from time to time.

(j) Section prevails over inconsistent law. Except as otherwise provided in subsection (i), this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(k) Inapplicability to interests in certain entities. Subsections (d), (f), and (j) do not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.

(l) Inapplicability of certain subsections. Subsections (a) through (c) and (g) do not apply to a controllable account or controllable payment intangible.

75 Rights After Default; Secured Transactions; UCC. Amend RSA 382-A:9-601(b) to read as follows:

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, ***9-105A,*** 9-106, [~~or~~] 9-107, ***or 9-107A*** has the rights and duties provided in Section 9-207.

76 Unknown Debtor or Secondary Obligor; Secured Transactions; UCC. RSA 382-A:9-605 is repealed and reenacted to read as follows:

(a) When no duty owed by secured party. Except as provided in subsection (b), a secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(b) When secured party owes duty to debtor notwithstanding subsection (a). A secured party owes a duty based on its status as a secured party to a person that is a debtor if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible, the secured party knows that the information specified in subsection (a)(1)(A), (B), or (C) 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.

77 Notification Before Disposition of Collateral; Secured Transactions; UCC. Amend RSA 382-A:9-611 to read as follows:

382-A:9-611 Notification Before Disposition of Collateral.

(a) "Notification date." In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor [~~an authenticated~~] ***a signed*** notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required. Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send [~~an authenticated~~] ***a signed*** notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9-311(a).

(d) Subsection (b) inapplicable: perishable collateral; recognized market. Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) Compliance with subsection (c)(3)(B). A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent [~~an authenticated~~] ***a signed*** notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

78 Contents and Form of Notification Before Disposition of Collateral; Secured Transactions; UCC. Amend RSA 382-A:9-614 to read as follows:

382-A:9-614 Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction.

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) the information specified in Section 9-613(1);

(B) a description of any liability for a deficiency of the person to which the notification is sent;

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 9-623 is available; and

(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral] , because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date:

Time:

Place:

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing ***or in an electronic document*** 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 ***or a description of electronic communication method***] and request a written explanation ***or an explanation in an electronic document***. [We will charge you $_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address] [***or description of electronic communication method***]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

[End of Form]

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

79 Explanation of Calculation of Surplus or Deficiency; Secured Transactions; UCC. Amend RSA 382-A:9-616(a)-(c) to read as follows:

382-A:9-616 Explanation of Calculation of Surplus or Deficiency.

(a) Definitions. In this section:

(1) "Explanation" means a [~~writing~~] ***record*** that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) [~~authenticated~~] ***signed*** by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under Section 9-610.

(b) Explanation of calculation. In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9-615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes [~~written~~] demand ***in a record*** on the consumer obligor after the disposition for payment of the deficiency; and

(B) within 14 days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) Required Information. To comply with subsection (a)(1)(B), [~~a writing~~] ***an explanation*** must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) the amount of the surplus or deficiency.

80 Nonliability and Limitation on Liability of Secured Party; Secured Transactions; UCC. Amend RSA 382-A:9-628 to read as follows:

382-A:9-628 Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.

(a) Limitation of liability of secured party for noncompliance with article. ***Subject to subsection (f),*** unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. ***Subject to subsection (f)*** a secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under Section 9-625(c)(2) for its failure to comply with Section 9-616.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under Section 9-625(c)(2) more than once with respect to any one secured obligation.

(f) Notwithstanding subsection (b), a secured party owes a duty based on its status as a secured party to a person that is a debtor if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible, the secured party knows that it will not be provided with the information specified in subsection (b)(1)(A), (B), or (C) by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

81 New Subdivisions; Uniform Commercial Code; Article 12 and 13; Controllable Electronic Records; Transition Provisions. Amend RSA 382-A by inserting after section 9-809 the following new subdivisions:

ARTICLE 12

CONTROLLABLE ELECTRONIC RECORDS

382-A:12-101 Short Title. This article may be cited as Uniform Commercial Code-Controllable Electronic Records.

382-A:12-102 Definitions.

(a) Article 12 definitions. In this article:

(1) "Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under Section 12-105. 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.

(2) "Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in the 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.

(3) "Transferable record" means:

(A) "Transferable record" as defined in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., as amended; or

(B) "Transferable record" as defined in [cite to Uniform Electronic Transactions Act Section 16(a)].

(4) "Value" has the meaning provided in Section 3-303(a).

(b) Definitions in Article 9. The definitions in Article 9 of "account debtor", "controllable account", "controllable payment intangible", "chattel paper", "deposit account", "electronic money", and "investment property" apply to this article.

382-A:12-103 Relationship to Article 9 and Consumer Laws.

(a) Article 9 governs in case of conflict. If there is conflict between this article and Article 9, Article 9 governs.

(b) Applicable consumer law and other laws. A transaction subject to this article is subject to any applicable rule of law that establishes a different rule for consumers and [insert reference to (i) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection statute or regulation].

382-A:12-104 Rights in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible.

(a) Applicability of section to controllable account and controllable payment intangible. This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits of a purchaser and a qualifying purchaser under subsections (d), (e), (g), and (h), in the same manner this section applies to a controllable electronic record.

(b) Control of controllable account and controllable payment intangible. For purposes of determining whether a 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 controllable electronic record that evidences the account or payment intangible.

(c) Applicability of other law to acquisition of rights. Except as provided in this section, law other than this article determines whether a person acquires a right in a controllable electronic record and the right the person acquires.

(d) Shelter principle and purchase of limited interest. A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

(e) Rights of qualifying purchaser. A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(f) Limitation of rights of qualifying purchaser in other property. Except as provided in subsections (a) and (e) for controllable accounts and controllable payment intangibles or law other than this article, a qualifying purchaser takes a right to payment, right to performance, or interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

(g) No-action protection for qualifying purchaser. An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory.

(h) Filing not notice. Filing of a financing statement under Article 9 is not notice of a claim of a property right in a controllable electronic record.

382-A:12-105 Control of Controllable Electronic Record.

(a) General rule: control of controllable electronic record. A person has control of a controllable electronic record if:

(1) the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded gives the person:

(A) the power to avail itself of substantially all the benefit from the electronic record; and

(B) exclusive power, subject to subsection (b), to:

(i) prevent others from availing themselves of substantially all the benefit from the electronic record; and

(ii) transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and

(2) the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in paragraph (1).

(b) Presumption of exclusivity of certain powers. If a person has the powers that are specified in subsection (a)(1)(B), the powers are presumed to be exclusive.

(c) Control through another person. A person has control of a controllable electronic record if another person, other than the transferor of an interest in the electronic record:

(1) has control of the electronic record and acknowledges that it has control on behalf of the person, or

(2) obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.

(d) No requirement to acknowledge. A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(e) No duties or confirmation. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.

(f) Meaning of exclusive. A power specified in subsection (a)(1) is exclusive, even if:

(1) the controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded 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

(2) the person shares the power with another person.

382-A:12-106 Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible.

(a) Discharge of account debtor. An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

(1) the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2) except as provided in subsection (b), a person that formerly had control of the controllable electronic record.

(b) Effect of notification. Subject to subsection (d), an account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1) is signed by a person that formerly had control or the person to which control was transferred;

(2) reasonably identifies the controllable account or controllable payment intangible;

(3) notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5) provides a commercially reasonable method by which the account debtor is to pay the transferee.

(c) Discharge following effective notification. After receipt of a notification that complies with subsection (b), the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(d) When notification ineffective. Subject to subsection (h), notification is ineffective under subsection (b):

(1) unless, before the notification is sent, an account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;

(2) to the extent an agreement between an 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 under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to:

(A) divide a payment;

(B) make less than the full amount of an installment or other periodic payment; or

(C) pay any part of a payment by more than one method or to more than one person.

(e) Proof of transfer of control. Subject to subsection (h), if requested by the account debtor, the person giving the notification seasonably shall furnish reasonable proof, using the agreed method, that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (b).

(f) What constitutes reasonable proof. A person furnishes reasonable proof that control has been transferred if the person demonstrates, using the agreed method, that the transferee has the power to:

(1) avail itself of substantially all the benefit from the controllable electronic record;

(2) prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(3) transfer the powers mentioned in paragraphs (1) and (2) to another person.

(g) Rights not waivable. Subject to subsection (h), an account debtor may not waive or vary its rights under subsections (d)(1) and (e) or its option under subsection (d)(3).

(h) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

382-A: 12-107 Governing Law.

(a) Governing law: general rule. Except as provided in subsection (b), the local law of a controllable electronic record's jurisdiction governs a matter covered by this article.

(b) Governing law: Section 12-106. The local law of the controllable electronic record's jurisdiction for a controllable electronic record that evidences a controllable account or controllable payment intangible governs a matter covered by Section 12-106 unless an effective agreement determines that the local law of another jurisdiction governs.

(c) Controllable electronic record's jurisdiction. The following rules determine a controllable electronic record's jurisdiction under this section:

(1) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or this chapter, that jurisdiction is the controllable electronic record's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the [Uniform Commercial Code], that jurisdiction is the controllable electronic record's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(4) If paragraphs (1) through (3) do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the controllable electronic record's jurisdiction is the District of Columbia.

(d) Applicability of Article 12. If subsection (c)(5) applies and Article 12 is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this article is the law of the District of Columbia as though Article 12 were in effect in the District of Columbia without material modification. In this section, "Article 12" means Uniform Commercial Code—Controllable Electronic Records (with Conforming Amendments to Articles 1and 9), 2022 Official Text.

(e) Relation of transaction to controllable electronic record's jurisdiction not necessary. Subsections (b) through (d) apply even if a transaction does not bear any relation to the controllable electronic record's jurisdiction.

(f) Rights of purchasers determined at time of purchase. The rights acquired by a purchaser or a qualifying purchaser under Section 12-104 are governed by the law applicable under this section at the time of purchase.

ARTICLE 13

ADDITIONAL TRANSITION PROVISIONS FOR ARTICLES 9 AND 12

382-A:13-301 Savings Clause.

(a) Pre-effective-date transactions, liens, or interests. Except as otherwise provided in this part, Article 9 and Article 12 apply to a transaction, lien, or other interest in property, even if

the transaction, lien, or interest was entered into, created, or acquired before the effective date of this Article.

(b) Continuing validity. Except as otherwise provided in subsection (c) and Sections 13-302 through 13-306:

(1) a transaction, lien, or interest in property that was not governed by this chapter and was validly entered into, created, or transferred before the effective date of this Article, and would be subject to Article 9 as amended or Article 12 if it had been entered into, created, or transferred after the effective date of this Article, and the rights, duties, and interests flowing from the transaction, lien, or interest in property remain valid after the effective date of this Article; and

(2) the transaction, lien, or interest in property may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) Pre-effective-date proceedings. This Article does not affect an action, case, or proceeding commenced before the effective date of this Article.

382-A:13-302 Security Interest Perfected Before Effective Date.

(a) Continuing perfection: perfection requirements satisfied. A security interest that is enforceable and perfected immediately before the effective date of this Article is a perfected security interest under this Article if, on the effective date of this Article, the applicable requirements for enforceability and perfection under this Article are satisfied without further action.

(b) Continuing perfection: perfection requirements not satisfied. If, immediately before the effective date of this Article, a security interest is enforceable and perfected, but the applicable requirements for enforceability or perfection under this Article, are not satisfied on the effective date of this Article, the security interest:

(1) is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before the effective date of this Article or January 1, 2025;

(2) remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under Section 9-203 before January 1, 2025; and

(3) remains perfected thereafter only if the applicable requirements for perfection under this Article are satisfied before January 1, 2025.

382-A:13-303 Security Interest Unperfected Before Effective Date. A security interest that is enforceable immediately before the effective date of this Article but which would be unperfected at that time:

(1) remains an enforceable security interest until January 1, 2025;

(2) remains enforceable thereafter if the security interest becomes enforceable under Section 9-203 on the effective date of this Article or before January 1, 2025; and

(3) becomes perfected:

(A) without further action, on the effective date of this Article if the applicable requirements for perfection under this Article are satisfied before or at that time; or

(B) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

382-A:13-304 Effectiveness of Actions Taken Before Effective Date.

(a) Pre-effective-date action; attachment and perfection before adjustment date. If action, other than the filing of a financing statement, is taken before the effective date of this Article and the action would have resulted in perfection of the security interest had the security interest become enforceable before the effective date of this Article, the action is effective to perfect a security interest that attaches under this Article before January 1, 2025. An attached security interest becomes unperfected on January 1, 2025 unless the security interest becomes a perfected security interest under this Article before January 1, 2025.

(b) Pre-effective-date filing. The filing of a financing statement before the effective date of this Article is effective to perfect a security interest on the effective date of this Article to the extent the filing would satisfy the applicable requirements for perfection under this Article.

(c) Pre-effective-date enforceability actions. The taking of an action before the effective date of this Article is sufficient for the enforceability of a security interest on the effective date of this Article if the action would satisfy the applicable requirements for enforceability under this Article.

382-A:13-305 Priority

(a) Determination of priority. Subject to subsections (b) and (c), this Article determines the priority of conflicting claims to collateral.

(b) Established priorities. Subject to subsection (c), if the relative priorities of claims to collateral were established before the effective date of this Article, Article 9 determines priority.

(c) Determination of certain priorities on adjustment date. On January 1, 2025, to the extent that the relative priorities determined by this Article modify the relative priorities established before the effective date of this Article, the relative priorities of claims to Article 12 property and electronic money which were established before the effective date of this Article cease to apply.

382-A:13-306 Priority of Claims When Priority Rules of Article 9 Do Not Apply.

(a) Determination of priority. Subject to subsections (b) and (c), Article 12 determines the priority of conflicting claims to Article 12 property when the priority rules of Article 9 do not apply.

(b) Established priorities. Subject to subsection (c), when the priority rules of Article 9 do not apply and the relative priorities of claims to Article 12 property were established before the effective date of this Article, law other than Article 12 determines priority.

(c) Determination of certain priorities on adjustment date. When the priority rules of Article 9 do not apply, to the extent that the relative priorities determined by this Article modify the relative priorities established before the effective date of this Article, on January 1, 2025 the relative priorities of claims to Article 12 property which were established before the effective date of this Article cease to apply.

82 New Paragraph; Uniform Securities Act; Definitions; Open Blockchain Token. Amend RSA 421-B:1-102 by inserting after paragraph (35) the following new paragraph:

(35-a) "Open blockchain token" means a digital unit which is:

(A) Created:

(i) In response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(ii) By deploying computer code to a blockchain network that allows for the creation of digital tokens or other units; or

(iii) Using any combination of the methods specified in subparagraphs (i) and (ii) of this paragraph;

(B) Recorded in a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature, especially relating to the supply of units and their distribution; and

(C) Capable of being traded or transferred between persons without an intermediary or custodian of value.

83 New Paragraph; Uniform Securities Act; Exempt Transaction; Open Blockchain Token. Amend RSA 421-B:2-202 by inserting after paragraph (24) the following new paragraph:

(25) A purchase or sale of an open blockchain token if all of the following are met:

(A) The issuer or seller of the token, or the registered agent of the developer or seller, files a notice of intent with the secretary of state, as specified in subsection (D) of this section;

(B) The purpose of the token is for a consumptive purpose, which shall only be exchangeable for, or provided for the receipt of, goods, services or content, including rights of access to goods, services or content; and

(C) The issuer or seller of the token did not sell the token to the initial buyer as a financial investment. For purposes of this subsection, a developer seller of the token will be deemed not to have sold the token to the initial buyer as a financial investment if:

(i) The issuer or seller did not market the token as a financial investment; and

(ii) At least one of the following is true:

(a) The issuer or seller of the token reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

(b) The token has a consumptive purpose that is available at the time of sale and can be used at or near the time of sale for use for a consumptive purpose;

(c) If the token does not have a consumptive purpose available at the time of sale, the initial buyer of the token is prevented from reselling the token until the token is available for use for a consumptive purpose; or

(d) The issuer or seller takes other reasonable precautions to prevent buyers from purchasing the token as a financial investment.

(D) The issuer, seller or person who facilitates the exchange of an open blockchain token, or the registered agent of the applicable person, files a notice of intent with the secretary of state prior to offering or selling the tokens in this state. The notice of intent shall contain the name of the person acting as an issuer, seller or facilitator, the contact information of the person or the registered agent of the person, and a statement that any marketing or advertising materials, including web sites offering or selling open blockchain tokens, will contain a disclosure that the tokens are not registered as securities pursuant to a transaction exemption under RSA 421-B, the New Hampshire Uniform Securities Act. The notice shall also specify whether the person will be acting as an issuer, seller or facilitator. A form shall be made available by the office of the secretary of state on its Internet website for this purpose. The secretary of state shall charge a fee of $100 per filing.

84 New Subparagraph; Uniform Securities Act; Broker-Dealer Registration Requirements and Exemption. Amend RSA 421-B:4-401(b) by inserting after subparagraph (2) the following new subparagraph:

(3)(A) Except as otherwise provided by RSA 421-B:5-511, a person who exclusively facilitates the exchange of an open blockchain token if all of the following are met:

(i) The person, or the registered agent of the person, files a notice of intent with the secretary of state, as specified in RSA 421-B:2-202(26)(d);

(ii) The person has a reasonable and good faith belief that a token subject to exchange conforms to the requirements of paragraphs RSA 421-B:2-202(25)(a)-(c); and

(iii) The person takes reasonably prompt action to terminate the exchange of a token that does not conform to the requirements of this subsection.

85 New Section; Uniform Securities Act; Liability of Issuers, Seller, and Others Who Facilitate Exchange of Open Blockchain Tokens. Amend RSA 421-B by inserting after section 5-510 the following new section:

421-B:5-511 Liability of Issuers, Sellers, and Others Who Facilitate Exchange of Open Blockchain Tokens. Notwithstanding any other provision of law, an issuer, seller, or a person who facilitates the exchange of an open blockchain token is subject to the provisions of RSA 421-B:5-501 through RSA 421-B:5-503 and RSA 421-B:5-505 through RSA 421-B:5-510 only to the extent necessary to carry out those sections. The secretary of state shall have the authority provided under

RSA 421-B:6-601 through RSA 421-B:6-613 to determine compliance with the provisions of this section, including whether a person qualifies for the exemptions set forth in this section. The evidentiary burdens specified in RSA 421-B:5-503 shall apply in any proceeding initiated by the secretary of state pursuant to this subsection.

86 New Subparagraphs; Department of Administrative Services; Division of Procurement and Support Services; Structural Steel Defined. Amend RSA 21-I:11, II by inserting after subparagraph (f) the following new subparagraphs:

(g) "Structural steel" shall mean a product consisting of the elements of the structural frame that are shown and sized in the structural design documents, essential to support the design loads as defined in the 2016 American Institute of Steel Construction (AISC) code of standard practice for steel buildings and bridges 303-16.

(h) "Domestic fabricated structural steel" shall mean an iron or steel product where all manufacturing must take place in the United States, from the initial melting stage, through fabrication, and application of coatings, except metallurgical processes involving the refinement of steel additives. The miscellaneous steel or iron components, subcomponents, and hardware necessary to encase, assemble, and construct such components, including, but not limited to, cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, and door hinges, shall not be subject to the United States manufacturing requirement of this definition.

(i) "Permanently incorporated product" shall mean a product that is required to remain in place at the completion of the project contract, in a fixed location, affixed to the public work to which it was incorporated and shall not mean a product that will be removed from the project at or before its completion.

87 New Paragraph; Department of Administrative Services; Division of Procurement and Support Services; Established Preference of American Made Materials in State Administered Contracts. Amend RSA 21-I:11 by inserting after paragraph II the following new paragraph:

III.(a) Notwithstanding any law to the contrary relating to procurement and to the extent permitted by federal law, any state administered contract for construction, reconstruction, alteration, repair, improvement, or maintenance of a public building or public works with the state shall contain a provision that the permanently incorporated iron, structural steel, and fabricated structural steel used or supplied in the performance of the contract or any subcontract as defined in RSA 21-I:11, II shall be fabricated in the United States. Such provision shall only be required if there is at least $1,000,000 state dollars being used in the contract.

(b) Departments and agencies of this state affected by subparagraph (a) shall identify what steel products need Buy America certification in the contract documents.

(c) Departments and agencies of this state affected by subparagraph (a) may request a waiver from the department of administrative services, which shall provide an opportunity for public

hearing and comment at least 30 days before finalizing a waiver, in the same manner as described in RSA 541-A:11. The department of administrative services may grant a waiver upon finding that:

(1) Application of the project would be inconsistent with the public interest;

(2) The product is not produced or fabricated in the United States and that it would be in the public interest to provide a waiver;

(3) The item for which a waiver is being requested is not produced and fabricated in the United States in sufficient and reasonably available quantities and of satisfactory quality; or

(d) A request for waiver under subparagraph (c) shall include facts and justification to support the granting of the waiver. The response to a request shall be in writing and made available to the public upon request. In granting a waiver, the department of administrative services shall consider all appropriate factors including, but not limited to, any cost, administrative burden, and delay that would be imposed if the provision were not waived.

(e) Waivers granted by the department of administrative services under subparagraph (b), shall be granted on a project-by-project basis and shall be nontransferable.

(f) If a court or federal or state agency has determined that any person intentionally affixed a "Made in America" label to structural steel under this paragraph that was not made in the United States or otherwise falsely represented that structural steel under this paragraph was produced in the United States, the department of administrative services shall withhold contract payment until the structural steel can be replaced, a waiver is granted, or the noncompliance of this paragraph is otherwise remedied. Failure to comply or produce a satisfactory remedy to the state may result in debarment proceedings in accordance with RSA 21-I:11-c, III.

(g) If any provision of this paragraph or application thereof is held to be invalid or in conflict with any applicable laws, this invalidity or conflict shall not affect the other provisions or applications which shall be given affect without the invalid provisions or applications, and to this end, the provisions and applications of this paragraph are severable.

88 Effective Date.

I. Sections 86-87 of this act shall take effect January 1, 2023.

II. The remainder of this act shall take effect January 1, 2025.

LBA
22-2784
Amended 5/9/22

HB 1503-FN- FISCAL NOTE

AS AMENDED BY THE SENATE (AMENDMENTS #2022-1939s and #2022-1974s)

AN ACT adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and establishing state procurement policies intended to promote the use of American materials.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

METHODOLOGY:

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws. This bill also adopts the Uniform Commercial Code on controllable electronic records. Lastly, this bill requires the use of American made steel products in all public works projects where the state administers the contract and the contract involves at least $1,000,000 state dollars.

The Department of State has determined the portion of the bill dealing with open blockchain tokens and the adoption of the Uniform Commercial Code on controllable electronic records has a total fiscal impact of less than $10,000 in each of the fiscal years for 2024 through 2025.

The Department of Administrative Services state there will be an indeterminable impact to state General fund expenditures for the portion of the bill requiring the use of American made steal products in all public works projects. The Department states the cost impacts of using American manufactured iron, steel and manufactured goods is indeterminable due to wide-ranging price fluctuations for these goods, supply-chain shortages, and United States imposed tariffs.

AGENCIES CONTACTED:

Department of State and Department of Administrative Services

CHAPTER 281
HB 1503-FN - FINAL VERSION

15Mar2022... 0828h
04/28/2022 1661s
05/05/2022 1939s
05/05/2022 1974s
26May2022... 2077CofC
26May2022... 2125EBA

2022 SESSION

22-2784
08/04

HOUSE BILL ***1503-FN***

AN ACT adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and establishing state procurement policies intended to promote the use of American materials.

SPONSORS: Rep. Ammon, Hills. 40; Rep. Alexander Jr., Hills. 6; Rep. Osborne, Rock. 4; Rep. Warden, Hills. 15; Rep. Edwards, Rock. 4; Rep. Berezhny, Graf. 9; Rep. Baxter, Rock. 20; Rep. White, Merr. 20; Sen. Avard, Dist 12

COMMITTEE: Commerce and Consumer Affairs

AMENDED ANALYSIS

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws. This bill also adopts the Uniform Commercial Code on controllable electronic records. This bill also establishes the requirements and fraud processes, for the use of American made steel products in state public works projects.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 281
HB 1503-FN - FINAL VERSION

15Mar2022... 0828h
04/28/2022 1661s
05/05/2022 1939s
05/05/2022 1974s
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22-2784
08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and establishing state procurement policies intended to promote the use of American materials.

Be it Enacted by the Senate and House of Representatives in General Court convened:

281:1 Statement of Intent.

I. The Joint Committee on the Uniform Commercial Code and Emerging Technologies of the Uniform Law Commission has developed draft Uniform Commercial Code provisions governing certain digital assets, specifically those that fall within the definition of "controllable electronic records." The current draft has been extensively vetted by those who understand and participate in digital transactions.

II. Adoption of the Uniform Law Commission's draft by the New Hampshire general court will create a considerable advantage for New Hampshire to lead in emerging industries utilizing blockchain, digital ledger technology, virtual currencies, and other digital assets and would provide a sensible framework and legal certainty for transactions of controllable electronic records. In subsequent sessions, if necessary, the New Hampshire general court 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.

281:2 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(10) to read as follows:

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. [~~Conspicuous terms include the following:~~

~~(A) 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; and~~

~~(B) 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.~~]

281:3 New Paragraph; Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b) by inserting after paragraph (16) the following new paragraph:

(16A) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

281:4 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(21) to read as follows:

(21) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control, ***other than pursuant to Section 7-106(d),*** of a negotiable electronic document of title.

281:5 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(24) to read as follows:

(24) "Money" means a medium of exchange ***that is*** 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 term 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 adopted by a government, or organization or pursuant to such an agreement.***

281:6 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(27) to read as follows:

(27) "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. ***The term includes a protected series, however denominated, of an entity if the protected series is established under law other than this chapter 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.***

281:7 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(37) to read as follows:

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing ***and, with respect to a record that is not a writing, includes the***

attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record. "Sign" and "Signature" have corresponding meanings.

281:8 Uniform Commercial Code; Definitions. Amend the introductory paragraph of RSA 382-A:1-204 to read as follows:

Except as otherwise provided in Articles 3, 4,[~~and~~] 5, ***6, and 12,*** a person gives value for rights if the person acquires them:

281:9 Uniform Commercial Code; Sales; Scope. RSA 382-A:2-102 is repealed and reenacted to read as follows:

(1) Unless the context otherwise requires and except as provided in subsections (3) and (4), this Article applies to transactions in goods.

(2) If the goods aspects of a hybrid transaction predominate, this Article applies to the transaction.

(3) If the goods aspects of a hybrid transaction do not predominate, the provisions of this Article which relate primarily to the goods aspects of the transaction and not to the transaction as a whole apply.

(4) This article 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 Article impair or repeal any statute regulating sales to consumers, farmers, or other specified classes of buyers.

(5) This Section does not preclude in appropriate circumstances the application of other law to the aspects of a hybrid transaction which do not relate to the goods even if the goods aspects of the transaction predominate.

281:10 Uniform Commercial Code; Sales; Definitions. RSA 382-A:2-106 is repealed and reenacted to read as follows:

382-A:2-106 Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; "Cancellation".

(1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2–401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all

obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

(5) "Hybrid transaction" means a single transaction involving a sale of goods and a sale, lease, or license of other property or the provision of services.

281:11 Uniform Commercial Code; Sales; Statute of Frauds. RSA 382-A:2-201 is repealed and reenacted to read as follows:

382-A:2-201 Formal Requirements; Statute of Frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A record is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such record.

(2) Between merchants if within a reasonable time a record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless a record containing a notice of objection to its contents is given with 10 days after it is received.

281:12 Uniform Commercial Code; Sales; Final Written Expression. Amend RSA 382-A:2-202 to read as follows:

382-A:2-202 Final Written Expression; Parol or Extrinsic Evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a [~~writing~~] ***record*** intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of performance, course of dealing, or usage of trade (Section 1-303); and

(b) by evidence of consistent additional terms unless the court finds the [~~writing~~] ***record*** to have been intended also as a complete and exclusive statement of the terms of the agreement.

281:13 Uniform Commercial Code; Sales; Seals Inoperative. Amend RSA 382-A:2-203 to read as follows:

382-A:2-203 Seals Inoperative. The affixing of a seal to a [~~writing~~] ***record*** evidencing a contract for sale or an offer to buy or sell goods does not constitute the [~~writing~~] ***record*** a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

281:14 Uniform Commercial Code; Sales; Firm Offers. Amend RSA 382-A:2-205 to read as follows:

382-A:2-205 Firm Offers. An offer by a merchant to buy or sell goods in a signed [~~writing~~] ***writing*** which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

281:15 Uniform Commercial Code; Sales; Modification, Recission, and Waiver. Amend RSA 382-A:2-209(2) to read as follows:

(2) A signed agreement which excludes modification or rescission except by a signed [~~writing~~] ***record*** cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

281:16 Uniform Commercial Code; Leases; Scope. RSA 382-A:2A-102 is repealed and reenacted to read as follows:

382-A:2A-102 Scope.

(1) Except as provided in subsection (3), this article applies to any transaction, regardless of form, that creates a lease.

(2) If the lease-of-goods aspects of a hybrid lease predominate, this article applies to the transaction.

(3) If the lease-of-goods aspects of a hybrid lease do not predominate:

(A) only the provisions of this article which relate primarily to the lease-of-goods aspects of the transaction and not to the transaction as a whole apply;

(B) RSA 382-A:2A-209 applies if the lease is a finance lease; and

(C) RSA 382-A:2A-407 applies to the promises of a person that is the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods.

(4) This Section does not preclude the application in appropriate circumstances of other law to the aspects of a hybrid lease which do not relate to the lease of goods even if the lease-of-goods aspects of the transaction predominate.

281:17 New Subparagraph; Definitions; Uniform Commercial Code; Leases; Definitions. Amend RSA 382-A:2A-103 by inserting after subparagraph (1)(h) the following new subparagraph:

(hh) "Hybrid lease" means a single transaction involving a lease of goods and:

(i) the provision of services;

(ii) a sale of other goods; or

(iii) a sale, lease, or license of property other than goods.

281:18 Uniform Commercial Code; Leases; Statute of Frauds. Amend RSA 382-A:2A-201 to read as follows:

382-A:2A-201 Statute of Frauds.

(1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000; or

(b) there is a [~~writing~~] ***record***, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A [~~writing~~] ***record*** is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable:

(a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a [~~writing~~] ***record*** signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) a reasonable lease term.

281:19 Uniform Commercial Code; Leases; Final Written Expression. Amend RSA 382-A:2A-202 to read as follows:

382-A:2A-202 Final Written Expression; Parol or Extrinsic Evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a [~~writing~~] ***record*** intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade or by course of performance; and

(b) by evidence of consistent additional terms unless the court finds the [~~writing~~] ***record*** to have been intended also as a complete and exclusive statement of the terms of the agreement.

281:20 Uniform Commercial Code; Leases; Seals Inoperative. Amend RSA 382-A:2A-203 to read as follows:

382-A:2A-203 Seals Inoperative. The affixing of a seal to a [~~writing~~] ***record*** evidencing a lease contract or an offer to enter into a lease contract does not render the [~~writing~~] ***record*** a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

281:21 Uniform Commercial Code; Leases; Firm Offers. Amend RSA 382-A:2A-205 to read as follows:

382-A:2A-205 Firm Offers. An offer by a merchant to lease goods to or from another person in a signed [~~writing~~] ***record*** that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

281:22 Uniform Commercial Code; Leases; Modification, Recission, and Waiver. Amend RSA 382-A:2A-208(2) to read as follows:

(2) A signed lease agreement that excludes modification or rescission except by a signed [~~writing~~] ***record*** may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

281:23 Uniform Commercial Code; Negotiable Instruments. Amend RSA 382-A:3-104(3) to read as follows:

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, [~~or~~] (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor***; (iv) a term that specifies the law that governs the promise or order; or (v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.***

281:24 Uniform Commercial Code; Negotiable Instruments; Issue of Instrument. Amend RSA 382-A:3-105(a) to read as follows:

(a) "Issue" means*:*

(1) 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***; or***

(2) if agreed by the payee, first transmission by the drawer to the payee of an image of an item and information derived from the item in a manner that enables the depository bank to collect the item by transferring or presenting under federal law an electronic check.

281:25 Uniform Commercial Code; Negotiable Instruments; Discharge by Cancellation or Renunciation. Amend RSA 382-A:3-604 to read as follows:

382-A:3-604 Discharge by Cancellation or Renunciation.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) 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 (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed [~~writing~~] ***record. The obligation of a party to pay a check is not discharged solely by the destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made, and subsequently, the information and image are transmitted for payment.***

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement

281:26 Uniform Commercial Code; Funds Transfers; Payment Order. Amend the introductory paragraph of RSA 382-A:4A-103(a)(1) to read as follows:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, [~~electronically~~], or in [~~writing~~] ***a record***, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

281:27 Uniform Commercial Code; Funds Transfers; Security Procedure. Amend RSA 382-A:4A-201 to read as follows:

382-A:4A-201 Security Procedure. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure ***may impose an obligation on the receiving bank or the customer and*** may require the use of algorithms or other codes, identifying words, [~~or~~] numbers, ***symbols, sounds or biometrics,*** encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer ***or requiring that a payment order be sent from a known email address, IP address or phone number*** is not by itself a security procedure.

281:28 Uniform Commercial Code; Funds Transfers; Authorized and Verified Payment Orders. Amend RSA 382-A:4A-202(a)-(c) to read as follows:

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with ***the bank's obligation under*** the security procedure and any [~~written~~] agreement or instruction of the customer***, evidenced by a record,*** restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates [~~a written~~] ***an*** agreement ***evidenced by a record*** with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in [~~writing~~] ***a record*** to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the ***bank's obligations under the*** security procedure chosen by the customer.

281:29 Uniform Commercial Code; Funds Transfers; Unenforceability of Certain Verified Payment Orders. Amend RSA 382-A:4A-203(a)(1) to read as follows:

(1) By express [~~written~~] agreement ***evidenced by a record***, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

281:30 Uniform Commercial Code; Funds Transfers; Misdescription of Beneficiary. Amend RSA 382-A:4A-207(c)(2) to read as follows:

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a [~~writing~~] ***record*** stating the information to which the notice relates.

281:31 Uniform Commercial Code; Funds Transfer; Misdescription of Intermediary Bank or Beneficiary's Bank. Amend RSA 382-A:4A-208(b)(2) to read as follows:

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a [~~writing~~] ***record*** stating the information to which the notice relates.

281:32 Uniform Commercial Code; Funds Transfers; Rejection of Payment Order. Amend RSA 382-A:4A-210(a) to read as follows:

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally[~~, electronically, or in writing~~] ***or in a record.*** A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

281:33 Uniform Commercial Code; Funds Transfer; Cancellation and Amendment of Payment Order. Amend RSA 382-A:4A-211(a) to read as follows:

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally[~~, electronically, or in writing~~] ***or in a record.*** If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

281:34 Uniform Commercial Code; Letters of Credit; Choice of Law and Forum. Amend RSA 382-A:5-116(c)-(e) to read as follows:

(c) ***For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under subsection (d).***

(d) A branch of a bank is considered to be located at 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.

(e) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 5-103(c).

[~~(d)~~] *(f)* If there is conflict between this article and Article 3, 4, 4A, or 9, this article governs.

[~~(e)~~] *(g)* The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

281:35 Uniform Commercial Code; Documents of Title; Control of Electronic Document of Title. Amend RSA 382-A:7-106(b) to read as follows:

(b) A system satisfies subsection (a), and a person[~~is deemed to have~~] ***has*** control of an electronic document of title, if the document is created, stored, and [~~assigned~~] ***transferred*** in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified [~~assignee~~] ***transferee*** of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) A system satisfies subsection (a) and a person has control of an electronic document of title if an 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 to readily identify each electronic copy as an authoritative copy or nonauthoritative copy;

(2) enables the person readily to 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

(3) gives the person exclusive power, subject to subsection (h) to:

(A) prevent others from altering the person to which each authoritative electronic copy has been issued or transferred; and

(B) transfer control of each authoritative electronic copy.

(d) If a person has the powers that are specified in subsection (c)(3), the powers are presumed to be exclusive.

(e) A person has control of an electronic document of title if another person, other than the transferor of an interest in the document:

(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.

(f) A person that has control under this section is not required to acknowledge that it has or will obtain control on behalf of another person.

(g) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.

(h) A power is exclusive under subsection (c)(3), even if:

(1) the authoritative electronic copy, a record attached to or logically associated with the electronic copy or a system in which the electronic copy is recorded limits the use of the document or has a protocol that is programmed to cause a change, including a transfer or loss of control; or

(2) the person shares the power with another person.

281:36 Uniform Commercial Code; Investment Securities; Definitions. Amend RSA 382-A:8-102(6)(i) to read as follows:

(i) send a signed [~~writing~~] ***record***; or

281:37 Uniform Commercial Code; Investment Securities; Definitions. Amend RSA 382-A:8-106(d)-(g) to read as follows:

(d) A purchaser has "control" of a security entitlement if:

(1) the purchaser becomes the entitlement holder;

(2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(3) another person [~~has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser~~] ***other than the transferor of an interest in the security entitlement:***

(A) has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or

(B) obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c) or (d) has control even if the registered owner in the case of subsection (c) or the entitlement holder in the case of subsection (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of a purchaser.

(i) If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the purchaser and is not required to confirm the acknowledgment to another person.

281:38 Uniform Commercial Code; Investment Securities; Protected Purchaser. Amend RSA 382-A:8-303(b) to read as follows:

(b) [~~In addition to acquiring the rights of a purchaser, a~~] ***A*** protected purchaser also acquires its interest in the security free of any adverse claim.

281:39 Uniform Commercial Code; Investment Securities; Acquisition of Security Entitlement from Securities Intermediary. Amend RSA 382-A:8-501(d) to read as follows:

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the [~~other~~] person, and has not been indorsed to the securities intermediary or in blank, the other person

is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

281:40 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(2) to read as follows:

(2) "Account", except as used in "account for", ***"account to," "account statement," "customer's account," "on account of," "statement of account," and paragraphs (14) and (29)*** means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes ***controllable accounts and*** health-care-insurance receivables. The term does not include (i) [~~rights to payment evidenced by chattel paper or an instrument~~] ***chattel paper***, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card, ***or (vii) rights to payment evidenced by an instrument.***

281:41 New Paragraphs; Definitions; Uniform Commercial Code; Secured Transactions; Assignee. Amend RSA 382-A:9-102 by inserting after paragraph (6) the following new paragraphs:

(6A) "Assignee" means a person:

(A) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not an obligation to be secured is outstanding; or

(B) to which an account, chattel paper, payment intangible, or promissory note has been sold.

(6B) "Assignor" means a person that:

(A) under a security agreement creates or provides for a security interest that secures an obligation; or

(B) sells an account, chattel paper, payment intangible, or promissory note.

281:42 Uniform Commercial Code; Secured Transactions; Definitions. RSA 382-A:9-102(11) is repealed and reenacted to read as follows:

(11) "Chattel paper" means:

(A) 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; or

(B) 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:

(i) the right to payment and lease agreement are evidenced by a record; and

(ii) the predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

The term does not include (i) a right to payment arising out of a charter or other contract involving the use or hire of a vessel or (ii) 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.

281:43 New Paragraphs; Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102 by inserting after paragraph 27 the following new paragraphs:

(27A) "Controllable account" means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that under Section 12-105 has control of the controllable electronic record.

(27B) "Controllable payment intangible" means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that under Section 12-105 has control of the controllable electronic record.

281:44 New Paragraph; Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102 by inserting after paragraph 31 the following new paragraph:

(31A) "Electronic money" means money in an electronic form.

281:45 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(42) to read as follows:

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes ***controllable electronic records,*** payment intangibles and software.

281:46 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(47) to read as follows:

(47) "Instrument" means a negotiable instrument (defined in Section 3-104), or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, [~~or~~] (iii) writings that evidence 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, ***or (iv) writings that evidence chattel paper.***

281:47 New Paragraph; Definitions; Money; Secured Transactions; UCC. Amend RSA 382-A:9-102 by inserting after paragraph (54) the following new paragraph:

(54A) "Money" has the meaning provided in Section 1-201(24), but the term does not include (i) a deposit account or (ii) money in an electronic form that cannot be subjected to control under Section 9-105A.

281:48 Definitions; Payment Intangible; Secured Transactions; UCC. Amend RSA 382-A:9-102(61) to read as follows:

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. ***The term includes a controllable payment intangible.***

281:49 New Paragraph; Definitions; Tangible Money; Secured Transactions; UCC. Amend RSA 382-A:9-102 by inserting after paragraph (79) the following new paragraph:

(79A) "Tangible money" means money in a tangible form.

281:50 Definitions; Controllable Electronic Record; Qualified Purchaser; Secured Transactions; UCC. Amend RSA 382-A:9-102(b) to read as follows:

(b) "Control" as provided in Section 7-106 and the following definitions in other articles apply to this article:

"Applicant" Section 5-102.

"Beneficiary" Section 5-102.

"Broker" Section 8-102.

"Certificated security" Section 8-102.

"Check" Section 3-104.

"Clearing corporation" Section 8-102.

"Contract for sale" Section 2-106.

"Controllable electronic record" Section 12-102.

"Customer" Section 4-104.

"Entitlement holder" Section 8-102.

"Financial asset" Section 8-102.

"Holder in due course" Section 3-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right) Section 5-102.

"Issuer" (with respect to a security) Section 8-201.

"Issuer" (with respect to documents of title) Section 7-102.

"Lease" Section 2A-103.

"Lease agreement" Section 2A-103.

"Lease contract" Section 2A-103.

"Leasehold interest" Section 2A-103.

"Lessee" Section 2A-103.

"Lessee in ordinary course of business" Section 2A-103.
"Lessor" Section 2A-103.
"Lessor's residual interest" Section 2A-103.
"Letter of credit" Section 5-102.
"Merchant" Section 2-104.
"Negotiable instrument" Section 3-104.
"Nominated person" Section 5-102.
"Note" Section 3-104.
"Proceeds of a letter of credit" Section 5-114.
"Prove" Section 3-103.
"Qualifying purchaser" Section 12-102.
"Sale" Section 2-106.
"Securities account" Section 8-501.
"Securities intermediary" Section 8-102.
"Security" Section 8-102.
"Security certificate" Section 8-102.
"Security entitlement" Section 8-102.
"Uncertificated security" Section 8-102.

281:51 Control of Deposit Account; Secured Transactions; UCC. Amend RSA 382-A:9-104 to read as follows:

382-A:9-104 Control of Deposit Account.

(a) Requirements for control. A secured party has control of a deposit account if:

(1) the secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party, and bank have agreed in [~~an authenticated~~] ***a signed*** 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***; or***

(4) another person, other than the debtor:

(A) has control of the deposit account and acknowledges that it has control on behalf of the secured party; or

(B) obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party.

(b) Debtor's right to direct disposition. A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

281:52 Control of Electronic Copy of Record Evidencing Chattel Paper; Secured Transactions; UCC. RSA 382-A:9-105 is repealed and reenacted to read as follows:

382-A:9-105 Control of Electronic Copy of Record Evidencing Chattel Paper.

(a) General rule: control of electronic copy of record evidencing chattel paper. A purchaser has control of each 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 chattel paper was assigned.

(b) Single authoritative copy. A system satisfies subsection (a) if the record or records evidencing the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the purchaser as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the purchaser or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the purchaser;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) One or more authoritative copies. A system satisfies subsection (a) and a purchaser has control of an electronic copy of a record evidencing chattel paper if:

(1) the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(A) enables the person readily to identify each electronic copy as an authoritative copy or nonauthoritative copy;

(B) enables the purchaser readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of each authoritative electronic copy; and

(C) gives the purchaser exclusive power, subject to subsection (d), to:

(i) prevent others from adding or changing an identified assignee of each authoritative electronic copy; and

(ii) transfer control of each authoritative electronic copy; or

(2) another person, other than the debtor:

(A) has control of each authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(B) obtains control of each authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

(d) Presumption of exclusivity of certain powers. If a person has the powers that are specified in subsection (c)(1)(C), the powers are presumed to be exclusive.

(e) Meaning of exclusive. A power is exclusive under subsection (b)(1)(C), even if:

(1) the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the purchaser shares the power with another person.

281:53 New Section; Control of Electronic Money. Amend RSA 382-A by inserting after section 9-105 the following new section:

382-A: 9-105A Control of Electronic Money.

(a) General rule: control of electronic money. A person has control of electronic money if:

(1) 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:

(A) the power to avail itself of substantially all the benefit from the electronic money; and

(B) exclusive power, subject to subsection (b), to:

(i) prevent others from availing themselves of substantially all the benefit from the electronic money; and

(ii) 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; and

(2) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers under paragraph (1).

(b) Presumption of exclusivity of certain powers. If a person has the powers that are specified in subsection (a)(1)(B), the powers are presumed to be exclusive.

(c) Control through another person. A person has control of electronic money if another person, other than the transferor of an interest in the electronic money:

(1) has control of the electronic money and acknowledges that it has control on behalf of the person, or

(2) obtains control of the electronic money after having acknowledged that it will obtain control of the electronic money on behalf of the person.

(d) Meaning of exclusive. A power is exclusive under subsection (a)(1)(B), even if:

(1) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded limits the use of the electronic money or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the person shares the power with another person.

281:54 New Sections; Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible; Nor Requirement to Confirm; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 107 the following new sections:

382-A:9-107A Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible.

(a) Control under Section 12-105. A secured party has control of a controllable electronic record as provided in Section 12-105.

(b) Control of controllable account and controllable payment intangible. A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

382-A:9-107B No Requirement to Acknowledge or Confirm; No Duties.

(a) No requirement to acknowledge. A person that has control under Section 9-104, 9-105, or 9-105A is not required to acknowledge that it has or will obtain control on behalf of another person.

(b) No duties or confirmation. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.

281:55 Attachment and Enforceability of Security Interest; Secured Transactions; UCC. Amend RSA 382-A:9-203(b)(3) to read as follows:

(3) one of the following conditions is met:

(A) the debtor has [~~authenticated~~] ***signed*** a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement; [~~or~~]

(D) the collateral is ***controllable accounts, controllable electronic records, controllable payment intangibles,*** deposit accounts, [~~electronic chattel paper,~~] ***electronic***

documents, electronic money, investment property, ***or*** letter-of-credit rights[~~, or electronic documents,~~] and the secured party has control under Section 7-106, 9-104, 9-105, ***9-105A,*** 9-106, [~~or~~] 9-107***, or 9-107A*** pursuant to the debtor's security agreement***; or***

(E) the collateral is chattel paper and the secured party has possession and control under Section 9-314A pursuant to the debtor's security agreement.

281:56 Attachment and Enforceability; Secured Transactions; UCC. Amend RSA 382-A:9-203(b)-(c) to read as follows:

(b) When after-acquired property clause not effective. ***Subject to subsection (c),*** a security interest does not attach under a term constituting an after-acquired property clause to:

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) a commercial tort claim.

(c) ***Limitation on subsection (b). Subsection (b) does not prevent a security interest from attaching:***

(1) to consumer goods as proceeds under Section 9-315(a) or commingled goods under section 9-336(c);

(2) to a commercial tort claim as proceeds under Section 9-315(a); or

(3) under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.

(d) Future advances and other value. A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

281:57 Duties and Rights; Secured Party in Control; Secured Transactions; UCC. Amend the introductory paragraph of RSA 382-A:9-207(c) to read as follows:

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, ***9-105A,*** 9-106, [~~or~~] 9-107***, or 9-107A***:

281:58 Additional Duties of Secured Party; Secured Transactions; UCC. Amend RSA 382-A:9-208(b) to read as follows:

(b) Duties of secured party after receiving demand from debtor. Within 10 days after receiving[~~an authenticated~~] ***a signed*** demand by the debtor:

(1) a secured party having control of a deposit account under Section 9-104(a)(2) shall send to the bank with which the deposit account is maintained [~~an authenticated~~]***a signed*** statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under Section 9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control [~~of electronic chattel paper~~] under Section 9-105 ***of an electronic copy of a record evidencing chattel paper*** shall ***transfer control of the electronic copy to the debtor or a person designated by the debtor;*** [~~:~~]

[~~(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;~~

~~(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper 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; and~~

~~(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;~~]

(4) a secured party having control of investment property under Section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an [~~authenticated record~~] ***a signed record*** that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under Section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party [~~an authenticated~~] ***a signed*** release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; [~~and~~

~~(6) a secured party having control of an electronic document shall:~~

~~(A) give control of the electronic document to the debtor or its designated custodian;~~

~~(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the 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; and~~

~~(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.~~]

(6) a secured party having control under Section 7-106 of an authoritative copy of an electronic document of title shall transfer control of the authoritative copy to the debtor or a person designated by the debtor;

(7) a secured party having control under Section 9-105A of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor; and

(8) a secured party having control under Section 12-105 of a controllable electronic record shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

281:59 Law Governing Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-301 to read as follows:

382-A:9-301 Law Governing Perfection and Priority of Security Interests. Except as otherwise provided in Sections 9-303 through [~~9-306~~] ***9-306B***, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, ***or tangible*** money[~~, or tangible chattel paper~~] is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

281:60 New Sections; Chattel Paper Evidenced by Authoritative Electronic Copy. Amend RSA 382-A by inserting after section 9-306 the following new sections:

382-A:9-306A Law Governing Perfection and Priority of Security Interests in Chattel Paper.

(a) Chattel paper evidenced by authoritative electronic copy. Except as provided in subsection (e), 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 electronic chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper.

(b) Electronic Chattel Paper's Jurisdiction. The following rules determine the electronic chattel paper's jurisdiction under this section:

(1) If the authoritative electronic copy of chattel paper, or a record attached to or logically associated with the electronic copy which is readily available for review, expressly provides that a particular jurisdiction is the electronic chattel paper's jurisdiction for purposes of this part, this article, or the [Uniform Commercial Code], that jurisdiction is the electronic chattel paper's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this part, this article, or the [Uniform Commercial Code], that jurisdiction is the electronic chattel paper's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the electronic copy, or a record attached to or logically associated with the electronic copy which is readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction is the electronic chattel paper's jurisdiction.

(4) If paragraphs (1) through (3) do not apply and the rules of the system in which the 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 electronic chattel paper's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the electronic chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

(c) Relation of transaction to electronic chattel paper's jurisdiction not necessary. Subsections (a) and (b) apply even if a transaction does not bear any relation to the electronic chattel paper's jurisdiction.

(d) Chattel paper evidenced by authoritative tangible copy. If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while an authoritative tangible copy of a record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the chattel paper by possession under Section 9-314A; and

(B) the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(e) When perfection governed by law of jurisdiction where debtor is located. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

382-A:9-306B Law Governing Perfection and Priority of Security Interests in Controllable Accounts, Controllable Electronic Records, and Controllable Payment Intangibles.

(a) Governing law: general rules. Except as provided in subsection (b), the local law of the controllable electronic record's jurisdiction as specified in Section 12-107(c) and (d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable account, controllable electronic record, or controllable payment intangible.

(b) When perfection governed by law of jurisdiction where debtor is located. The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and

(2) automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible.

281:61 When Filing Required; Secured Transactions; UCC. Amend RSA 382-A:9-310(b)(8)-(10) to read as follows:

(8) in ***controllable accounts, controllable electronic records, controllable payment intangibles,*** deposit accounts, [~~electronic chattel paper,~~] electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 9-314;

(9) ***in chattel paper which is perfected by possession and control under Section 9-314A;***

(10) in proceeds which is perfected under Section 9-315; or

[~~(10)~~] ***(11)*** that is perfected under Section 9-316.

281:62 Perfection of Security Interests; Secured Transactions; UCC. Amend RSA 382-A:9-312 to read as follows:

382-A:9-312 Perfection of Security Interests in Chattel Paper, ***Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles,*** Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(a) Perfection by filing permitted. A security interest in chattel paper, [~~negotiable documents,~~] ***controllable accounts, controllable electronic records, controllable payment intangibles,*** instruments, [~~or~~] investment property, ***or negotiable documents*** may be perfected by filing.

(b) Control or possession of certain collateral. Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under Section 9-314;

(2) and except as otherwise provided in Section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314; [~~and~~]

(3) a security interest in ***tangible*** money may be perfected only by the secured party's taking possession under Section 9-313***; and***

(4) a security interest in electronic money may be perfected only by control under Section 9-314.

(c) Goods covered by negotiable document. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) Goods covered by nonnegotiable document. While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) Temporary perfection: new value. A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under [~~an authenticated~~] ***a signed*** security agreement.

(f) Temporary perfection: goods or documents made available to debtor. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) Temporary perfection: delivery of security certificate or instrument to debtor. A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) Expiration of temporary perfection. After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

281:63 Possession By Secured Party Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-313(a) to read as follows:

(a) Perfection by possession or delivery. Except as otherwise provided in subsection (b), a secured party may perfect a security interest in [~~tangible negotiable documents,~~] goods, instruments, ***negotiable tangible documents, or tangible*** money, [~~or tangible chattel paper~~] by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8-301.

281:64 Possession by a Secured Party; Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-313(c) to read as follows:

(c) Collateral in possession of person other than debtor. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession [~~authenticates~~] ***signs*** a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having [~~authenticated~~] ***signed*** a record acknowledging that it will hold possession of collateral for the secured party's benefit.

281:65 Perfection by Control; Secured Transactions; UCC. Amend RSA 382-A:9-314(a)-(b) to read as follows:

(a) Perfection by control. A security interest in[~~investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents~~] ***controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, or letter-of-credit rights*** may be perfected by control of the collateral under Section 7-106, 9-104, [~~9-105,~~] ***9-105A,*** 9-106,[~~or~~] 9-107, ***or 9-107A.***

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in ***controllable accounts, controllable electronic records, controllable payment intangibles,*** deposit accounts,[~~electronic chattel paper, letter-of-credit rights, or~~] electronic documents, ***electronic money, or letter-of-credit rights*** is perfected by control under Section 7-106, 9-104, [~~9-105,~~] ***9-105A,*** [~~or~~] 9-107, ***or 9-107A*** when the secured party obtains control and remains perfected by control only while the secured party retains control.

281:66 New Section; Perfection by Possession; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 9-314 the following new section:

382-A:9-314A Perfection by Possession and Control of Chattel Paper.

(a) Perfection by possession and control. 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.

(b) Time of perfection; continuation of perfection. A security interest is perfected under subsection (a) when the secured party takes possession and obtains control and remains perfected under subsection (a) only while the secured party retains possession and control.

(c) Application of Section 9-313 to Perfection by Possession of Chattel Paper. Section 9-313(c) and (f) through (i) applies to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

281:67 Continued Perfection of Security Interest; Secured Transactions; UCC. Amend the introductory paragraph of RSA 382-A:9-316(a) to read as follows:

(a) General rule: effect on perfection of change in governing law. A security interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1), [~~or~~] 9-305(c), ***9-306A(e), or 9-306B(b)*** remains perfected until the earliest of:

281:68 Continued Perfection of Security Interest; Secured Transactions; UCC. Amend RSA 382-A:9-316(f) to read as follows:

(f) Change in jurisdiction of ***controllable electronic record,*** bank, issuer, nominated person, securities intermediary, or commodity intermediary. A security interest in ***controllable accounts, controllable electronic records, controllable payment intangibles, chattle paper,*** deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the ***controllable electronic record's jurisdiction, the electronic chattel paper's jurisdiction, the*** bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) the time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of 4 months after a change of the applicable jurisdiction to another jurisdiction.

281:69 Interest that Take Priority Over or Take Free of Security Interest or Agricultural Lien; Secured Transactions; UCC. Amend RSA 382-A:9-317 to read as follows:

382-A:9-317 Interests That Take Priority Over or Take Free of Security Interest or Agricultural Lien.

(a) Conflicting security interests and rights of lien creditors. A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under Section 9-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in Section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer[~~, other than a secured party,~~] of [~~tangible chattel paper, tangible documents,~~] goods, instruments, ***tangible documents,*** or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. ***Subject to subsections (f), (g), (h), and (i)*** a licensee of a general intangible or a buyer, other than a secured party, of collateral other than [~~tangible chattel paper,~~] ***electronic money,*** tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. Except as otherwise provided in Sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

(f) Buyers of chattel paper. 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 tangible 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 under Section 9-105, obtains control of each authoritative electronic copy.

(g) Buyers of electronic documents. 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 under Section 7-106, obtains control of each authoritative electronic copy.

(h) Buyers of controllable electronic records. A buyer of a controllable electronic record 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 electronic record.

(i) Buyers of controllable accounts and controllable payment intangibles. 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.

281:70 New Section; Priority of Security Interests; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 9-326 the following new section:

382-A:9-326A Priority of Security Interests in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible. A security interest in a controllable account, controllable electronic record, 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.

281:71 Priority of Purchaser of Chattel Paper or Instrument;Secured Transactions; UCC. Amend RSA 382-A:9-330(a)-(b) to read as follows:

(a) Purchaser's priority: security interest claimed merely as proceeds. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of ***each authoritative tangible copy of the record evidencing*** the chattel paper [~~or~~] ***and*** obtains control ***under RSA 382-A:9-105*** of ***each authoritative electronic copy of the record evidencing*** the chattel paper [~~under Section 9-105~~]; and

(2) the [~~chattel paper does~~] ***authoritative copies of the record evidencing the chattel paper do*** not indicate that [~~it has~~] ***the copies have*** been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority: other security interests. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of ***each authoritative tangible copy of the record evidencing*** the chattel paper [~~or~~] ***and*** obtains control ***under RSA 382-A:9-105*** of ***each authoritative electronic copy of the record evidencing*** the chattel paper [~~under Section 9-105~~] 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.

281:72 Priority Rights of Purchasers; Secured Transactions; UCC. Amend RSA 382-A:9-331 to read as follows:

382-A:9-331 Priority of Rights of Purchasers of ***Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles,*** Instruments, Documents, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements ***and Protections Against Assertions of Claims*** Under [~~Article 8~~] ***Articles 8 and 12.***

(a) Rights under Articles 3, 7, [~~and~~] 8***, and 12*** not limited. This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security***, or a qualifying purchaser of a controllable account, controllable electronic record, or controllable payment intangible.*** These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, [~~and~~] 8***, and 12.***

(b) Protection under [~~Article 8~~] ***Articles 8 and 12.*** This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under [~~Article 8~~] ***Articles 8 and 12.***

(c) Filing not notice. Filing under this article does not constitute notice of a claim or defense to the holders, [~~or~~] purchasers, or persons described in subsections (a) and (b).

281:73 Transfer of Money; Transfer of Funds; Secured Transactions; UCC. Amend RSA 382-A:9-332 to read as follows:

382-A:9-332 Transfer of Money; Transfer of Funds From Deposit Account.

(a) Transferee of ***tangible*** money. A transferee of ***tangible*** money takes the money free of a security interest [~~unless the transferee acts~~] ***if the transferee receives delivery of the money without acting*** in collusion with the debtor in violating the rights of the secured party.

(b) ***Transferee of electronic money. 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.***

(c) Transferee of funds from deposit account. A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account [~~unless the transferee acts~~] ***if the transferee receives the funds without acting*** in collusion with the debtor in violating the rights of the secured party.

281:74 Discharge of Account Debtor; Secured Transactions; UCC. Amend RSA 382-A:9-406 to read as follows:

382-A:9-406 Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.

(a) Discharge of account debtor; effect of notification. Subject to subsections (b) through (i) ***and (l)***, an account debtor on an account, chattel paper, or a payment intangible may discharge

its obligation by paying the assignor until, but not after, the account debtor receives a notification, [~~authenticated~~] ***signed*** by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. Subject to [~~subsection (h)~~] ***subsections (h) and (l)***, notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to [~~subsection (h)~~] ***subsections (h) and (l)***, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(f) Legal restrictions on assignment generally ineffective. Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subsection (b)(3) not waivable. Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. This section does not apply to:

(1) an assignment of a health-care-insurance receivable; or

(2) an assignment or transfer of or creation of a security interest in:

(A) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C.A § 104(a)(1) or (2), as amended from time to time; or

(B) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C.A § 1396p(d)(4), as amended from time to time.

(j) Section prevails over inconsistent law. Except as otherwise provided in subsection (i), this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(k) Inapplicability to interests in certain entities. Subsections (d), (f), and (j) do not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.

(l) Inapplicability of certain subsections. Subsections (a) through (c) and (g) do not apply to a controllable account or controllable payment intangible.

281:75 Rights After Default; Secured Transactions; UCC. Amend RSA 382-A:9-601(b) to read as follows:

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, ***9-105A,*** 9-106, [~~or~~] 9-107***, or 9-107A*** has the rights and duties provided in Section 9-207.

281:76 Unknown Debtor or Secondary Obligor; Secured Transactions; UCC. RSA 382-A:9-605 is repealed and reenacted to read as follows:

(a) When no duty owed by secured party. Except as provided in subsection (b), a secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(b) When secured party owes duty to debtor notwithstanding subsection (a). A secured party owes a duty based on its status as a secured party to a person that is a debtor if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible, the secured party knows that the information specified in subsection (a)(1)(A), (B), or (C) 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.

281:77 Notification Before Disposition of Collateral; Secured Transactions; UCC. Amend RSA 382-A:9-611 to read as follows:

382-A:9-611 Notification Before Disposition of Collateral.

(a) "Notification date." In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor [~~an authenticated~~] ***a signed*** notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required. Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send [~~an authenticated~~] ***a signed*** notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9-311(a).

(d) Subsection (b) inapplicable: perishable collateral; recognized market. Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) Compliance with subsection (c)(3)(B). A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent [~~an authenticated~~] ***a signed*** notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

281:78 Contents and Form of Notification Before Disposition of Collateral; Secured Transactions; UCC. Amend RSA 382-A:9-614 to read as follows:

382-A:9-614 Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction.

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) the information specified in Section 9-613(1);

(B) a description of any liability for a deficiency of the person to which the notification is sent;

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 9-623 is available; and

(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral] , because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date:

Time:

Place:

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing ***or in an electronic document*** 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 ***or a description of electronic communication method***] and request a written explanation ***or an explanation in an electronic document***. [We will charge you $_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address] ***[or description of electronic communication method]***].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

[End of Form]

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

281:79 Explanation of Calculation of Surplus or Deficiency; Secured Transactions; UCC. Amend RSA 382-A:9-616(a)-(c) to read as follows:

(a) Definitions. In this section:

(1) "Explanation" means a [~~writing~~] ***record*** that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) [~~authenticated~~] ***signed*** by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under Section 9-610.

(b) Explanation of calculation. In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9-615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes [~~written~~] demand ***in a record*** on the consumer obligor after the disposition for payment of the deficiency; and

(B) within 14 days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) Required Information. To comply with subsection (a)(1)(B), [~~a writing~~] ***an explanation*** must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) the amount of the surplus or deficiency.

281:80 Nonliability and Limitation on Liability of Secured Party; Secured Transactions; UCC. Amend RSA 382-A:9-628 to read as follows:

382-A:9-628 Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.

(a) Limitation of liability of secured party for noncompliance with article. ***Subject to subsection (f),*** unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. ***Subject to subsection (f)*** a secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under Section 9-625(c)(2) for its failure to comply with Section 9-616.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under Section 9-625(c)(2) more than once with respect to any one secured obligation.

(f) Notwithstanding subsection (b), a secured party owes a duty based on its status as a secured party to a person that is a debtor if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible, the secured party knows that it will not be provided with the information specified in subsection (b)(1)(A), (B), or (C) by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

281:81 New Articles; Uniform Commercial Code; Article 12 and 13; Controllable Electronic Records; Transition Provisions. Amend RSA 382-A by inserting after Article 9 the following new Articles:

ARTICLE 12

CONTROLLABLE ELECTRONIC RECORDS

382-A:12-101 Short Title. This article may be cited as Uniform Commercial Code-Controllable Electronic Records.

382-A:12-102 Definitions.

(a) Article 12 definitions. In this article:

(1) "Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under Section 12-105. 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.

(2) "Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in the 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.

(3) "Transferable record" means:

(A) "Transferable record" as defined in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., as amended; or

(B) "Transferable record" as defined in [cite to Uniform Electronic Transactions Act Section 16(a)].

(4) "Value" has the meaning provided in Section 3-303(a).

(b) Definitions in Article 9. The definitions in Article 9 of "account debtor", "controllable account", "controllable payment intangible", "chattel paper", "deposit account", "electronic money", and "investment property" apply to this article.

382-A:12-103 Relationship to Article 9 and Consumer Laws.

(a) Article 9 governs in case of conflict. If there is conflict between this article and Article 9, Article 9 governs.

(b) Applicable consumer law and other laws. A transaction subject to this article is subject to any applicable rule of law that establishes a different rule for consumers and [insert reference to (i) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection statute or regulation].

382-A:12-104 Rights in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible.

(a) Applicability of section to controllable account and controllable payment intangible. This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits of a purchaser and a qualifying purchaser under subsections (d), (e), (g), and (h), in the same manner this section applies to a controllable electronic record.

(b) Control of controllable account and controllable payment intangible. For purposes of determining whether a 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 controllable electronic record that evidences the account or payment intangible.

(c) Applicability of other law to acquisition of rights. Except as provided in this section, law other than this article determines whether a person acquires a right in a controllable electronic record and the right the person acquires.

(d) Shelter principle and purchase of limited interest. A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or

had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

(e) Rights of qualifying purchaser. A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(f) Limitation of rights of qualifying purchaser in other property. Except as provided in subsections (a) and (e) for controllable accounts and controllable payment intangibles or law other than this article, a qualifying purchaser takes a right to payment, right to performance, or interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

(g) No-action protection for qualifying purchaser. An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory.

(h) Filing not notice. Filing of a financing statement under Article 9 is not notice of a claim of a property right in a controllable electronic record.

382-A:12-105 Control of Controllable Electronic Record.

(a) General rule: control of controllable electronic record. A person has control of a controllable electronic record if:

(1) the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded gives the person:

(A) the power to avail itself of substantially all the benefit from the electronic record; and

(B) exclusive power, subject to subsection (b), to:

(i) prevent others from availing themselves of substantially all the benefit from the electronic record; and

(ii) transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and

(2) the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in paragraph (1).

(b) Presumption of exclusivity of certain powers. If a person has the powers that are specified in subsection (a)(1)(B), the powers are presumed to be exclusive.

(c) Control through another person. A person has control of a controllable electronic record if another person, other than the transferor of an interest in the electronic record:

(1) has control of the electronic record and acknowledges that it has control on behalf of the person, or

(2) obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.

(d) No requirement to acknowledge. A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(e) No duties or confirmation. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.

(f) Meaning of exclusive. A power specified in subsection (a)(1) is exclusive, even if:

(1) the controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded 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

(2) the person shares the power with another person.

382-A:12-106 Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible.

(a) Discharge of account debtor. An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

(1) the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2) except as provided in subsection (b), a person that formerly had control of the controllable electronic record.

(b) Effect of notification. Subject to subsection (d), an account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1) is signed by a person that formerly had control or the person to which control was transferred;

(2) reasonably identifies the controllable account or controllable payment intangible;

(3) notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5) provides a commercially reasonable method by which the account debtor is to pay the transferee.

(c) Discharge following effective notification. After receipt of a notification that complies with subsection (b), the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(d) When notification ineffective. Subject to subsection (h), notification is ineffective under subsection (b):

(1) unless, before the notification is sent, an account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;

(2) to the extent an agreement between an 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 under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to:

(A) divide a payment;

(B) make less than the full amount of an installment or other periodic payment; or

(C) pay any part of a payment by more than one method or to more than one person.

(e) Proof of transfer of control. Subject to subsection (h), if requested by the account debtor, the person giving the notification seasonably shall furnish reasonable proof, using the agreed method, that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (b).

(f) What constitutes reasonable proof. A person furnishes reasonable proof that control has been transferred if the person demonstrates, using the agreed method, that the transferee has the power to:

(1) avail itself of substantially all the benefit from the controllable electronic record;

(2) prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(3) transfer the powers mentioned in paragraphs (1) and (2) to another person.

(g) Rights not waivable. Subject to subsection (h), an account debtor may not waive or vary its rights under subsections (d)(1) and (e) or its option under subsection (d)(3).

(h) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

382-A: 12-107 Governing Law.

(a) Governing law: general rule. Except as provided in subsection (b), the local law of a controllable electronic record's jurisdiction governs a matter covered by this article.

(b) Governing law: Section 12-106. The local law of the controllable electronic record's jurisdiction for a controllable electronic record that evidences a controllable account or controllable payment intangible governs a matter covered by Section 12-106 unless an effective agreement determines that the local law of another jurisdiction governs.

(c) Controllable electronic record's jurisdiction. The following rules determine a controllable electronic record's jurisdiction under this section:

(1) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or this chapter, that jurisdiction is the controllable electronic record's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the [Uniform Commercial Code], that jurisdiction is the controllable electronic record's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(4) If paragraphs (1) through (3) do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the controllable electronic record's jurisdiction is the District of Columbia.

(d) Applicability of Article 12. If subsection (c)(5) applies and Article 12 is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this article is the law of the District of Columbia as though Article 12 were in effect in the District of Columbia without material modification. In this section, "Article 12" means Uniform Commercial Code—Controllable Electronic Records (with Conforming Amendments to Articles 1and 9), 2022 Official Text.

(e) Relation of transaction to controllable electronic record's jurisdiction not necessary. Subsections (b) through (d) apply even if a transaction does not bear any relation to the controllable electronic record's jurisdiction.

(f) Rights of purchasers determined at time of purchase. The rights acquired by a purchaser or a qualifying purchaser under Section 12-104 are governed by the law applicable under this section at the time of purchase.

ARTICLE 13

ADDITIONAL TRANSITION PROVISIONS FOR ARTICLES 9 AND 12

382-A:13-301 Savings Clause.

(a) Pre-effective-date transactions, liens, or interests. Except as otherwise provided in this part, Article 9 and Article 12 apply to a transaction, lien, or other interest in property, even if the transaction, lien, or interest was entered into, created, or acquired before the effective date of this Article.

(b) Continuing validity. Except as otherwise provided in subsection (c) and Sections 13-302 through 13-306:

(1) a transaction, lien, or interest in property that was not governed by this chapter and was validly entered into, created, or transferred before the effective date of this Article, and would be subject to Article 9 as amended or Article 12 if it had been entered into, created, or transferred after the effective date of this Article, and the rights, duties, and interests flowing from the transaction, lien, or interest in property remain valid after the effective date of this Article; and

(2) the transaction, lien, or interest in property may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) Pre-effective-date proceedings. This Article does not affect an action, case, or proceeding commenced before the effective date of this Article.

382-A:13-302 Security Interest Perfected Before Effective Date.

(a) Continuing perfection: perfection requirements satisfied. A security interest that is enforceable and perfected immediately before the effective date of this Article is a perfected security interest under this Article if, on the effective date of this Article, the applicable requirements for enforceability and perfection under this Article are satisfied without further action.

(b) Continuing perfection: perfection requirements not satisfied. If, immediately before the effective date of this Article, a security interest is enforceable and perfected, but the applicable requirements for enforceability or perfection under this Article, are not satisfied on the effective date of this Article, the security interest:

(1) is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before the effective date of this Article or January 1, 2025;

(2) remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under Section 9-203 before January 1, 2025; and

(3) remains perfected thereafter only if the applicable requirements for perfection under this Article are satisfied before January 1, 2025.

382-A:13-303 Security Interest Unperfected Before Effective Date. A security interest that is enforceable immediately before the effective date of this Article but which would be unperfected at that time:

(1) remains an enforceable security interest until January 1, 2025;

(2) remains enforceable thereafter if the security interest becomes enforceable under Section 9-203 on the effective date of this Article or before January 1, 2025; and

(3) becomes perfected:

(A) without further action, on the effective date of this Article if the applicable requirements for perfection under this Article are satisfied before or at that time; or

(B) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

382-A:13-304 Effectiveness of Actions Taken Before Effective Date.

(a) Pre-effective-date action; attachment and perfection before adjustment date. If action, other than the filing of a financing statement, is taken before the effective date of this Article and the action would have resulted in perfection of the security interest had the security interest become enforceable before the effective date of this Article, the action is effective to perfect a security interest that attaches under this Article before January 1, 2025. An attached security interest becomes unperfected on January 1, 2025 unless the security interest becomes a perfected security interest under this Article before January 1, 2025.

(b) Pre-effective-date filing. The filing of a financing statement before the effective date of this Article is effective to perfect a security interest on the effective date of this Article to the extent the filing would satisfy the applicable requirements for perfection under this Article.

(c) Pre-effective-date enforceability actions. The taking of an action before the effective date of this Article is sufficient for the enforceability of a security interest on the effective date of this Article if the action would satisfy the applicable requirements for enforceability under this Article.

382-A:13-305 Priority.

(a) Determination of priority. Subject to subsections (b) and (c), this Article determines the priority of conflicting claims to collateral.

(b) Established priorities. Subject to subsection (c), if the relative priorities of claims to collateral were established before the effective date of this Article, Article 9 determines priority.

(c) Determination of certain priorities on adjustment date. On January 1, 2025, to the extent that the relative priorities determined by this Article modify the relative priorities established before the effective date of this Article, the relative priorities of claims to Article 12

property and electronic money which were established before the effective date of this Article cease to apply.

382-A:13-306 Priority of Claims When Priority Rules of Article 9 Do Not Apply.

(a) Determination of priority. Subject to subsections (b) and (c), Article 12 determines the priority of conflicting claims to Article 12 property when the priority rules of Article 9 do not apply.

(b) Established priorities. Subject to subsection (c), when the priority rules of Article 9 do not apply and the relative priorities of claims to Article 12 property were established before the effective date of this Article, law other than Article 12 determines priority.

(c) Determination of certain priorities on adjustment date. When the priority rules of Article 9 do not apply, to the extent that the relative priorities determined by this Article modify the relative priorities established before the effective date of this Article, on January 1, 2025 the relative priorities of claims to Article 12 property which were established before the effective date of this Article cease to apply.

281:82 New Paragraph; Uniform Securities Act; Definitions; Open Blockchain Token. Amend RSA 421-B:1-102 by inserting after paragraph (35) the following new paragraph:

(35-a) "Open blockchain token" means a digital unit which is:

(A) Created:

(i) In response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(ii) By deploying computer code to a blockchain network that allows for the creation of digital tokens or other units; or

(iii) Using any combination of the methods specified in subparagraphs (i) and (ii) of this paragraph;

(B) Recorded in a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature, especially relating to the supply of units and their distribution; and

(C) Capable of being traded or transferred between persons without an intermediary or custodian of value.

281:83 New Paragraph; Uniform Securities Act; Exempt Transaction; Open Blockchain Token. Amend RSA 421-B:2-202 by inserting after paragraph (24) the following new paragraph:

(25) A purchase or sale of an open blockchain token if all of the following are met:

(A) The issuer or seller of the token, or the registered agent of the developer or seller, files a notice of intent with the secretary of state, as specified in subsection (D) of this section;

(B) The purpose of the token is for a consumptive purpose, which shall only be exchangeable for, or provided for the receipt of, goods, services or content, including rights of access to goods, services or content; and

(C) The issuer or seller of the token did not sell the token to the initial buyer as a financial investment. For purposes of this subsection, a developer seller of the token will be deemed not to have sold the token to the initial buyer as a financial investment if:

(i) The issuer or seller did not market the token as a financial investment; and

(ii) At least one of the following is true:

(a) The issuer or seller of the token reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

(b) The token has a consumptive purpose that is available at the time of sale and can be used at or near the time of sale for use for a consumptive purpose;

(c) If the token does not have a consumptive purpose available at the time of sale, the initial buyer of the token is prevented from reselling the token until the token is available for use for a consumptive purpose; or

(d) The issuer or seller takes other reasonable precautions to prevent buyers from purchasing the token as a financial investment.

(D) The issuer, seller or person who facilitates the exchange of an open blockchain token, or the registered agent of the applicable person, files a notice of intent with the secretary of state prior to offering or selling the tokens in this state. The notice of intent shall contain the name of the person acting as an issuer, seller or facilitator, the contact information of the person or the registered agent of the person, and a statement that any marketing or advertising materials, including web sites offering or selling open blockchain tokens, will contain a disclosure that the tokens are not registered as securities pursuant to a transaction exemption under RSA 421-B, the New Hampshire Uniform Securities Act. The notice shall also specify whether the person will be acting as an issuer, seller or facilitator. A form shall be made available by the office of the secretary of state on its Internet website for this purpose. The secretary of state shall charge a fee of $100 per filing.

281:84 New Subparagraph; Uniform Securities Act; Broker-Dealer Registration Requirements and Exemption. Amend RSA 421-B:4-401(b) by inserting after subparagraph (2) the following new subparagraph:

(3)(A) Except as otherwise provided by RSA 421-B:5-511, a person who exclusively facilitates the exchange of an open blockchain token if all of the following are met:

(i) The person, or the registered agent of the person, files a notice of intent with the secretary of state, as specified in RSA 421-B:2-202(26)(d);

(ii) The person has a reasonable and good faith belief that a token subject to exchange conforms to the requirements of paragraphs RSA 421-B:2-202(25)(a)-(c); and

(iii) The person takes reasonably prompt action to terminate the exchange of a token that does not conform to the requirements of this subsection.

281:85 New Section; Uniform Securities Act; Liability of Issuers, Seller, and Others Who Facilitate Exchange of Open Blockchain Tokens. Amend RSA 421-B by inserting after section 5-510 the following new section:

421-B:5-511 Liability of Issuers, Sellers, and Others Who Facilitate Exchange of Open Blockchain Tokens. Notwithstanding any other provision of law, an issuer, seller, or a person who facilitates the exchange of an open blockchain token is subject to the provisions of RSA 421-B:5-501 through RSA 421-B:5-503 and RSA 421-B:5-505 through RSA 421-B:5-510 only to the extent necessary to carry out those sections. The secretary of state shall have the authority provided under RSA 421-B:6-601 through RSA 421-B:6-613 to determine compliance with the provisions of this section, including whether a person qualifies for the exemptions set forth in this section. The evidentiary burdens specified in RSA 421-B:5-503 shall apply in any proceeding initiated by the secretary of state pursuant to this subsection.

281:86 New Subparagraphs; Department of Administrative Services; Division of Procurement and Support Services; Structural Steel Defined. Amend RSA 21-I:11, II by inserting after subparagraph (f) the following new subparagraphs:

(g) "Structural steel" shall mean a product consisting of the elements of the structural frame that are shown and sized in the structural design documents, essential to support the design loads as defined in the 2016 American Institute of Steel Construction (AISC) code of standard practice for steel buildings and bridges 303-16.

(h) "Domestic fabricated structural steel" shall mean an iron or steel product where all manufacturing must take place in the United States, from the initial melting stage, through fabrication, and application of coatings, except metallurgical processes involving the refinement of steel additives.

(i) "Permanently incorporated product" shall mean a product that is required to remain in place at the end of the project contract, in a fixed location, affixed to the public work to which it was incorporated and shall not mean a product that is capable of being moved from one location to another.

(j) "Fabrication" shall mean all manufacturing of iron or steel products, from the initial melting stage, through fabrication and application of coatings, except metallurgical processes involving the refinement of steel additives.

281:87 New Paragraph; Department of Administrative Services; Division of Procurement and Support Services; Established Preference of American Made Materials in State Contracts. Amend RSA 21-I:11 by inserting after paragraph II the following new paragraph:

III.(a) Notwithstanding any law to the contrary relating to procurement and to the extent permitted by federal law, any contract for construction, reconstruction, alteration, repair, improvement, or maintenance of a public building or public works with the state as a party shall contain a provision that for the permanently incorporated iron, structural steel, and fabricated

structural steel used or supplied in the performance of the contract or any subcontract, strong consideration and preference shall be given for iron or steel fabricated in the United States. If the competitive bidding process results in all qualifying factors being equal, the contract shall be awarded to the contractor offering steel fabricated in the United States. In instances where qualifying factors are equal, absent of low price, and using domesticated structural steel, the state may reserve the option to purchase steel fabricated in the United States.

(b) If a court or federal or state agency has determined that any person intentionally affixed a "Made in America" label to structural steel under this paragraph that was not made in the United States or otherwise falsely represented that structural steel under this paragraph was produced in the United States, the department of administrative services shall withhold contract payment until the structural steel can be replaced, or the noncompliance of this paragraph is otherwise remedied. Failure to comply with and/or produce a satisfactory remedy to the state may result in debarment proceedings under RSA 21-I:11-c, III.

(c) If any provision of this paragraph or application thereof is held to be invalid or in conflict with any applicable laws, this invalidity or conflict shall not affect the other provisions or applications which shall be given affect without the invalid provisions or applications, and to this end, the provisions and applications of this paragraph are severable.

281:88 Effective Date. This act shall take effect January 1, 2023.

Approved: June 28, 2022
Effective Date: January 01, 2023

Amendments

Rep. Ammon, Hills. 40
April 18, 2022
2022-1616h
08/04

Amendment to HB 1503-FN

Amend the title of the bill by replacing it with the following:

AN ACT adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws.

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Intent.

I. The Joint Committee on the Uniform Commercial Code and Emerging Technologies of the Uniform Law Commission has developed draft Uniform Commercial Code provisions governing certain digital assets, specifically those that fall within the definition of "controllable electronic records." The current draft has been extensively vetted by those who understand and participate in digital transactions.

II. Adoption of the Uniform Law Commission's draft by the New Hampshire general court will create a considerable advantage for New Hampshire to lead in emerging industries utilizing blockchain, digital ledger technology, virtual currencies, and other digital assets and would provide a sensible framework and legal certainty for transactions of controllable electronic records. In subsequent sessions, if necessary, the New Hampshire general court 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.

2 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(10) to read as follows:

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. [~~Conspicuous terms include the following:~~

~~(A) 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; and~~

~~(B) 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.~~]

3 New Paragraph; Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b) by inserting after paragraph (16) the following new paragraph:

(16A) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

4 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(21) to read as follows:

(21) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control***, other than pursuant to Section 7-106(d),*** of a negotiable electronic document of title.

5 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(24) to read as follows:

(24) "Money" means a medium of exchange ***that is*** 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 term 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 adopted by a government, or organization or pursuant to such an agreement.***

6 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(27) to read as follows:

(27) "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. ***The term includes a protected series, however denominated, of an entity if the protected series is established under law other than this chapter 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.***

7 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(37) to read as follows:

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing ***and, with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record. "Sign" and "Signature" have corresponding meanings.***

8 Uniform Commercial Code; Definitions. Amend the introductory paragraph of RSA 382-A:1-204 to read as follows:

Except as otherwise provided in Articles 3, 4,[~~and~~] 5, ***6, and 12,*** a person gives value for rights if the person acquires them:

9 Uniform Commercial Code; Sales; Scope. RSA 382-A:2-102 is repealed and reenacted to read as follows:

(1) Unless the context otherwise requires and except as provided in subsections (3) and (4), this Article applies to transactions in goods.

(2) If the goods aspects of a hybrid transaction predominate, this Article applies to the transaction.

(3) If the goods aspects of a hybrid transaction do not predominate, the provisions of this Article which relate primarily to the goods aspects of the transaction and not to the transaction as a whole apply.

(4) This article 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 Article impair or repeal any statute regulating sales to consumers, farmers, or other specified classes of buyers.

(5) This Section does not preclude in appropriate circumstances the application of other law to the aspects of a hybrid transaction which do not relate to the goods even if the goods aspects of the transaction predominate.

10 Uniform Commercial Code; Sales; Definitions. RSA 382-A:2-106 is repealed and reenacted to read as follows:

382-A:2-106 Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; "Cancellation".

(1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2–401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

(5) "Hybrid transaction" means a single transaction involving a sale of goods and a sale, lease, or license of other property or the provision of services.

11 Uniform Commercial Code; Sales; Statute of Frauds. RSA 382-A:2-201 is repealed and reenacted to read as follows:

382-A:2-201 Formal Requirements; Statute of Frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A record is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such record.

(2) Between merchants if within a reasonable time a record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless a record containing a notice of objection to its contents is given with 10 days after it is received.

12 Uniform Commercial Code; Sales; Final Written Expression. Amend RSA 382-A:2-202 to read as follows:

382-A:2-202 Final Written Expression; Parol or Extrinsic Evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a [~~writing~~] ***record*** intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of performance, course of dealing, or usage of trade (Section 1-303); and

(b) by evidence of consistent additional terms unless the court finds the [~~writing~~] ***record*** to have been intended also as a complete and exclusive statement of the terms of the agreement.

13 Uniform Commercial Code; Sales; Seals Inoperative. Amend RSA 382-A:2-203 to read as follows:

382-A:2-203 Seals Inoperative. The affixing of a seal to a [~~writing~~] ***record*** evidencing a contract for sale or an offer to buy or sell goods does not constitute the [~~writing~~] ***record*** a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

14 Uniform Commercial Code; Sales; Firm Offers. Amend RSA 382-A:2-205 to read as follows:

382-A:2-205 Firm Offers. An offer by a merchant to buy or sell goods in a signed [~~writing~~] ***writing*** which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

15 Uniform Commercial Code; Sales; Modification, Recission, and Waiver. Amend RSA 382-A:2-209(2) to read as follows:

(2) A signed agreement which excludes modification or rescission except by a signed [~~writing~~] ***record*** cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

16 Uniform Commercial Code; Leases; Scope. RSA 382-A:2A-102 is repealed and reenacted to read as follows:

382-A:2A-102 Scope.

(1) Except as provided in subsection (3), this article applies to any transaction, regardless of form, that creates a lease.

(2) If the lease-of-goods aspects of a hybrid lease predominate, this article applies to the transaction.

(3) If the lease-of-goods aspects of a hybrid lease do not predominate:

(A) only the provisions of this article which relate primarily to the lease-of-goods aspects of the transaction and not to the transaction as a whole apply;

(B) RSA 382-A:2A-209 applies if the lease is a finance lease; and

(C) RSA 382-A:2A-407 applies to the promises of a person that is the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods.

(4) This Section does not preclude the application in appropriate circumstances of other law to the aspects of a hybrid lease which do not relate to the lease of goods even if the lease-of-goods aspects of the transaction predominate.

17 New Subparagraph; Definitions; Uniform Commercial Code; Leases; Definitions. Amend RSA 382-A:2A-103 by inserting after subparagraph (1)(h) the following new subparagraph:

(hh) "Hybrid lease" means a single transaction involving a lease of goods and:

(i) the provision of services;

(ii) a sale of other goods; or

(iii) a sale, lease, or license of property other than goods.

18 Uniform Commercial Code; Leases; Statute of Frauds. Amend RSA 382-A:2A-201 to read as follows:

382-A:2A-201 Statute of Frauds.

(1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000; or

(b) there is a [~~writing~~] ***record***, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A [~~writing~~] ***record*** is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable:

(a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a [~~writing~~] ***record*** signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) a reasonable lease term.

19 Uniform Commercial Code; Leases; Final Written Expression. Amend RSA 382-A:2A-202 to read as follows:

382-A:2A-202 Final Written Expression; Parol or Extrinsic Evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a [~~writing~~] ***record*** intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade or by course of performance; and

(b) by evidence of consistent additional terms unless the court finds the [~~writing~~] ***record*** to have been intended also as a complete and exclusive statement of the terms of the agreement.

20 Uniform Commercial Code; Leases; Seals Inoperative. Amend RSA 382-A:2A-203 to read as follows:

382-A:2A-203 Seals Inoperative. The affixing of a seal to a [~~writing~~] ***record*** evidencing a lease contract or an offer to enter into a lease contract does not render the [~~writing~~] ***record*** a sealed

instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

21 Uniform Commercial Code; Leases; Firm Offers. Amend RSA 382-A:2A-205 to read as follows:

382-A:2A-205 Firm Offers. An offer by a merchant to lease goods to or from another person in a signed [~~writing~~] ***record*** that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

22 Uniform Commercial Code; Leases; Modification, Recission, and Waiver. Amend RSA 382-A:2A-208(2) to read as follows:

(2) A signed lease agreement that excludes modification or rescission except by a signed [~~writing~~] ***record*** may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

23 Uniform Commercial Code; Negotiable Instruments. Amend RSA 382-A:3-104(3) to read as follows:

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, [~~or~~] (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor***; (iv) a term that specifies the law that governs the promise or order; or (v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.***

24 Uniform Commercial Code; Negotiable Instruments; Issue of Instrument. Amend RSA 382-A:3-105(a) to read as follows:

(a) "Issue" means*:*

(1) 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***; or***

(2) if agreed by the payee, first transmission by the drawer to the payee of an image of an item and information derived from the item in a manner that enables the depository bank to collect the item by transferring or presenting under federal law an electronic check.

25 Uniform Commercial Code; Negotiable Instruments; Discharge by Cancellation or Renunciation. Amend RSA 382-A:3-604 to read as follows:

382-A:3-604 Discharge by Cancellation or Renunciation.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) 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 (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed [~~writing~~] ***record. The obligation of a party to pay a check is not discharged solely by the destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made, and subsequently, the information and image are transmitted for payment.***

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement

26 Uniform Commercial Code; Funds Transfers; Payment Order. Amend the introductory paragraph of RSA 382-A:4A-103(a)(1) to read as follows:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, [~~electronically~~], or in [~~writing~~] ***a record***, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

27 Uniform Commercial Code; Funds Transfers; Security Procedure. Amend RSA 382-A:4A-201 to read as follows:

382-A:4A-201 Security Procedure. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure ***may impose an obligation on the receiving bank or the customer and*** may require the use of algorithms or other codes, identifying words, [~~or~~] numbers, ***symbols, sounds or biometrics,*** encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer ***or requiring that a payment order be sent from a known email address, IP address or phone number*** is not by itself a security procedure.

28 Uniform Commercial Code; Funds Transfers; Authorized and Verified Payment Orders. Amend RSA 382-A:4A-202(a)-(c) to read as follows:

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of

providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with ***the bank's obligation under*** the security procedure and any [~~written~~] agreement or instruction of the customer***, evidenced by a record,*** restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates [~~a written~~] ***an*** agreement ***evidenced by a record*** with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in [~~writing~~] ***a record*** to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the ***bank's obligations under the*** security procedure chosen by the customer.

29 Uniform Commercial Code; Funds Transfers; Unenforceability of Certain Verified Payment Orders. Amend RSA 382-A:4A-203(a)(1) to read as follows:

(1) By express [~~written~~] agreement ***evidenced by a record***, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

30 Uniform Commercial Code; Funds Transfers; Misdescription of Beneficiary. Amend RSA 382-A:4A-207(c)(2) to read as follows:

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a [~~writing~~] ***record*** stating the information to which the notice relates.

31 Uniform Commercial Code; Funds Transfer; Misdescription of Intermediary Bank or Beneficiary's Bank. Amend RSA 382-A:4A-208(b)(2) to read as follows:

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different

from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a [~~writing~~] ***record*** stating the information to which the notice relates.

32 Uniform Commercial Code; Funds Transfers; Rejection of Payment Order. Amend RSA 382-A:4A-210(a) to read as follows:

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally[~~, electronically, or in writing~~] ***or in a record***. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

33 Uniform Commercial Code; Funds Transfer; Cancellation and Amendment of Payment Order. Amend RSA 382-A:4A-211(a) to read as follows:

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally[~~, electronically, or in writing~~] ***or in a record***. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

34 Uniform Commercial Code; Letters of Credit; Choice of Law and Forum. Amend RSA 382-A:5-116(c)-(e) to read as follows:

(c) ***For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under subsection (d).***

(d) A branch of a bank is considered to be located at 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.

(e) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or

practice, and (iii) there is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 5-103(c).

[~~(d)~~] ***(f)*** If there is conflict between this article and Article 3, 4, 4A, or 9, this article governs.

[~~(e)~~] ***(g)*** The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

35 Uniform Commercial Code; Documents of Title; Control of Electronic Document of Title. Amend RSA 382-A:7-106(b) to read as follows:

(b) A system satisfies subsection (a), and a person[~~is deemed to have~~] ***has*** control of an electronic document of title, if the document is created, stored, and [~~assigned~~] ***transferred*** in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified [~~assignee~~] ***transferee*** of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) A system satisfies subsection (a) and a person has control of an electronic document of title if an 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 to readily identify each electronic copy as an authoritative copy or nonauthoritative copy;

(2) enables the person readily to 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

(3) gives the person exclusive power, subject to subsection (h) to:

(A) prevent others from altering the person to which each authoritative electronic copy has been issued or transferred; and

(B) transfer control of each authoritative electronic copy.

(d) If a person has the powers that are specified in subsection (c)(3), the powers are presumed to be exclusive.

(e) A person has control of an electronic document of title if another person, other than the transferor of an interest in the document:

(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.

(f) A person that has control under this section is not required to acknowledge that it has or will obtain control on behalf of another person.

(g) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.

(h) A power is exclusive under subsection (c)(3), even if:

(1) the authoritative electronic copy, a record attached to or logically associated with the electronic copy or a system in which the electronic copy is recorded limits the use of the document or has a protocol that is programmed to cause a change, including a transfer or loss of control; or

(2) the person shares the power with another person.

36 Uniform Commercial Code; Investment Securities; Definitions. Amend RSA 382-A:8-102(6)(i) to read as follows:

(i) send a signed [~~writing~~] ***record***; or

37 Uniform Commercial Code; Investment Securities; Definitions. Amend RSA 382-A:8-106(d)-(g) to read as follows:

(d) A purchaser has "control" of a security entitlement if:

(1) the purchaser becomes the entitlement holder;

(2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(3) another person [~~has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser~~] ***other than the transferor of an interest in the security entitlement:***

(A) has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or

(B) obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c) or (d) has control even if the registered owner in the case of subsection (c) or the entitlement holder in the case of subsection (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of a purchaser.

(i) If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the purchaser and is not required to confirm the acknowledgment to another person.

38 Uniform Commercial Code; Investment Securities; Protected Purchaser. Amend RSA 382-A:8-303(b) to read as follows:

(b) [~~In addition to acquiring the rights of a purchaser, a~~] ***A*** protected purchaser also acquires its interest in the security free of any adverse claim.

39 Uniform Commercial Code; Investment Securities; Acquisition of Security Entitlement from Securities Intermediary. Amend RSA 382-A:8-501(d) to read as follows:

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the [~~other~~] person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

40 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(2) to read as follows:

(2) "Account", except as used in "account for", ***"account to," "account statement," "customer's account," "on account of," "statement of account," and paragraphs (14) and (29)***

means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes ***controllable accounts and*** health-care-insurance receivables. The term does not include (i) [~~rights to payment evidenced by chattel paper or an instrument~~] ***chattel paper***, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card***, or (vii) rights to payment evidenced by an instrument***.

41 New Paragraphs; Definitions; Uniform Commercial Code; Secured Transactions; Assignee. Amend RSA 382-A:9-102 by inserting after paragraph (6) the following new paragraphs:

(6A) "Assignee" means a person:

(A) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not an obligation to be secured is outstanding; or

(B) to which an account, chattel paper, payment intangible, or promissory note has been sold.

(6B) "Assignor" means a person that:

(A) under a security agreement creates or provides for a security interest that secures an obligation; or

(B) sells an account, chattel paper, payment intangible, or promissory note.

42 Uniform Commercial Code; Secured Transactions; Definitions. RSA 382-A:9-102(11) is repealed and reenacted to read as follows:

(11) "Chattel paper" means:

(A) 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; or

(B) 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:

(i) the right to payment and lease agreement are evidenced by a record; and

(ii) the predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

The term does not include (i) a right to payment arising out of a charter or other contract involving the use or hire of a vessel or (ii) 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.

43 New Paragraphs; Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102 by inserting after paragraph 27 the following new paragraphs:

(27A) "Controllable account" means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that under Section 12-105 has control of the controllable electronic record.

(27B) "Controllable payment intangible" means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that under Section 12-105 has control of the controllable electronic record.

44 New Paragraph; Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102 by inserting after paragraph 31 the following new paragraph:

(31A) "Electronic money" means money in an electronic form.

45 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(42) to read as follows:

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes ***controllable electronic records,*** payment intangibles and software.

46 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(47) to read as follows:

(47) "Instrument" means a negotiable instrument (defined in Section 3-104), or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, [~~or~~] (iii) writings that evidence 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***, or (iv) writings that evidence chattel paper.***

47 New Paragraph; Definitions; Money; Secured Transactions; UCC. Amend RSA 382-A:9-102 by inserting after paragraph (54) the following new paragraph:

(54A) "Money" has the meaning provided in Section 1-201(24), but the term does not include (i) a deposit account or (ii) money in an electronic form that cannot be subjected to control under Section 9-105A.

48 Definitions; Payment Intangible; Secured Transactions; UCC. Amend RSA 382-A:9-102(61) to read as follows:

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. ***The term includes a controllable payment intangible.***

49 New Paragraph; Definitions; Tangible Money; Secured Transactions; UCC. Amend RSA 382-A:9-102 by inserting after paragraph (79) the following new paragraph:

(79A) "Tangible money" means money in a tangible form.

50 Definitions; Controllable Electronic Record; Qualified Purchaser; Secured Transactions; UCC. Amend RSA 382-A:9-102(b) to read as follows:

(b) "Control" as provided in Section 7-106 and the following definitions in other articles apply to this article:

"Applicant" Section 5-102.

"Beneficiary" Section 5-102.

"Broker" Section 8-102.

"Certificated security" Section 8-102.

"Check" Section 3-104.

"Clearing corporation" Section 8-102.

"Contract for sale" Section 2-106.

"Controllable electronic record" Section 12-102.

"Customer" Section 4-104.

"Entitlement holder" Section 8-102.

"Financial asset" Section 8-102.

"Holder in due course" Section 3-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right) Section 5-102.

"Issuer" (with respect to a security) Section 8-201.

"Issuer" (with respect to documents of title) Section 7-102.

"Lease" Section 2A-103.

"Lease agreement" Section 2A-103.

"Lease contract" Section 2A-103.

"Leasehold interest" Section 2A-103.

"Lessee" Section 2A-103.

"Lessee in ordinary course of business" Section 2A-103.

"Lessor" Section 2A-103.

"Lessor's residual interest" Section 2A-103.

"Letter of credit" Section 5-102.

"Merchant" Section 2-104.

"Negotiable instrument" Section 3-104.

"Nominated person" Section 5-102.

"Note" Section 3-104.

"Proceeds of a letter of credit" Section 5-114.

"Prove" Section 3-103.

"Qualifying purchaser" Section 12-102.

"Sale" Section 2-106.

"Securities account" Section 8-501.

"Securities intermediary" Section 8-102.

"Security" Section 8-102.

"Security certificate" Section 8-102.

"Security entitlement" Section 8-102.

"Uncertificated security" Section 8-102.

51 Control of Deposit Account; Secured Transactions; UCC. Amend RSA 382-A:9-104 to read as follows:

382-A:9-104 Control of Deposit Account.

(a) Requirements for control. A secured party has control of a deposit account if:

(1) the secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party, and bank have agreed in [~~an authenticated~~] ***a signed*** 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***; or***

(4) another person, other than the debtor:

(A) has control of the deposit account and acknowledges that it has control on behalf of the secured party; or

(B) obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party.

(b) Debtor's right to direct disposition. A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

52 Control of Electronic Copy of Record Evidencing Chattel Paper; Secured Transactions; UCC. RSA 382-A:9-105 is repealed and reenacted to read as follows:

382-A:9-105 Control of Electronic Copy of Record Evidencing Chattel Paper.

(a) General rule: control of electronic copy of record evidencing chattel paper. A purchaser has control of each 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 chattel paper was assigned.

(b) Single authoritative copy. A system satisfies subsection (a) if the record or records evidencing the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the purchaser as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the purchaser or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the purchaser;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) One or more authoritative copies. A system satisfies subsection (a) and a purchaser has control of an electronic copy of a record evidencing chattel paper if:

(1) the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(A) enables the person readily to identify each electronic copy as an authoritative copy or nonauthoritative copy;

(B) enables the purchaser readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of each authoritative electronic copy; and

(C) gives the purchaser exclusive power, subject to subsection (d), to:

(i) prevent others from adding or changing an identified assignee of each authoritative electronic copy; and

(ii) transfer control of each authoritative electronic copy; or

(2) another person, other than the debtor:

(A) has control of each authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(B) obtains control of each authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

(d) Presumption of exclusivity of certain powers. If a person has the powers that are specified in subsection (c)(1)(C), the powers are presumed to be exclusive.

(e) Meaning of exclusive. A power is exclusive under subsection (b)(1)(C), even if:

(1) the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the purchaser shares the power with another person.

53 New Section; Control of Electronic Money. Amend RSA 382-A by inserting after section 9-105 the following new section:

382-A: 9-105A Control of Electronic Money.

(a) General rule: control of electronic money. A person has control of electronic money if:

(1) 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:

(A) the power to avail itself of substantially all the benefit from the electronic money; and

(B) exclusive power, subject to subsection (b), to:

(i) prevent others from availing themselves of substantially all the benefit from the electronic money; and

(ii) 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; and

(2) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers under paragraph (1).

(b) Presumption of exclusivity of certain powers. If a person has the powers that are specified in subsection (a)(1)(B), the powers are presumed to be exclusive.

(c) Control through another person. A person has control of electronic money if another person, other than the transferor of an interest in the electronic money:

(1) has control of the electronic money and acknowledges that it has control on behalf of the person, or

(2) obtains control of the electronic money after having acknowledged that it will obtain control of the electronic money on behalf of the person.

(d) Meaning of exclusive. A power is exclusive under subsection (a)(1)(B), even if:

(1) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded limits the use of the electronic money or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the person shares the power with another person.

54 New Sections; Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible; Nor Requirement to Confirm; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 107 the following new sections:

382-A:9-107A Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible.

(a) Control under Section 12-105. A secured party has control of a controllable electronic record as provided in Section 12-105.

(b) Control of controllable account and controllable payment intangible. A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

382-A:9-107B No Requirement to Acknowledge or Confirm; No Duties.

(a) No requirement to acknowledge. A person that has control under Section 9-104, 9-105, or 9-105A is not required to acknowledge that it has or will obtain control on behalf of another person.

(b) No duties or confirmation. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.

55 Attachment and Enforceability of Security Interest; Secured Transactions; UCC. Amend RSA 382-A:9-203(b)(3) to read as follows:

(3) one of the following conditions is met:

(A) the debtor has [~~authenticated~~] ***signed*** a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement; [~~or~~]

(D) the collateral is ***controllable accounts, controllable electronic records, controllable payment intangibles,*** deposit accounts, [~~electronic chattel paper,~~] ***electronic documents, electronic money,*** investment property, ***or*** letter-of-credit rights[~~, or electronic documents,~~] and the secured party has control under Section 7-106, 9-104, 9-105, ***9-105A,*** 9-106, [~~or~~] 9-107***, or 9-107A*** pursuant to the debtor's security agreement***; or***

(E) the collateral is chattel paper and the secured party has possession and control under Section 9-314A pursuant to the debtor's security agreement.

56 Attachment and Enforceability; Secured Transactions; UCC. Amend RSA 382-A:9-203(b)-(c) to read as follows:

(b) When after-acquired property clause not effective. ***Subject to subsection (c),*** a security interest does not attach under a term constituting an after-acquired property clause to:

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) a commercial tort claim.

(c) ***Limitation on subsection (b). Subsection (b) does not prevent a security interest from attaching:***

(1) to consumer goods as proceeds under Section 9-315(a) or commingled goods under section 9-336(c);

(2) to a commercial tort claim as proceeds under Section 9-315(a); or

(3) under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.

(d) Future advances and other value. A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

57 Duties and Rights; Secured Party in Control; Secured Transactions; UCC. Amend the introductory paragraph of RSA 382-A:9-207(c) to read as follows:

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, ***9-105A,*** 9-106, [~~or~~] 9-107***, or 9-107A***:

58 Additional Duties of Secured Party; Secured Transactions; UCC. Amend RSA 382-A:9-208(b) to read as follows:

(b) Duties of secured party after receiving demand from debtor. Within 10 days after receiving[~~, an authenticated~~] ***a signed*** demand by the debtor:

(1) a secured party having control of a deposit account under Section 9-104(a)(2) shall send to the bank with which the deposit account is maintained [~~an authenticated~~]***a signed*** statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under Section 9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control [~~of electronic chattel paper~~] under Section 9-105 ***of an electronic copy of a record evidencing chattel paper*** shall ***transfer control of the electronic copy to the debtor or a person designated by the debtor;*** [~~:~~]

[~~(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;~~

~~(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper 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; and~~

~~(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;~~]

(4) a secured party having control of investment property under Section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an [~~authenticated record~~] ***a signed record*** that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under Section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party [~~an authenticated~~] ***a signed*** release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; [~~and~~

~~(6) a secured party having control of an electronic document shall:~~

~~(A) give control of the electronic document to the debtor or its designated custodian;~~

~~(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the 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; and~~

~~(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.~~]

(6) a secured party having control under Section 7-106 of an authoritative copy of an electronic document of title shall transfer control of the authoritative copy to the debtor or a person designated by the debtor;

(7) a secured party having control under Section 9-105A of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor; and

(8) a secured party having control under Section 12-105 of a controllable electronic record shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

59 Law Governing Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-301 to read as follows:

382-A:9-301 Law Governing Perfection and Priority of Security Interests. Except as otherwise provided in Sections 9-303 through [~~9-306~~] ***9-306B***, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, ***or tangible*** money[~~, or tangible chattel paper~~] is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

60 New Sections; Chattel Paper Evidenced by Authoritative Electronic Copy. Amend RSA 382-A by inserting after section 9-306 the following new sections:

382-A:9-306A. Law Governing Perfection and Priority of Security Interests in Chattel Paper.

(a) Chattel paper evidenced by authoritative electronic copy. Except as provided in subsection (e), 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 electronic chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper.

(b) Electronic Chattel Paper's Jurisdiction. The following rules determine the electronic chattel paper's jurisdiction under this section:

(1) If the authoritative electronic copy of chattel paper, or a record attached to or logically associated with the electronic copy which is readily available for review, expressly provides that a particular jurisdiction is the electronic chattel paper's jurisdiction for purposes of this part, this article, or the [Uniform Commercial Code], that jurisdiction is the electronic chattel paper's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this part, this article, or the [Uniform Commercial Code], that jurisdiction is the electronic chattel paper's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the electronic copy, or a record attached to or logically associated with the electronic copy which is readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction is the electronic chattel paper's jurisdiction.

(4) If paragraphs (1) through (3) do not apply and the rules of the system in which the 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 electronic chattel paper's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the electronic chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

(c) Relation of transaction to electronic chattel paper's jurisdiction not necessary. Subsections (a) and (b) apply even if a transaction does not bear any relation to the electronic chattel paper's jurisdiction.

(d) Chattel paper evidenced by authoritative tangible copy. If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while an authoritative tangible copy of a record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the chattel paper by possession under Section 9-314A; and

(B) the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(e) When perfection governed by law of jurisdiction where debtor is located. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

382-A:9-306B Law Governing Perfection and Priority of Security Interests in Controllable Accounts, Controllable Electronic Records, and Controllable Payment Intangibles.

(a) Governing law: general rules. Except as provided in subsection (b), the local law of the controllable electronic record's jurisdiction as specified in Section 12-107(c) and (d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable account, controllable electronic record, or controllable payment intangible.

(b) When perfection governed by law of jurisdiction where debtor is located. The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and

(2) automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible.

61 When Filing Required; Secured Transactions; UCC. Amend RSA 382-A:9-310(b)(8)-(10) to read as follows:

(8) in ***controllable accounts, controllable electronic records, controllable payment intangibles,*** deposit accounts, [~~electronic chattel paper,~~] electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 9-314;

(9) ***in chattel paper which is perfected by possession and control under Section 9-314A;***

(10) in proceeds which is perfected under Section 9-315; or

[~~(10)~~] ***(11)*** that is perfected under Section 9-316.

62 Perfection of Security Interests; Secured Transactions; UCC. Amend RSA 382-A:9-312 to read as follows:

382-A:9-312 Perfection of Security Interests in Chattel Paper, ***Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles,*** Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(a) Perfection by filing permitted. A security interest in chattel paper, [~~negotiable documents,~~] ***controllable accounts, controllable electronic records, controllable payment intangibles,*** instruments, [~~or~~] investment property***, or negotiable documents*** may be perfected by filing.

(b) Control or possession of certain collateral. Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under Section 9-314;

(2) and except as otherwise provided in Section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314; [~~and~~]

(3) a security interest in ***tangible*** money may be perfected only by the secured party's taking possession under Section 9-313***; and***

(4) a security interest in electronic money may be perfected only by control under Section 9-314.

(c) Goods covered by negotiable document. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) Goods covered by nonnegotiable document. While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) Temporary perfection: new value. A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under [~~an authenticated~~] ***a signed*** security agreement.

(f) Temporary perfection: goods or documents made available to debtor. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) Temporary perfection: delivery of security certificate or instrument to debtor. A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) Expiration of temporary perfection. After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

63 Possession By Secured Party Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-313(a) to read as follows:

(a) Perfection by possession or delivery. Except as otherwise provided in subsection (b), a secured party may perfect a security interest in [~~tangible negotiable documents,~~] goods, instruments, ***negotiable tangible documents, or tangible*** money, [~~or tangible chattel paper~~] by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8-301.

64 Possession by a Secured Party; Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-313(c) to read as follows:

(c) Collateral in possession of person other than debtor. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession [~~authenticates~~] ***signs*** a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having [~~authenticated~~] ***signed*** a record acknowledging that it will hold possession of collateral for the secured party's benefit.

65 Perfection by Control; Secured Transactions; UCC. Amend RSA 382-A:9-314(a)-(b) to read as follows:

(a) Perfection by control. A security interest in[~~investment property, deposit accounts, letter of credit rights, electronic chattel paper, or electronic documents~~] ***controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, or letter-of-credit rights*** may be perfected by control of the collateral under Section 7-106, 9-104, [~~9-105,~~] ***9-105A,*** 9-106,[~~or~~] 9-107, ***or 9-107A.***

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in ***controllable accounts, controllable electronic records, controllable payment intangibles,*** deposit accounts,[~~electronic chattel paper, letter of credit rights, or~~] electronic documents, ***electronic money, or letter-of-credit rights*** is perfected by control under Section 7-106, 9-104, [~~9-105,~~] ***9-105A,*** [~~or~~] 9-107, ***or 9-107A*** when the secured party obtains control and remains perfected by control only while the secured party retains control.

66 New Section; Perfection by Possession; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 9-314 the following new section:

9-314A Perfection by Possession and Control of Chattel Paper.

(a) Perfection by possession and control. 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.

(b) Time of perfection; continuation of perfection. A security interest is perfected under subsection (a) when the secured party takes possession and obtains control and remains perfected under subsection (a) only while the secured party retains possession and control.

(c) Application of Section 9-313 to Perfection by Possession of Chattel Paper. Section 9-313(c) and (f) through (i) applies to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

67 Continued Perfection of Security Interest; Secured Transactions; UCC. Amend the introductory paragraph of RSA 382-A:9-316(a) to read as follows:

(a) General rule: effect on perfection of change in governing law. A security interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1), [~~or~~] 9-305(c), ***9-306A(e), or 9-306B(b)*** remains perfected until the earliest of:

68 Continued Perfection of Security Interest; Secured Transactions; UCC. Amend RSA 382-A:9-316(f) to read as follows:

(f) Change in jurisdiction of ***controllable electronic record,*** bank, issuer, nominated person, securities intermediary, or commodity intermediary. A security interest in ***controllable accounts, controllable electronic records, controllable payment intangibles, chattle paper,*** deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the ***controllable electronic record's jurisdiction, the electronic chattel paper's jurisdiction, the*** bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) the time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of 4 months after a change of the applicable jurisdiction to another jurisdiction.

69 Interest that Take Priority Over or Take Free of Security Interest or Agricultural Lien; Secured Transactions; UCC. Amend RSA 382-A:9-317 to read as follows:

382-A:9-317 Interests That Take Priority Over or Take Free of Security Interest or Agricultural Lien.

(a) Conflicting security interests and rights of lien creditors. A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under Section 9-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in Section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer[~~, other than a secured party,~~] of [~~tangible chattel paper, tangible documents,~~] goods, instruments, ***tangible documents,*** or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. ***Subject to subsections (f), (g), (h), and (i)*** a licensee of a general intangible or a buyer, other than a secured party, of collateral other than [~~tangible chattel paper,~~] ***electronic money,*** tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. Except as otherwise provided in Sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

(f) Buyers of chattel paper. 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 tangible 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 under Section 9-105, obtains control of each authoritative electronic copy.

(g) Buyers of electronic documents. 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 under Section 7-106, obtains control of each authoritative electronic copy.

(h) Buyers of controllable electronic records. A buyer of a controllable electronic record 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 electronic record.

(i) Buyers of controllable accounts and controllable payment intangibles. 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.

70 New Section; Priority of Security Interests; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 9-326 the following new section:

382-A:9-326A Priority of Security Interests in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible. A security interest in a controllable account, controllable electronic record, 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.

71 Priority of Purchaser of Chattel Paper or Instrument;Secured Transactions; UCC. Amend RSA 382-A:9-330(a)-(b) to read as follows:

(a) Purchaser's priority: security interest claimed merely as proceeds. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of ***each authoritative tangible copy of the record evidencing*** the chattel paper [~~or~~] ***and*** obtains control ***under RSA 382-A:9-105*** of ***each authoritative electronic copy of the record evidencing*** the chattel paper [~~under Section 9-105~~]; and

(2) the [~~chattel paper does~~] ***authoritative copies of the record evidencing the chattel paper do*** not indicate that [~~it has~~] ***the copies have*** been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority: other security interests. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of ***each authoritative tangible copy of the record evidencing*** the chattel paper [~~or~~] ***and*** obtains control ***under RSA 382-A:9-105*** of ***each authoritative electronic copy of the record evidencing*** the chattel paper [~~under Section 9-105~~] 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.

72 Priority Rights of Purchasers; Secured Transactions; UCC. Amend RSA 382-A:9-331 to read as follows:

382-A:9-331 Priority of Rights of Purchasers of ***Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles,*** Instruments, Documents, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements ***and Protections Against Assertions of Claims*** Under [~~Article 8~~] ***Articles 8 and 12.***

(a) Rights under Articles 3, 7, [~~and~~] 8***, and 12*** not limited. This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security***, or a qualifying purchaser of a controllable account, controllable electronic record, or controllable payment intangible***. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, [~~and~~] 8***, and 12***.

(b) Protection under [~~Article 8~~] ***Articles 8 and 12.*** This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under [~~Article 8~~] ***Articles 8 and 12.***

(c) Filing not notice. Filing under this article does not constitute notice of a claim or defense to the holders, [~~or~~] purchasers, or persons described in subsections (a) and (b).

73 Transfer of Money; Transfer of Funds; Secured Transactions; UCC. Amend RSA 382-A:9-332 to read as follows:

382-A:9-332 Transfer of Money; Transfer of Funds From Deposit Account.

(a) Transferee of ***tangible*** money. A transferee of ***tangible*** money takes the money free of a security interest [~~unless the transferee acts~~] ***if the transferee receives delivery of the money without acting*** in collusion with the debtor in violating the rights of the secured party.

(b) ***Transferee of electronic money. 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.***

(c) Transferee of funds from deposit account. A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account [~~unless the transferee acts~~] ***if the transferee receives the funds without acting*** in collusion with the debtor in violating the rights of the secured party.

74 Discharge of Account Debtor; Secured Transactions; UCC. Amend RSA 382-A:9-406 to read as follows:

382-A:9-406 Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.

(a) Discharge of account debtor; effect of notification. Subject to subsections (b) through (i) ***and (l)***, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, [~~authenticated~~] ***signed*** by the assignor or the assignee, that the amount due or to become due has

been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. Subject to [~~subsection (h)~~] ***subsections (h) and (l)***, notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to [~~subsection (h)~~] ***subsections (h) and (l)***, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(f) Legal restrictions on assignment generally ineffective. Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or

official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subsection (b)(3) not waivable. Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. This section does not apply to:

(1) an assignment of a health-care-insurance receivable; or

(2) an assignment or transfer of or creation of a security interest in:

(A) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C.A § 104(a)(1) or (2), as amended from time to time; or

(B) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C.A § 1396p(d)(4), as amended from time to time.

(j) Section prevails over inconsistent law. Except as otherwise provided in subsection (i), this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(k). Inapplicability to interests in certain entities. Subsections (d), (f), and (j) do not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.

(l) Inapplicability of certain subsections. Subsections (a) through (c) and (g) do not apply to a controllable account or controllable payment intangible.

75 Rights After Default; Secured Transactions; UCC. Amend RSA 382-A:9-601(b) to read as follows:

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, ***9-105A,*** 9-106, [~~or~~] 9-107***, or 9-107A*** has the rights and duties provided in Section 9-207.

76 Unknown Debtor or Secondary Obligor; Secured Transactions; UCC. RSA 382-A:9-605 is repealed and reenacted to read as follows:

(a) When no duty owed by secured party. Except as provided in subsection (b), a secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(b) When secured party owes duty to debtor notwithstanding subsection (a). A secured party owes a duty based on its status as a secured party to a person that is a debtor if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible, the secured party knows that the information specified in subsection (a)(1)(A), (B), or (C) 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.

77 Notification Before Disposition of Collateral; Secured Transactions; UCC. Amend RSA 382-A:9-611 to read as follows:

382-A:9-611 Notification Before Disposition of Collateral.

(a) "Notification date." In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor [~~an authenticated~~] ***a signed*** notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required. Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send [~~an authenticated~~] ***a signed*** notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9-311(a).

(d) Subsection (b) inapplicable: perishable collateral; recognized market. Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) Compliance with subsection (c)(3)(B). A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent [~~an authenticated~~] ***a signed*** notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

78 Contents and Form of Notification Before Disposition of Collateral; Secured Transactions; UCC. Amend RSA 382-A:9-614 to read as follows:

382-A:9-614 Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction.

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) the information specified in Section 9-613(1);

(B) a description of any liability for a deficiency of the person to which the notification is sent;

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 9-623 is available; and

(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral] , because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date:

Time:

Place:

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing ***or in an electronic document*** 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 ***or a description of electronic communication method***] and request a written explanation ***or an explanation in an electronic document***. [We will charge you $_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address] [***or description of electronic communication method***]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

[End of Form]

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

79 Explanation of Calculation of Surplus or Deficiency; Secured Transactions; UCC. Amend RSA 382-A:9-616(a)-(c) to read as follows:

382-A:9-616 Explanation of Calculation of Surplus or Deficiency.

(a) Definitions. In this section:

(1) "Explanation" means a [~~writing~~] ***record*** that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) [~~authenticated~~] ***signed*** by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under Section 9-610.

(b) Explanation of calculation. In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9-615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes [~~written~~] demand ***in a record*** on the consumer obligor after the disposition for payment of the deficiency; and

(B) within 14 days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) Required Information. To comply with subsection (a)(1)(B), [~~a writing~~] ***an explanation*** must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) the amount of the surplus or deficiency.

80 Nonliability and Limitation on Liability of Secured Party; Secured Transactions; UCC. Amend RSA 382-A:9-628 to read as follows:

382-A:9-628 Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.

(a) Limitation of liability of secured party for noncompliance with article. ***Subject to subsection (f),*** unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. ***Subject to subsection (f)*** a secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under Section 9-625(c)(2) for its failure to comply with Section 9-616.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under Section 9-625(c)(2) more than once with respect to any one secured obligation.

(f) Notwithstanding subsection (b), a secured party owes a duty based on its status as a secured party to a person that is a debtor if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible, the secured party knows that it will not be provided with the information specified in subsection (b)(1)(A), (B), or (C) by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

81 New Subdivisions; Uniform Commercial Code; Article 12 and 13; Controllable Electronic Records; Transition Provisions. Amend RSA 382-A by inserting after section 9-809 the following new subdivisions:

ARTICLE 12

CONTROLLABLE ELECTRONIC RECORDS

382-A:12-101 Short Title. This article may be cited as Uniform Commercial Code-Controllable Electronic Records.

382-A:12-102 Definitions.

(a) Article 12 definitions. In this article:

(1) "Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under Section 12-105. 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.

(2) "Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in the 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.

(3) "Transferable record" means:

(A) "Transferable record" as defined in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., as amended; or

(B) "Transferable record" as defined in [cite to Uniform Electronic Transactions Act Section 16(a)].

(4) "Value" has the meaning provided in Section 3-303(a).

(b) Definitions in Article 9. The definitions in Article 9 of "account debtor", "controllable account", "controllable payment intangible", "chattel paper", "deposit account", "electronic money", and "investment property" apply to this article.

382-A:12-103 Relationship to Article 9 and Consumer Laws.

(a) Article 9 governs in case of conflict. If there is conflict between this article and Article 9, Article 9 governs.

(b) Applicable consumer law and other laws. A transaction subject to this article is subject to any applicable rule of law that establishes a different rule for consumers and [insert reference to (i) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection statute or regulation].

382-A:12-104 Rights in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible.

(a) Applicability of section to controllable account and controllable payment intangible. This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits of a purchaser and a qualifying purchaser under subsections (d), (e), (g), and (h), in the same manner this section applies to a controllable electronic record.

(b) Control of controllable account and controllable payment intangible. For purposes of determining whether a 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 controllable electronic record that evidences the account or payment intangible.

(c) Applicability of other law to acquisition of rights. Except as provided in this section, law other than this article determines whether a person acquires a right in a controllable electronic record and the right the person acquires.

(d) Shelter principle and purchase of limited interest. A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or

had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

(e) Rights of qualifying purchaser. A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(f) Limitation of rights of qualifying purchaser in other property. Except as provided in subsections (a) and (e) for controllable accounts and controllable payment intangibles or law other than this article, a qualifying purchaser takes a right to payment, right to performance, or interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

(g) No-action protection for qualifying purchaser. An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory.

(h) Filing not notice. Filing of a financing statement under Article 9 is not notice of a claim of a property right in a controllable electronic record.

382-A:12-105 Control of Controllable Electronic Record.

(a) General rule: control of controllable electronic record. A person has control of a controllable electronic record if:

(1) the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded gives the person:

(A) the power to avail itself of substantially all the benefit from the electronic record; and

(B) exclusive power, subject to subsection (b), to:

(i) prevent others from availing themselves of substantially all the benefit from the electronic record; and

(ii) transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and

(2) the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in paragraph (1).

(b) Presumption of exclusivity of certain powers. If a person has the powers that are specified in subsection (a)(1)(B), the powers are presumed to be exclusive.

(c) Control through another person. A person has control of a controllable electronic record if another person, other than the transferor of an interest in the electronic record:

(1) has control of the electronic record and acknowledges that it has control on behalf of the person, or

(2) obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.

(d) No requirement to acknowledge. A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(e) No duties or confirmation. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.

(f) Meaning of exclusive. A power specified in subsection (a)(1) is exclusive, even if:

(1) the controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded 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

(2) the person shares the power with another person.

382-A:12-106 Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible.

(a) Discharge of account debtor. An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

(1) the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2) except as provided in subsection (b), a person that formerly had control of the controllable electronic record.

(b) Effect of notification. Subject to subsection (d), an account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1) is signed by a person that formerly had control or the person to which control was transferred;

(2) reasonably identifies the controllable account or controllable payment intangible;

(3) notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5) provides a commercially reasonable method by which the account debtor is to pay the transferee.

(c) Discharge following effective notification. After receipt of a notification that complies with subsection (b), the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(d) When notification ineffective. Subject to subsection (h), notification is ineffective under subsection (b):

(1) unless, before the notification is sent, an account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;

(2) to the extent an agreement between an 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 under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to:

(A) divide a payment;

(B) make less than the full amount of an installment or other periodic payment; or

(C) pay any part of a payment by more than one method or to more than one person.

(e) Proof of transfer of control. Subject to subsection (h), if requested by the account debtor, the person giving the notification seasonably shall furnish reasonable proof, using the agreed method, that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (b).

(f) What constitutes reasonable proof. A person furnishes reasonable proof that control has been transferred if the person demonstrates, using the agreed method, that the transferee has the power to:

(1) avail itself of substantially all the benefit from the controllable electronic record;

(2) prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(3) transfer the powers mentioned in paragraphs (1) and (2) to another person.

(g) Rights not waivable. Subject to subsection (h), an account debtor may not waive or vary its rights under subsections (d)(1) and (e) or its option under subsection (d)(3).

(h) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

382-A: 12-107 Governing Law.

(a) Governing law: general rule. Except as provided in subsection (b), the local law of a controllable electronic record's jurisdiction governs a matter covered by this article.

(b) Governing law: Section 12-106. The local law of the controllable electronic record's jurisdiction for a controllable electronic record that evidences a controllable account or controllable payment intangible governs a matter covered by Section 12-106 unless an effective agreement determines that the local law of another jurisdiction governs.

(c) Controllable electronic record's jurisdiction. The following rules determine a controllable electronic record's jurisdiction under this section:

(1) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or this chapter, that jurisdiction is the controllable electronic record's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the [Uniform Commercial Code], that jurisdiction is the controllable electronic record's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(4) If paragraphs (1) through (3) do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the controllable electronic record's jurisdiction is the District of Columbia.

(d) Applicability of Article 12. If subsection (c)(5) applies and Article 12 is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this article is the law of the District of Columbia as though Article 12 were in effect in the District of Columbia without material modification. In this section, "Article 12" means Uniform Commercial Code—Controllable Electronic Records (with Conforming Amendments to Articles 1and 9), 2022 Official Text.

(e) Relation of transaction to controllable electronic record's jurisdiction not necessary. Subsections (b) through (d) apply even if a transaction does not bear any relation to the controllable electronic record's jurisdiction.

(f) Rights of purchasers determined at time of purchase. The rights acquired by a purchaser or a qualifying purchaser under Section 12-104 are governed by the law applicable under this section at the time of purchase.

ARTICLE 13

ADDITIONAL TRANSITION PROVISIONS FOR ARTICLES 9 AND 12

382-A:13-301 Savings Clause.

(a) Pre-effective-date transactions, liens, or interests. Except as otherwise provided in this part, Article 9 and Article 12 apply to a transaction, lien, or other interest in property, even if the transaction, lien, or interest was entered into, created, or acquired before the effective date of this Article.

(b) Continuing validity. Except as otherwise provided in subsection (c) and Sections 13-302 through 13-306:

(1) a transaction, lien, or interest in property that was not governed by this chapter and was validly entered into, created, or transferred before the effective date of this Article, and would be subject to Article 9 as amended or Article 12 if it had been entered into, created, or transferred after the effective date of this Article, and the rights, duties, and interests flowing from the transaction, lien, or interest in property remain valid after the effective date of this Article; and

(2) the transaction, lien, or interest in property may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) Pre-effective-date proceedings. This Article does not affect an action, case, or proceeding commenced before the effective date of this Article.

382-A:13-302 Security Interest Perfected Before Effective Date.

(a) Continuing perfection: perfection requirements satisfied. A security interest that is enforceable and perfected immediately before the effective date of this Article is a perfected security interest under this Article if, on the effective date of this Article, the applicable requirements for enforceability and perfection under this Article are satisfied without further action.

(b) Continuing perfection: perfection requirements not satisfied. If, immediately before the effective date of this Article, a security interest is enforceable and perfected, but the applicable requirements for enforceability or perfection under this Article, are not satisfied on the effective date of this Article, the security interest:

(1) is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before the effective date of this Article or January 1, 2025;

(2) remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under Section 9-203 before January 1, 2025; and

(3) remains perfected thereafter only if the applicable requirements for perfection under this Article are satisfied before January 1, 2025.

382-A:13-303 Security Interest Unperfected Before Effective Date. A security interest that is enforceable immediately before the effective date of this Article but which would be unperfected at that time:

(1) remains an enforceable security interest until January 1, 2025;

(2) remains enforceable thereafter if the security interest becomes enforceable under Section 9-203 on the effective date of this Article or before January 1, 2025; and

(3) becomes perfected:

(A) without further action, on the effective date of this Article if the applicable requirements for perfection under this Article are satisfied before or at that time; or

(B) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

382-A:13-304 Effectiveness of Actions Taken Before Effective Date.

(a) Pre-effective-date action; attachment and perfection before adjustment date. If action, other than the filing of a financing statement, is taken before the effective date of this Article and the action would have resulted in perfection of the security interest had the security interest become enforceable before the effective date of this Article, the action is effective to perfect a security interest that attaches under this Article before January 1, 2025. An attached security interest becomes unperfected on January 1, 2025 unless the security interest becomes a perfected security interest under this Article before January 1, 2025.

(b) Pre-effective-date filing. The filing of a financing statement before the effective date of this Article is effective to perfect a security interest on the effective date of this Article to the extent the filing would satisfy the applicable requirements for perfection under this Article.

(c) Pre-effective-date enforceability actions. The taking of an action before the effective date of this Article is sufficient for the enforceability of a security interest on the effective date of this Article if the action would satisfy the applicable requirements for enforceability under this Article.

382-A:13-305 Priority

(a) Determination of priority. Subject to subsections (b) and (c), this Article determines the priority of conflicting claims to collateral.

(b) Established priorities. Subject to subsection (c), if the relative priorities of claims to collateral were established before the effective date of this Article, Article 9 determines priority.

(c) Determination of certain priorities on adjustment date. On January 1, 2025, to the extent that the relative priorities determined by this Article modify the relative priorities established before the effective date of this Article, the relative priorities of claims to Article 12

property and electronic money which were established before the effective date of this Article cease to apply.

382-A:13-306 Priority of Claims When Priority Rules of Article 9 Do Not Apply.

(a) Determination of priority. Subject to subsections (b) and (c), Article 12 determines the priority of conflicting claims to Article 12 property when the priority rules of Article 9 do not apply.

(b) Established priorities. Subject to subsection (c), when the priority rules of Article 9 do not apply and the relative priorities of claims to Article 12 property were established before the effective date of this Article, law other than Article 12 determines priority.

(c) Determination of certain priorities on adjustment date. When the priority rules of Article 9 do not apply, to the extent that the relative priorities determined by this Article modify the relative priorities established before the effective date of this Article, on January 1, 2025 the relative priorities of claims to Article 12 property which were established before the effective date of this Article cease to apply.

82 New Paragraph; Uniform Securities Act; Definitions; Open Blockchain Token. Amend RSA 421-B:1-102 by inserting after paragraph (35) the following new paragraph:

(35-a) "Open blockchain token" means a digital unit which is:

(A) Created:

(i) In response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(ii) By deploying computer code to a blockchain network that allows for the creation of digital tokens or other units; or

(iii) Using any combination of the methods specified in subparagraphs (i) and (ii) of this paragraph;

(B) Recorded in a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature, especially relating to the supply of units and their distribution; and

(C) Capable of being traded or transferred between persons without an intermediary or custodian of value.

83 New Paragraph; Uniform Securities Act; Exempt Transaction; Open Blockchain Token. Amend RSA 421-B:2-202 by inserting after paragraph (24) the following new paragraph:

(25) A purchase or sale of an open blockchain token if all of the following are met:

(A) The issuer or seller of the token, or the registered agent of the developer or seller, files a notice of intent with the secretary of state, as specified in subsection (D) of this section;

(B) The purpose of the token is for a consumptive purpose, which shall only be exchangeable for, or provided for the receipt of, goods, services or content, including rights of access to goods, services or content; and

(C) The issuer or seller of the token did not sell the token to the initial buyer as a financial investment. For purposes of this subsection, a developer seller of the token will be deemed not to have sold the token to the initial buyer as a financial investment if:

(i) The issuer or seller did not market the token as a financial investment; and

(ii) At least one of the following is true:

(a) The issuer or seller of the token reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

(b) The token has a consumptive purpose that is available at the time of sale and can be used at or near the time of sale for use for a consumptive purpose;

(c) If the token does not have a consumptive purpose available at the time of sale, the initial buyer of the token is prevented from reselling the token until the token is available for use for a consumptive purpose; or

(d) The issuer or seller takes other reasonable precautions to prevent buyers from purchasing the token as a financial investment.

(D) The issuer, seller or person who facilitates the exchange of an open blockchain token, or the registered agent of the applicable person, files a notice of intent with the secretary of state prior to offering or selling the tokens in this state. The notice of intent shall contain the name of the person acting as an issuer, seller or facilitator, the contact information of the person or the registered agent of the person, and a statement that any marketing or advertising materials, including web sites offering or selling open blockchain tokens, will contain a disclosure that the tokens are not registered as securities pursuant to a transaction exemption under RSA 421-B, the New Hampshire Uniform Securities Act. The notice shall also specify whether the person will be acting as an issuer, seller or facilitator. A form shall be made available by the office of the secretary of state on its Internet website for this purpose. The secretary of state shall charge a fee of $100 per filing.

84 New Subparagraph; Uniform Securities Act; Broker-Dealer Registration Requirements and Exemption. Amend RSA 421-B:4-401(b) by inserting after subparagraph (2) the following new subparagraph:

(3)(A) Except as otherwise provided by RSA 421-B:5-511, a person who exclusively facilitates the exchange of an open blockchain token if all of the following are met:

(i) The person, or the registered agent of the person, files a notice of intent with the secretary of state, as specified in RSA 421-B:2-202(26)(d);

(ii) The person has a reasonable and good faith belief that a token subject to exchange conforms to the requirements of paragraphs RSA 421-B:2-202(25)(a)-(c); and

(iii) The person takes reasonably prompt action to terminate the exchange of a token that does not conform to the requirements of this subsection.

85 New Section; Uniform Securities Act; Liability of Issuers, Seller, and Others Who Facilitate Exchange of Open Blockchain Tokens. Amend RSA 421-B by inserting after section 5-510 the following new section:

421-B:5-511 Liability of Issuers, Sellers, and Others Who Facilitate Exchange of Open Blockchain Tokens. Notwithstanding any other provision of law, an issuer, seller, or a person who facilitates the exchange of an open blockchain token is subject to the provisions of RSA 421-B:5-501 through RSA 421-B:5-503 and RSA 421-B:5-505 through RSA 421-B:5-510 only to the extent necessary to carry out those sections. The secretary of state shall have the authority provided under RSA 421-B:6-601 through RSA 421-B:6-613 to determine compliance with the provisions of this section, including whether a person qualifies for the exemptions set forth in this section. The evidentiary burdens specified in RSA 421-B:5-503 shall apply in any proceeding initiated by the secretary of state pursuant to this subsection.

86 Effective Date. This act shall take effect January 1, 2023.

2022-1616h

AMENDED ANALYSIS

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws.

This bill also adopts the Uniform Commercial Code on controllable electronic records.

Commerce
April 19, 2022
2022-1661s
08/04

Amendment to HB 1503-FN

Amend the bill by replacing section 34 with the following:

34 Effective Date. This act shall take effect January 1, 2025.

Senate Finance
May 3, 2022
2022-1939s
08/04

Amendment to HB 1503-FN

Amend the title of the bill by replacing it with the following:

AN ACT adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws.

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Intent.

I. The Joint Committee on the Uniform Commercial Code and Emerging Technologies of the Uniform Law Commission has developed draft Uniform Commercial Code provisions governing certain digital assets, specifically those that fall within the definition of "controllable electronic records." The current draft has been extensively vetted by those who understand and participate in digital transactions.

II. Adoption of the Uniform Law Commission's draft by the New Hampshire general court will create a considerable advantage for New Hampshire to lead in emerging industries utilizing blockchain, digital ledger technology, virtual currencies, and other digital assets and would provide a sensible framework and legal certainty for transactions of controllable electronic records. In subsequent sessions, if necessary, the New Hampshire general court 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.

2 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(10) to read as follows:

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. [~~Conspicuous terms include the following:~~

~~(A) 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; and~~

~~(B) 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.~~]

3 New Paragraph; Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b) by inserting after paragraph (16) the following new paragraph:

(16A) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

4 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(21) to read as follows:

(21) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control, ***other than pursuant to Section 7-106(d),*** of a negotiable electronic document of title.

5 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(24) to read as follows:

(24) "Money" means a medium of exchange ***that is*** 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 term 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 adopted by a government, or organization or pursuant to such an agreement.***

6 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(27) to read as follows:

(27) "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. ***The term includes a protected series, however denominated, of an entity if the protected series is established under law other than this chapter 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.***

7 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(37) to read as follows:

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing ***and, with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record. "Sign" and "Signature" have corresponding meanings.***

8 Uniform Commercial Code; Definitions. Amend the introductory paragraph of RSA 382-A:1-204 to read as follows:

Except as otherwise provided in Articles 3, 4,[~~-and~~] 5, ***6, and 12,*** a person gives value for rights if the person acquires them:

9 Uniform Commercial Code; Sales; Scope. RSA 382-A:2-102 is repealed and reenacted to read as follows:

(1) Unless the context otherwise requires and except as provided in subsections (3) and (4), this Article applies to transactions in goods.

(2) If the goods aspects of a hybrid transaction predominate, this Article applies to the transaction.

(3) If the goods aspects of a hybrid transaction do not predominate, the provisions of this Article which relate primarily to the goods aspects of the transaction and not to the transaction as a whole apply.

(4) This article 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 Article impair or repeal any statute regulating sales to consumers, farmers, or other specified classes of buyers.

(5) This Section does not preclude in appropriate circumstances the application of other law to the aspects of a hybrid transaction which do not relate to the goods even if the goods aspects of the transaction predominate.

10 Uniform Commercial Code; Sales; Definitions. RSA 382-A:2-106 is repealed and reenacted to read as follows:

382-A:2-106 Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; "Cancellation".

(1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2–401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

(5) "Hybrid transaction" means a single transaction involving a sale of goods and a sale, lease, or license of other property or the provision of services.

11 Uniform Commercial Code; Sales; Statute of Frauds. RSA 382-A:2-201 is repealed and reenacted to read as follows:

382-A:2-201 Formal Requirements; Statute of Frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A record is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such record.

(2) Between merchants if within a reasonable time a record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless a record containing a notice of objection to its contents is given with 10 days after it is received.

12 Uniform Commercial Code; Sales; Final Written Expression. Amend RSA 382-A:2-202 to read as follows:

382-A:2-202 Final Written Expression; Parol or Extrinsic Evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a [~~writing~~] ***record*** intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of performance, course of dealing, or usage of trade (Section 1-303); and

(b) by evidence of consistent additional terms unless the court finds the [~~writing~~] ***record*** to have been intended also as a complete and exclusive statement of the terms of the agreement.

13 Uniform Commercial Code; Sales; Seals Inoperative. Amend RSA 382-A:2-203 to read as follows:

382-A:2-203 Seals Inoperative. The affixing of a seal to a [~~writing~~] ***record*** evidencing a contract for sale or an offer to buy or sell goods does not constitute the [~~writing~~] ***record*** a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

14 Uniform Commercial Code; Sales; Firm Offers. Amend RSA 382-A:2-205 to read as follows:

382-A:2-205 Firm Offers. An offer by a merchant to buy or sell goods in a signed [~~writing~~] ***writing*** which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

15 Uniform Commercial Code; Sales; Modification, Recission, and Waiver. Amend RSA 382-A:2-209(2) to read as follows:

(2) A signed agreement which excludes modification or rescission except by a signed [~~writing~~] ***record*** cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

16 Uniform Commercial Code; Leases; Scope. RSA 382-A:2A-102 is repealed and reenacted to read as follows:

382-A:2A-102 Scope.

(1) Except as provided in subsection (3), this article applies to any transaction, regardless of form, that creates a lease.

(2) If the lease-of-goods aspects of a hybrid lease predominate, this article applies to the transaction.

(3) If the lease-of-goods aspects of a hybrid lease do not predominate:

(A) only the provisions of this article which relate primarily to the lease-of-goods aspects of the transaction and not to the transaction as a whole apply;

(B) RSA 382-A:2A-209 applies if the lease is a finance lease; and

(C) RSA 382-A:2A-407 applies to the promises of a person that is the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods.

(4) This Section does not preclude the application in appropriate circumstances of other law to the aspects of a hybrid lease which do not relate to the lease of goods even if the lease-of-goods aspects of the transaction predominate.

17 New Subparagraph; Definitions; Uniform Commercial Code; Leases; Definitions. Amend RSA 382-A:2A-103 by inserting after subparagraph (1)(h) the following new subparagraph:

(hh) "Hybrid lease" means a single transaction involving a lease of goods and:

(i) the provision of services;

(ii) a sale of other goods; or

(iii) a sale, lease, or license of property other than goods.

18 Uniform Commercial Code; Leases; Statute of Frauds. Amend RSA 382-A:2A-201 to read as follows:

382-A:2A-201 Statute of Frauds.

(1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000; or

(b) there is a [~~writing~~] ***record***, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A [~~writing~~] ***record*** is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable:

(a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a [~~writing~~] ***record*** signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) a reasonable lease term.

19 Uniform Commercial Code; Leases; Final Written Expression. Amend RSA 382-A:2A-202 to read as follows:

382-A:2A-202 Final Written Expression; Parol or Extrinsic Evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a [~~writing~~] ***record*** intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade or by course of performance; and

(b) by evidence of consistent additional terms unless the court finds the [~~writing~~] ***record*** to have been intended also as a complete and exclusive statement of the terms of the agreement.

20 Uniform Commercial Code; Leases; Seals Inoperative. Amend RSA 382-A:2A-203 to read as follows:

382-A:2A-203 Seals Inoperative. The affixing of a seal to a [~~writing~~] ***record*** evidencing a lease contract or an offer to enter into a lease contract does not render the [~~writing~~] ***record*** a sealed

instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

21 Uniform Commercial Code; Leases; Firm Offers. Amend RSA 382-A:2A-205 to read as follows:

382-A:2A-205 Firm Offers. An offer by a merchant to lease goods to or from another person in a signed [~~writing~~] ***record*** that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

22 Uniform Commercial Code; Leases; Modification, Recission, and Waiver. Amend RSA 382-A:2A-208(2) to read as follows:

(2) A signed lease agreement that excludes modification or rescission except by a signed [~~writing~~] ***record*** may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

23 Uniform Commercial Code; Negotiable Instruments. Amend RSA 382-A:3-104(3) to read as follows:

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, [~~or~~] (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor***; (iv) a term that specifies the law that governs the promise or order; or (v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.***

24 Uniform Commercial Code; Negotiable Instruments; Issue of Instrument. Amend RSA 382-A:3-105(a) to read as follows:

(a) "Issue" means*:*

(1) 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***; or***

(2) if agreed by the payee, first transmission by the drawer to the payee of an image of an item and information derived from the item in a manner that enables the depository bank to collect the item by transferring or presenting under federal law an electronic check.

25 Uniform Commercial Code; Negotiable Instruments; Discharge by Cancellation or Renunciation. Amend RSA 382-A:3-604 to read as follows:

382-A:3-604 Discharge by Cancellation or Renunciation.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) 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 (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed [~~writing~~] ***record. The obligation of a party to pay a check is not discharged solely by the destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made, and subsequently, the information and image are transmitted for payment.***

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement

26 Uniform Commercial Code; Funds Transfers; Payment Order. Amend the introductory paragraph of RSA 382-A:4A-103(a)(1) to read as follows:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, [~~electronically~~], or in [~~writing~~] ***a record***, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

27 Uniform Commercial Code; Funds Transfers; Security Procedure. Amend RSA 382-A:4A-201 to read as follows:

382-A:4A-201 Security Procedure. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure ***may impose an obligation on the receiving bank or the customer and*** may require the use of algorithms or other codes, identifying words, [~~or~~] numbers, ***symbols, sounds or biometrics,*** encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer ***or requiring that a payment order be sent from a known email address, IP address or phone number*** is not by itself a security procedure.

28 Uniform Commercial Code; Funds Transfers; Authorized and Verified Payment Orders. Amend RSA 382-A:4A-202(a)-(c) to read as follows:

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of

providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with ***the bank's obligation under*** the security procedure and any [~~written~~] agreement or instruction of the customer***, evidenced by a record,*** restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates [~~a written~~] ***an*** agreement ***evidenced by a record*** with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in [~~writing~~] ***a record*** to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the ***bank's obligations under the*** security procedure chosen by the customer.

29 Uniform Commercial Code; Funds Transfers; Unenforceability of Certain Verified Payment Orders. Amend RSA 382-A:4A-203(a)(1) to read as follows:

(1) By express [~~written~~] agreement ***evidenced by a record***, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

30 Uniform Commercial Code; Funds Transfers; Misdescription of Beneficiary. Amend RSA 382-A:4A-207(c)(2) to read as follows:

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a [~~writing~~] ***record*** stating the information to which the notice relates.

31 Uniform Commercial Code; Funds Transfer; Misdescription of Intermediary Bank or Beneficiary's Bank. Amend RSA 382-A:4A-208(b)(2) to read as follows:

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different

from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a [~~writing~~] ***record*** stating the information to which the notice relates.

32 Uniform Commercial Code; Funds Transfers; Rejection of Payment Order. Amend RSA 382-A:4A-210(a) to read as follows:

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally[~~, electronically, or in writing~~] ***or in a record***. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

33 Uniform Commercial Code; Funds Transfer; Cancellation and Amendment of Payment Order. Amend RSA 382-A:4A-211(a) to read as follows:

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally[~~, electronically, or in writing~~] ***or in a record***. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

34 Uniform Commercial Code; Letters of Credit; Choice of Law and Forum. Amend RSA 382-A:5-116(c)-(e) to read as follows:

(c) ***For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under subsection (d).***

(d) A branch of a bank is considered to be located at 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.

(e) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or

practice, and (iii) there is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 5-103(c).

[~~(d)~~] ***(f)*** If there is conflict between this article and Article 3, 4, 4A, or 9, this article governs.

[~~(e)~~] ***(g)*** The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

35 Uniform Commercial Code; Documents of Title; Control of Electronic Document of Title. Amend RSA 382-A:7-106(b) to read as follows:

(b) A system satisfies subsection (a), and a person[~~is deemed to have~~] ***has*** control of an electronic document of title, if the document is created, stored, and [~~assigned~~] ***transferred*** in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified [~~assignee~~] ***transferee*** of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) A system satisfies subsection (a) and a person has control of an electronic document of title if an 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 to readily identify each electronic copy as an authoritative copy or nonauthoritative copy;

(2) enables the person readily to 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

(3) gives the person exclusive power, subject to subsection (h) to:

(A) prevent others from altering the person to which each authoritative electronic copy has been issued or transferred; and

(B) transfer control of each authoritative electronic copy.

(d) If a person has the powers that are specified in subsection (c)(3), the powers are presumed to be exclusive.

(e) A person has control of an electronic document of title if another person, other than the transferor of an interest in the document:

(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.

(f) A person that has control under this section is not required to acknowledge that it has or will obtain control on behalf of another person.

(g) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.

(h) A power is exclusive under subsection (c)(3), even if:

(1) the authoritative electronic copy, a record attached to or logically associated with the electronic copy or a system in which the electronic copy is recorded limits the use of the document or has a protocol that is programmed to cause a change, including a transfer or loss of control; or

(2) the person shares the power with another person.

36 Uniform Commercial Code; Investment Securities; Definitions. Amend RSA 382-A:8-102(6)(i) to read as follows:

(i) send a signed [~~writing~~] ***record***; or

37 Uniform Commercial Code; Investment Securities; Definitions. Amend RSA 382-A:8-106(d)-(g) to read as follows:

(d) A purchaser has "control" of a security entitlement if:

(1) the purchaser becomes the entitlement holder;

(2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(3) another person [~~has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser~~] ***other than the transferor of an interest in the security entitlement:***

(A) has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or

(B) obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c) or (d) has control even if the registered owner in the case of subsection (c) or the entitlement holder in the case of subsection (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of a purchaser.

(i) If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the purchaser and is not required to confirm the acknowledgment to another person.

38 Uniform Commercial Code; Investment Securities; Protected Purchaser. Amend RSA 382-A:8-303(b) to read as follows:

(b) [~~In addition to acquiring the rights of a purchaser, a~~] *A* protected purchaser also acquires its interest in the security free of any adverse claim.

39 Uniform Commercial Code; Investment Securities; Acquisition of Security Entitlement from Securities Intermediary. Amend RSA 382-A:8-501(d) to read as follows:

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the [~~other~~] person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

40 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(2) to read as follows:

(2) "Account", except as used in "account for", ***"account to," "account statement," "customer's account," "on account of," "statement of account," and paragraphs (14) and (29)***

means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes ***controllable accounts and*** health-care-insurance receivables. The term does not include (i) [~~rights to payment evidenced by chattel paper or an instrument~~] ***chattel paper***, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card, ***or (vii) rights to payment evidenced by an instrument.***

41 New Paragraphs; Definitions; Uniform Commercial Code; Secured Transactions; Assignee. Amend RSA 382-A:9-102 by inserting after paragraph (6) the following new paragraphs:

(6A) "Assignee" means a person:

(A) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not an obligation to be secured is outstanding; or

(B) to which an account, chattel paper, payment intangible, or promissory note has been sold.

(6B) "Assignor" means a person that:

(A) under a security agreement creates or provides for a security interest that secures an obligation; or

(B) sells an account, chattel paper, payment intangible, or promissory note.

42 Uniform Commercial Code; Secured Transactions; Definitions. RSA 382-A:9-102(11) is repealed and reenacted to read as follows:

(11) "Chattel paper" means:

(A) 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; or

(B) 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:

(i) the right to payment and lease agreement are evidenced by a record; and

(ii) the predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

The term does not include (i) a right to payment arising out of a charter or other contract involving the use or hire of a vessel or (ii) 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.

43 New Paragraphs; Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102 by inserting after paragraph 27 the following new paragraphs:

(27A) "Controllable account" means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that under Section 12-105 has control of the controllable electronic record.

(27B) "Controllable payment intangible" means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that under Section 12-105 has control of the controllable electronic record.

44 New Paragraph; Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102 by inserting after paragraph 31 the following new paragraph:

(31A) "Electronic money" means money in an electronic form.

45 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(42) to read as follows:

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes ***controllable electronic records,*** payment intangibles and software.

46 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(47) to read as follows:

(47) "Instrument" means a negotiable instrument (defined in Section 3-104), or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, [~~or~~] (iii) writings that evidence 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***, or (iv) writings that evidence chattel paper.***

47 New Paragraph; Definitions; Money; Secured Transactions; UCC. Amend RSA 382-A:9-102 by inserting after paragraph (54) the following new paragraph:

(54A) "Money" has the meaning provided in Section 1-201(24), but the term does not include (i) a deposit account or (ii) money in an electronic form that cannot be subjected to control under Section 9-105A.

48 Definitions; Payment Intangible; Secured Transactions; UCC. Amend RSA 382-A:9-102(61) to read as follows:

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. ***The term includes a controllable payment intangible.***

49 New Paragraph; Definitions; Tangible Money; Secured Transactions; UCC. Amend RSA 382-A:9-102 by inserting after paragraph (79) the following new paragraph:

(79A) "Tangible money" means money in a tangible form.

50 Definitions; Controllable Electronic Record; Qualified Purchaser; Secured Transactions; UCC. Amend RSA 382-A:9-102(b) to read as follows:

(b) "Control" as provided in Section 7-106 and the following definitions in other articles apply to this article:

"Applicant" Section 5-102.

"Beneficiary" Section 5-102.

"Broker" Section 8-102.

"Certificated security" Section 8-102.

"Check" Section 3-104.

"Clearing corporation" Section 8-102.

"Contract for sale" Section 2-106.

"Controllable electronic record" Section 12-102.

"Customer" Section 4-104.

"Entitlement holder" Section 8-102.

"Financial asset" Section 8-102.

"Holder in due course" Section 3-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right) Section 5-102.

"Issuer" (with respect to a security) Section 8-201.

"Issuer" (with respect to documents of title) Section 7-102.

"Lease" Section 2A-103.

"Lease agreement" Section 2A-103.

"Lease contract" Section 2A-103.

"Leasehold interest" Section 2A-103.

"Lessee" Section 2A-103.

"Lessee in ordinary course of business" Section 2A-103.

"Lessor" Section 2A-103.

"Lessor's residual interest" Section 2A-103.

"Letter of credit" Section 5-102.

"Merchant" Section 2-104.

"Negotiable instrument" Section 3-104.

"Nominated person" Section 5-102.

"Note" Section 3-104.

"Proceeds of a letter of credit" Section 5-114.

"Prove" Section 3-103.

"Qualifying purchaser" Section 12-102.

"Sale" Section 2-106.

"Securities account" Section 8-501.

"Securities intermediary" Section 8-102.

"Security" Section 8-102.

"Security certificate" Section 8-102.

"Security entitlement" Section 8-102.

"Uncertificated security" Section 8-102.

51 Control of Deposit Account; Secured Transactions; UCC. Amend RSA 382-A:9-104 to read as follows:

382-A:9-104 Control of Deposit Account.

(a) Requirements for control. A secured party has control of a deposit account if:

(1) the secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party, and bank have agreed in [~~an authenticated~~] ***a signed*** 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***; or***

(4) another person, other than the debtor:

(A) has control of the deposit account and acknowledges that it has control on behalf of the secured party; or

(B) obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party.

(b) Debtor's right to direct disposition., A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

52 Control of Electronic Copy of Record Evidencing Chattel Paper; Secured Transactions; UCC. RSA 382-A:9-105 is repealed and reenacted to read as follows:

382-A:9-105 Control of Electronic Copy of Record Evidencing Chattel Paper.

(a) General rule: control of electronic copy of record evidencing chattel paper. A purchaser has control of each 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 chattel paper was assigned.

(b) Single authoritative copy. A system satisfies subsection (a) if the record or records evidencing the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the purchaser as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the purchaser or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the purchaser;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) One or more authoritative copies. A system satisfies subsection (a) and a purchaser has control of an electronic copy of a record evidencing chattel paper if:

(1) the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(A) enables the person readily to identify each electronic copy as an authoritative copy or nonauthoritative copy;

(B) enables the purchaser readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of each authoritative electronic copy; and

(C) gives the purchaser exclusive power, subject to subsection (d), to:

(i) prevent others from adding or changing an identified assignee of each authoritative electronic copy; and

(ii) transfer control of each authoritative electronic copy; or

(2) another person, other than the debtor:

(A) has control of each authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(B) obtains control of each authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

(d) Presumption of exclusivity of certain powers. If a person has the powers that are specified in subsection (c)(1)(C), the powers are presumed to be exclusive.

(e) Meaning of exclusive. A power is exclusive under subsection (b)(1)(C), even if:

(1) the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the purchaser shares the power with another person.

53 New Section; Control of Electronic Money. Amend RSA 382-A by inserting after section 9-105 the following new section:

382-A: 9-105A Control of Electronic Money.

(a) General rule: control of electronic money. A person has control of electronic money if:

(1) 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:

(A) the power to avail itself of substantially all the benefit from the electronic money; and

(B) exclusive power, subject to subsection (b), to:

(i) prevent others from availing themselves of substantially all the benefit from the electronic money; and

(ii) 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; and

(2) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers under paragraph (1).

(b) Presumption of exclusivity of certain powers. If a person has the powers that are specified in subsection (a)(1)(B), the powers are presumed to be exclusive.

(c) Control through another person. A person has control of electronic money if another person, other than the transferor of an interest in the electronic money:

(1) has control of the electronic money and acknowledges that it has control on behalf of the person, or

(2) obtains control of the electronic money after having acknowledged that it will obtain control of the electronic money on behalf of the person.

(d) Meaning of exclusive. A power is exclusive under subsection (a)(1)(B), even if:

(1) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded limits the use of the electronic money or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the person shares the power with another person.

54 New Sections; Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible; Nor Requirement to Confirm; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 107 the following new sections:

382-A:9-107A Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible.

(a) Control under Section 12-105. A secured party has control of a controllable electronic record as provided in Section 12-105.

(b) Control of controllable account and controllable payment intangible. A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

382-A:9-107B No Requirement to Acknowledge or Confirm; No Duties.

(a) No requirement to acknowledge. A person that has control under Section 9-104, 9-105, or 9-105A is not required to acknowledge that it has or will obtain control on behalf of another person.

(b) No duties or confirmation. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.

55 Attachment and Enforceability of Security Interest; Secured Transactions; UCC. Amend RSA 382-A:9-203(b)(3) to read as follows:

(3) one of the following conditions is met:

(A) the debtor has [~~authenticated~~] ***signed*** a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement; [~~or~~]

(D) the collateral is ***controllable accounts, controllable electronic records, controllable payment intangibles,*** deposit accounts, [~~electronic chattel paper,~~] ***electronic documents, electronic money,*** investment property, ***or*** letter-of-credit rights[~~, or electronic documents,~~] and the secured party has control under Section 7-106, 9-104, 9-105, ***9-105A,*** 9-106, [~~or~~] 9-107***, or 9-107A*** pursuant to the debtor's security agreement***; or***

(E) the collateral is chattel paper and the secured party has possession and control under Section 9-314A pursuant to the debtor's security agreement.

56 Attachment and Enforceability; Secured Transactions; UCC. Amend RSA 382-A:9-203(b)-(c) to read as follows:

(b) When after-acquired property clause not effective. ***Subject to subsection (c),*** a security interest does not attach under a term constituting an after-acquired property clause to:

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) a commercial tort claim.

(c) ***Limitation on subsection (b). Subsection (b) does not prevent a security interest from attaching:***

(1) to consumer goods as proceeds under Section 9-315(a) or commingled goods under section 9-336(c);

(2) to a commercial tort claim as proceeds under Section 9-315(a); or

(3) under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.

(d) Future advances and other value. A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

57 Duties and Rights; Secured Party in Control; Secured Transactions; UCC. Amend the introductory paragraph of RSA 382-A:9-207(c) to read as follows:

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, ***9-105A,*** 9-106, [~~or~~] 9-107***, or 9-107A***:

58 Additional Duties of Secured Party; Secured Transactions; UCC. Amend RSA 382-A:9-208(b) to read as follows:

(b) Duties of secured party after receiving demand from debtor. Within 10 days after receiving[~~an authenticated~~] ***a signed*** demand by the debtor:

(1) a secured party having control of a deposit account under Section 9-104(a)(2) shall send to the bank with which the deposit account is maintained [~~an authenticated~~]***a signed*** statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under Section 9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control [~~of electronic chattel paper~~] under Section 9-105 ***of an electronic copy of a record evidencing chattel paper*** shall ***transfer control of the electronic copy to the debtor or a person designated by the debtor;*** [~~:~~]

[~~(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;~~

~~(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper 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; and~~

~~(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;~~]

(4) a secured party having control of investment property under Section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an [~~authenticated record~~] ***a signed record*** that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under Section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party [~~an authenticated~~] ***a signed*** release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; [~~and~~

~~(6) a secured party having control of an electronic document shall:~~

~~(A) give control of the electronic document to the debtor or its designated custodian;~~

~~(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the 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; and~~

~~(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.~~]

(6) a secured party having control under Section 7-106 of an authoritative copy of an electronic document of title shall transfer control of the authoritative copy to the debtor or a person designated by the debtor;

(7) a secured party having control under Section 9-105A of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor; and

(8) a secured party having control under Section 12-105 of a controllable electronic record shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

59 Law Governing Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-301 to read as follows:

382-A:9-301 Law Governing Perfection and Priority of Security Interests. Except as otherwise provided in Sections 9-303 through [~~9-306~~] ***9-306B***, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, ***or tangible*** money[~~, or tangible chattel paper~~] is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

60 New Sections; Chattel Paper Evidenced by Authoritative Electronic Copy. Amend RSA 382-A by inserting after section 9-306 the following new sections:

382-A:9-306A Law Governing Perfection and Priority of Security Interests in Chattel Paper.

(a) Chattel paper evidenced by authoritative electronic copy. Except as provided in subsection (e), 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 electronic chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper.

(b) Electronic Chattel Paper's Jurisdiction. The following rules determine the electronic chattel paper's jurisdiction under this section:

(1) If the authoritative electronic copy of chattel paper, or a record attached to or logically associated with the electronic copy which is readily available for review, expressly provides that a particular jurisdiction is the electronic chattel paper's jurisdiction for purposes of this part, this article, or the [Uniform Commercial Code], that jurisdiction is the electronic chattel paper's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this part, this article, or the [Uniform Commercial Code], that jurisdiction is the electronic chattel paper's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the electronic copy, or a record attached to or logically associated with the electronic copy which is readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction is the electronic chattel paper's jurisdiction.

(4) If paragraphs (1) through (3) do not apply and the rules of the system in which the 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 electronic chattel paper's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the electronic chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

(c) Relation of transaction to electronic chattel paper's jurisdiction not necessary. Subsections (a) and (b) apply even if a transaction does not bear any relation to the electronic chattel paper's jurisdiction.

(d) Chattel paper evidenced by authoritative tangible copy. If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while an authoritative tangible copy of a record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the chattel paper by possession under Section 9-314A; and

(B) the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(e) When perfection governed by law of jurisdiction where debtor is located. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

382-A:9-306B Law Governing Perfection and Priority of Security Interests in Controllable Accounts, Controllable Electronic Records, and Controllable Payment Intangibles.

(a) Governing law: general rules. Except as provided in subsection (b), the local law of the controllable electronic record's jurisdiction as specified in Section 12-107(c) and (d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable account, controllable electronic record, or controllable payment intangible.

(b) When perfection governed by law of jurisdiction where debtor is located. The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and

(2) automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible.

61 When Filing Required; Secured Transactions; UCC. Amend RSA 382-A:9-310(b)(8)-(10) to read as follows:

(8) in ***controllable accounts, controllable electronic records, controllable payment intangibles,*** deposit accounts, [~~electronic chattel paper,~~] electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 9-314;

(9) ***in chattel paper which is perfected by possession and control under Section 9-314A;***

(10) in proceeds which is perfected under Section 9-315; or

[~~(10)~~] ***(11)*** that is perfected under Section 9-316.

62 Perfection of Security Interests; Secured Transactions; UCC. Amend RSA 382-A:9-312 to read as follows:

382-A:9-312 Perfection of Security Interests in Chattel Paper, ***Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles,*** Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(a) Perfection by filing permitted. A security interest in chattel paper, [~~negotiable documents,~~] ***controllable accounts, controllable electronic records, controllable payment intangibles,*** instruments, [~~or~~] investment property***, or negotiable documents*** may be perfected by filing.

(b) Control or possession of certain collateral. Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under Section 9-314;

(2) and except as otherwise provided in Section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314; [~~and~~]

(3) a security interest in ***tangible*** money may be perfected only by the secured party's taking possession under Section 9-313***; and***

(4) a security interest in electronic money may be perfected only by control under Section 9-314.

(c) Goods covered by negotiable document. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) Goods covered by nonnegotiable document. While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) Temporary perfection: new value. A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under [~~an authenticated~~] ***a signed*** security agreement.

(f) Temporary perfection: goods or documents made available to debtor. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) Temporary perfection: delivery of security certificate or instrument to debtor. A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) Expiration of temporary perfection. After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

63 Possession By Secured Party Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-313(a) to read as follows:

(a) Perfection by possession or delivery. Except as otherwise provided in subsection (b), a secured party may perfect a security interest in [~~tangible negotiable documents,~~] goods, instruments, ***negotiable tangible documents, or tangible*** money, [~~or tangible chattel paper~~] by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8-301.

64 Possession by a Secured Party; Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-313(c) to read as follows:

(c) Collateral in possession of person other than debtor. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession [~~authenticates~~] ***signs*** a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having [~~authenticated~~] ***signed*** a record acknowledging that it will hold possession of collateral for the secured party's benefit.

65 Perfection by Control; Secured Transactions; UCC. Amend RSA 382-A:9-314(a)-(b) to read as follows:

(a) Perfection by control. A security interest in[~~investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents~~] ***controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, or letter-of-credit rights*** may be perfected by control of the collateral under Section 7-106, 9-104, [~~9-105,~~] ***9-105A,*** 9-106,[~~or~~] 9-107, ***or 9-107A.***

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in ***controllable accounts, controllable electronic records, controllable payment intangibles,*** deposit accounts,[~~electronic chattel paper, letter-of-credit rights, or~~] electronic documents***, electronic money, or letter-of-credit rights*** is perfected by control under Section 7-106, 9-104, [~~9-105,~~] ***9-105A,*** [~~or~~] 9-107***, or 9-107A*** when the secured party obtains control and remains perfected by control only while the secured party retains control.

66 New Section; Perfection by Possession; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 9-314 the following new section:

9-314A Perfection by Possession and Control of Chattel Paper.

(a) Perfection by possession and control. 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.

(b) Time of perfection; continuation of perfection. A security interest is perfected under subsection (a) when the secured party takes possession and obtains control and remains perfected under subsection (a) only while the secured party retains possession and control.

(c) Application of Section 9-313 to Perfection by Possession of Chattel Paper. Section 9-313(c) and (f) through (i) applies to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

67 Continued Perfection of Security Interest; Secured Transactions; UCC. Amend the introductory paragraph of RSA 382-A:9-316(a) to read as follows:

(a) General rule: effect on perfection of change in governing law. A security interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1), [~~or~~] 9-305(c), ***9-306A(e), or 9-306B(b)*** remains perfected until the earliest of:

68 Continued Perfection of Security Interest; Secured Transactions; UCC. Amend RSA 382-A:9-316(f) to read as follows:

(f) Change in jurisdiction of ***controllable electronic record,*** bank, issuer, nominated person, securities intermediary, or commodity intermediary. A security interest in ***controllable accounts, controllable electronic records, controllable payment intangibles, chattle paper,*** deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the ***controllable electronic record's jurisdiction, the electronic chattel paper's jurisdiction, the*** bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) the time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of 4 months after a change of the applicable jurisdiction to another jurisdiction.

69 Interest that Take Priority Over or Take Free of Security Interest or Agricultural Lien; Secured Transactions; UCC. Amend RSA 382-A:9-317 to read as follows:

382-A:9-317 Interests That Take Priority Over or Take Free of Security Interest or Agricultural Lien.

(a) Conflicting security interests and rights of lien creditors. A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under Section 9-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in Section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer[~~, other than a secured party,~~] of [~~tangible chattel paper, tangible documents,~~] goods, instruments, ***tangible documents,*** or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. ***Subject to subsections (f), (g), (h), and (i)*** a licensee of a general intangible or a buyer, other than a secured party, of collateral other than [~~tangible chattel paper,~~] ***electronic money,*** tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. Except as otherwise provided in Sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

(f) Buyers of chattel paper. 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 tangible 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 under Section 9-105, obtains control of each authoritative electronic copy.

(g) Buyers of electronic documents. 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 under Section 7-106, obtains control of each authoritative electronic copy.

(h) Buyers of controllable electronic records. A buyer of a controllable electronic record 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 electronic record.

(i) Buyers of controllable accounts and controllable payment intangibles. 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.

70 New Section; Priority of Security Interests; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 9-326 the following new section:

382-A:9-326A Priority of Security Interests in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible. A security interest in a controllable account, controllable electronic record, 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.

71 Priority of Purchaser of Chattel Paper or Instrument;Secured Transactions; UCC. Amend RSA 382-A:9-330(a)-(b) to read as follows:

(a) Purchaser's priority: security interest claimed merely as proceeds. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of ***each authoritative tangible copy of the record evidencing*** the chattel paper [~~or~~] ***and*** obtains control ***under RSA 382-A:9-105*** of ***each authoritative electronic copy of the record evidencing*** the chattel paper [~~under Section 9-105~~]; and

(2) the [~~chattel paper does~~] ***authoritative copies of the record evidencing the chattel paper do*** not indicate that [~~it has~~] ***the copies have*** been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority: other security interests. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of ***each authoritative tangible copy of the record evidencing*** the chattel paper [~~or~~] ***and*** obtains control ***under RSA 382-A:9-105*** of ***each authoritative electronic copy of the record evidencing*** the chattel paper [~~under Section 9-105~~] 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.

72 Priority Rights of Purchasers; Secured Transactions; UCC. Amend RSA 382-A:9-331 to read as follows:

382-A:9-331 Priority of Rights of Purchasers of ***Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles,*** Instruments, Documents, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements ***and Protections Against Assertions of Claims*** Under [~~Article 8~~] ***Articles 8 and 12.***

(a) Rights under Articles 3, 7, [~~and~~] 8***, and 12*** not limited. This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security***, or a qualifying purchaser of a controllable account, controllable electronic record, or controllable payment intangible.*** These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, [~~and~~] 8***, and 12.***

(b) Protection under [~~Article 8~~] ***Articles 8 and 12.*** This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under [~~Article 8~~] ***Articles 8 and 12.***

(c) Filing not notice. Filing under this article does not constitute notice of a claim or defense to the holders, [~~or~~] purchasers, or persons described in subsections (a) and (b).

73 Transfer of Money; Transfer of Funds; Secured Transactions; UCC. Amend RSA 382-A:9-332 to read as follows:

382-A:9-332 Transfer of Money; Transfer of Funds From Deposit Account.

(a) Transferee of ***tangible*** money. A transferee of ***tangible*** money takes the money free of a security interest [~~unless the transferee acts~~] ***if the transferee receives delivery of the money without acting*** in collusion with the debtor in violating the rights of the secured party.

(b) ***Transferee of electronic money. 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.***

(c) Transferee of funds from deposit account. A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account [~~unless the transferee acts~~] ***if the transferee receives the funds without acting*** in collusion with the debtor in violating the rights of the secured party.

74 Discharge of Account Debtor; Secured Transactions; UCC. Amend RSA 382-A:9-406 to read as follows:

382-A:9-406 Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.

(a) Discharge of account debtor; effect of notification. Subject to subsections (b) through (i) ***and (l)***, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, [~~authenticated~~] ***signed*** by the assignor or the assignee, that the amount due or to become due has

been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. Subject to [~~subsection (h)~~] ***subsections (h) and (l)***, notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to [~~subsection (h)~~] ***subsections (h) and (l)***, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(f) Legal restrictions on assignment generally ineffective. Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or

official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subsection (b)(3) not waivable. Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. This section does not apply to:

(1) an assignment of a health-care-insurance receivable; or

(2) an assignment or transfer of or creation of a security interest in:

(A) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C.A § 104(a)(1) or (2), as amended from time to time; or

(B) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C.A § 1396p(d)(4), as amended from time to time.

(j) Section prevails over inconsistent law. Except as otherwise provided in subsection (i), this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(k) Inapplicability to interests in certain entities. Subsections (d), (f), and (j) do not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.

(l) Inapplicability of certain subsections. Subsections (a) through (c) and (g) do not apply to a controllable account or controllable payment intangible.

75 Rights After Default; Secured Transactions; UCC. Amend RSA 382-A:9-601(b) to read as follows:

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, ***9-105A,*** 9-106, [~~or~~] 9-107***, or 9-107A*** has the rights and duties provided in Section 9-207.

76 Unknown Debtor or Secondary Obligor; Secured Transactions; UCC. RSA 382-A:9-605 is repealed and reenacted to read as follows:

(a) When no duty owed by secured party. Except as provided in subsection (b), a secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(b) When secured party owes duty to debtor notwithstanding subsection (a). A secured party owes a duty based on its status as a secured party to a person that is a debtor if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible, the secured party knows that the information specified in subsection (a)(1)(A), (B), or (C) 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.

77 Notification Before Disposition of Collateral; Secured Transactions; UCC. Amend RSA 382-A:9-611 to read as follows:

382-A:9-611 Notification Before Disposition of Collateral.

(a) "Notification date." In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor [~~an authenticated~~] ***a signed*** notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required. Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send [~~an authenticated~~] ***a signed*** notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9-311(a).

(d) Subsection (b) inapplicable: perishable collateral; recognized market. Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) Compliance with subsection (c)(3)(B). A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent [~~an authenticated~~] ***a signed*** notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

78 Contents and Form of Notification Before Disposition of Collateral; Secured Transactions; UCC. Amend RSA 382-A:9-614 to read as follows:

382-A:9-614 Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction.

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) the information specified in Section 9-613(1);

(B) a description of any liability for a deficiency of the person to which the notification is sent;

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 9-623 is available; and

(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral] , because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date:

Time:

Place:

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing ***or in an electronic document*** 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 ***or a description of electronic communication method***] and request a written explanation ***or an explanation in an electronic document***. [We will charge you $_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address] [***or description of electronic communication method***]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

[End of Form]

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

79 Explanation of Calculation of Surplus or Deficiency; Secured Transactions; UCC. Amend RSA 382-A:9-616(a)-(c) to read as follows:

382-A:9-616 Explanation of Calculation of Surplus or Deficiency.

(a) Definitions. In this section:

(1) "Explanation" means a [~~writing~~] ***record*** that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) [~~authenticated~~] ***signed*** by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under Section 9-610.

(b) Explanation of calculation. In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9-615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes [~~written~~] demand ***in a record*** on the consumer obligor after the disposition for payment of the deficiency; and

(B) within 14 days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) Required Information. To comply with subsection (a)(1)(B), [~~a writing~~] ***an explanation*** must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) the amount of the surplus or deficiency.

80 Nonliability and Limitation on Liability of Secured Party; Secured Transactions; UCC. Amend RSA 382-A:9-628 to read as follows:

382-A:9-628 Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.

(a) Limitation of liability of secured party for noncompliance with article. ***Subject to subsection (f),*** unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. ***Subject to subsection (f)*** a secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under Section 9-625(c)(2) for its failure to comply with Section 9-616.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under Section 9-625(c)(2) more than once with respect to any one secured obligation.

(f) Notwithstanding subsection (b), a secured party owes a duty based on its status as a secured party to a person that is a debtor if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible, the secured party knows that it will not be provided with the information specified in subsection (b)(1)(A), (B), or (C) by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

81 New Subdivisions; Uniform Commercial Code; Article 12 and 13; Controllable Electronic Records; Transition Provisions. Amend RSA 382-A by inserting after section 9-809 the following new subdivisions:

ARTICLE 12

CONTROLLABLE ELECTRONIC RECORDS

382-A:12-101 Short Title. This article may be cited as Uniform Commercial Code-Controllable Electronic Records.

382-A:12-102 Definitions.

(a) Article 12 definitions. In this article:

(1) "Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under Section 12-105. 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.

(2) "Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in the 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.

(3) "Transferable record" means:

(A) "Transferable record" as defined in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., as amended; or

(B) "Transferable record" as defined in [cite to Uniform Electronic Transactions Act Section 16(a)].

(4) "Value" has the meaning provided in Section 3-303(a).

(b) Definitions in Article 9. The definitions in Article 9 of "account debtor", "controllable account", "controllable payment intangible", "chattel paper", "deposit account", "electronic money", and "investment property" apply to this article.

382-A:12-103 Relationship to Article 9 and Consumer Laws.

(a) Article 9 governs in case of conflict. If there is conflict between this article and Article 9, Article 9 governs.

(b) Applicable consumer law and other laws. A transaction subject to this article is subject to any applicable rule of law that establishes a different rule for consumers and [insert reference to (i) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection statute or regulation].

382-A:12-104 Rights in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible.

(a) Applicability of section to controllable account and controllable payment intangible. This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits of a purchaser and a qualifying purchaser under subsections (d), (e), (g), and (h), in the same manner this section applies to a controllable electronic record.

(b) Control of controllable account and controllable payment intangible. For purposes of determining whether a 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 controllable electronic record that evidences the account or payment intangible.

(c) Applicability of other law to acquisition of rights. Except as provided in this section, law other than this article determines whether a person acquires a right in a controllable electronic record and the right the person acquires.

(d) Shelter principle and purchase of limited interest. A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or

had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

(e) Rights of qualifying purchaser. A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(f) Limitation of rights of qualifying purchaser in other property. Except as provided in subsections (a) and (e) for controllable accounts and controllable payment intangibles or law other than this article, a qualifying purchaser takes a right to payment, right to performance, or interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

(g) No-action protection for qualifying purchaser. An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory.

(h) Filing not notice. Filing of a financing statement under Article 9 is not notice of a claim of a property right in a controllable electronic record.

382-A:12-105 Control of Controllable Electronic Record.

(a) General rule: control of controllable electronic record. A person has control of a controllable electronic record if:

(1) the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded gives the person:

(A) the power to avail itself of substantially all the benefit from the electronic record; and

(B) exclusive power, subject to subsection (b), to:

(i) prevent others from availing themselves of substantially all the benefit from the electronic record; and

(ii) transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and

(2) the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in paragraph (1).

(b) Presumption of exclusivity of certain powers. If a person has the powers that are specified in subsection (a)(1)(B), the powers are presumed to be exclusive.

(c) Control through another person. A person has control of a controllable electronic record if another person, other than the transferor of an interest in the electronic record:

(1) has control of the electronic record and acknowledges that it has control on behalf of the person, or

(2) obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.

(d) No requirement to acknowledge. A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(e) No duties or confirmation. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.

(f) Meaning of exclusive. A power specified in subsection (a)(1) is exclusive, even if:

(1) the controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded 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

(2) the person shares the power with another person.

382-A:12-106 Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible.

(a) Discharge of account debtor. An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

(1) the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2) except as provided in subsection (b), a person that formerly had control of the controllable electronic record.

(b) Effect of notification. Subject to subsection (d), an account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1) is signed by a person that formerly had control or the person to which control was transferred;

(2) reasonably identifies the controllable account or controllable payment intangible;

(3) notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5) provides a commercially reasonable method by which the account debtor is to pay the transferee.

(c) Discharge following effective notification. After receipt of a notification that complies with subsection (b), the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(d) When notification ineffective. Subject to subsection (h), notification is ineffective under subsection (b):

(1) unless, before the notification is sent, an account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;

(2) to the extent an agreement between an 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 under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to:

(A) divide a payment;

(B) make less than the full amount of an installment or other periodic payment; or

(C) pay any part of a payment by more than one method or to more than one person.

(e) Proof of transfer of control. Subject to subsection (h), if requested by the account debtor, the person giving the notification seasonably shall furnish reasonable proof, using the agreed method, that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (b).

(f) What constitutes reasonable proof. A person furnishes reasonable proof that control has been transferred if the person demonstrates, using the agreed method, that the transferee has the power to:

(1) avail itself of substantially all the benefit from the controllable electronic record;

(2) prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(3) transfer the powers mentioned in paragraphs (1) and (2) to another person.

(g) Rights not waivable. Subject to subsection (h), an account debtor may not waive or vary its rights under subsections (d)(1) and (e) or its option under subsection (d)(3).

(h) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

382-A: 12-107 Governing Law.

(a) Governing law: general rule. Except as provided in subsection (b), the local law of a controllable electronic record's jurisdiction governs a matter covered by this article.

(b) Governing law: Section 12-106. The local law of the controllable electronic record's jurisdiction for a controllable electronic record that evidences a controllable account or controllable payment intangible governs a matter covered by Section 12-106 unless an effective agreement determines that the local law of another jurisdiction governs.

(c) Controllable electronic record's jurisdiction. The following rules determine a controllable electronic record's jurisdiction under this section:

(1) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or this chapter, that jurisdiction is the controllable electronic record's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the [Uniform Commercial Code], that jurisdiction is the controllable electronic record's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(4) If paragraphs (1) through (3) do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the controllable electronic record's jurisdiction is the District of Columbia.

(d) Applicability of Article 12. If subsection (c)(5) applies and Article 12 is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this article is the law of the District of Columbia as though Article 12 were in effect in the District of Columbia without material modification. In this section, "Article 12" means Uniform Commercial Code—Controllable Electronic Records (with Conforming Amendments to Articles 1and 9), 2022 Official Text.

(e) Relation of transaction to controllable electronic record's jurisdiction not necessary. Subsections (b) through (d) apply even if a transaction does not bear any relation to the controllable electronic record's jurisdiction.

(f) Rights of purchasers determined at time of purchase. The rights acquired by a purchaser or a qualifying purchaser under Section 12-104 are governed by the law applicable under this section at the time of purchase.

ARTICLE 13

ADDITIONAL TRANSITION PROVISIONS FOR ARTICLES 9 AND 12

382-A:13-301 Savings Clause.

(a) Pre-effective-date transactions, liens, or interests. Except as otherwise provided in this part, Article 9 and Article 12 apply to a transaction, lien, or other interest in property, even if the transaction, lien, or interest was entered into, created, or acquired before the effective date of this Article.

(b) Continuing validity. Except as otherwise provided in subsection (c) and Sections 13-302 through 13-306:

(1) a transaction, lien, or interest in property that was not governed by this chapter and was validly entered into, created, or transferred before the effective date of this Article, and would be subject to Article 9 as amended or Article 12 if it had been entered into, created, or transferred after the effective date of this Article, and the rights, duties, and interests flowing from the transaction, lien, or interest in property remain valid after the effective date of this Article; and

(2) the transaction, lien, or interest in property may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) Pre-effective-date proceedings. This Article does not affect an action, case, or proceeding commenced before the effective date of this Article.

382-A:13-302 Security Interest Perfected Before Effective Date.

(a) Continuing perfection: perfection requirements satisfied. A security interest that is enforceable and perfected immediately before the effective date of this Article is a perfected security interest under this Article if, on the effective date of this Article, the applicable requirements for enforceability and perfection under this Article are satisfied without further action.

(b) Continuing perfection: perfection requirements not satisfied. If, immediately before the effective date of this Article, a security interest is enforceable and perfected, but the applicable requirements for enforceability or perfection under this Article, are not satisfied on the effective date of this Article, the security interest:

(1) is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before the effective date of this Article or January 1, 2025;

(2) remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under Section 9-203 before January 1, 2025; and

(3) remains perfected thereafter only if the applicable requirements for perfection under this Article are satisfied before January 1, 2025.

382-A:13-303 Security Interest Unperfected Before Effective Date. A security interest that is enforceable immediately before the effective date of this Article but which would be unperfected at that time:

(1) remains an enforceable security interest until January 1, 2025;

(2) remains enforceable thereafter if the security interest becomes enforceable under Section 9-203 on the effective date of this Article or before January 1, 2025; and

(3) becomes perfected:

(A) without further action, on the effective date of this Article if the applicable requirements for perfection under this Article are satisfied before or at that time; or

(B) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

382-A:13-304 Effectiveness of Actions Taken Before Effective Date.

(a) Pre-effective-date action; attachment and perfection before adjustment date. If action, other than the filing of a financing statement, is taken before the effective date of this Article and the action would have resulted in perfection of the security interest had the security interest become enforceable before the effective date of this Article, the action is effective to perfect a security interest that attaches under this Article before January 1, 2025. An attached security interest becomes unperfected on January 1, 2025 unless the security interest becomes a perfected security interest under this Article before January 1, 2025.

(b) Pre-effective-date filing. The filing of a financing statement before the effective date of this Article is effective to perfect a security interest on the effective date of this Article to the extent the filing would satisfy the applicable requirements for perfection under this Article.

(c) Pre-effective-date enforceability actions. The taking of an action before the effective date of this Article is sufficient for the enforceability of a security interest on the effective date of this Article if the action would satisfy the applicable requirements for enforceability under this Article.

382-A:13-305 Priority

(a) Determination of priority. Subject to subsections (b) and (c), this Article determines the priority of conflicting claims to collateral.

(b) Established priorities. Subject to subsection (c), if the relative priorities of claims to collateral were established before the effective date of this Article, Article 9 determines priority.

(c) Determination of certain priorities on adjustment date. On January 1, 2025, to the extent that the relative priorities determined by this Article modify the relative priorities established before the effective date of this Article, the relative priorities of claims to Article 12

property and electronic money which were established before the effective date of this Article cease to apply.

382-A:13-306 Priority of Claims When Priority Rules of Article 9 Do Not Apply.

(a) Determination of priority. Subject to subsections (b) and (c), Article 12 determines the priority of conflicting claims to Article 12 property when the priority rules of Article 9 do not apply.

(b) Established priorities. Subject to subsection (c), when the priority rules of Article 9 do not apply and the relative priorities of claims to Article 12 property were established before the effective date of this Article, law other than Article 12 determines priority.

(c) Determination of certain priorities on adjustment date. When the priority rules of Article 9 do not apply, to the extent that the relative priorities determined by this Article modify the relative priorities established before the effective date of this Article, on January 1, 2025 the relative priorities of claims to Article 12 property which were established before the effective date of this Article cease to apply.

82 New Paragraph; Uniform Securities Act; Definitions; Open Blockchain Token. Amend RSA 421-B:1-102 by inserting after paragraph (35) the following new paragraph:

(35-a) "Open blockchain token" means a digital unit which is:

(A) Created:

(i) In response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(ii) By deploying computer code to a blockchain network that allows for the creation of digital tokens or other units; or

(iii) Using any combination of the methods specified in subparagraphs (i) and (ii) of this paragraph;

(B) Recorded in a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature, especially relating to the supply of units and their distribution; and

(C) Capable of being traded or transferred between persons without an intermediary or custodian of value.

83 New Paragraph; Uniform Securities Act; Exempt Transaction; Open Blockchain Token. Amend RSA 421-B:2-202 by inserting after paragraph (24) the following new paragraph:

(25) A purchase or sale of an open blockchain token if all of the following are met:

(A) The issuer or seller of the token, or the registered agent of the developer or seller, files a notice of intent with the secretary of state, as specified in subsection (D) of this section;

(B) The purpose of the token is for a consumptive purpose, which shall only be exchangeable for, or provided for the receipt of, goods, services or content, including rights of access to goods, services or content; and

(C) The issuer or seller of the token did not sell the token to the initial buyer as a financial investment. For purposes of this subsection, a developer seller of the token will be deemed not to have sold the token to the initial buyer as a financial investment if:

(i) The issuer or seller did not market the token as a financial investment; and

(ii) At least one of the following is true:

(a) The issuer or seller of the token reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

(b) The token has a consumptive purpose that is available at the time of sale and can be used at or near the time of sale for use for a consumptive purpose;

(c) If the token does not have a consumptive purpose available at the time of sale, the initial buyer of the token is prevented from reselling the token until the token is available for use for a consumptive purpose; or

(d) The issuer or seller takes other reasonable precautions to prevent buyers from purchasing the token as a financial investment.

(D) The issuer, seller or person who facilitates the exchange of an open blockchain token, or the registered agent of the applicable person, files a notice of intent with the secretary of state prior to offering or selling the tokens in this state. The notice of intent shall contain the name of the person acting as an issuer, seller or facilitator, the contact information of the person or the registered agent of the person, and a statement that any marketing or advertising materials, including web sites offering or selling open blockchain tokens, will contain a disclosure that the tokens are not registered as securities pursuant to a transaction exemption under RSA 421-B, the New Hampshire Uniform Securities Act. The notice shall also specify whether the person will be acting as an issuer, seller or facilitator. A form shall be made available by the office of the secretary of state on its Internet website for this purpose. The secretary of state shall charge a fee of $100 per filing.

84 New Subparagraph; Uniform Securities Act; Broker-Dealer Registration Requirements and Exemption. Amend RSA 421-B:4-401(b) by inserting after subparagraph (2) the following new subparagraph:

(3)(A) Except as otherwise provided by RSA 421-B:5-511, a person who exclusively facilitates the exchange of an open blockchain token if all of the following are met:

(i) The person, or the registered agent of the person, files a notice of intent with the secretary of state, as specified in RSA 421-B:2-202(26)(d);

(ii) The person has a reasonable and good faith belief that a token subject to exchange conforms to the requirements of paragraphs RSA 421-B:2-202(25)(a)-(c); and

(iii) The person takes reasonably prompt action to terminate the exchange of a token that does not conform to the requirements of this subsection.

85 New Section; Uniform Securities Act; Liability of Issuers, Seller, and Others Who Facilitate Exchange of Open Blockchain Tokens. Amend RSA 421-B by inserting after section 5-510 the following new section:

421-B:5-511 Liability of Issuers, Sellers, and Others Who Facilitate Exchange of Open Blockchain Tokens. Notwithstanding any other provision of law, an issuer, seller, or a person who facilitates the exchange of an open blockchain token is subject to the provisions of RSA 421-B:5-501 through RSA 421-B:5-503 and RSA 421-B:5-505 through RSA 421-B:5-510 only to the extent necessary to carry out those sections. The secretary of state shall have the authority provided under RSA 421-B:6-601 through RSA 421-B:6-613 to determine compliance with the provisions of this section, including whether a person qualifies for the exemptions set forth in this section. The evidentiary burdens specified in RSA 421-B:5-503 shall apply in any proceeding initiated by the secretary of state pursuant to this subsection.

86 Effective Date. This act shall take effect January 1, 2025.

2022-1939s

AMENDED ANALYSIS

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws.

This bill also adopts the Uniform Commercial Code on controllable electronic records.

Sen. Sherman, Dist 24
Sen. Carson, Dist 14
May 5, 2022
2022-1974s
08/10

Floor Amendment to HB 1503-FN

Amend the title of the bill by replacing it with the following:

AN ACT adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and establishing state procurement policies intended to promote the use of American materials.

Amend the bill by replacing section 86 with the following:

86 New Subparagraphs; Department of Administrative Services; Division of Procurement and Support Services; Structural Steel Defined. Amend RSA 21-I:11, II by inserting after subparagraph (f) the following new subparagraphs:

(g) "Structural steel" shall mean a product consisting of the elements of the structural frame that are shown and sized in the structural design documents, essential to support the design loads as defined in the 2016 American Institute of Steel Construction (AISC) code of standard practice for steel buildings and bridges 303-16.

(h) "Domestic fabricated structural steel" shall mean an iron or steel product where all manufacturing must take place in the United States, from the initial melting stage, through fabrication, and application of coatings, except metallurgical processes involving the refinement of steel additives. The miscellaneous steel or iron components, subcomponents, and hardware necessary to encase, assemble, and construct such components, including, but not limited to, cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, and door hinges, shall not be subject to the United States manufacturing requirement of this definition.

(i) "Permanently incorporated product" shall mean a product that is required to remain in place at the completion of the project contract, in a fixed location, affixed to the public work to which it was incorporated and shall not mean a product that will be removed from the project at or before its completion.

87 New Paragraph; Department of Administrative Services; Division of Procurement and Support Services; Established Preference of American Made Materials in State Administered Contracts. Amend RSA 21-I:11 by inserting after paragraph II the following new paragraph:

III.(a) Notwithstanding any law to the contrary relating to procurement and to the extent permitted by federal law, any state administered contract for construction, reconstruction, alteration, repair, improvement, or maintenance of a public building or public works with the state shall contain a provision that the permanently incorporated iron, structural steel, and fabricated structural steel used or supplied in the performance of the contract or any subcontract as defined in RSA 21-I:11, II shall be fabricated in the United States. Such provision shall only be required if there is at least $1,000,000 state dollars being used in the contract.

(b) Departments and agencies of this state affected by subparagraph (a) shall identify what steel products need Buy America certification in the contract documents.

(c) Departments and agencies of this state affected by subparagraph (a) may request a waiver from the department of administrative services, which shall provide an opportunity for public hearing and comment at least 30 days before finalizing a waiver, in the same manner as described in RSA 541-A:11. The department of administrative services may grant a waiver upon finding that:

(1) Application of the project would be inconsistent with the public interest;

(2) The product is not produced or fabricated in the United States and that it would be in the public interest to provide a waiver;

(3) The item for which a waiver is being requested is not produced and fabricated in the United States in sufficient and reasonably available quantities and of satisfactory quality; or

(d) A request for waiver under subparagraph (c) shall include facts and justification to support the granting of the waiver. The response to a request shall be in writing and made available to the public upon request. In granting a waiver, the department of administrative services shall consider all appropriate factors including, but not limited to, any cost, administrative burden, and delay that would be imposed if the provision were not waived.

(e) Waivers granted by the department of administrative services under subparagraph (b), shall be granted on a project-by-project basis and shall be nontransferable.

(f) If a court or federal or state agency has determined that any person intentionally affixed a "Made in America" label to structural steel under this paragraph that was not made in the United States or otherwise falsely represented that structural steel under this paragraph was produced in the United States, the department of administrative services shall withhold contract payment until the structural steel can be replaced, a waiver is granted, or the noncompliance of this paragraph is otherwise remedied. Failure to comply or produce a satisfactory remedy to the state may result in debarment proceedings in accordance with RSA 21-I:11-c, III.

(g) If any provision of this paragraph or application thereof is held to be invalid or in conflict with any applicable laws, this invalidity or conflict shall not affect the other provisions or applications which shall be given affect without the invalid provisions or applications, and to this end, the provisions and applications of this paragraph are severable.

88 Effective Date.

I. Sections 86-87 of this act shall take effect January 1, 2023.

II. The remainder of this act shall take effect January 1, 2025.

2022-1974s

AMENDED ANALYSIS

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws. This bill also adopts the Uniform Commercial Code on controllable electronic records. This bill also establishes the requirement, as well as waiver and fraud processes, for the use of American made steel products in all public works projects where the state administers the contract and the contract involves at least $1,000,000 state dollars.

Committee Minutes

SENATE CALENDAR NOTICE
Commerce

Sen Harold French, Chair
Sen Bill Gannon, Vice Chair
Sen Jeb Bradley, Member
Sen Donna Soucy, Member
Sen Kevin Cavanaugh, Member

Date: April 5, 2022

HEARINGS

Tuesday	04/12/2022
(Day)	(Date)

Commerce	State House 100	9:00 a.m.
(Name of Committee)	(Place)	(Time)

9:00 a.m.	**HB 1165**	repealing the Granite State paid family leave plan.
9:10 a.m.	**HB 1503-FN**	exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 1165

Rep. Prout	Rep. Silber	Rep. Turcotte	Rep. Verville
Rep. Berezhny	Rep. Johnson	Rep. Warden	Rep. Layon

HB 1503-FN

Rep. Ammon	Rep. Alexander Jr.	Rep. Osborne	Rep. Warden
Rep. Edwards	Rep. Berezhny	Rep. Baxter	Rep. White
Sen. Avard			

Aaron Jones 271-4063

Harold F. French
Chairman

AMENDED
SENATE CALENDAR NOTICE
Commerce

Sen Harold French, Chair
Sen Bill Gannon, Vice Chair
Sen Jeb Bradley, Member
Sen Donna Soucy, Member
Sen Kevin Cavanaugh, Member

Date: April 5, 2022

HEARINGS

Tuesday	04/12/2022
(Day)	(Date)

Commerce	State House 100	9:00 a.m.
(Name of Committee)	(Place)	(Time)

9:00 a.m.	**HB 1165**	repealing the Granite State paid family leave plan.
9:10 a.m.	**HB 1503-FN**	exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.
9:20 a.m.	**HB 1237-FN**	relative to the definition of cigar bar.
9:30 a.m.	**HB 1469-FN**	relative to prohibited acts for banks, credit unions, and businesses.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 1165			
Rep. Prout	Rep. Silber	Rep. Turcotte	Rep. Verville
Rep. Berezhny	Rep. Johnson	Rep. Warden	Rep. Layon
HB 1503-FN			
Rep. Ammon	Rep. Alexander Jr.	Rep. Osborne	Rep. Warden
Rep. Edwards	Rep. Berezhny	Rep. Baxter	Rep. White
Sen. Avard			
HB 1237-FN			
Rep. Cloutier	Rep. Stapleton		
HB 1469-FN			
Rep. Bernardy	Rep. Vose	Rep. Hobson	Rep. Ammon
Rep. Notter	Rep. Greeson	Rep. Greene	

Aaron Jones 271-4063

Harold F. French
Chairman

Senate Commerce Committee

Sonja Caldwell 271-2117

HB 1503-FN, exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

Hearing Date: April 12, 2022

Members of the Committee Present: Senators French, Gannon, Bradley, Soucy and Cavanaugh

Members of the Committee Absent : None

Bill Analysis: This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws.

This bill also adopts the Uniform Commercial Code on controllable electronic records.

Sponsors:

Rep. Ammon	Rep. Alexander Jr.	Rep. Osborne
Rep. Warden	Rep. Edwards	Rep. Berezhny
Rep. Baxter	Rep. White	Sen. Avard

Who supports the bill: Rep. Edwards, Rep. Warden, Rep. Berezhny, Rep. Ammon, Walter Kirsch, Rep. Torosian, Lilli Walsh, Jason Osborne, Christine Paul, Deb Hobson

Who opposes the bill: Joyce Weston, Martha Richards, Evan Oxenham, Sally Widerstrom, Richard Hunnewell, Anne Hunnewell, Sallie Fellows, Linda Tanner

Who is neutral on the bill: no one

Summary of testimony presented:

Rep. Keith Ammon

- He owns some controllable electronic records in the form of digital tokens.
- This bill covers a broad topic. It has been abstracted by the uniform law commission into something called controllable electronic records. It deals with things like cryptocurrency, bitcoin, smart contracts, digital tokens, digital assets, and non-fungible tokens. There is a whole new world of digital assets, and this bill seeks to lay basic rules of the road for companies operating in this space in the State of NH.
- The first part of the bill deals with something called a digital token that has a consumptive purpose. He gave the example of a Chuck E Cheese token. You purchase a token to operate an amusement. In the digital world, that could be a video game, or a YouTube channel. That

is what a consumptive token is and that would be exempted from securities law because that is an area that stifles innovation.

- The CPI index came out this morning with 8.5% inflation; it's because of too much printing of money.
- Digital assets can have a different type of issuance rate. Bitcoin has an issuance rate set in stone that is every 4 years half as many coins get produced.
- There are different innovations that can happen with digital assets. It provides choice to constituents. This space is growing in finance and digital innovation. NH would be the second state to adopt these rules developed by the uniform law commission. Indiana just adopted them.
- NH would have an advantage to be a destination in the northeast for these new types of companies that have significant capital and are driving innovation. The younger demographic is looking for jobs in this space.
- This could possibly benefit the University System because as we develop expertise in the industry it can benefit our state as a whole.

Sen. French said there was a similar bill 8 years ago in the House.

Sen. Soucy asked if the uniform commercial code adopted this recommendation or if it was still in draft.
Rep. Ammon said it is still in draft. He said he thinks the committee received an email from Kristy Merrill that has an updated version. For this to go live we would need a committee amendment that incorporates the most recent changes. At the end of the bill there is a process for developing a report later this year. Article 12 of the UCC code is going to eventually be adopted by almost every state. At end of bill, on page 17, line 23, there is a process where a report is created that updates the legislature on the most recent changes. The report would be filed with the Banking Commissioner and the Secretary of State.
Sen. Soucy asked if he could expand on how this would lead to the creation of jobs in NH since this is a virtual world. She doesn't understand why a company would actually put a brick-and-mortar site in NH.
Rep. Ammon said Google and Netscape are big IT companies that might not necessarily have a storefront, but they are virtual on the internet which is where a lot of job creation is happening. A local example is DYN, which had a headquarters in Manchester, and they got bought by Oracle. On the scale of the internet, you can attract a lot of capital into one location because of the reach of the internet.

Sen. Gannon appreciated the consumptive token analogy with Chuck E Cheese.
Rep. Ammon said controllable electronic records, which is the UCC's term and is an umbrella term that covers lots of different things. This space can cover all kinds of things where you prove your ownership over not just virtual property but physical property. It could be the title of your house or car. Those things can all be programmed into smart contracts. You prove it with your ability to control those records. This deals with third party companies that you would hand over your records to. It provides rules of the road for them to prove custody or ownership.

Rep. Edwards

- He supports the bill.
- He is intrigued by this initiative because the blockchain technology that operates underneath things like bitcoin can be repurposed in ways we cannot see now.

- NH has a history of being open to early adoption of technology. We supported Dean Kamen's initiative a few years ago. He sees that potential here too.
- It is important for the state to send message we are open to innovation and growth.

Rep. Lex Berezhny

- He has been a professional software developer for two decades and currently works at Library Inc. in Manchester.
- They are building a decentralized alternative to YouTube using blockchain technology.
- His role is implementing digital wallet which stores Library blockchain tokens.
- Their platform has 40 million users per month from around the world viewing a catalogue of 15 million videos uploaded by one million creators.
- Library is the biggest decentralized alternative to YouTube.
- The15 million videos recorded on their platform are recorded on the library blockchain. This is their core feature and how their tokens are consumed.
- Creators Consume tokens in order to publish content and regular users consume tokens by supporting specific content.
- Their technology fits within the framework of this bill.
- Federal government doesn't have a framework to regulate a company like theirs.
- Instead of establishing a legal framework the federal government Through securities and exchange commission has taken the path of squashing innovation in this area.
- Library Inc. was sued by the SEC a year ago and has already spent over one million dollars on legal fees, which could have been spent expanding their NH office and platform.
- This bill will help form consensus on how to regulate this industry.

sc
Date Hearing Report completed: April 14, 2022

Speakers

Senate Commerce Committee
SIGN-IN SHEET

Date: 04/12/2022 **Time:** 9:10 a.m.

HB 1503-FN An ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

Name/Representing *(please print neatly)*

Rep Jess Edwards	Support	☒	Oppose	☐	Speaking?	Yes ☒ / No ☐
Rep. Mark Warden	Support	☒	Oppose	☐	Speaking?	Yes ☐ / No ☒
Rep Lex Berezhny	Support	☒	Oppose	☐	Speaking?	Yes ☒ / No ☐
Rep Keith Ammon - Sponsor	Support	☒	Oppose	☐	Speaking?	Yes ☒ / No ☐
	Support	☐	Oppose	☐	Speaking?	Yes ☐ / No ☐
	Support	☐	Oppose	☐	Speaking?	Yes ☐ / No ☐
	Support	☐	Oppose	☐	Speaking?	Yes ☐ / No ☐
	Support	☐	Oppose	☐	Speaking?	Yes ☐ / No ☐
	Support	☐	Oppose	☐	Speaking?	Yes ☐ / No ☐
	Support	☐	Oppose	☐	Speaking?	Yes ☐ / No ☐
	Support	☐	Oppose	☐	Speaking?	Yes ☐ / No ☐
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	Support	☐	Oppose	☐	Speaking?	Yes ☐ / No ☐
	Support	☐	Oppose	☐	Speaking?	Yes ☐ / No ☐
	Support	☐	Oppose	☐	Speaking?	Yes ☐ / No ☐
	Support	☐	Oppose	☐	Speaking?	Yes ☐ / No ☐
	Support	☐	Oppose	☐	Speaking?	Yes ☐ / No ☐

Senate Remote Testify

Commerce Committee Testify List for Bill HB1503 on 2022-04-12

Support: 6 Oppose: 8

Name	Title	Representing	Position
Weston, Joyce	An Elected Official	Myself	Oppose
Richards, Martha	A Member of the Public	Myself	Oppose
Oxenham, Evan	A Member of the Public	Myself	Oppose
Widerstrom, Sally	A Member of the Public	Myself	Oppose
kirsch, walter	A Member of the Public	Myself	Support
Hunnewell, Richard	State Agency Staff	Myself	Oppose
Hunnewell, Anne	A Member of the Public	Myself	Oppose
Fellows, Sallie	An Elected Official	Myself	Oppose
Tanner, Linda	An Elected Official	Myself	Oppose
Torosian, Peter	An Elected Official	Rockingham County District # 14	Support
Walsh, Lilli	A Member of the Public	Myself	Support
Osborne, Jason	An Elected Official	Myself	Support
Paul, Christine	A Member of the Public	Myself	Support
Hobson, Deb	An Elected Official	Myself	Support

Testimony

Aaron Jones

From: Joyce Weston
Sent: Friday, April 8, 2022 8:16 AM
To: Harold French
Cc: William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Subject: HB1503 cyrptocurrency bill

To: the Senate Commerce Committee

From: Rep. Joyce Weston, Grafton 8

Date: April 8, 2022

Re: HB 1503 with amendment 0828h

I am going to provide you with solid reasons to oppose this bill.

I do not have trouble with the first part of the amended bill, which exempts the blockchain token from securities law under certain circumstances. But I do have a problem with the second part of the bill, which is to adopt Article 12 of the Uniform Commercial Code (UCC).

Why do I object to this new article? Because we don't know what's in it yet. In the House Commerce committee hearings, we were given a draft, and I had some serious problems with certain elements of the draft. Even the Uniform Law Commission — the authors of these rules — admitted that there were "issues" with the draft. Amendment 0828h includes updated rules from the ULC, but those rules are still just a draft. The commission is meeting again this spring to work on the issue further, and the final product is promised sometime this summer.

So, what's the hurry? I don't know about you, but I would never write a blank check. Nor would I sign a contract without reading it. But you are being asked to consider approving the unknown.

Meanwhile, on February 9, Governor Sununu submitted his executive order establishing a commission on cryptocurrencies and digital assets. He has pulled in the experts to explore this complex issue. The report is due on August 8 —only four months from now. Is it really appropriate for us to jump ahead before hearing the results of the Governor's commission?

Then on March 9, President Biden signed an executive order to call on the federal government — in coordination with the Federal Reserve — to examine the risks and benefits of cryptocurrencies. The measures in his upcoming study focus on six key areas: consumer protection, financial stability, illicit activity, U.S. competitiveness, financial inclusion, and responsible innovation. Our brief Commerce hearings on cryptocurrencies have barely touched these areas of study. I strongly

suggest we wait for these reports, which should be out in the second half of this year, before we surge ahead, laying out a welcome mat for a volatile industry, — and a favorite method for Russian oligarchs to hide their tainted money.

We are approaching the 78th anniversary of the Bretton Woods Conference. I am proud that the American dollar has maintained its role as the standard for reserve currency since 1944. I recognize that we need to establish rules to contain the threat of a second currency in our economy, but right now — we need to slow down, let the experts do their work, and then proceed with caution.

Rep. Joyce Weston

Plymouth, Holderness, Hebron
joyce.weston@leg.state.nh.us
603-276-0862

Chairman French and Members of Senate Commerce,

Thank you for the opportunity to testify on HB1503.

My name is Lex Berezhny, I represent Grafton District 9, I am a co-sponsor on this bill and I have been a professional software developer for the past two decades.

For the past three years I have been employed at LBRY Inc, a New Hampshire company based in Manchester and we are building a decentralized alternative to YouTube using blockchain technologies. My specific role is implementing a digital wallet which stores the LBRY blockchain tokens.

Our platform has 40 million unique users per month, viewing a catalog of 15 million videos, uploaded by 1 million creators. Today, LBRY is the biggest decentralized alternative to YouTube.

The 15 million videos on our platform are recorded on the LBRY blockchain. This is the core feature of our blockchain and how our tokens are "consumed".

Creators consume tokens in order to publish content and regular users consume tokens by supporting specific content. Supported content rises higher in search results.

We believe our technology fits within the framework setup by HB1503.

Unfortunately, this bill is not yet law and even more unfortunate, the federal government does not have a framework in place to regulate a company such as ours.

Instead of establishing a legal framework to let us operate in a safe and regulated manner, the Federal government, via the Securities and Exchange Commission, has taken the path of squashing all innovation in this area.

LBRY Inc, like many other crypt companies, was sued by the SEC a year ago and has already spent over a million dollars on legal fees. Money which would have otherwise been spent in expanding our New Hampshire office and continuing to build our platform.

We intend to continue fighting and hope to win the SEC lawsuit but there are many other companies, all over the United States, which decided to settle and shut down.

Passing this legislation will not be a silver bullet but it will, by joining with other states that have passed similar laws, begin to form a consensus on how this industry could be regulated. And we hope that future blockchain startups can avoid the uncertainty and legal costs which we continue to endure.

Thank you for your consideration of this very important legislation to provide needed clarity for individuals and businesses innovating in the crypto currency space.

Debra Martone

rom: Kevin Moquin <Kevin.Moquin@SOS.NH.GOV>
Sent: Friday, April 22, 2022 2:04 PM
To: Ava Hawkes
Cc: Eric Forcier; Thomas B. Connolly
Subject: FW: HB 1503 - 2022-1616h, Keith Ammon

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Ava,

In response to your request on behalf of Senator Bradley for review and feedback on the proposed amendment to HB1503, I forwarding email correspondence with Rep. Ammon regarding the amendment. It contains the result of our review and feedback. Please reach out if you have any other questions.

Best regards,
Kevin B. Moquin
Senior Staff Attorney
NH Bureau of Securities Regulation

rom: Kevin Moquin
ent: Friday, April 22, 2022 10:54 AM
To: Keith Ammon <Keith.Ammon@leg.state.nh.us>
Cc: John Hunt <jbhunt@prodigy.net>; Eric Forcier <Eric.Forcier@SOS.NH.GOV>; Thomas B. Connolly <Thomas.Connolly@SOS.NH.GOV>
Subject: FW: HB 1503 - 2022-1616h, Keith Ammon

Hi Representative Ammon,

With regard to the Securities aspect of the amendment, there do not appear to be any changes.

In regard to the UCC aspect of the amendment, see Tom Connolly's response below. If you have any questions with regard to specific sections of the amendment related to the UCC, you may want to reach out to Tom.

Best regards,

Kevin B. Moquin
Senior Staff Attorney
NH Bureau of Securities Regulation

From: Thomas B. Connolly <Thomas.Connolly@SOS.NH.GOV>
ent: Thursday, April 21, 2022 11:28 AM
To: Eric Forcier <Eric.Forcier@SOS.NH.GOV>
Cc: Kevin Moquin <Kevin.Moquin@SOS.NH.GOV>
Subject: RE: HB 1503 - 2022-1616h, Keith Ammon

Thanks, Eric.

It looks good from my perspective. Courtney at OLS gave me the most recent draft of changes from the ULC and Rep.

Ammon's amendment seems to track that pretty closely.

Tom

Thomas B. Connolly- Assistant Secretary of State
Department of State of New Hampshire – Corporation Division
603.271.0716 direct

From: Eric Forcier <Eric.Forcier@SOS.NH.GOV>
Sent: Thursday, April 21, 2022 9:25 AM
To: Thomas B. Connolly <Thomas.Connolly@SOS.NH.GOV>
Cc: Kevin Moquin <Kevin.Moquin@SOS.NH.GOV>
Subject: FW: HB 1503 - 2022-1616h, Keith Ammon
Importance: High

Good morning,

I am just making sure you've seen this attached amendment. Perhaps we can chat about it sometime tomorrow?

Eric

From: Barry Glennon <Barry.Glennon@SOS.NH.GOV>
Sent: Thursday, April 21, 2022 9:19 AM
To: Eric Forcier <Eric.Forcier@SOS.NH.GOV>
Subject: FW: HB 1503 - 2022-1616h, Keith Ammon
Importance: High

From: Keith Ammon <Keith.Ammon@leg.state.nh.us>
Sent: Wednesday, April 20, 2022 10:49 AM
To: Barry Glennon <Barry.Glennon@SOS.NH.GOV>; Kevin Moquin <Kevin.Moquin@SOS.NH.GOV>
Cc: John Hunt <jbhunt@prodigy.net>
Subject: FW: HB 1503 - 2022-1616h, Keith Ammon
Importance: High

Hi, Barry and Kevin. Could you look over this amendment for aspects related to the securities division. It contains the original language passed by the House for consumable tokens, plus the most recent language for UCC article 12 covering "controllable electronic records." Please let me know if you have any questions. Thank you!

Rep. Ammon

From: AskOLS <AskOLS@leg.state.nh.us>
Sent: Tuesday, April 19, 2022 15:27
To: Keith Ammon <Keith.Ammon@leg.state.nh.us>
Subject: HB 1503 - 2022-1616h, Keith Ammon
Importance: High

Attached please find a PDF of amendment 2022-1616h to HB 1503 requested by Rep. Keith Ammon.

Please note that the amendment copy contains the "UNAPPROVED" watermark. Once OLS is notified that the amendment has been officially adopted by committee action, OLS will remove the watermark and release the amendment to the Clerk.

Sincerely,
Office of Legislative Services
State House, Rm 109
603-271-3435

Debra Martone

rom: Ryan Hale <rhale@nhbankers.com>
Sent: Monday, April 25, 2022 1:05 PM
To: Kristy Merrill; Ava Hawkes
Subject: RE: HB 1503 - 2022-1616h, Keith Ammon

Follow Up Flag: Follow up
Flag Status: Flagged

Yes. Thank you very much Ava. We had legal review this language. He didn't see any issues with it from our end. Please let me know if you or Senator Bradley has any questions.

Best,

Ryan

From: Kristy Merrill <KMerrill@nhbankers.com>
Sent: Monday, April 25, 2022 12:52 PM
To: Ava Hawkes <Ava.Hawkes@leg.state.nh.us>
c: Ryan Hale <rhale@nhbankers.com>
ubject: RE: HB 1503 - 2022-1616h, Keith Ammon

Thank you, Ava.

Does Sen. Bradley plan to offer this as a floor amendment this Thur?

-Kristy

From: Ava Hawkes <Ava.Hawkes@leg.state.nh.us>
Sent: Friday, April 22, 2022 12:45 PM
To: Kristy Merrill <KMerrill@nhbankers.com>; Emelia.a.galdieri@banking.nh.gov; Raeleen.blaisdell@banking.nh.gov; Eric.Forcier@sos.nh.gov
Cc: Ava Hawkes <Ava.Hawkes@leg.state.nh.us>; Michele.j.Kelleher@banking.nh.gov; Paula.penney@sos.nh.gov; Jeb Bradley <Jeb.Bradley@leg.state.nh.us>
Subject: FW: HB 1503 - 2022-1616h, Keith Ammon
Importance: High

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the ender and know the content is safe

Good Afternoon,

I hope this email finds you all well. My name is Ava Hawkes and I am the legislative aide to Senator Jeb Bradley.

Senator Bradley requested that I forward the attached amendment 1616h to HB 1503 for your review and feedback. The Senator hopes to receive your thoughts and feedback on this amendment as soon as feasible as this bill will be on the Senate Floor on Thursday, April 28th.

Thank you for your time and efforts. Please let me know if I can answer any questions.

Have a great weekend –

Best,

Ava-Marisa Hawkes
Legislative Aide to Senate Majority Leader Jeb Bradley (SD3)
Legislative Aide to Senate Education Committee

New Hampshire Senate
Email: ava.hawkes@leg.state.nh.us
Phone: (603) 271- 3266

From: AskOLS <AskOLS@leg.state.nh.us>
Sent: Tuesday, April 19, 2022 15:27
To: Keith Ammon <Keith.Ammon@leg.state.nh.us>
Subject: HB 1503 - 2022-1616h, Keith Ammon
Importance: High

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Sincerely,
Office of Legislative Services
State House, Rm 109
603-271-3435

Debra Martone

From: Galdieri, Emelia <emelia.a.galdieri@banking.nh.gov>
Sent: Wednesday, April 27, 2022 8:42 AM
To: Ava Hawkes
Subject: RE: HB 1503 - 2022-1616h, Keith Ammon

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Ms. Hawkes,

The Banking Department has reviewed the proposed amendment and has no comments or concerns.

Please let me know if you need any questions or require any additional information.

Thank you,

Emelia

Emelia A.S. Galdieri
Bank Commissioner
State of New Hampshire Banking Department
53 Regional Drive, Suite 200
Concord, NH 03301
T: (603) 271-3561
F: (603) 271-1090
emelia.a.galdieri@banking.nh.gov

www.nh.gov/banking

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From: Ava Hawkes <Ava.Hawkes@leg.state.nh.us>
Sent: Friday, April 22, 2022 12:45 PM
To: Kristy Merrill <KMerrill@nhbankers.com>; Galdieri, Emelia <Emelia.a.galdieri@banking.nh.gov>; Blaisdell, Raeleen <Raeleen.blaisdell@banking.nh.gov>; Eric.Forcier@sos.nh.gov
Cc: Ava Hawkes <Ava.Hawkes@leg.state.nh.us>; Kelleher, Michele <Michele.j.Kelleher@banking.nh.gov>; Paula.penney@sos.nh.gov; Jeb Bradley <Jeb.Bradley@leg.state.nh.us>
Subject: FW: HB 1503 - 2022-1616h, Keith Ammon
Importance: High

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Good Afternoon,

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Senator Bradley requested that I forward the attached amendment 1616h to HB 1503 for your review and feedback. The Senator hopes to receive your thoughts and feedback on this amendment as soon as feasible as this bill will be on the Senate Floor on Thursday, April 28th.

Thank you for your time and efforts. Please let me know if I can answer any questions.

Have a great weekend –

Best,

Ava-Marisa Hawkes
Legislative Aide to Senate Majority Leader Jeb Bradley (SD3)
Legislative Aide to Senate Education Committee

New Hampshire Senate
Email: ava.hawkes@leg.state.nh.us
Phone: (603) 271- 3266

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Importance: High

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Sincerely,
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Voting Sheets

Senate Commerce Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # HB 1503-FN

Hearing date: 4/12/22

Executive Session date: 4/19/22

Motion of: OTP-A **Vote:** 4-0

Committee Member	Made by	Second	Yes	No
Sen. French, Chair			✓	
Sen. Gannon, V-Chair		✓	✓	
Sen. Bradley	✓		✓	
Sen. Cavanaugh				
Sen. Soucy			✓	

Motion of: Amendment **Vote:** 4-0

Committee Member	Made by	Second	Yes	No
Sen. French, Chair			✓	
Sen. Gannon, V-Chair		✓	✓	
Sen. Bradley	✓		✓	
Sen. Cavanaugh				
Sen. Soucy			✓	

Motion of: _____ **Vote:** _____

Committee Member	Made by	Second	Yes	No
Sen. French, Chair				
Sen. Gannon, V-Chair				
Sen. Bradley				
Sen. Cavanaugh				
Sen. Soucy				

Reported out by: Sen. Bradley

Notes: _____

Senate Finance Committee

EXECUTIVE SESSION

Bill # HB 1503-FN

Hearing date: N/A

Executive session date: 05/03/22

Motion of: Move #1616 w/ effective date change! VOTE: 7-0

		Made by Senator:	Seconded by Senator:	Reported by Senator:
	Daniels	☐	☐	☐
	Reagan	☐	☐	☐
	Giuda	☐	☐	☐
	Rosenwald	☑	☐	☐
	D'Allesandro	☐	☑	☐
	Morse	☐	☐	☐
	Hennessey	☐	☐	☐

Motion of: OTP/A VOTE: 7-0

		Made by Senator:	Seconded by Senator:	Reported by Senator:
	Daniels	☐	☐	☐
	Reagan	☐	☑	☐
	Giuda	☐	☐	☐
	Rosenwald	☐	☐	☐
	D'Allesandro	☑	☐	☑
	Morse	☐	☐	☐
	Hennessey	☐	☐	☐

Committee Member	Present	Yes	No	Reported out by
Senator Daniels, Chairman	☑	☑	☐	☐
Senator Reagan, Vice-Chair	☑	☑	☐	☐
Senator Giuda	☑	☑	☐	☐
Senator Hennessey	☑	☑	☐	☐
Senator Rosenwald	☑	☑	☐	☐
Senator Morse	☑	☑	☐	☐
Senator D'Allesandro	☑	☑	☐	☑

Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Tuesday, April 19, 2022

THE COMMITTEE ON Commerce

to which was referred **HB 1503-FN**

AN ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 4-0

AMENDMENT # 1661s

Senator Jeb Bradley
For the Committee

Aaron Jones 271-4063

COMMERCE

HB 1503-FN, exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

Ought to Pass with Amendment, Vote 4-0.

Senator Jeb Bradley for the committee.

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Tuesday, May 3, 2022

THE COMMITTEE ON Finance

to which was referred **HB 1503-FN**

AN ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 7-0

AMENDMENT # 1939s

Senator Lou D'Allesandro
For the Committee

Deb Martone 271-4980

General Court of New Hampshire - Bill Status System

Docket of HB1503

Docket Abbreviations

Bill Title: (Third New Title) adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and establishing state procurement policies intended to promote the use of American materials.

Official Docket of **HB1503.**:

Date	Body	Description
12/3/2021	H	**Introduced** 01/05/2022 and referred to Commerce and Consumer Affairs
1/12/2022	H	Public Hearing: 01/12/2022 2:00 p.m. LOB302-304
2/2/2022	H	Executive Session: 02/02/2022 1:15 p.m. LOB302-304
1/27/2022	H	Subcommittee Work Session: 02/02/2022 09:30 am LOB 302-304
2/15/2022	H	Work Session: 02/24/2022 09:00 am LOB 302-304
3/3/2022	H	Executive Session: 03/03/2022 1:15 p.m. LOB302-304
2/23/2022	H	==CANCELLED== Subcommittee Work Session: 03/02/2022 09:00 am LOB 302-304
2/28/2022	H	Subcommittee Work Session: 03/03/2022 10:00 am LOB 302-304
3/9/2022	H	Majority Committee Report: Ought to Pass with Amendment **#2022-0828h** (NT) **(Vote 14-4; RC)**
3/9/2022	H	Minority Committee Report: Refer for Interim Study
3/15/2022	H	Amendment **#2022-0828h**: AA VV 03/15/2022 **HJ 6**
3/15/2022	H	Lay HB1503 on Table (Rep. Van Houten): MF **RC** 149-188 03/15/2022 **HJ 6**
3/15/2022	H	**Ought to Pass with Amendment** 2022-0828: MA **RC** 187-150 03/15/2022 **HJ 6**
3/22/2022	S	Introduced 03/17/2022 and Referred to Commerce; **SJ 6**
4/5/2022	S	**Hearing:** 04/12/2022, Room 100, SH, 09:10 am; **SC 15**
4/20/2022	S	Committee Report: Ought to Pass with Amendment **#2022-1661s**, 04/28/2022; **SC 17**
4/28/2022	S	Committee Amendment **#2022-1661s**, AA, VV; 04/28/2022; **SJ 10**
4/28/2022	S	**Ought to Pass with Amendment** 2022-1661s, MA, VV; Refer to Finance Rule 4-5; 04/28/2022; **SJ 10**
5/3/2022	S	Committee Report: Ought to Pass with Amendment **#2022-1939s**, 05/05/2022; **SC 18A**
5/5/2022	S	Committee Amendment **#2022-1939s**, AA, VV; 05/05/2022; **SJ 11**
5/5/2022	S	Sen. Sherman Floor Amendment **#2022-1974s**, AA, VV; 05/05/2022; **SJ 11**
5/5/2022	S	**Ought to Pass with Amendment**s 2022-1939s and 2022-1974s, MA, VV; OT3rdg; 05/05/2022; **SJ 11**
5/10/2022	H	House Non-Concurs with Senate Amendment 2022-1974s 2022-1939s 2022-1661s and Requests CofC (Reps. Hunt, Potucek, Osborne, McAleer): MA VV 05/05/2022 **HJ 12**
5/12/2022	S	Sen. French Accedes to House Request for Committee of Conference, MA, VV; 05/12/2022; **SJ 12**
5/12/2022	S	President Appoints: Senators French, Carson, Cavanaugh; 05/12/2022; **SJ 12**

5/12/2022	H	==RECESSED== Conference Committee Meeting: 05/13/2022 03:30 pm LOB 206-208
5/19/2022	H	Conference Committee Meeting: 05/19/2022 10:00 am LOB 206-208
5/19/2022	S	Conference Committee Report Filed, **#2022-2077c**; 05/26/2022
5/26/2022	S	Conference Committee Report **#2022-2077c**, Adopted, VV; 05/26/2022; **SJ 13**
5/26/2022	H	Conference Committee Report 2022-2077c: Adopted, VV 05/26/2022 **HJ 14**
6/21/2022	S	Enrolled Bill Amendment **#2022-2125e** Adopted, VV, (In recess of 05/26/2022); **SJ 13**
6/21/2022	H	Enrolled Bill Amendment **#2022-2125e**: AA VV (in recess of) 05/26/2022 **HJ 14**
6/22/2022	S	Enrolled Adopted, VV, (In recess 05/26/2022); **SJ 13**
6/22/2022	H	Enrolled (in recess of) 05/26/2022 **HJ 14**
6/29/2022	H	Signed by Governor Sununu 06/24/2022; Chapter 281; 01/01/2023 **HJ 14**

NH House	NH Senate

General Court of New Hampshire - Bill Status System

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5/5/2022	S	Committee Amendment **#2022-1939s**, AA, VV; 05/05/2022; **SJ 11**
5/5/2022	S	Sen. Sherman Floor Amendment **#2022-1974s**, AA, VV; 05/05/2022; **SJ 11**
5/5/2022	S	**Ought to Pass with Amendment**s 2022-1939s and 2022-1974s, MA, VV; OT3rdg; 05/05/2022; **SJ 11**
5/10/2022	H	House Non-Concurs with Senate Amendment 2022-1974s 2022-1939s 2022-1661s and Requests CofC (Reps. Hunt, Potucek, Osborne, McAleer): MA VV 05/05/2022 **HJ 12**
5/12/2022	S	Sen. French Accedes to House Request for Committee of Conference, MA, VV; 05/12/2022; **SJ 12**
5/12/2022	S	President Appoints: Senators French, Carson, Cavanaugh; 05/12/2022; **SJ 12**

5/12/2022	H	==RECESSED== Conference Committee Meeting: 05/13/2022 03:30 pm LOB 206-208
5/19/2022	H	Conference Committee Meeting: 05/19/2022 10:00 am LOB 206-208
5/19/2022	S	Conference Committee Report Filed, **#2022-2077c**; 05/26/2022
5/26/2022	S	Conference Committee Report **#2022-2077c**, Adopted, VV; 05/26/2022; **SJ 13**
5/26/2022	H	Conference Committee Report 2022-2077c: Adopted, VV 05/26/2022 **HJ 14**
6/21/2022	S	Enrolled Bill Amendment **#2022-2125e** Adopted, VV, (In recess of 05/26/2022); **SJ 13**
6/21/2022	H	Enrolled Bill Amendment **#2022-2125e**: AA VV (in recess of) 05/26/2022 **HJ 14**
6/22/2022	S	Enrolled Adopted, VV, (In recess 05/26/2022); **SJ 13**
6/22/2022	H	Enrolled (in recess of) 05/26/2022 **HJ 14**
6/29/2022	H	Signed by Governor Sununu 06/24/2022; Chapter 281; 01/01/2023 **HJ 14**

NH House	NH Senate

Other Referrals

May 19, 2022
2022-2077-CofC
08/10

Committee of Conference Report on HB 1503-FN, exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

Recommendation:

That the House recede from its position of nonconcurrence with the Senate amendment, and concur with the Senate amendment, and

That the Senate and House adopt the following new amendment to the bill as amended by the Senate, and pass the bill as so amended:

Amend the bill by replacing all after section 85 with the following:

86 New Subparagraphs; Department of Administrative Services; Division of Procurement and Support Services; Structural Steel Defined. Amend RSA 21-I:11, II by inserting after subparagraph (f) the following new subparagraphs:

(g) "Structural steel" shall mean a product consisting of the elements of the structural frame that are shown and sized in the structural design documents, essential to support the design loads as defined in the 2016 American Institute of Steel Construction (AISC) code of standard practice for steel buildings and bridges 303-16.

(h) "Domestic fabricated structural steel" shall mean an iron or steel product where all manufacturing must take place in the United States, from the initial melting stage, through fabrication, and application of coatings, except metallurgical processes involving the refinement of steel additives.

(i) "Permanently incorporated product" shall mean a product that is required to remain in place at the end of the project contract, in a fixed location, affixed to the public work to which it was incorporated and shall not mean a product that is capable of being moved from one location to another.

(j) "Fabrication" shall mean all manufacturing of iron or steel products, from the initial melting stage, through fabrication and application of coatings, except metallurgical processes involving the refinement of steel additives.

87 New Paragraph; Department of Administrative Services; Division of Procurement and Support Services; Established Preference of American Made Materials in State Contracts. Amend RSA 21-I:11 by inserting after paragraph II the following new paragraph:

III.(a) Notwithstanding any law to the contrary relating to procurement and to the extent permitted by federal law, any contract for construction, reconstruction, alteration, repair, improvement, or maintenance of a public building or public works with the state as a party shall contain a provision that for the permanently incorporated iron, structural steel, and fabricated structural steel used or supplied in the performance of the contract or any subcontract, strong consideration and preference shall be given for iron or steel fabricated in the United States. If the competitive bidding process results in all qualifying factors being equal, the contract shall be awarded to the contractor offering steel fabricated in the United States. In instances where qualifying factors are equal, absent of low price, and using domesticated structural steel, the state may reserve the option to purchase steel fabricated in the United States.

(b) If a court or federal or state agency has determined that any person intentionally affixed a "Made in America" label to structural steel under this paragraph that was not made in the United States or otherwise falsely represented that structural steel under this paragraph was produced in the United States, the department of administrative services shall withhold contract payment until the structural steel can be replaced, or the noncompliance of this paragraph is otherwise remedied. Failure to comply with and/or produce a satisfactory remedy to the state may result in debarment proceedings under RSA 21-I:11-c, III.

(c) If any provision of this paragraph or application thereof is held to be invalid or in conflict with any applicable laws, this invalidity or conflict shall not affect the other provisions or applications which shall be given affect without the invalid provisions or applications, and to this end, the provisions and applications of this paragraph are severable.

88 Effective Date. This act shall take effect January 1, 2023.

The signatures below attest to the authenticity of this Report on HB 1503-FN, exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and adopting the Uniform Commercial Code relative to controllable electronic records.

Conferees on the Part of the Senate	Conferees on the Part of the House
Sen. French, Dist. 7	Rep. Hunt, Ches. 11
Sen. Carson, Dist. 14	Rep. Potucek, Rock. 6
Sen. Cavanaugh, Dist. 16	Rep. Osborne, Rock. 4
	Rep. McAleer, Carr. 7

2022-2077-CofC

AMENDED ANALYSIS

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws. This bill also adopts the Uniform Commercial Code on controllable electronic records. This bill also establishes the requirement and fraud processes, for the use of American made steel products in state public works projects.

Senate Inventory Checklist for Archives

Bill Number: HB 1503-FN **Senate Committee:** FINANCE

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

X Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

X Bill version as it came to the committee

___ All Calendar Notices

___ Hearing Sign-up sheet(s)

X Prepared testimony, presentations, & other submissions ~~handed in at the public hearing~~

___ Hearing Report

X Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

X - amendment # 1616h ___ - amendment #_____

X - amendment # 1939s ___ - amendment #_____

X Executive Session Sheet

X Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

X - amendment # 1974 ___ - amendment #_____

___ - amendment #_____ ___ - amendment #_____

Post Floor Action: (if applicable) {Clerk's Office}

X Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference): 2077c

X Enrolled Bill Amendment(s) 2125c

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

X as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Debra A. Martone 06/15/22

Committee Aide **Date**

Senate Clerk's Office JM

June 15, 2022
2022-2125-EBA
04/10

Enrolled Bill Amendment to HB 1503-FN

The Committee on Enrolled Bills to which was referred HB 1503-FN

AN ACT adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and establishing state procurement policies intended to promote the use of American materials.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1503-FN

This enrolled bill amendment makes technical corrections to the bill.

Enrolled Bill Amendment to HB 1503-FN

Amend section 66 of the bill by replacing line 3 with the following:

382-A:9-314A Perfection by Possession and Control of Chattel Paper.

Amend section 79 of the bill by deleting line 3.

Amend section 81 of the bill by replacing lines 1-3 with the following:

81 New Articles; Uniform Commercial Code; Article 12 and 13; Controllable Electronic Records; Transition Provisions. Amend RSA 382-A by inserting after Article 9 the following new Articles:

Senate Inventory Checklist for Archives

Bill Number: HB 1503-FN **Senate Committee:** Commerce

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

X Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

X Bill version as it came to the committee
X All Calendar Notices
X Hearing Sign-up sheet(s)
X Prepared testimony, presentations, & other submissions handed in at the public hearing
X Hearing Report
X Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

X - amendment # 1661S ___ - amendment #_____
___ - amendment #_____ ___ - amendment #_____

X Executive Session Sheet
X Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment #_____ ___ - amendment #_____
___ - amendment #_____ ___ - amendment #_____

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):
___ Enrolled Bill Amendment(s)
___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

X as amended by the senate ___ as amended by the house
___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Aaron James 7/7/22
Committee Aide **Date**

Senate Clerk's Office AK