LEGISLATIVE COMMITTEE MINUTES

HB584

Bill as Introduced

HB 584 - AS AMENDED BY THE HOUSE

22Mar2023... 0993h

2023 SESSION

23-0481
08/10

HOUSE BILL ***584***

AN ACT relative to the Uniform Commercial Code's article on controllable electronic records.

SPONSORS: Rep. Ammon, Hills. 42; Rep. Potucek, Rock. 13; Rep. Edwards, Rock. 31; Rep. Osborne, Rock. 2; Rep. Bernardy, Rock. 36; Rep. Hunt, Ches. 14; Sen. Watters, Dist 4

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill makes changes to the Uniform Commercial Code relative to 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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Three

AN ACT relative to the Uniform Commercial Code's article on controllable electronic records.

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

1 Definitions; Conspicuous. 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, ***based on the totality of the circumstances,*** 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.

2 Definitions; Delivery. Amend RSA 382-A:1-201(b)(15) to read as follows:

(15) "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or ***an authoritative tangible copy of a record evidencing*** chattel paper, means voluntary transfer of possession.

3 Definitions; Send. Amend RSA 382-A:1-201(b)(36) to read as follows:

(36) "Send" in connection with a [~~writing,~~] record, or [~~notice~~] ***notification,*** means:

(A) to deposit in the mail, [~~or~~] deliver for transmission, ***or transmit*** by any other usual means of communication with postage or cost of transmission provided for [~~and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none~~] ***addressed*** to any address reasonable under the circumstances; or

(B) [~~in any other way to cause to be received any record or notice within the time it would have arrived if properly sent~~] ***to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).***

4 Definitions; Signed. 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.~~] ***"Sign" means with present intent to authenticate or adopt a record:***

(A) execute or adopt a tangible symbol; or

(B) attach or logically associate with the record an electronic symbol, sound, or process. "Signed," "signing," and "signature" have corresponding meanings.

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

382-A:2-102 Scope; Certain Security and Other Transactions Excluded from this Article.

(1) Unless the context otherwise requires, and except as provided in subsection (3), this Article applies to transactions in goods and, in the case of a hybrid transaction, it applies to the extent provided in subsection (2).

(2) In a hybrid transaction:

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

(b) If the sale-of-goods aspects predominate, this Article applies to the transaction but does not preclude application in appropriate circumstances of other law to aspects of the transaction which do not relate to the sale of goods.

(3) This Article does not:

(a) apply to a transaction that, even though in the form of an unconditional contract to sell or present sale, operates only to create a security interest; or

(b) impair or repeal a statute regulating sales to consumers, farmers, or other specified classes of buyers.

6 Definitions; Hybrid Transaction. Amend the section heading of RSA 382-A:2-106 to read as follows:

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

7 Definitions; Hybrid Transaction. RSA 382-A:2-106(5) is repealed and reenacted to read as follows:

(5) "Hybrid transaction" means a single transaction involving a sale of goods and:

(a) the provision of services;

(b) a lease of other goods; or

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

8 Sales; Statute of Frauds. Amend RSA 382-A:2-201(1) to read as follows:

(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~~] ***the party's*** 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.

9 Sales; Final Expression. Amend the section heading of RSA 382-A:2-202 to read as follows:

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

10 Modification; Rescission 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 or other signed*** 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.

11 Leases; Scope. RSA 382-A:2A-102 is repealed and reenacted to read as follows:

(1) This Article applies to any transaction regardless of form, that creates a lease and, in the case of a hybrid lease, it applies to the extent provided in subsection (2).

(2) In a hybrid lease:

(a) if the lease-of-goods aspects do not predominate:

(i) only the provisions of this Article which relate primarily to the lease-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply.

(ii) Section 2A-209 applies if the lease is a finance lease; and

(iii) Section 2A-407 applies to the promises of the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods; and

(b) if the lease-of-goods aspects predominate, this article applies to the transaction, but does not preclude application in appropriate circumstances of other law to the aspects of the lease which do not relate to the lease of goods.

12 Waiver or Renunciation of Claim or Right After Default. Amend RSA 382-A:2A-107 to read as follows:

382-A:2A-107 Waiver or Renunciation of Claim or Right After Default. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a [~~written~~] waiver or renunciation ***in a*** signed [~~and~~] ***record*** delivered by the aggrieved party.

13 Leases; Statute of Frauds. Amend RSA 382-A:2A-201 to read as follows:

(3) A 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~~] ***record.***

14 Final Expression; Parol or Extrinsic Evidence. Amend the section heading of RSA 382-A:2A-202

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

15 Signature Necessary for Liability on an Instrument. Amend RSA 382-A:3-401 to read as follows:

382-A:3-401 Signature ***Necessary for Liability on Instrument.***

[~~(a)~~] A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3-402.

[~~(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.~~]

16 Liability for Late or Improper Execution or Failure to Execute Payment Oder. Amend RSA 382-A:4A-305(c)-(d) to read as follows:

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, ***evidenced by a record***.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express [~~written~~] agreement of the receiving bank, ***evidenced by a record,*** but are not otherwise recoverable.

17 Formal Requirements. Amend RSA 382-A:5-104 to read as follows:

382-A:5-104 Formal Requirements. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a ***signed*** record [~~and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in Section 5-108(e)~~].

18 Choice of Law and Forum. Amend RSA 382-A:5-116(a) to read as follows:

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or [~~otherwise authenticated~~] by the affected parties [~~in the manner provided in Section 5-104~~] or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

19 Definitions; Record; Sign. Amend RSA 382-A:7-102(a)(10)-(11) to read as follows:

[~~(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.~~

~~(11) "Sign" means, with present intent to authenticate or adopt a record:~~

~~(A) to execute or adopt a tangible symbol; or~~

~~(B) to attach to or logically associate with the record an electronic sound, symbol, or process.~~]

20 Control of Electronic Document of Title. RSA 382-A:7-106, (d)-(h) are repealed and reenacted to read as follows:

(d) Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B0 even if:

(1) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the document of title or has protocol that is programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(e) A power of a person is not shared with another person under subsection (d)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the document of title.

(f) If a person has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) A person has control of an electronic document of title if another person, other than the transferor to the person 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.

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(i) 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 or Article 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment of any other person.

21 Definitions. Amend RSA 382-A:8-102(b) to read as follows:

(b) [~~Other~~] ***The following*** definitions [~~applying to~~] ***in*** this Article and [~~the sections in which they appear are~~] ***other Articles apply to this Article***:

Appropriate person	Section 8-107
Controllable account	***Section 9-102***
Controllable electronic record	***Section 12-102***
Controllable payment intangible	***Section 9-102***
Control Delivery	Section 8-106
Delivery	Section 8-301
Investment company security	Section 8-103
Issuer	Section 8-201

Overissue	Section 8-210
Protected purchaser	Section 8-303
Securities account	Section 8-501

22 New Paragraph; Rules for Determining Whether Certain Obligations and Interests are Securities or Financial Assets. Amend RSA 382-A:8-103 by inserting after paragraph (g) the following new paragraph:

(h) A controllable account, controllable electronic record, or controllable payment intangible is not a financial asset unless Section 8-102(a)(9)(iii) applies.

23 Investment Securities; Definitions. Amend the introductory paragraph of RSA 382-A:8-106(d)(3) to read as follows:

(3) another person other than the transferor ***to the purchaser*** of an interest in the security entitlement:

24 New Paragraph; Applicability; Choice of Law. Amend RSA 382-A:8-110 by inserting after paragraph (f) the following new paragraph:

(g) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction governs a matter or transaction specified in subsection (a) or (b) even if the matter or transaction does not bear any relation to the jurisdiction.

25 Definitions; Account. Amend RSA 382-A:9-102(a)(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)~~] ***"account statement", "account to", "commodity account" in paragraph (14), "customer's account", "deposit account" in paragraph (29), "on account of", and "statement of account"*** 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) 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.

26 Definitions; Account Debtor; Accounting. Amend RSA 382-A:9-102(a)(3)-4) to read as follows:

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the ***negotiable*** instrument[~~constitutes part of~~] ***evidences*** chattel paper.

(4) "Accounting", except as used in " accounting for", means a record:

(A) [~~authenticated~~] ***signed*** by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

27 Definitions; Assignee; Assignor. Amend RSA 382-A:1-902(a)(7) to read as follows:

[~~(7) "Authenticate" means:~~

~~(A) to sign; or~~

~~(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.~~]

(7A) "Assignee" except as used in "assignee for benefit of creditors", means a person (i) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not the obligation is outstanding or

(ii) to which an account, chattel paper, payment intangible, or promissory note has been sold. The term includes a person to which a security interest has been transferred by a secured party.

(7B) "Assignor" means a person that (i) under a security agreement creates or provides for a security interest that secures an obligation or (ii) sells an account, chattel paper, payment intangible, or promissory note. The term includes a secured party that has transferred a security interest to another person.

28 Definitions; Proposal. Amend RSA 382-A:9-102(a)(66) to read as follows:

(66) "Proposal" means a record [~~authenticated~~] ***signed*** by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9-620, 9-621, and 9-622.

29 Definitions; Send. Amend RSA 382-A:9-102(a)(75) to read as follows:

(75) [~~"Send", in connection with a record or notification, means:~~

~~(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or~~

~~(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).~~]

30 Definition; Tangible Chattel Paper. Amend RSA 382-A:9-102(a)(79) to read as follows:

(79) [~~"Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.~~]

31 Definitions; Protected Purchaser. 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.
"Protected purchaser"	***Section 8-303.***
"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.

32 Control of Electronic Copy of Record Evidencing Chattel Paper. Amend RSA 382-A:9-105 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~~] ***authoritative electronic copy*** 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 ***authoritative*** 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)~~] ***(1)*** enables the person readily to identify each electronic copy as an authoritative copy or nonauthoritative copy;

[~~(B)~~] ***(2)*** 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)~~] ***(3)*** gives the purchaser exclusive power, subject to subsection (d), to:

[~~(i)~~] ***(A)*** prevent others from adding or changing an identified assignee of each authoritative electronic copy; and

[~~(ii)~~] ***(B)*** 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~~] ***Meaning of exclusive. Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B) even if:***

(1) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the authoritative electronic copy or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(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.~~] ***When power not shared with another person. A power of purchaser is not shared with another person under subsection (d)(2) and the purchasers power is not exclusive if:***

(1) the purchaser can exercise the power only if the power is also exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the purchaser; or

(B) is the transferor to the purchaser of an interest in the chattel paper.

(f) Presumption of exclusivity of certain powers. If a purchaser has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) Obtaining control through another person. A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if another person, other than the transferor to the purchaser of an interest in the chattel paper:

(1) has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(2) obtains control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(3) obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

33 Control of Electronic Money. Amend RSA 382-A:9-105A, (a)(1)(A) to read as follows:

(A) [~~the~~] power to avail itself of substantially all the benefit from the electronic money; and

34 Control of Electronic Money. RSA 382-A:9-105A(b)-(d) is repealed and reenacted to read as follows:

(b) Meaning of exclusive. Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) 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 power is shared with another person.

(c) When power not shared with another person. A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the electronic money.

(d) Presumption of exclusivity of certain powers. If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e) Control through another person. A person has control of electronic money if another person other than the transferor to the person 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 controlled of the electronic money on behalf of the person.

35 No Requirement to Acknowledge or Confirm; No Duties. Amend RSA 382-A:107B(a) to read as follows:

(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.

36 After-Acquired Property; Future Advances. Amend RSA 382-A:9-204(b) to read as follows:

(b) When after-acquired property clause not effective. Subject to subsection [~~(c)~~]***b.1***, a security interest does not attach under a term constituting an after-acquired property clause to:

(b.1) Limitation on subsection (b). Subsection (b) does not prevent a security interest from attaching:

(1) ***to*** 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 ***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.

37 Duties of Secured Party After Receiving Demand from Debtor. Amend RSA 382-A:9-208(b)(1) to read as follows:

(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 a signed [~~statement~~] ***record*** that releases the bank from any further obligation to comply with instructions originated by the secured party;

38 Duties of Secured Party After Receiving Demand from Debtor. RSA 382-A:9-208(b)(8) is repealed and reenacted as follows:

(8) A secured party having control under Section 12-105 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

39 Duties of Secured Party After Receiving Demand for Debtor. Amend RSA 382-A:9-209(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, a secured party shall send to an account debtor that has received notification ***under Section 9-406(a) or 12-106(b)*** of an assignment to the secured party as assignee [~~under Section 9-406(a) an authenticated~~] ***a singed*** record that releases the account debtor from any further obligation to the secured party.

40 Request for Accounting. Amend RSA 382-A:9-210 to read as follows:

382-A:9-210 Request for Accounting; Request Regarding List of Collateral or Statement of Account.

(a) Definitions. In this section:

(1) "Request" means a record of a type described in paragraph (2), (3), or (4).

(2) "Request for an accounting" means a record [~~authenticated~~] ***signed*** by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record [~~authenticated~~] ***signed*** by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record [~~authenticated~~] ***signed*** by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Duty to respond to requests. Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) in the case of a request for an accounting, by [~~authenticating~~] ***signing*** and sending to the debtor an accounting; and

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by [~~authenticating~~] ***signed*** and sending to the debtor an approval or correction.

(c) Request regarding list of collateral; statement concerning type of collateral. A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor [~~an authenticated~~] ***a signed*** record including a statement to that effect within 14 days after receipt.

(d) Request regarding list of collateral; no interest claimed. A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor [~~an authenticated~~] ***a signed*** record:

(1) disclaiming any interest in the collateral; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) Request for accounting or regarding statement of account; no interest in obligation claimed. A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor [~~an authenticated~~] ***a signed*** record:

(1) disclaiming any interest in the obligations; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) Charges for responses. A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding $25 for each additional response.

41 Law Governing Perfection and Priority of Security Interests in Deposit Accounts. Amend RSA 382-A:9-304(a) to read as follows:

(a) Law of bank's jurisdiction governs. The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank, ***even if the transaction does not bear any relation to the bank's jurisdiction.***

42 New Subparagraph; Governing Law; General Rules. Amend RSA 382-A:9-305(a) by inserting after subparagraph (4) the following new subparagraph:

(5) Paragraphs (2), (3), and (4) apply even if the transaction does not bear any relation to the jurisdiction.

43 Chattel Paper Evidenced by Authoritative Electronic Copy. Amend RSA 382-A:9-306A(a) to read as follows:

(a) Chattel paper evidenced by authoritative electronic copy. Except as provided in subsection [~~(e)~~]***(d)***, 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, ***even if the transaction does not bear any relation to the chattel paper's jurisdiction.***

44 Chattel Paper; Perfection. RSA 382-A:9-306A(c)-(e) is repealed and reenacted to read as follows:

(c) 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 the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(1) perfection of a security interest in the chattel paper by possession under Section 9-314A; and

(2) the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(d) When perfection governed by the law of jurisdiction where debtor located. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

45 Governing Law; General Rules. Amend RSA 382-A:9-306B(a) to read as follows:

(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 ***evidenced by the controllable electronic record.***

46 Exemptions; Filing of Financing Statement. Amend RSA 382-A:9-310(b)(9)-(11) to read as follows:

[~~(9)~~] ***(8.1)*** in chattel paper which is perfected by possession and control under Section 9-314A;

[~~(10)~~] ***(9)*** in proceeds which is perfected under Section 9-315; or

[~~(11)~~] ***(10)*** that is perfected under Section 9-316.

47 Specified Collateral; Time of Perfection. Amend RSA 382-A:9-314(b)-(c) to read as follows:

(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 documents, electronic money, or letter-of-credit rights is perfected by control under Section 7-106, 9-104, 9-105A, 9-107, or 9-107A [~~when~~] ***not earlier than the time*** the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection. A security interest in investment property is perfected by control under Section 9-106 [~~from~~] ***not earlier than*** the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

48 Perfection by Possession; Time of Perfection. Amend RSA 382-A:9-314A(b) to read as follows:

(b) Time of perfection; continuation of perfection. A security interest is perfected under subsection (a) [~~when~~] ***not earlier than the time*** the secured party takes possession and obtains control and remains perfected under subsection (a) only while the secured party retains possession and control.

49 Continued Perfection of Security Interest. 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), 9-305(c), [~~9-306A(c)~~] ***9-306A(d)***, or 9-306B(b) remains perfected until the earliest of:

50 Changed in Jurisdiction of Chattel Paper. Amend the introductory paragraph of RSA 382A:9-316(f) to read as follows:

(f) Change in jurisdiction of ***chattel paper,*** controllable electronic record, bank, issuer, nominated person, securities intermediary, or commodity intermediary. A security interest in ***chattel paper,*** 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 ***chattel paper's jurisdiction, 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:

51 Buyers that Receive Delivery. Amend RSA 382-A:9-317(b) to read as follows:

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer of goods***, other than a secured party***, 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.

52 Future Advances; Buyer of Goods. Amend the introductory paragraph of RSA 382-A:9-323(d) to read as follows:

(d) Buyer of goods. Except as otherwise provided in subsection (e), a buyer of goods [~~other than a buyer in ordinary course of business~~] takes free of a security interest to the extent that it secures advances made after the earlier of:

53 Future Advances; Lessee of Goods. Amend the introductory paragraph of RSA 382-A:9-323(f) to read as follows:

(f) Lessee of goods. Except as otherwise provided in subsection (g), a lessee of goods[~~, other than a lessee in ordinary course of business,~~] takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

54 Priority of Purchase; Inventory Purchase-Money Priority. Amend RSA 382-A:9-324(b)(2) to read as follows:

(2) the purchase-money secured party sends [~~an authenticated~~] ***a signed*** notification to the holder of the conflicting security interest;

55 Priority of Purchase; Livestock Purchase-Money Priority. Amend RSA 382-A:9-324(d)(2) to read as follows:

(2) the purchase-money secured party sends [~~an authenticated~~] ***a signed*** notification to the holder of the conflicting security interest;

56 Priority of Purchaser of Chattel Paper or Instrument. Amend RSA 382-A:9-330 to read as follows:

382-A:9-330 Priority of Purchaser of Chattel Paper or Instrument.

(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, and obtains control under RSA 382-A:9-105 of each authoritative electronic copy of the record evidencing the chattel paper; and

(2) the authoritative copies of the record evidencing the chattel paper do not indicate that [~~the copies have~~] ***the chattel paper has*** 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 and obtains control under RSA 382-A:9-105 of each authoritative electronic copy of the record evidencing the chattel paper 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.

(c) Chattel paper purchaser's priority in proceeds. Except as otherwise provided in Section 9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) Section 9-322 provides for priority in the proceeds; or

(2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Instrument purchaser's priority. Except as otherwise provided in Section 9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new value. For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) Indication of assignment gives knowledge. For purposes of subsections (b) and (d), if ***the authoritative copies of the record evidencing*** chattel paper or an instrument [~~indicates~~] ***indicate*** that [~~it~~] ***the chattel paper or instrument*** has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

57 Priority of Security; Fixtures. Amend RSA 382-A:9-334(f)(1) to read as follows:

(1) the encumbrancer or owner has, in [~~an authenticated~~] ***a signed*** record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

58 Bank's Rights and Duties with Respect to Deposit Account. Amend the introductory paragraph to RSA 382-A:9-341 to read as follows:

Except as otherwise provided in Section 9-340(c), and unless the bank otherwise agrees in [~~an authenticated~~]***a signed*** record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

59 Rights Acquired by Assignee. Amend RSA 382-A:9-404(a)(2) to read as follows:

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment [~~authenticated~~] ***signed*** by the assignor or the assignee.

60 Discharge of Account Debtor. Amend RSA 382-A:9-406(d) to read as follows:

(d) Term restricting assignment generally ineffective. ***In this subsection, "promissory note" includes a negotiable instrument that evidences chattel paper.*** 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:

61 New Paragraph; Promissory Note. Amend RSA 382-A:9-408 by inserting after paragraph (f) the following new paragraph:

(g) "Promissory Note." In this section, "promissory note" includes a negotiable instrument that evidences chattel paper.

62 Persons Entitled to File a Record. Amend RSA 382-A:9-509(a)(1) to read as follows:

(1) the debtor authorizes the filing in [~~an authenticated~~] ***a signed*** record or pursuant to subsection (b) or (c); or

63 Security Agreement as Authorization. Amend the introductory paragraph of RSA 382-A:9-509(b) to read as follows:

(b) Security agreement as authorization. By [~~authenticating~~] ***signing*** or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

64 Time for Compliance; Termination Statement. Amend RSA 382-A:9-513(b)(2) to read as follows:

(2) if earlier, within 20 days after the secured party receives [~~an authenticated~~] ***a signed*** demand from a debtor.

65 Other Collateral; Termination Statement. Amend the introductory paragraph of RSA 382-A:9-513(c) to read as follows:

(c) Other collateral. In cases not governed by subsection (a), within 20 days after a secured party receives [~~an authenticated~~] ***a signed*** demand from a debtor, the secured party shall

cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

66 Secured Party Owes Duty to Debtor or Obligor. RSA 382-A:9-605(b) is repealed and reenacted to read as follows:

(b) Secured party owes duty to debtor or obligor. A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subsection (a)(1)(A), (B), or (C) relating to the person 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.

67 Application of Proceeds, Surplus, and Deficiency if Obligation is Secured. Amend RSA 382-A:9-608(a)(1)(C) to read as follows:

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives [~~an authenticated~~] ***a signed*** demand for proceeds before distribution of the proceeds is completed.

68 Persons to Be Notified. Amend RSA 382-A:9-611(b) -(c) to read as follows:

(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~~] ***signed*** notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send 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~~] ***a signed*** 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).

69 Contents and Form of Notification Before Disposition of Collateral: General. RSA 382-A:9-613 is repealed and reenacted to read as follows:

382-A:9-613 Contents and Form of Notification Before Disposition of Collateral: General.

(a) Contents and form of notification. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) information not specified by that paragraph; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in Section 9-614(a)(3), when completed in accordance with the instructions in subsection (b) and Section 9-614(b), each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to which the notification is sent)

From: (Name, address, and telephone number of secured party)

{1} Name of debtor that is not an addressee:

(Name of each debtor)

{2} We will sell (describe collateral) to the highest qualified bidder at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date: _____)

(Time: _____)

(Place:_____)

{3} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{4} You are entitled to an accounting of the unpaid indebtedness secured by the property we intend to sell or, as applicable, lease or license.

{5} If you request an accounting, you must pay a charge of $(amount).

{6} You may request an accounting by calling us at (telephone number).

(b) Instructions for form of notification. The following instructions apply to the form of notification in subsection (a)(5):

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(5). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2) Include and complete item {1} only if there is a debtor that is not an addressee of the notification and list the name or names.

(3) Include and complete either item {2}, if the notification relates to a public disposition of the collateral, or item {3}, if the notification relates to a private disposition of the collateral. If item {2} is included, include the words "to the highest qualified bidder" only if applicable.

(4) Include and complete items {4} and {6}.

(5) Include and complete item {5} only if the sender will charge the recipient for an accounting.

70 Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction. RSA 382-A:9-614 is repealed and reenacted to read as follows:

382-A:9-614 Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction.

(a) Contents and form of notification. 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(a)(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 in accordance with the instructions in subsection (b), 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: (Identify transaction)

We have your (describe collateral), because you broke promises in our agreement.

{1} 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.

{2} We will sell (describe collateral) at private sale sometime after (date. A sale could include a lease or license.

{3} 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.

{4} 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).

{5} If you want us to explain to you in (writing) or in (description of electronic record) how we have figured the amount you owe us,

{6} Call us at (telephone number) or write us at (secured party's address) or contact us by (description of electronic communication method).

{7} and request (a written explanation) (a written explanation or an explanation in description of electronic record).

{8} We will charge you (amount) for the explanation if we sent you another written explanation of the amount you owe us within the last six months.

{9} If you need more information about the sale(call us at (telephone number))(or) (write us at (secured party's address))(or contact us by (description of electronic communication method)).

{10} 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)

(b) Instructions for form of notification. The following instructions apply to the form of notification in subsection (a)(3):

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(3). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2) Include and complete either item {1}, if the notification relates to a public disposition of the collateral, or item {2}, if the notification relates to a private disposition of the collateral.

(3) Include and complete items {3}, {4}, {5}, {6}, and {7},

(4) In item {5}, include and complete any one of the three alternative methods for the explanation__writing, writing or electronic record, or electronic record,

(5) In item {6}, include the telephone number, In addition, the sender may include and complete either or both of the two additional alternative methods of communication__writing or electronic communication__for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included.

(6) In item {7}, include and complete the method or methods for the explanation__writing, writing or electronic record, or electronic record--included in item {5},

(7) Include and complete item {8} only if a written explanation is included in item {5} as a method for communicating the explanation and the sender will charge the recipient for another written explanation.

(8) In item {9}, include either the telephone number or the address or both the telephone number and the address. In addition, the sender may include and complete the additional method of communication--electronic communication--for the recipient of the notification to communicate with the sender. The additional method of electronic communication is not required to be included.

(9) If item {10} does not apply, insert "None" after "agreement."

71 Application of Proceeds of Disposition. Amend RSA 382-A:9-615(a)(3)-(4) to read as follows:

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien [~~an authenticated~~] ***a signed*** demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor [~~an authenticated~~] ***a signed*** demand for proceeds before distribution of the proceeds is completed.

72 Explanation of Calculation of Surplus or Deficiency. Amend RSA 382-A:9-616(a)(1)-(2) to read as follows:

(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.

73 Explanation of Calculation. Amend RSA 382-A:9-616(b)(1)(A) to read as follows:

(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

74 Transfer of Record or Legal Title. Amend the introductory statement of RSA 382-A:9-619(a) to read as follows:

(a) "Transfer statement." In this section, "transfer statement" means a record [~~authenticated~~] ***signed*** by a secured party stating:

75 Acceptance of Collateral in Full or Partial Satisfaction of Obligation. Amend the introductory statement of RSA 382-A:9-620(a)(2) to read as follows:

(2) The secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal [~~authenticated~~] ***signed*** by:

76 Purported Acceptance Ineffective. Amend RSA 382-A:9-620(b)(1) to read as follows:

(1) the secured party consents to the acceptance in [~~an authenticated~~] ***a signed*** record or sends a proposal to the debtor; and

77 Debtors Consent. Amend RSA 382-A:9-620(c) to read as follows:

(c) Debtor's consent. For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record [~~authenticated~~] ***signed*** after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record [~~authenticated~~] ***signed*** after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection [~~authenticated~~] ***signed*** by the debtor within 20 days after the proposal is sent.

78 Compliance with Mandatory Disposition Requirement. Amend RSA 382-A:620(f)(2)

(2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and [~~authenticated~~] ***signed*** after default.

79 Notification of Proposal to Accept Collateral. Amend RSA 382-A:9-621(a)(1) to read as follows:

(1) any person from which the secured party has received, before the debtor consented to the acceptance, [~~an authenticated~~] ***a signed*** notification of a claim of an interest in the collateral;

80 Waivers. Amend RSA 382-A:9-624 to read as follows:

382-A:9-624 Waiver.

(a) Waiver of disposition notification. A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 9-611 only by an agreement to that effect entered into and [~~authenticated~~] ***signed*** after default.

(b) Waiver of mandatory disposition. A debtor may waive the right to require disposition of collateral under Section 9-620(e) only by an agreement to that effect entered into and[~~authenticated~~] ***signed*** after default.

(c) Waiver of redemption right. Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 9-623 only by an agreement to that effect entered into and [~~authenticated~~] ***signed*** after default.

81 Limitation of Liability. RSA 382-A:9-628(f) is repealed and reenacted to read as follows:

(f) Limitation of liability under subsections (a) and (b) does not apply. Subsections (a) and (b) do not apply to limit the liability of a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subsection (b)(1)(A), (B), or (C) relating to the person 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.

82 Definitions. Amend RSA 382-A:12-102(a)(2)-(3) to read as follows:

(2) "Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in the controllable electronic record that obtains control of [~~the~~] ***a*** 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~~] ***has the meaning provided for that term in:***

(A) [~~"Transferable record" as defined in~~] ***Section 201(a)(1) of*** 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 Uniform Electronic Transactions Act Section 16(a).

83 Control of Controllable Account and Controllable Payment Intangible. Amend RSA 382-A:12-104(b) to read as follows:

(b) Control of controllable account and controllable payment intangible. [~~For purposes of determining~~] ***To determine*** 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.

84 Limitation of Rights of Qualifying Purchasers in Other Property. Amend RSA 382-A:12-104(f) to read as follows:

(f) Limitation of rights of qualifying purchaser in other property. Except as provided in subsections (a) and (e) for[~~controllable accounts~~] ***a controllable account*** and [~~controllable payment intangibles~~] ***a controllable payment intangible*** 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.

85 Control of Controllable Electronic Record. RSA 382-A:12-105 is repealed and reenacted to read as follows:

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

(a) Control of controllable electronic record. A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:

(1) gives the person:

(A) 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) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having powers specified in paragraph (1).

(b) Meaning of exclusive. Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) 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 power is shared with another person.

(c) When power not shared with another person. A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(d) Presumption of exclusivity of certain powers. If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e) Control through another person. A person has control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable 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.

(f) 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.

(g) 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 or

Article 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

86 Proof of Transfer of Control. Amend RSA 382-A:12-106 to read as follows:

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~~] ***the*** 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~~] ***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 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~~] ***the*** 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~~] ***the*** 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 ***in the agreement referred to in subsection (d)(1)***, 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 ***under subsection (e)*** that control has been transferred if the person demonstrates, using the [~~agreed~~] method ***in the agreement referred to in subsection (d)(1)***, 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~~] ***specified*** 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.

87 Governing Law. Amend RSA 382-A: 12-107(b) to read as follows:

(b) Governing law: Section 12-106. ***For a controllable electronic record that evidences a controllable account or controllable payment intangible,*** 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.

88 Applicability; Relations; Rights. Amend RSA 382-A:12-107(d)-(f) to read as follows:

(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 1 and 9), 2022 Official Text~~].

(e) Relation of ***matter or*** transaction to controllable electronic record's jurisdiction not necessary. [~~Subsections (b) through (d) apply even if a transaction~~] ***To the extent subsections (a) and (b) provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this article, that law governs even if the matter or a transaction to which the matter relates*** does not bear any relation to the controllable electronic record's jurisdiction.

(f) Rights of purchasers determined at time of purchase. The rights acquired ***under Section 12-104*** 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.

89 Article Title; Transitional Provisions. Amend the Article title preceding RSA 382-A:13 to read as follows:

ARTICLE 13

[~~ADDITIONAL~~] TRANSITION PROVISIONS FOR [~~ARTICLES 9 AND 12~~] ***UNIFORM COMMERCIAL CODE AMENDMENTS***

90 New Sections; Transition Provisions. Amend RSA 382-A:13 by inserting after the Article title the following new sections:

382-A:13-101 Title. This article may be cited as Transactional Provisions for Uniform Commercial Code Amendments.

382-A:13-102 Definitions.

(a) Article A Definitions. In this article:

(1) "Adjustment date" means July 1, 2025, or the date that is one year after the effective date of this article, whichever is later.

(2) "Article 12" means Article 12 of the Uniform Commercial Code.

(3) "Article 12 property" means a controllable account, controllable electronic record, or controllable payment intangible.

(b) Definitions in other articles. The following definitions in other articles of the Uniform Commercial Code apply to this article.

"Controllable account".	Section 9-102.
"Controllable electronic record".	Section 12-102.
"Controllable payment intangible".	Section 9-102.
"Electronic money".	Section 9-102.
"Financing statement".	Section 9-102.

(c) Article 1 definitions and principles. Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

382-A:13-201 Saving Clause. Except as provided in Part 3, a transaction validly entered into before the effective date of this article and the rights, duties, and interests flowing from the transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as

required or permitted by law other than the Uniform Commercial Code or, if applicable, the Uniform Commercial Code, as though this article had not taken effect.

91 Transition Provisions. RSA 382-A:13-301 through 382-A:13-306 are repealed and reenacted to read as follows:

382-A:13-301 Saving Clause.

(a) Pre-effective date transaction, lien, or interest. Except as provided in this part, Article 9 as amended by this act 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 provided in subsection (c) and sections 13-302 through 12-A306:

(1) a transaction, lien, or interest in property that was validly entered into, created, or transferred before the effective date of this article, and was not governed by the Uniform Commercial Code, but would be subject to Article 9 as amended in this act or Article 12 if it had been entered into, created, or transferred on or after the effective date of this act, including the rights, duties and interests, flowing from the transaction ,lien, or interest, remains valid on and after the effective date of this act; and

(2) the transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that would apply if this act had not taken effect.

(c) Pre-effective date proceeding. This article does not affect an action case, or proceeding commenced from 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 chapter if, on the effective date of this article the requirements for enforceability and perfection under this chapter are satisfied without further action.

(b) Continuing perfection: enforceability or perfection requirements not satisfied. If a security interest is enforceable and perfected immediately before the effective date of this article but the requirements for enforceability or perfection under this chapter 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 the adjustment date;

(2) remaines enforceable thereafter only if the security interest satisfies the requirements for enforceability under Section 9-203 before the adjustment date; and

(3) remains perfected thereafter only if the requirements for perfection under this chapter are satisfied before the time specified in paragraph (1).

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 is unperfected at that time:

(1) remains an enforceable security interest until the adjustment date;

(2) remains enforceable thereafter if the security interest becomes enforceable under Section 9-203 on the effective date of this article or before the adjustment date; and

(3) becomes perfected:

(A) without further action on the effective date of this article if the requirements for perfection under this chapter are satisfied before or at that time; or

(B) when the requirements for perfection are satisfied if the requirements are satisfied after that time.

382-A:13-304 Effectiveness of Action 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 chapter before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under this article before the adjustment date.

(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 requirements for perfection under this article.

(c) Pre-effective date enforceability action. 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 requirements for enforceability under this article.

382-A:13-305 Priority.

(a) Determination of priority. Subject to subsections (b) and (c), this act determines the priority of conflicting claims to collateral.

(b) Established priorities. Subject to subsection (c), if the priorities of claims to collateral were established before the effective date of this article, Article 9 as in effect before the effective date of this article determines priority.

(c) Determination of certain priorities on adjustment date. On the adjustment date, to the extent the priorities determined by Article 9 as amended by this act modify the priorities established before the effective date of this article, the priorities of claims to Article 12 property and electronic money established before the effective date of this article shall 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 as amended by this act do not apply.

(b) Established priorities. Subject to subsection (c), when the priority rules of Article 9 as amended by this act do not apply and the 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 as amended by this act do not apply, to the extent the priorities determined by this act modify the priorities established before the effective date of this act, the priorities of claims to Article 12 property established before the effective date of this act cease to apply on the adjustment date.

92 Effective Date. This act shall take effect 60 days after its passage.

HB 584 - AS AMENDED BY THE SENATE

22Mar2023... 0993h
05/18/2023 1882s

2023 SESSION

23-0481
08/10

HOUSE BILL ***584***

AN ACT relative to the Uniform Commercial Code's article on controllable electronic records.

SPONSORS: Rep. Ammon, Hills. 42; Rep. Potucek, Rock. 13; Rep. Edwards, Rock. 31; Rep. Osborne, Rock. 2; Rep. Bernardy, Rock. 36; Rep. Hunt, Ches. 14; Sen. Watters, Dist 4

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill makes changes to the Uniform Commercial Code relative to 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 Three

AN ACT relative to the Uniform Commercial Code's article on controllable electronic records.

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

1 Definitions; Conspicuous. 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, ***based on the totality of the circumstances,*** 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.

2 Definitions; Delivery. Amend RSA 382-A:1-201(b)(15) to read as follows:

(15) "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or ***an authoritative tangible copy of a record evidencing*** chattel paper, means voluntary transfer of possession.

3 Definitions; Send. Amend RSA 382-A:1-201(b)(36) to read as follows:

(36) "Send" in connection with a [~~writing,~~] record, or [~~notice~~] ***notification,*** means:

(A) to deposit in the mail, [~~or~~] deliver for transmission, ***or transmit*** by any other usual means of communication with postage or cost of transmission provided for [~~and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none~~] ***addressed*** to any address reasonable under the circumstances; or

(B) [~~in any other way to cause to be received any record or notice within the time it would have arrived if properly sent~~] ***to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).***

4 Definitions; Signed. 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.~~] ***"Sign" means with present intent to authenticate or adopt a record:***

(A) execute or adopt a tangible symbol; or

(B) attach or logically associate with the record an electronic symbol, sound, or process. "Signed," "signing," and "signature" have corresponding meanings.

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

382-A:2-102 Scope; Certain Security and Other Transactions Excluded from this Article.

(1) Unless the context otherwise requires, and except as provided in subsection (3), this Article applies to transactions in goods and, in the case of a hybrid transaction, it applies to the extent provided in subsection (2).

(2) In a hybrid transaction:

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

(b) If the sale-of-goods aspects predominate, this Article applies to the transaction but does not preclude application in appropriate circumstances of other law to aspects of the transaction which do not relate to the sale of goods.

(3) This Article does not:

(a) apply to a transaction that, even though in the form of an unconditional contract to sell or present sale, operates only to create a security interest; or

(b) impair or repeal a statute regulating sales to consumers, farmers, or other specified classes of buyers.

6 Definitions; Hybrid Transaction. Amend the section heading of RSA 382-A:2-106 to read as follows:

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

7 Definitions; Hybrid Transaction. RSA 382-A:2-106(5) is repealed and reenacted to read as follows:

(5) "Hybrid transaction" means a single transaction involving a sale of goods and:

(a) the provision of services;

(b) a lease of other goods; or

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

8 Sales; Statute of Frauds. Amend RSA 382-A:2-201(1) to read as follows:

(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~~] ***the party's*** 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.

9 Sales; Final Expression. Amend the section heading of RSA 382-A:2-202 to read as follows:

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

10 Modification; Rescission 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 or other signed*** 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.

11 Leases; Scope. RSA 382-A:2A-102 is repealed and reenacted to read as follows:

(1) This Article applies to any transaction regardless of form, that creates a lease and, in the case of a hybrid lease, it applies to the extent provided in subsection (2).

(2) In a hybrid lease:

(a) if the lease-of-goods aspects do not predominate:

(i) only the provisions of this Article which relate primarily to the lease-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply.

(ii) Section 2A-209 applies if the lease is a finance lease; and

(iii) Section 2A-407 applies to the promises of the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods; and

(b) if the lease-of-goods aspects predominate, this article applies to the transaction, but does not preclude application in appropriate circumstances of other law to the aspects of the lease which do not relate to the lease of goods.

12 Waiver or Renunciation of Claim or Right After Default. Amend RSA 382-A:2A-107 to read as follows:

382-A:2A-107 Waiver or Renunciation of Claim or Right After Default. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a [~~written~~] waiver or renunciation ***in a*** signed [~~and~~] ***record*** delivered by the aggrieved party.

13 Leases; Statute of Frauds. Amend RSA 382-A:2A-201 to read as follows:

(3) A 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~~] ***record.***

14 Final Expression; Parol or Extrinsic Evidence. Amend the section heading of RSA 382-A:2A-202

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

15 Signature Necessary for Liability on an Instrument. Amend RSA 382-A:3-401 to read as follows:

382-A:3-401 Signature ***Necessary for Liability on Instrument.***

[~~(a)~~] A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3-402.

[~~(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.~~]

16 Liability for Late or Improper Execution or Failure to Execute Payment Oder. Amend RSA 382-A:4A-305(c)-(d) to read as follows:

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, ***evidenced by a record.***

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express [~~written~~] agreement of the receiving bank, ***evidenced by a record,*** but are not otherwise recoverable.

17 Formal Requirements. Amend RSA 382-A:5-104 to read as follows:

382-A:5-104 Formal Requirements. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a ***signed*** record [~~and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in Section 5-108(e)~~].

18 Choice of Law and Forum. Amend RSA 382-A:5-116(a) to read as follows:

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or [~~otherwise authenticated~~] by the affected parties [~~in the manner provided in Section 5-104~~] or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

19 Definitions; Record; Sign. Amend RSA 382-A:7-102(a)(10)-(11) to read as follows:

[~~(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.~~

~~(11) "Sign" means, with present intent to authenticate or adopt a record:~~

~~(A) to execute or adopt a tangible symbol; or~~

~~(B) to attach to or logically associate with the record an electronic sound, symbol, or process.~~]

20 Control of Electronic Document of Title. RSA 382-A:7-106, (d)-(h) are repealed and reenacted to read as follows:

(d) Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B0 even if:

(1) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the document of title or has protocol that is programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(e) A power of a person is not shared with another person under subsection (d)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the document of title.

(f) If a person has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) A person has control of an electronic document of title if another person, other than the transferor to the person 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.

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(i) 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 or Article 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment of any other person.

21 Definitions. Amend RSA 382-A:8-102(b) to read as follows:

(b) [~~Other~~] ***The following*** definitions [~~applying to~~] ***in*** this Article and [~~the sections in which they appear are~~] ***other Articles apply to this Article***:

Appropriate person	Section 8-107
Controllable account	***Section 9-102***
Controllable electronic record	***Section 12-102***
Controllable payment intangible	***Section 9-102***
Control Delivery	Section 8-106
Delivery	Section 8-301

Investment company security	Section 8-103
Issuer	Section 8-201
Overissue	Section 8-210
Protected purchaser	Section 8-303
Securities account	Section 8-501

22 New Paragraph; Rules for Determining Whether Certain Obligations and Interests are Securities or Financial Assets. Amend RSA 382-A:8-103 by inserting after paragraph (g) the following new paragraph:

(h) A controllable account, controllable electronic record, or controllable payment intangible is not a financial asset unless Section 8-102(a)(9)(iii) applies.

23 Investment Securities; Definitions. Amend the introductory paragraph of RSA 382-A:8-106(d)(3) to read as follows:

(3) another person other than the transferor ***to the purchaser*** of an interest in the security entitlement:

24 New Paragraph; Applicability; Choice of Law. Amend RSA 382-A:8-110 by inserting after paragraph (f) the following new paragraph:

(g) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction governs a matter or transaction specified in subsection (a) or (b) even if the matter or transaction does not bear any relation to the jurisdiction.

25 Definitions; Account. Amend RSA 382-A:9-102(a)(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)~~] ***"account statement", "account to", "commodity account" in paragraph (14), "customer's account", "deposit account" in paragraph (29), "on account of", and "statement of account"*** 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) 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.

26 Definitions; Account Debtor; Accounting. Amend RSA 382-A:9-102(a)(3)-4) to read as follows:

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the ***negotiable*** instrument[~~constitutes part of~~] ***evidences*** chattel paper.

(4) "Accounting", except as used in " accounting for", means a record:

(A) [~~authenticated~~] ***signed*** by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

27 Definitions; Assignee; Assignor. Amend RSA 382-A:1-902(a)(7) to read as follows:

[~~(7) "Authenticate" means:~~

~~(A) to sign; or~~

~~(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.~~]

(7A) "Assignee" except as used in "assignee for benefit of creditors", means a person (i) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not the obligation is outstanding or

(ii) to which an account, chattel paper, payment intangible, or promissory note has been sold. The term includes a person to which a security interest has been transferred by a secured party.

(7B) "Assignor" means a person that (i) under a security agreement creates or provides for a security interest that secures an obligation or (ii) sells an account, chattel paper, payment intangible, or promissory note. The term includes a secured party that has transferred a security interest to another person.

28 Definitions; Proposal. Amend RSA 382-A:9-102(a)(66) to read as follows:

(66) "Proposal" means a record [~~authenticated~~] ***signed*** by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9-620, 9-621, and 9-622.

29 Definitions; Send. Amend RSA 382-A:9-102(a)(75) to read as follows:

(75) [~~"Send", in connection with a record or notification, means:~~

~~(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or~~

~~(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).~~]

30 Definition; Tangible Chattel Paper. Amend RSA 382-A:9-102(a)(79) to read as follows:

(79) [~~"Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.~~]

31 Definitions; Protected Purchaser. 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.
"Protected purchaser"	***Section 8-303.***
"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.

32 Control of Electronic Copy of Record Evidencing Chattel Paper. Amend RSA 382-A:9-105 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~~] ***authoritative electronic copy*** 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 ***authoritative*** 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)~~] ***(1)*** enables the person readily to identify each electronic copy as an authoritative copy or nonauthoritative copy;

[~~(B)~~] ***(2)*** 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)~~] ***(3)*** gives the purchaser exclusive power, subject to subsection (d), to:

[~~(i)~~] ***(A)*** prevent others from adding or changing an identified assignee of each authoritative electronic copy; and

[~~(ii)~~] ***(B)*** 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~~] ***Meaning of exclusive. Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B) even if:***

(1) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the authoritative electronic copy or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(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.~~] ***When power not shared with another person. A power of purchaser is not shared with another person under subsection (d)(2) and the purchasers power is not exclusive if:***

(1) the purchaser can exercise the power only if the power is also exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the purchaser; or

(B) is the transferor to the purchaser of an interest in the chattel paper.

(f) Presumption of exclusivity of certain powers. If a purchaser has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) Obtaining control through another person. A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if another person, other than the transferor to the purchaser of an interest in the chattel paper:

(1) has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(2) obtains control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(3) obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

33 Control of Electronic Money. Amend RSA 382-A:9-105A, (a)(1)(A) to read as follows:

(A) [~~the~~] power to avail itself of substantially all the benefit from the electronic money; and

34 Control of Electronic Money. RSA 382-A:9-105A(b)-(d) is repealed and reenacted to read as follows:

(b) Meaning of exclusive. Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) 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 power is shared with another person.

(c) When power not shared with another person. A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the electronic money.

(d) Presumption of exclusivity of certain powers. If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e) Control through another person. A person has control of electronic money if another person other than the transferor to the person 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 controlled of the electronic money on behalf of the person.

35 No Requirement to Acknowledge or Confirm; No Duties. Amend RSA 382-A:107B(a) to read as follows:

(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.

36 After-Acquired Property; Future Advances. Amend RSA 382-A:9-204(b) to read as follows:

(b) When after-acquired property clause not effective. Subject to subsection [~~(c)~~] ***(b.1)***, 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.

(b.1) 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 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.

37 Duties of Secured Party After Receiving Demand from Debtor. Amend RSA 382-A:9-208(b)(1) to read as follows:

(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 a signed [~~statement~~] ***record*** that releases the bank from any further obligation to comply with instructions originated by the secured party;

38 Duties of Secured Party After Receiving Demand from Debtor. RSA 382-A:9-208(b)(8) is repealed and reenacted as follows:

(8) A secured party having control under Section 12-105 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

39 Duties of Secured Party After Receiving Demand for Debtor. Amend RSA 382-A:9-209(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, a secured party shall send to an account debtor that has received notification ***under Section 9-406(a) or 12-106(b)*** of an assignment to the secured party as assignee [~~under Section 9-406(a) an authenticated~~] ***a singed*** record that releases the account debtor from any further obligation to the secured party.

40 Request for Accounting. Amend RSA 382-A:9-210 to read as follows:

382-A:9-210 Request for Accounting; Request Regarding List of Collateral or Statement of Account.

(a) Definitions. In this section:

(1) "Request" means a record of a type described in paragraph (2), (3), or (4).

(2) "Request for an accounting" means a record [~~authenticated~~] ***signed*** by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record [~~authenticated~~] ***signed*** by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record [~~authenticated~~] ***signed*** by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Duty to respond to requests. Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) in the case of a request for an accounting, by [~~authenticating~~] ***signing*** and sending to the debtor an accounting; and

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by [~~authenticating~~] ***signed*** and sending to the debtor an approval or correction.

(c) Request regarding list of collateral; statement concerning type of collateral. A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor [~~an authenticated~~] ***a signed*** record including a statement to that effect within 14 days after receipt.

(d) Request regarding list of collateral; no interest claimed. A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor [~~an authenticated~~] ***a signed*** record:

(1) disclaiming any interest in the collateral; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) Request for accounting or regarding statement of account; no interest in obligation claimed. A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor [~~an authenticated~~] ***a signed*** record:

(1) disclaiming any interest in the obligations; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) Charges for responses. A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding $25 for each additional response.

41 Law Governing Perfection and Priority of Security Interests in Deposit Accounts. Amend RSA 382-A:9-304(a) to read as follows:

(a) Law of bank's jurisdiction governs. The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank***, even if the transaction does not bear any relation to the bank's jurisdiction.***

42 New Subparagraph; Governing Law; General Rules. Amend RSA 382-A:9-305(a) by inserting after subparagraph (4) the following new subparagraph:

(5) Paragraphs (2), (3), and (4) apply even if the transaction does not bear any relation to the jurisdiction.

43 Chattel Paper Evidenced by Authoritative Electronic Copy. Amend RSA 382-A:9-306A(a) to read as follows:

(a) Chattel paper evidenced by authoritative electronic copy. Except as provided in subsection [~~(e)~~]***(d)***, 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***, even if the transaction does not bear any relation to the chattel paper's jurisdiction.***

44 Chattel Paper; Perfection. RSA 382-A:9-306A(c)-(e) is repealed and reenacted to read as follows:

(c) 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 the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(1) perfection of a security interest in the chattel paper by possession under Section 9-314A; and

(2) the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(d) When perfection governed by the law of jurisdiction where debtor located. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

45 Governing Law; General Rules. Amend RSA 382-A:9-306B(a) to read as follows:

(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 ***evidenced by the controllable electronic record.***

46 Exemptions; Filing of Financing Statement. Amend RSA 382-A:9-310(b)(9)-(11) to read as follows:

[~~(9)~~] ***(8.1)*** in chattel paper which is perfected by possession and control under Section 9-314A;

[~~(10)~~] ***(9)*** in proceeds which is perfected under Section 9-315; or

[~~(11)~~] ***(10)*** that is perfected under Section 9-316.

47 Specified Collateral; Time of Perfection. Amend RSA 382-A:9-314(b)-(c) to read as follows:

(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 documents, electronic money, or letter-of-credit rights is perfected by control under Section 7-106, 9-104, 9-105A, 9-107, or 9-107A [~~when~~] ***not earlier than the time*** the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection. A security interest in investment property is perfected by control under Section 9-106 [~~from~~] ***not earlier than*** the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

48 Perfection by Possession; Time of Perfection. Amend RSA 382-A:9-314A(b) to read as follows:

(b) Time of perfection; continuation of perfection. A security interest is perfected under subsection (a) [~~when~~] ***not earlier than the time*** the secured party takes possession and obtains control and remains perfected under subsection (a) only while the secured party retains possession and control.

49 Continued Perfection of Security Interest. 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), 9-305(c), [~~9-306A(c)~~] ***9-306A(d)***, or 9-306B(b) remains perfected until the earliest of:

50 Changed in Jurisdiction of Chattel Paper. Amend the introductory paragraph of RSA 382A:9-316(f) to read as follows:

(f) Change in jurisdiction of ***chattel paper,*** controllable electronic record, bank, issuer, nominated person, securities intermediary, or commodity intermediary. A security interest in ***chattel paper,*** 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 ***chattel paper's jurisdiction, 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:

51 Buyers that Receive Delivery. Amend RSA 382-A:9-317(b) to read as follows:

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer ***other than a secured party,*** of 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.

52 Future Advances; Buyer of Goods. Amend the introductory paragraph of RSA 382-A:9-323(d) to read as follows:

(d) Buyer of goods. Except as otherwise provided in subsection (e), a buyer of goods [~~other than a buyer in ordinary course of business~~] takes free of a security interest to the extent that it secures advances made after the earlier of:

53 Future Advances; Lessee of Goods. Amend the introductory paragraph of RSA 382-A:9-323(f) to read as follows:

(f) Lessee of goods. Except as otherwise provided in subsection (g), a lessee of goods[~~, other than a lessee in ordinary course of business,~~] takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

54 Priority of Purchase; Inventory Purchase-Money Priority. Amend RSA 382-A:9-324(b)(2) to read as follows:

(2) the purchase-money secured party sends [~~an authenticated~~] ***a signed*** notification to the holder of the conflicting security interest;

55 Priority of Purchase; Livestock Purchase-Money Priority. Amend RSA 382-A:9-324(d)(2) to read as follows:

(2) the purchase-money secured party sends [~~an authenticated~~] ***a signed*** notification to the holder of the conflicting security interest;

56 Priority of Purchaser of Chattel Paper or Instrument. Amend RSA 382-A:9-330 to read as follows:

382-A:9-330 Priority of Purchaser of Chattel Paper or Instrument.

(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, and obtains control under RSA 382-A:9-105 of each authoritative electronic copy of the record evidencing the chattel paper; and

(2) the authoritative copies of the record evidencing the chattel paper do not indicate that [~~the copies have~~] ***the chattel paper has*** 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 and obtains control under RSA 382-A:9-105 of each authoritative electronic copy of the record evidencing the chattel paper 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.

(c) Chattel paper purchaser's priority in proceeds. Except as otherwise provided in Section 9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) Section 9-322 provides for priority in the proceeds; or

(2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Instrument purchaser's priority. Except as otherwise provided in Section 9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new value. For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) Indication of assignment gives knowledge. For purposes of subsections (b) and (d), if ***the authoritative copies of the record evidencing*** chattel paper or an instrument [~~indicates~~] ***indicate*** that [~~it~~] ***the chattel paper or instrument*** has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

57 Priority of Security; Fixtures. Amend RSA 382-A:9-334(f)(1) to read as follows:

(1) the encumbrancer or owner has, in [~~an authenticated~~] ***a signed*** record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

58 Bank's Rights and Duties with Respect to Deposit Account. Amend the introductory paragraph to RSA 382-A:9-341 to read as follows:

Except as otherwise provided in Section 9-340(c), and unless the bank otherwise agrees in [~~an authenticated~~]***a signed*** record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

59 Rights Acquired by Assignee. Amend RSA 382-A:9-404(a)(2) to read as follows:

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment [~~authenticated~~] ***signed*** by the assignor or the assignee.

60 Discharge of Account Debtor. Amend RSA 382-A:9-406(d) to read as follows:

(d) Term restricting assignment generally ineffective. ***In this subsection, "promissory note" includes a negotiable instrument that evidences chattel paper.*** 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:

61 New Paragraph; Promissory Note. Amend RSA 382-A:9-408 by inserting after paragraph (f) the following new paragraph:

(g) "Promissory Note." In this section, "promissory note" includes a negotiable instrument that evidences chattel paper.

62 Persons Entitled to File a Record. Amend RSA 382-A:9-509(a)(1) to read as follows:

(1) the debtor authorizes the filing in [~~an authenticated~~] ***a signed*** record or pursuant to subsection (b) or (c); or

63 Security Agreement as Authorization. Amend the introductory paragraph of RSA 382-A:9-509(b) to read as follows:

(b) Security agreement as authorization. By [~~authenticating~~] ***signing*** or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

64 Time for Compliance; Termination Statement. Amend RSA 382-A:9-513(b)(2) to read as follows:

(2) if earlier, within 20 days after the secured party receives [~~an authenticated~~] ***a signed*** demand from a debtor.

65 Other Collateral; Termination Statement. Amend the introductory paragraph of RSA 382-A:9-513(c) to read as follows:

(c) Other collateral. In cases not governed by subsection (a), within 20 days after a secured party receives [~~an authenticated~~] ***a signed*** demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

66 Secured Party Owes Duty to Debtor or Obligor. RSA 382-A:9-605(b) is repealed and reenacted to read as follows:

(b) Secured party owes duty to debtor or obligor. A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subsection (a)(1)(A), (B), or (C) relating to the person 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.

67 Application of Proceeds, Surplus, and Deficiency if Obligation is Secured. Amend RSA 382-A:9-608(a)(1)(C) to read as follows:

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives [~~an authenticated~~] ***a signed*** demand for proceeds before distribution of the proceeds is completed.

68 Persons to Be Notified. Amend RSA 382-A:9-611(b)-(c) to read as follows:

(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~~] ***signed*** notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send 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~~] ***a signed*** 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).

69 Contents and Form of Notification Before Disposition of Collateral: General. RSA 382-A:9-613 is repealed and reenacted to read as follows:

382-A:9-613 Contents and Form of Notification Before Disposition of Collateral: General.

(a) Contents and form of notification. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) information not specified by that paragraph; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in Section 9-614(a)(3), when completed in accordance with the instructions in subsection (b) and Section 9-614(b), each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to which the notification is sent)

From: (Name, address, and telephone number of secured party)

{1} Name of debtor that is not an addressee:

(Name of each debtor)

{2} We will sell (describe collateral) to the highest qualified bidder at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date: _____)

(Time: _____)

(Place:_____)

{3} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{4} You are entitled to an accounting of the unpaid indebtedness secured by the property we intend to sell or, as applicable, lease or license.

{5} If you request an accounting, you must pay a charge of $(amount).

{6} You may request an accounting by calling us at (telephone number).

(b) Instructions for form of notification. The following instructions apply to the form of notification in subsection (a)(5):

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(5). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2) Include and complete item {1} only if there is a debtor that is not an addressee of the notification and list the name or names.

(3) Include and complete either item {2}, if the notification relates to a public disposition of the collateral, or item {3}, if the notification relates to a private disposition of the collateral. If item {2} is included, include the words "to the highest qualified bidder" only if applicable.

(4) Include and complete items {4} and {6}.

(5) Include and complete item {5} only if the sender will charge the recipient for an accounting.

70 Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction. RSA 382-A:9-614 is repealed and reenacted to read as follows:

382-A:9-614 Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction.

(a) Contents and form of notification. 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(a)(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 in accordance with the instructions in subsection (b), 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: (Identify transaction)

We have your (describe collateral), because you broke promises in our agreement.

{1} 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.

{2} We will sell (describe collateral) at private sale sometime after (date. A sale could include a lease or license.

{3} 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.

{4} 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).

{5} If you want us to explain to you in (writing) or in (description of electronic record) how we have figured the amount you owe us,

{6} Call us at (telephone number) or write us at (secured party's address) or contact us by (description of electronic communication method).

{7} and request (a written explanation) (a written explanation or an explanation in description of electronic record).

{8} We will charge you (amount) for the explanation if we sent you another written explanation of the amount you owe us within the last six months.

{9} If you need more information about the sale(call us at (telephone number))(or) (write us at (secured party's address))(or contact us by (description of electronic communication method)).

{10} 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)

(b) Instructions for form of notification. The following instructions apply to the form of notification in subsection (a)(3):

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(3). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2) Include and complete either item {1}, if the notification relates to a public disposition of the collateral, or item {2}, if the notification relates to a private disposition of the collateral.

(3) Include and complete items {3}, {4}, {5}, {6}, and {7},

(4) In item {5}, include and complete any one of the three alternative methods for the explanation__writing, writing or electronic record, or electronic record,

(5) In item {6}, include the telephone number, In addition, the sender may include and complete either or both of the two additional alternative methods of communication__writing or electronic communication__for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included.

(6) In item {7}, include and complete the method or methods for the explanation__writing, writing or electronic record, or electronic record--included in item {5},

(7) Include and complete item {8} only if a written explanation is included in item {5} as a method for communicating the explanation and the sender will charge the recipient for another written explanation.

(8) In item {9}, include either the telephone number or the address or both the telephone number and the address. In addition, the sender may include and complete the additional method of communication--electronic communication--for the recipient of the notification to communicate with the sender. The additional method of electronic communication is not required to be included.

(9) If item {10} does not apply, insert "None" after "agreement."

71 Application of Proceeds of Disposition. Amend RSA 382-A:9-615(a)(3)-(4) to read as follows:

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien [~~an authenticated~~] ***a signed*** demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor [~~an authenticated~~] ***a signed*** demand for proceeds before distribution of the proceeds is completed.

72 Explanation of Calculation of Surplus or Deficiency. Amend RSA 382-A:9-616(a)(1)-(2) to read as follows:

(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.

73 Explanation of Calculation. Amend RSA 382-A:9-616(b)(1)(A) to read as follows:

(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

74 Transfer of Record or Legal Title. Amend the introductory statement of RSA 382-A:9-619(a) to read as follows:

(a) "Transfer statement." In this section, "transfer statement" means a record [~~authenticated~~] ***signed*** by a secured party stating:

75 Acceptance of Collateral in Full or Partial Satisfaction of Obligation. Amend the introductory statement of RSA 382-A:9-620(a)(2) to read as follows:

(2) The secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal [~~authenticated~~] ***signed*** by:

76 Purported Acceptance Ineffective. Amend RSA 382-A:9-620(b)(1) to read as follows:

(1) the secured party consents to the acceptance in [~~an authenticated~~] ***a signed*** record or sends a proposal to the debtor; and

77 Debtors Consent. Amend RSA 382-A:9-620(c) to read as follows:

(c) Debtor's consent. For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record [~~authenticated~~] ***signed*** after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record [~~authenticated~~] ***signed*** after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection [~~authenticated~~] ***signed*** by the debtor within 20 days after the proposal is sent.

78 Compliance with Mandatory Disposition Requirement. Amend RSA 382-A:620(f)(2)

(2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and [~~authenticated~~] ***signed*** after default.

79 Notification of Proposal to Accept Collateral. Amend RSA 382-A:9-621(a)(1) to read as follows:

(1) any person from which the secured party has received, before the debtor consented to the acceptance, [~~an authenticated~~] ***a signed*** notification of a claim of an interest in the collateral;

80 Waivers. Amend RSA 382-A:9-624 to read as follows:

382-A:9-624 Waiver.

(a) Waiver of disposition notification. A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 9-611 only by an agreement to that effect entered into and [~~authenticated~~] ***signed*** after default.

(b) Waiver of mandatory disposition. A debtor may waive the right to require disposition of collateral under Section 9-620(e) only by an agreement to that effect entered into and[~~authenticated~~] ***signed*** after default.

(c) Waiver of redemption right. Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 9-623 only by an agreement to that effect entered into and [~~authenticated~~] ***signed*** after default.

81 Limitation of Liability. RSA 382-A:9-628(f) is repealed and reenacted to read as follows:

(f) Limitation of liability under subsections (a) and (b) does not apply. Subsections (a) and (b) do not apply to limit the liability of a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or

controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subsection (b)(1)(A), (B), or (C) relating to the person 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.

82 Definitions. Amend RSA 382-A:12-102(a)(3) to read as follows:

(3) "Transferable record" [~~means~~] ***has the meaning provided for that term in:***

(A) [~~"Transferable record" as defined in~~] ***Section 201(a)(1) of*** 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 Uniform Electronic Transactions Act Section 16(a).

83 Control of Controllable Account and Controllable Payment Intangible. Amend RSA 382-A:12-104(b) to read as follows:

(b) Control of controllable account and controllable payment intangible. [~~For purposes of determining~~] ***To determine*** 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.

84 Limitation of Rights of Qualifying Purchasers in Other Property. Amend RSA 382-A:12-104(f) to read as follows:

(f) Limitation of rights of qualifying purchaser in other property. Except as provided in subsections (a) and (e) for[~~controllable accounts~~] ***a controllable account*** and [~~controllable payment intangibles~~] ***a controllable payment intangible*** 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.

85 Control of Controllable Electronic Record. RSA 382-A:12-105 is repealed and reenacted to read as follows:

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

(a) Control of controllable electronic record. A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:

(1) gives the person:

(A) 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) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having powers specified in paragraph (1).

(b) Meaning of exclusive. Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) 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 power is shared with another person.

(c) When power not shared with another person. A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(d) Presumption of exclusivity of certain powers. If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e) Control through another person. A person has control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable 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.

(f) 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.

(g) 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 or Article 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

86 Proof of Transfer of Control. Amend RSA 382-A:12-106 to read as follows:

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) ***Content and*** Effect of notification. Subject to subsection (d), [~~an~~] ***the*** 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~~] ***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 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~~] ***the*** 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~~] ***the*** 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 ***in the agreement referred to in subsection (d)(1)***, 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 ***under subsection (e)*** that control has been transferred if the person demonstrates, using the [~~agreed~~] method ***in the agreement referred to in subsection (d)(1)***, 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~~] ***specified*** 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.

87 Governing Law. Amend RSA 382-A: 12-107(b) to read as follows:

(b) Governing law: Section [~~12-106~~] ***12-107. For a controllable electronic record that evidences a controllable account or controllable payment intangible,*** 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.

88 Applicability; Relations; Rights. Amend RSA 382-A:12-107(d)-(f) to read as follows:

(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 s***ub***-section, "Article 12" means ***Article 12 of***

Uniform Commercial Code ***Amendments (2022)*** [~~Controllable Electronic Records (with Conforming Amendments to Articles 1 and 9), 2022 Official Text~~].

(e) Relation of ***matter or*** transaction to controllable electronic record's jurisdiction not necessary. [~~Subsections (b) through (d) apply even if a transaction~~] ***To the extent subsections (a) and (b) provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this article, that law governs even if the matter or a transaction to which the matter relates*** does not bear any relation to the controllable electronic record's jurisdiction.

(f) Rights of purchasers determined at time of purchase. The rights acquired ***under Section 12-104*** 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.

89 Article Title; Transitional Provisions. Amend the Article title preceding RSA 382-A:13 to read as follows:

ARTICLE 13

[~~ADDITIONAL~~] TRANSITION PROVISIONS FOR [~~ARTICLES 9 AND 12~~] ***UNIFORM COMMERCIAL CODE AMENDMENTS***

90 New Sections; Transition Provisions. Amend RSA 382-A:13 by inserting after the Article title the following new sections:

382-A:13-101 Title. This article may be cited as Transactional Provisions for Uniform Commercial Code Amendments.

382-A:13-102 Definitions.

(a) Article A Definitions. In this article:

(1) "Adjustment date" means July 1, 2025, or the date that is one year after the effective date of this article, whichever is later.

(2) "Article 12" means Article 12 of the Uniform Commercial Code.

(3) "Article 12 property" means a controllable account, controllable electronic record, or controllable payment intangible.

(b) Definitions in other Articles. The following definitions in other articles of the Uniform Commercial Code apply to this article.

"Controllable account". Section 9-102.

"Controllable electronic record". Section 12-102.

"Controllable payment intangible". Section 9-102.

"Financing statement". Section 9-102.

(c) Article 1 definitions and principles. Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

382-A:13-201 Saving Clause. Except as provided in Part 3, a transaction validly entered into before the effective date of this article and the rights, duties, and interests flowing from the

transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by law other than the Uniform Commercial Code or, if applicable, the Uniform Commercial Code, as though this article had not taken effect.

91 Transition Provisions. RSA 382-A:13-301 through 382-A:13-306 are repealed and reenacted to read as follows:

382-A:13-301 Saving Clause.

(a) Pre-effective date transaction, lien, or interest. Except as provided in this part, Article 9 as amended by this act 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 provided in subsection (c) and sections 13-302 through 12-A306:

(1) a transaction, lien, or interest in property that was validly entered into, created, or transferred before the effective date of this article, and was not governed by the Uniform Commercial Code, but would be subject to Article 9 as amended in this act or Article 12 if it had been entered into, created, or transferred on or after the effective date of this act, including the rights, duties and interests, flowing from the transaction ,lien, or interest, remains valid on and after the effective date of this act; and

(2) the transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that would apply if this act had not taken effect.

(c) Pre-effective date proceeding. This article does not affect an action case, or proceeding commenced from 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 chapter if, on the effective date of this article the requirements for enforceability and perfection under this chapter are satisfied without further action.

(b) Continuing perfection: enforceability or perfection requirements not satisfied. If a security interest is enforceable and perfected immediately before the effective date of this article but the requirements for enforceability or perfection under this chapter 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 the adjustment date;

(2) remaines enforceable thereafter only if the security interest satisfies the requirements for enforceability under Section 9-203 before the adjustment date; and

(3) remains perfected thereafter only if the requirements for perfection under this chapter are satisfied before the time specified in paragraph (1).

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 is unperfected at that time:

(1) remains an enforceable security interest until the adjustment date;

(2) remains enforceable thereafter if the security interest becomes enforceable under Section 9-203 on the effective date of this article or before the adjustment date; and

(3) becomes perfected:

(A) without further action on the effective date of this article if the requirements for perfection under this chapter are satisfied before or at that time; or

(B) when the requirements for perfection are satisfied if the requirements are satisfied after that time.

382-A:13-304 Effectiveness of Action 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 chapter before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under this article before the adjustment date.

(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 requirements for perfection under this article.

(c) Pre-effective date enforceability action. 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 requirements for enforceability under this article.

382-A:13-305 Priority.

(a) Determination of priority. Subject to subsections (b) and (c), this act determines the priority of conflicting claims to collateral.

(b) Established priorities. Subject to subsection (c), if the priorities of claims to collateral were established before the effective date of this article, Article 9 as in effect before the effective date of this article determines priority.

(c) Determination of certain priorities on adjustment date. On the adjustment date, to the extent the priorities determined by Article 9 as amended by this act modify the priorities established before the effective date of this article, the priorities of claims to Article 12 property established before the effective date of this article shall 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 as amended by this act do not apply.

(b) Established priorities. Subject to subsection (c), when the priority rules of Article 9 as amended by this act do not apply and the 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 as amended by this act do not apply, to the extent the priorities determined by this act modify the priorities established before the effective date of this act, the priorities of claims to Article 12 property established before the effective date of this act cease to apply on the adjustment date.

92 Money; Definition. 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 ***and is not in an electronic form***. [~~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.~~]

93 Money; Definition. Amend RSA 382-A:9-102(a)(54A) to read as follows:

(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~~].

94 No Requirement to Acknowledge or Confirm; No Duties. Amend RSA 382-A:9-107B(a) to read as follows:

(a) No requirement to acknowledge. A person that has control under Section 9-104[~~,~~] ***or*** 9-105[~~, or 9-105A~~] is not required to acknowledge that it has or will obtain control on behalf of another person.

95 Attachment and Enforceability of a Security Interest. Amend RSA 382-A:9-203(b) to read as follows:

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

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(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~~] ***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***; 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.

96 Duties and Rights When Secured Party in Possession or Control. 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, 9-107, or 9-107A:

97 Additional Duties of Secured Party Having Control of Collateral. Amend RSA 382-A:9-208(b)(6)-(8) to read as follows:

(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; ***and***

(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.

98 Law Governing Perfection and Priority of Security Interests. Amend the introductory paragraph of RSA 382-A:9-301(3) to read as follows:

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, or [~~tangible~~] money is located in a jurisdiction, the local law of that jurisdiction governs:

99 Perfection of Security Interests. Amend RSA 382-A:9-312(b)(2)-(4) to read as follows:

(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~~].

100 Perfection by Possession or Delivery. 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 goods, instruments, negotiable tangible documents, or [~~tangible~~] money, 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.

101 Perfection by Control. Amend RSA 382-A:9-314(a) and (b) to read as follows:

382-A:9-314 Perfection by Control.

(a) Perfection by control. A security interest in 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, [~~9-105A,~~] 9-106, 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 documents, [~~electronic money,~~] or letter-of-credit rights is perfected by control under Section 7-106, 9-104, [~~9-105A~~], 9-107, or 9-107A when the secured party obtains control and remains perfected by control only while the secured party retains control.

102 Licensees and Buyers of Certain Collateral. Amend RSA 382-A:9-317(d) to read as follows:

(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[~~electronic money, tangible documents,~~] goods, instruments, ***tangible documents,*** 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.

103 Transfer of Money; Transfer of Funds from Deposit Account. 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 if the transferee receives [~~delivery~~] ***possession*** 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 if the transferee receives the funds without acting in collusion with the debtor in violating the rights of the secured party.

104 Rights and Duties of Secured Party in Possession or Control. 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.

105 Definitions Controllable Electronic Records. Amend RSA 382-A:12-102(a)(1) to read as follows:

(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, ***or an electronic record that is currently authorized or adopted by a domestic or foreign government and is not a medium of exchange that was 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.***

106 Definitions in Article 9. Amend RSA 382-A:12-102(b) to read as follows:

(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.

107 Repeal. The following are repealed:

I. RSA 382-A:9-102(a)(31)(A), relative to electronic money.

II. RSA 382-A:9-102(a)(79A), relative to tangible money.

III. RSA 382-A:9-105A, relative to control of electronic money.

108 Effective Date. This act shall take effect 60 days after its passage.

HB 584 - VERSION ADOPTED BY BOTH BODIES

22Mar2023... 0993h
05/18/2023 1882s
29Jun2023... 2246EBA

2023 SESSION

23-0481
08/10

HOUSE BILL ***584***

AN ACT relative to the Uniform Commercial Code's article on controllable electronic records.

SPONSORS: Rep. Ammon, Hills. 42; Rep. Potucek, Rock. 13; Rep. Edwards, Rock. 31; Rep. Osborne, Rock. 2; Rep. Bernardy, Rock. 36; Rep. Hunt, Ches. 14; Sen. Watters, Dist 4

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill makes changes to the Uniform Commercial Code relative to 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 584 - VERSION ADOPTED BY BOTH BODIES

22Mar2023... 0993h
05/18/2023 1882s
29Jun2023... 2246EBA

23-0481
08/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the Uniform Commercial Code's article on controllable electronic records.

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

1 Definitions; Conspicuous. 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, ***based on the totality of the circumstances,*** 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.

2 Definitions; Delivery. Amend RSA 382-A:1-201(b)(15) to read as follows:

(15) "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or ***an authoritative tangible copy of a record evidencing*** chattel paper, means voluntary transfer of possession.

3 Definitions; Send. Amend RSA 382-A:1-201(b)(36) to read as follows:

(36) "Send" in connection with a [~~writing,~~] record, or [~~notice~~] ***notification,*** means:

(A) to deposit in the mail, [~~or~~] deliver for transmission, ***or transmit*** by any other usual means of communication with postage or cost of transmission provided for [~~and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none~~] ***addressed*** to any address reasonable under the circumstances; or

(B) [~~in any other way to cause to be received any record or notice within the time it would have arrived if properly sent~~] ***to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).***

4 Definitions; Signed. 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.~~] ***"Sign" means with present intent to authenticate or adopt a record:***

(A) execute or adopt a tangible symbol; or

(B) attach or logically associate with the record an electronic symbol, sound, or process. "Signed," "signing," and "signature" have corresponding meanings.

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

382-A:2-102 Scope; Certain Security and Other Transactions Excluded from this Article.

(1) Unless the context otherwise requires, and except as provided in subsection (3), this Article applies to transactions in goods and, in the case of a hybrid transaction, it applies to the extent provided in subsection (2).

(2) In a hybrid transaction:

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

(b) If the sale-of-goods aspects predominate, this Article applies to the transaction but does not preclude application in appropriate circumstances of other law to aspects of the transaction which do not relate to the sale of goods.

(3) This Article does not:

(a) apply to a transaction that, even though in the form of an unconditional contract to sell or present sale, operates only to create a security interest; or

(b) impair or repeal a statute regulating sales to consumers, farmers, or other specified classes of buyers.

6 Definitions; Hybrid Transaction. Amend the section heading of RSA 382-A:2-106 to read as follows:

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

7 Definitions; Hybrid Transaction. RSA 382-A:2-106(5) is repealed and reenacted to read as follows:

(5) "Hybrid transaction" means a single transaction involving a sale of goods and:

(a) the provision of services;

(b) a lease of other goods; or

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

8 Sales; Statute of Frauds. Amend RSA 382-A:2-201(1) to read as follows:

(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~~] ***the party's*** 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.

9 Sales; Final Expression. Amend the section heading of RSA 382-A:2-202 to read as follows:

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

10 Modification; Rescission 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 or other signed*** 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.

11 Leases; Scope. RSA 382-A:2A-102 is repealed and reenacted to read as follows:

(1) This Article applies to any transaction regardless of form, that creates a lease and, in the case of a hybrid lease, it applies to the extent provided in subsection (2).

(2) In a hybrid lease:

(a) if the lease-of-goods aspects do not predominate:

(i) only the provisions of this Article which relate primarily to the lease-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply.

(ii) Section 2A-209 applies if the lease is a finance lease; and

(iii) Section 2A-407 applies to the promises of the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods; and

(b) if the lease-of-goods aspects predominate, this article applies to the transaction, but does not preclude application in appropriate circumstances of other law to the aspects of the lease which do not relate to the lease of goods.

12 Waiver or Renunciation of Claim or Right After Default. Amend RSA 382-A:2A-107 to read as follows:

382-A:2A-107 Waiver or Renunciation of Claim or Right After Default. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a [~~written~~] waiver or renunciation ***in a*** signed [~~and~~] ***record*** delivered by the aggrieved party.

13 Leases; Statute of Frauds. Amend RSA 382-A:2A-201 to read as follows:

(3) A 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~~] ***record***.

14 Final Expression; Parol or Extrinsic Evidence. Amend the section heading of RSA 382-A:2A-202

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

15 Signature Necessary for Liability on an Instrument. Amend RSA 382-A:3-401 to read as follows:

382-A:3-401 Signature ***Necessary for Liability on Instrument.***

[~~(a)~~] A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3-402.

[~~(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.~~]

16 Liability for Late or Improper Execution or Failure to Execute Payment Oder. Amend RSA 382-A:4A-305(c)-(d) to read as follows:

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank***, evidenced by a record.***

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express [~~written~~] agreement of the receiving bank, ***evidenced by a record,*** but are not otherwise recoverable.

17 Formal Requirements. Amend RSA 382-A:5-104 to read as follows:

382-A:5-104 Formal Requirements. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a ***signed*** record [~~and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in Section 5-108(e)~~].

18 Choice of Law and Forum. Amend RSA 382-A:5-116(a) to read as follows:

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or [~~otherwise authenticated~~] by the affected parties [~~in the manner provided in Section 5-104~~] or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

19 Definitions; Record; Sign. Amend RSA 382-A:7-102(a)(10)-(11) to read as follows:

[~~(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.~~

~~(11) "Sign" means, with present intent to authenticate or adopt a record:~~

~~(A) to execute or adopt a tangible symbol; or~~

~~(B) to attach to or logically associate with the record an electronic sound, symbol, or process.~~]

20 Control of Electronic Document of Title. RSA 382-A:7-106, (d)-(h) are repealed and reenacted to read as follows:

(d) Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B0 even if:

(1) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the document of title or has protocol that is programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(e) A power of a person is not shared with another person under subsection (d)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the document of title.

(f) If a person has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) A person has control of an electronic document of title if another person, other than the transferor to the person 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.

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(i) 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 or Article 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment of any other person.

21 Definitions. Amend RSA 382-A:8-102(b) to read as follows:

(b) [~~Other~~] ***The following*** definitions [~~applying to~~] ***in*** this Article and [~~the sections in which they appear are~~] ***other Articles apply to this Article***:

Appropriate person	Section 8-107
Controllable account	***Section 9-102***
Controllable electronic record	***Section 12-102***
Controllable payment intangible	***Section 9-102***
Control Delivery	Section 8-106
Delivery	Section 8-301

Investment company security	Section 8-103
Issuer	Section 8-201
Overissue	Section 8-210
Protected purchaser	Section 8-303
Securities account	Section 8-501

22 New Paragraph; Rules for Determining Whether Certain Obligations and Interests are Securities or Financial Assets. Amend RSA 382-A:8-103 by inserting after paragraph (g) the following new paragraph:

(h) A controllable account, controllable electronic record, or controllable payment intangible is not a financial asset unless Section 8-102(a)(9)(iii) applies.

23 Investment Securities; Definitions. Amend the introductory paragraph of RSA 382-A:8-106(d)(3) to read as follows:

(3) another person other than the transferor ***to the purchaser*** of an interest in the security entitlement:

24 New Paragraph; Applicability; Choice of Law. Amend RSA 382-A:8-110 by inserting after paragraph (f) the following new paragraph:

(g) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction governs a matter or transaction specified in subsection (a) or (b) even if the matter or transaction does not bear any relation to the jurisdiction.

25 Definitions; Account. Amend RSA 382-A:9-102(a)(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)~~] ***"account statement", "account to", "commodity account" in paragraph (14), "customer's account", "deposit account" in paragraph (29), "on account of", and "statement of account"*** 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) 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.

26 Definitions; Account Debtor; Accounting. Amend RSA 382-A:9-102(a)(3)-4) to read as follows:

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the ***negotiable*** instrument[~~constitutes part of~~] ***evidences*** chattel paper.

(4) "Accounting", except as used in " accounting for", means a record:

(A) [~~authenticated~~] ***signed*** by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

27 Definitions; Assignee; Assignor. Amend RSA 382-A:1-902(a)(7) to read as follows:

[~~(7) "Authenticate" means:~~

~~(A) to sign; or~~

~~(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.~~]

(7A) "Assignee" except as used in "assignee for benefit of creditors", means a person (i) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not the obligation is outstanding or

(ii) to which an account, chattel paper, payment intangible, or promissory note has been sold. The term includes a person to which a security interest has been transferred by a secured party.

(7B) "Assignor" means a person that (i) under a security agreement creates or provides for a security interest that secures an obligation or (ii) sells an account, chattel paper, payment intangible, or promissory note. The term includes a secured party that has transferred a security interest to another person.

28 Definitions; Proposal. Amend RSA 382-A:9-102(a)(66) to read as follows:

(66) "Proposal" means a record [~~authenticated~~] ***signed*** by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9-620, 9-621, and 9-622.

29 Definitions; Send. Amend RSA 382-A:9-102(a)(75) to read as follows:

(75) [~~"Send", in connection with a record or notification, means:~~

~~(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or~~

~~(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).~~]

30 Definition; Tangible Chattel Paper. Amend RSA 382-A:9-102(a)(79) to read as follows:

(79) [~~"Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.~~]

31 Definitions; Protected Purchaser. 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.
"Protected purchaser"	***Section 8-303.***
"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.

32 Control of Electronic Copy of Record Evidencing Chattel Paper. Amend RSA 382-A:9-105 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~~] ***authoritative electronic copy*** 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 ***authoritative*** 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)~~] ***(1)*** enables the person readily to identify each electronic copy as an authoritative copy or nonauthoritative copy;

[~~(B)~~] *(2)* 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)~~] *(3)* gives the purchaser exclusive power, subject to subsection (d), to:

[~~(i)~~] *(A)* prevent others from adding or changing an identified assignee of each authoritative electronic copy; and

[~~(ii)~~] *(B)* 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~~] ***Meaning of exclusive.*** ***Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B) even if:***

(1) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the authoritative electronic copy or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(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.~~] ***When power not shared with another person. A power of purchaser is not shared with another person under subsection (d)(2) and the purchasers power is not exclusive if:***

(1) the purchaser can exercise the power only if the power is also exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the purchaser; or

(B) is the transferor to the purchaser of an interest in the chattel paper.

(f) Presumption of exclusivity of certain powers. If a purchaser has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) Obtaining control through another person. A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if another person, other than the transferor to the purchaser of an interest in the chattel paper:

(1) has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(2) obtains control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(3) obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

33 Control of Electronic Money. Amend RSA 382-A:9-105A, (a)(1)(A) to read as follows:

(A) [~~the~~] power to avail itself of substantially all the benefit from the electronic money; and

34 Control of Electronic Money. RSA 382-A:9-105A(b)-(d) is repealed and reenacted to read as follows:

(b) Meaning of exclusive. Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) 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 power is shared with another person.

(c) When power not shared with another person. A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the electronic money.

(d) Presumption of exclusivity of certain powers. If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e) Control through another person. A person has control of electronic money if another person other than the transferor to the person 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 controlled of the electronic money on behalf of the person.

35 No Requirement to Acknowledge or Confirm; No Duties. Amend RSA 382-A:107B(a) to read as follows:

(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.

36 After-Acquired Property; Future Advances. Amend RSA 382-A:9-204(b) to read as follows:

(b) When after-acquired property clause not effective. Subject to subsection [~~(c)~~] ***(b.1)***, 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.

(b.1) 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 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.

37 Duties of Secured Party After Receiving Demand from Debtor. Amend RSA 382-A:9-208(b)(1) to read as follows:

(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 a signed [~~statement~~] ***record*** that releases the bank from any further obligation to comply with instructions originated by the secured party;

38 Duties of Secured Party After Receiving Demand from Debtor. RSA 382-A:9-208(b)(8) is repealed and reenacted as follows:

(8) A secured party having control under Section 12-105 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

39 Duties of Secured Party After Receiving Demand for Debtor. Amend RSA 382-A:9-209(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, a secured party shall send to an account debtor that has received notification ***under Section 9-406(a) or 12-106(b)*** of an assignment to the secured party as assignee [~~under Section 9-406(a) an authenticated~~] ***a singed*** record that releases the account debtor from any further obligation to the secured party.

40 Request for Accounting. Amend RSA 382-A:9-210 to read as follows:

382-A:9-210 Request for Accounting; Request Regarding List of Collateral or Statement of Account.

(a) Definitions. In this section:

(1) "Request" means a record of a type described in paragraph (2), (3), or (4).

(2) "Request for an accounting" means a record [~~authenticated~~] ***signed*** by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record [~~authenticated~~] ***signed*** by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record [~~authenticated~~] ***signed*** by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Duty to respond to requests. Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) in the case of a request for an accounting, by [~~authenticating~~] ***signing*** and sending to the debtor an accounting; and

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by [~~authenticating~~] ***signing*** and sending to the debtor an approval or correction.

(c) Request regarding list of collateral; statement concerning type of collateral. A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor [~~an authenticated~~] ***a signed*** record including a statement to that effect within 14 days after receipt.

(d) Request regarding list of collateral; no interest claimed. A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor [~~an authenticated~~] ***a signed*** record:

(1) disclaiming any interest in the collateral; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) Request for accounting or regarding statement of account; no interest in obligation claimed. A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor [~~an authenticated~~] ***a signed*** record:

(1) disclaiming any interest in the obligations; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) Charges for responses. A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding $25 for each additional response.

41 Law Governing Perfection and Priority of Security Interests in Deposit Accounts. Amend RSA 382-A:9-304(a) to read as follows:

(a) Law of bank's jurisdiction governs. The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank***, even if the transaction does not bear any relation to the bank's jurisdiction.***

42 New Subparagraph; Governing Law; General Rules. Amend RSA 382-A:9-305(a) by inserting after subparagraph (4) the following new subparagraph:

(5) Paragraphs (2), (3), and (4) apply even if the transaction does not bear any relation to the jurisdiction.

43 Chattel Paper Evidenced by Authoritative Electronic Copy. Amend RSA 382-A:9-306A(a) to read as follows:

(a) Chattel paper evidenced by authoritative electronic copy. Except as provided in subsection [~~(c)~~]***(d)***, 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***, even if the transaction does not bear any relation to the chattel paper's jurisdiction.***

44 Chattel Paper; Perfection. RSA 382-A:9-306A(c)-(e) is repealed and reenacted to read as follows:

(c) 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 the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(1) perfection of a security interest in the chattel paper by possession under Section 9-314A; and

(2) the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(d) When perfection governed by the law of jurisdiction where debtor located. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

45 Governing Law; General Rules. Amend RSA 382-A:9-306B(a) to read as follows:

(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 ***evidenced by the controllable electronic record.***

46 Exemptions; Filing of Financing Statement. Amend RSA 382-A:9-310(b)(9)-(11) to read as follows:

[~~(9)~~] ***(8.1)*** in chattel paper which is perfected by possession and control under Section 9-314A;

[~~(10)~~] ***(9)*** in proceeds which is perfected under Section 9-315; or

[~~(11)~~] ***(10)*** that is perfected under Section 9-316.

47 Specified Collateral; Time of Perfection. Amend RSA 382-A:9-314(b)-(c) to read as follows:

(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 documents, electronic money, or letter-of-credit rights is perfected by control under Section 7-106, 9-104, 9-105A, 9-107, or 9-107A [~~when~~] ***not earlier than the time*** the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection. A security interest in investment property is perfected by control under Section 9-106 [~~from~~] ***not earlier than*** the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

48 Perfection by Possession; Time of Perfection. Amend RSA 382-A:9-314A(b) to read as follows:

(b) Time of perfection; continuation of perfection. A security interest is perfected under subsection (a) [~~when~~] ***not earlier than the time*** the secured party takes possession and obtains control and remains perfected under subsection (a) only while the secured party retains possession and control.

49 Continued Perfection of Security Interest. 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), 9-305(c), [~~9-306A(c)~~] ***9-306A(d)***, or 9-306B(b) remains perfected until the earliest of:

50 Changed in Jurisdiction of Chattel Paper. Amend the introductory paragraph of RSA 382A:9-316(f) to read as follows:

(f) Change in jurisdiction of ***chattel paper,*** controllable electronic record, bank, issuer, nominated person, securities intermediary, or commodity intermediary. A security interest in ***chattel paper,*** 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 ***chattel paper's jurisdiction, 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:

51 Buyers that Receive Delivery. Amend RSA 382-A:9-317(b) to read as follows:

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer ***other than a secured party,*** of 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.

52 Future Advances; Buyer of Goods. Amend the introductory paragraph of RSA 382-A:9-323(d) to read as follows:

(d) Buyer of goods. Except as otherwise provided in subsection (e), a buyer of goods [~~other than a buyer in ordinary course of business~~] takes free of a security interest to the extent that it secures advances made after the earlier of:

53 Future Advances; Lessee of Goods. Amend the introductory paragraph of RSA 382-A:9-323(f) to read as follows:

(f) Lessee of goods. Except as otherwise provided in subsection (g), a lessee of goods[~~, other than a lessee in ordinary course of business,~~] takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

54 Priority of Purchase; Inventory Purchase-Money Priority. Amend RSA 382-A:9-324(b)(2) to read as follows:

(2) the purchase-money secured party sends [~~an authenticated~~] ***a signed*** notification to the holder of the conflicting security interest;

55 Priority of Purchase; Livestock Purchase-Money Priority. Amend RSA 382-A:9-324(d)(2) to read as follows:

(2) the purchase-money secured party sends [~~an authenticated~~] ***a signed*** notification to the holder of the conflicting security interest;

56 Priority of Purchaser of Chattel Paper or Instrument. Amend RSA 382-A:9-330 to read as follows:

382-A:9-330 Priority of Purchaser of Chattel Paper or Instrument.

(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, and obtains control under RSA 382-A:9-105 of each authoritative electronic copy of the record evidencing the chattel paper; and

(2) the authoritative copies of the record evidencing the chattel paper do not indicate that [~~the copies have~~] ***the chattel paper has*** 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 and obtains control under RSA 382-A:9-105 of each authoritative electronic copy of the record evidencing the chattel paper 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.

(c) Chattel paper purchaser's priority in proceeds. Except as otherwise provided in Section 9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) Section 9-322 provides for priority in the proceeds; or

(2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Instrument purchaser's priority. Except as otherwise provided in Section 9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new value. For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) Indication of assignment gives knowledge. For purposes of subsections (b) and (d), if ***the authoritative copies of the record evidencing*** chattel paper or an instrument [~~indicates~~] ***indicate*** that [~~it~~] ***the chattel paper or instrument*** has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

57 Priority of Security; Fixtures. Amend RSA 382-A:9-334(f)(1) to read as follows:

(1) the encumbrancer or owner has, in [~~an authenticated~~] ***a signed*** record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

58 Bank's Rights and Duties with Respect to Deposit Account. Amend the introductory paragraph to RSA 382-A:9-341 to read as follows:

Except as otherwise provided in Section 9-340(c), and unless the bank otherwise agrees in [~~an authenticated~~]***a signed*** record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

59 Rights Acquired by Assignee. Amend RSA 382-A:9-404(a)(2) to read as follows:

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment [~~authenticated~~] ***signed*** by the assignor or the assignee.

60 Discharge of Account Debtor. Amend RSA 382-A:9-406(d) to read as follows:

(d) Term restricting assignment generally ineffective. ***In this subsection, "promissory note" includes a negotiable instrument that evidences chattel paper.*** 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:

61 New Paragraph; Promissory Note. Amend RSA 382-A:9-408 by inserting after paragraph (f) the following new paragraph:

(g) "Promissory Note." In this section, "promissory note" includes a negotiable instrument that evidences chattel paper.

62 Persons Entitled to File a Record. Amend RSA 382-A:9-509(a)(1) to read as follows:

(1) the debtor authorizes the filing in [~~an authenticated~~] ***a signed*** record or pursuant to subsection (b) or (c); or

63 Security Agreement as Authorization. Amend the introductory paragraph of RSA 382-A:9-509(b) to read as follows:

(b) Security agreement as authorization. By [~~authenticating~~] ***signing*** or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

64 Time for Compliance; Termination Statement. Amend RSA 382-A:9-513(b)(2) to read as follows:

(2) if earlier, within 20 days after the secured party receives [~~an authenticated~~] ***a signed*** demand from a debtor.

65 Other Collateral; Termination Statement. Amend the introductory paragraph of RSA 382-A:9-513(c) to read as follows:

(c) Other collateral. In cases not governed by subsection (a), within 20 days after a secured party receives [~~an authenticated~~] ***a signed*** demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

66 Secured Party Owes Duty to Debtor or Obligor. RSA 382-A:9-605(b) is repealed and reenacted to read as follows:

(b) Secured party owes duty to debtor or obligor. A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subsection (a)(1)(A), (B), or (C) relating to the person 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.

67 Application of Proceeds, Surplus, and Deficiency if Obligation is Secured. Amend RSA 382-A:9-608(a)(1)(C) to read as follows:

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives [~~an authenticated~~] ***a signed*** demand for proceeds before distribution of the proceeds is completed.

68 Persons to Be Notified. Amend RSA 382-A:9-611(b) -(c) to read as follows:

(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~~] ***signed*** notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send 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~~] ***a signed*** 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).

69 Contents and Form of Notification Before Disposition of Collateral: General. RSA 382-A:9-613 is repealed and reenacted to read as follows:

382-A:9-613 Contents and Form of Notification Before Disposition of Collateral: General.

(a) Contents and form of notification. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) information not specified by that paragraph; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in Section 9-614(a)(3), when completed in accordance with the instructions in subsection (b) and Section 9-614(b), each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to which the notification is sent)

From: (Name, address, and telephone number of secured party)

{1} Name of debtor that is not an addressee:

(Name of each debtor)

{2} We will sell (describe collateral) to the highest qualified bidder at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date: _____)

(Time: _____)

(Place:_____)

{3} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{4} You are entitled to an accounting of the unpaid indebtedness secured by the property we intend to sell or, as applicable, lease or license.

{5} If you request an accounting, you must pay a charge of $(amount).

{6} You may request an accounting by calling us at (telephone number).

(b) Instructions for form of notification. The following instructions apply to the form of notification in subsection (a)(5):

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(5). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2) Include and complete item {1} only if there is a debtor that is not an addressee of the notification and list the name or names.

(3) Include and complete either item {2}, if the notification relates to a public disposition of the collateral, or item {3}, if the notification relates to a private disposition of the collateral. If item {2} is included, include the words "to the highest qualified bidder" only if applicable.

(4) Include and complete items {4} and {6}.

(5) Include and complete item {5} only if the sender will charge the recipient for an accounting.

70 Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction. RSA 382-A:9-614 is repealed and reenacted to read as follows:

382-A:9-614 Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction.

(a) Contents and form of notification. 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(a)(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 in accordance with the instructions in subsection (b), 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: (Identify transaction)

We have your (describe collateral), because you broke promises in our agreement.

{1} 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.

{2} We will sell (describe collateral) at private sale sometime after (date. A sale could include a lease or license.

{3} 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.

{4} 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).

{5} If you want us to explain to you in (writing) or in (description of electronic record) how we have figured the amount you owe us,

{6} Call us at (telephone number) or write us at (secured party's address) or contact us by (description of electronic communication method).

{7} and request (a written explanation) (a written explanation or an explanation in description of electronic record).

{8} We will charge you (amount) for the explanation if we sent you another written explanation of the amount you owe us within the last six months.

{9} If you need more information about the sale(call us at (telephone number))(or) (write us at (secured party's address))(or contact us by (description of electronic communication method)).

{10} 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)

(b) Instructions for form of notification. The following instructions apply to the form of notification in subsection (a)(3):

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(3). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2) Include and complete either item {1}, if the notification relates to a public disposition of the collateral, or item {2}, if the notification relates to a private disposition of the collateral.

(3) Include and complete items {3}, {4}, {5}, {6}, and {7},

(4) In item {5}, include and complete any one of the three alternative methods for the explanation__writing, writing or electronic record, or electronic record,

(5) In item {6}, include the telephone number, In addition, the sender may include and complete either or both of the two additional alternative methods of communication__writing or electronic communication__for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included.

(6) In item {7}, include and complete the method or methods for the explanation__writing, writing or electronic record, or electronic record--included in item {5},

(7) Include and complete item {8} only if a written explanation is included in item {5} as a method for communicating the explanation and the sender will charge the recipient for another written explanation.

(8) In item {9}, include either the telephone number or the address or both the telephone number and the address. In addition, the sender may include and complete the additional method of communication--electronic communication--for the recipient of the notification to communicate with the sender. The additional method of electronic communication is not required to be included.

(9) If item {10} does not apply, insert "None" after "agreement."

71 Application of Proceeds of Disposition. Amend RSA 382-A:9-615(a)(3)-(4) to read as follows:

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien [~~an authenticated~~] ***a signed*** demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor [~~an authenticated~~] ***a signed*** demand for proceeds before distribution of the proceeds is completed.

72 Explanation of Calculation of Surplus or Deficiency. Amend RSA 382-A:9-616(a)(1)-(2) to read as follows:

(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.

73 Explanation of Calculation. Amend RSA 382-A:9-616(b)(1)(A) to read as follows:

(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

74 Transfer of Record or Legal Title. Amend the introductory statement of RSA 382-A:9-619(a) to read as follows:

(a) "Transfer statement." In this section, "transfer statement" means a record [~~authenticated~~] ***signed*** by a secured party stating:

75 Acceptance of Collateral in Full or Partial Satisfaction of Obligation. Amend the introductory statement of RSA 382-A:9-620(a)(2) to read as follows:

(2) The secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal [~~authenticated~~] ***signed*** by:

76 Purported Acceptance Ineffective. Amend RSA 382-A:9-620(b)(1) to read as follows:

(1) the secured party consents to the acceptance in [~~an authenticated~~] ***a signed*** record or sends a proposal to the debtor; and

77 Debtors Consent. Amend RSA 382-A:9-620(c) to read as follows:

(c) Debtor's consent. For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record [~~authenticated~~] ***signed*** after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record [~~authenticated~~] ***signed*** after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection [~~authenticated~~] ***signed*** by the debtor within 20 days after the proposal is sent.

78 Compliance with Mandatory Disposition Requirement. Amend RSA 382-A:620(f)(2)

(2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and [~~authenticated~~] ***signed*** after default.

79 Notification of Proposal to Accept Collateral. Amend RSA 382-A:9-621(a)(1) to read as follows:

(1) any person from which the secured party has received, before the debtor consented to the acceptance, [~~an authenticated~~] ***a signed*** notification of a claim of an interest in the collateral;

80 Waivers. Amend RSA 382-A:9-624 to read as follows:

382-A:9-624 Waiver.

(a) Waiver of disposition notification. A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 9-611 only by an agreement to that effect entered into and [~~authenticated~~] ***signed*** after default.

(b) Waiver of mandatory disposition. A debtor may waive the right to require disposition of collateral under Section 9-620(e) only by an agreement to that effect entered into and[~~authenticated~~] ***signed*** after default.

(c) Waiver of redemption right. Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 9-623 only by an agreement to that effect entered into and [~~authenticated~~] ***signed*** after default.

81 Limitation of Liability. RSA 382-A:9-628(f) is repealed and reenacted to read as follows:

(f) Limitation of liability under subsections (a) and (b) does not apply. Subsections (a) and (b) do not apply to limit the liability of a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or

controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subsection (b)(1)(A), (B), or (C) relating to the person 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.

82 Definitions. Amend RSA 382-A:12-102(a)(3) to read as follows:

(3) "Transferable record" [~~means~~] ***has the meaning provided for that term in:***

(A) [~~"Transferable record" as defined in~~] ***Section 201(a)(1) of*** 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 Uniform Electronic Transactions Act Section 16(a).

83 Control of Controllable Account and Controllable Payment Intangible. Amend RSA 382-A:12-104(b) to read as follows:

(b) Control of controllable account and controllable payment intangible. [~~For purposes of determining~~] ***To determine*** 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.

84 Limitation of Rights of Qualifying Purchasers in Other Property. Amend RSA 382-A:12-104(f) to read as follows:

(f) Limitation of rights of qualifying purchaser in other property. Except as provided in subsections (a) and (e) for[~~controllable accounts~~] ***a controllable account*** and [~~controllable payment intangibles~~] ***a controllable payment intangible*** 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.

85 Control of Controllable Electronic Record. RSA 382-A:12-105 is repealed and reenacted to read as follows:

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

(a) Control of controllable electronic record. A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:

(1) gives the person:

(A) 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) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having powers specified in paragraph (1).

(b) Meaning of exclusive. Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) 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 power is shared with another person.

(c) When power not shared with another person. A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(d) Presumption of exclusivity of certain powers. If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e) Control through another person. A person has control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable 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.

(f) 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.

(g) 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 or Article 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

86 Proof of Transfer of Control. Amend RSA 382-A:12-106 to read as follows:

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) ***Content and*** Effect of notification. Subject to subsection (d), [~~an~~] ***the*** 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~~] ***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 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~~] ***the*** 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~~] ***the*** 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 ***in the agreement referred to in subsection (d)(1)***, 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 ***under subsection (e)*** that control has been transferred if the person demonstrates, using the [~~agreed~~] method ***in the agreement referred to in subsection (d)(1)***, 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~~] ***specified*** 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.

87 Governing Law. Amend RSA 382-A: 12-107(b) to read as follows:

(b) Governing law: Section [~~12-106~~] ***12-107. For a controllable electronic record that evidences a controllable account or controllable payment intangible,*** 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.

88 Applicability; Relations; Rights. Amend RSA 382-A:12-107(d)-(f) to read as follows:

(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 ***sub***-section, "Article 12" means ***Article 12 of***

Uniform Commercial Code ***Amendments (2022)*** [~~Controllable Electronic Records (with Conforming Amendments to Articles 1 and 9), 2022 Official Text~~].

(e) Relation of ***matter or*** transaction to controllable electronic record's jurisdiction not necessary. [~~Subsections (b) through (d) apply even if a transaction~~] ***To the extent subsections (a) and (b) provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this article, that law governs even if the matter or a transaction to which the matter relates*** does not bear any relation to the controllable electronic record's jurisdiction.

(f) Rights of purchasers determined at time of purchase. The rights acquired ***under Section 12-104*** 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.

89 Article Title; Transitional Provisions. Amend the Article title preceding RSA 382-A:13 to read as follows:

ARTICLE 13

[~~ADDITIONAL~~] TRANSITION PROVISIONS FOR [~~ARTICLES 9 AND 12~~] ***UNIFORM COMMERCIAL CODE AMENDMENTS***

90 New Sections; Transition Provisions. Amend RSA 382-A:13 by inserting after the Article title the following new sections:

382-A:13-101 Title. This article may be cited as Transactional Provisions for Uniform Commercial Code Amendments.

382-A:13-102 Definitions.

(a) Article A Definitions. In this article:

(1) "Adjustment date" means July 1, 2025, or the date that is one year after the effective date of this article, whichever is later.

(2) "Article 12" means Article 12 of the Uniform Commercial Code.

(3) "Article 12 property" means a controllable account, controllable electronic record, or controllable payment intangible.

(b) Definitions in other Articles. The following definitions in other articles of the Uniform Commercial Code apply to this article.

"Controllable account". Section 9-102.

"Controllable electronic record". Section 12-102.

"Controllable payment intangible". Section 9-102.

"Financing statement". Section 9-102.

(c) Article 1 definitions and principles. Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

382-A:13-201 Saving Clause. Except as provided in Part 3, a transaction validly entered into before the effective date of this article and the rights, duties, and interests flowing from the

transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by law other than the Uniform Commercial Code or, if applicable, the Uniform Commercial Code, as though this article had not taken effect.

91 Transition Provisions. RSA 382-A:13-301 through 382-A:13-306 are repealed and reenacted to read as follows:

382-A:13-301 Saving Clause.

(a) Pre-effective date transaction, lien, or interest. Except as provided in this part, Article 9 as amended by this act 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 provided in subsection (c) and sections 13-302 through 13-306:

(1) a transaction, lien, or interest in property that was validly entered into, created, or transferred before the effective date of this article, and was not governed by the Uniform Commercial Code, but would be subject to Article 9 as amended in this act or Article 12 if it had been entered into, created, or transferred on or after the effective date of this act, including the rights, duties and interests, flowing from the transaction ,lien, or interest, remains valid on and after the effective date of this act; and

(2) the transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that would apply if this act had not taken effect.

(c) Pre-effective date proceeding. This article does not affect an action case, or proceeding commenced from 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 chapter if, on the effective date of this article the requirements for enforceability and perfection under this chapter are satisfied without further action.

(b) Continuing perfection: enforceability or perfection requirements not satisfied. If a security interest is enforceable and perfected immediately before the effective date of this article but the requirements for enforceability or perfection under this chapter 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 the adjustment date;

(2) remaines enforceable thereafter only if the security interest satisfies the requirements for enforceability under Section 9-203 before the adjustment date; and

(3) remains perfected thereafter only if the requirements for perfection under this chapter are satisfied before the time specified in paragraph (1).

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 is unperfected at that time:

(1) remains an enforceable security interest until the adjustment date;

(2) remains enforceable thereafter if the security interest becomes enforceable under Section 9-203 on the effective date of this article or before the adjustment date; and

(3) becomes perfected:

(A) without further action on the effective date of this article if the requirements for perfection under this chapter are satisfied before or at that time; or

(B) when the requirements for perfection are satisfied if the requirements are satisfied after that time.

382-A:13-304 Effectiveness of Action 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 chapter before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under this article before the adjustment date.

(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 requirements for perfection under this article.

(c) Pre-effective date enforceability action. 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 requirements for enforceability under this article.

382-A:13-305 Priority.

(a) Determination of priority. Subject to subsections (b) and (c), this act determines the priority of conflicting claims to collateral.

(b) Established priorities. Subject to subsection (c), if the priorities of claims to collateral were established before the effective date of this article, Article 9 as in effect before the effective date of this article determines priority.

(c) Determination of certain priorities on adjustment date. On the adjustment date, to the extent the priorities determined by Article 9 as amended by this act modify the priorities established before the effective date of this article, the priorities of claims to Article 12 property established before the effective date of this article shall 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 as amended by this act do not apply.

(b) Established priorities. Subject to subsection (c), when the priority rules of Article 9 as amended by this act do not apply and the 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 as amended by this act do not apply, to the extent the priorities determined by this act modify the priorities established before the effective date of this act, the priorities of claims to Article 12 property established before the effective date of this act cease to apply on the adjustment date.

92 Money; Definition. 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 ***and is not in an electronic form***. [~~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.~~]

93 Money; Definition. Amend RSA 382-A:9-102(a)(54A) to read as follows:

(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~~].

94 No Requirement to Acknowledge or Confirm; No Duties. Amend RSA 382-A:9-107B(a) to read as follows:

(a) No requirement to acknowledge. A person that has control under Section 9-104[~~,~~] ***or*** 9-105[~~, or 9-105A~~] is not required to acknowledge that it has or will obtain control on behalf of another person.

95 Attachment and Enforceability of a Security Interest. Amend RSA 382-A:9-203(b) to read as follows:

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

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(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~~] ***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***; 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.

96 Duties and Rights When Secured Party in Possession or Control. 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, 9-107, or 9-107A:

97 Additional Duties of Secured Party Having Control of Collateral. Amend RSA 382-A:9-208(b)(6)-(8) to read as follows:

(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; ***and***

(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.

98 Law Governing Perfection and Priority of Security Interests. Amend the introductory paragraph of RSA 382-A:9-301(3) to read as follows:

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, or [~~tangible~~] money is located in a jurisdiction, the local law of that jurisdiction governs:

99 Perfection of Security Interests. Amend RSA 382-A:9-312(b)(2)-(4) to read as follows:

(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~~].

100 Perfection by Possession or Delivery. 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 goods, instruments, negotiable tangible documents, or [~~tangible~~] money, 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.

101 Perfection by Control. Amend RSA 382-A:9-314(a) and (b) to read as follows:

382-A:9-314 Perfection by Control.

(a) Perfection by control. A security interest in 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, [~~9-105A,~~] 9-106, 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 documents, [~~electronic money,~~] or letter-of-credit rights is perfected by control under Section 7-106, 9-104, [~~9-105A~~], 9-107, or 9-107A when the secured party obtains control and remains perfected by control only while the secured party retains control.

102 Licensees and Buyers of Certain Collateral. Amend RSA 382-A:9-317(d) to read as follows:

(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[~~electronic money, tangible documents,~~] goods, instruments, ***tangible documents,*** 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.

103 Transfer of Money; Transfer of Funds from Deposit Account. 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 if the transferee receives [~~delivery~~] ***possession*** 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 if the transferee receives the funds without acting in collusion with the debtor in violating the rights of the secured party.

104 Rights and Duties of Secured Party in Possession or Control. 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.

105 Definitions Controllable Electronic Records. Amend RSA 382-A:12-102(a)(1) to read as follows:

(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***, or an electronic record that is currently authorized or adopted by a domestic or foreign government and is not a medium of exchange that was 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.***

106 Definitions in Article 9. Amend RSA 382-A:12-102(b) to read as follows:

(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.

107 Repeal. The following are repealed:

I. RSA 382-A:9-102(a)(31)(A), relative to electronic money.

II. RSA 382-A:9-102(a)(79A), relative to tangible money.

III. RSA 382-A:9-105A, relative to control of electronic money.

108 Effective Date. This act shall take effect 60 days after its passage.

CHAPTER 236
HB 584 - FINAL VERSION

22Mar2023... 0993h
05/18/2023 1882s
29Jun2023... 2246EBA

2023 SESSION

23-0481
08/10

HOUSE BILL ***584***

AN ACT relative to the Uniform Commercial Code's article on controllable electronic records.

SPONSORS: Rep. Ammon, Hills. 42; Rep. Potucek, Rock. 13; Rep. Edwards, Rock. 31; Rep. Osborne, Rock. 2; Rep. Bernardy, Rock. 36; Rep. Hunt, Ches. 14; Sen. Watters, Dist 4

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill makes changes to the Uniform Commercial Code relative to 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.

CHAPTER 236
HB 584 - FINAL VERSION

22Mar2023... 0993h
05/18/2023 1882s
29Jun2023... 2246EBA

23-0481
08/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the Uniform Commercial Code's article on controllable electronic records.

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

236:1 Definitions; Conspicuous. 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***, based on the totality of the circumstances,*** 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.

236:2 Definitions; Delivery. Amend RSA 382-A:1-201(b)(15) to read as follows:

(15) "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or ***an authoritative tangible copy of a record evidencing*** chattel paper, means voluntary transfer of possession.

236:3 Definitions; Send. Amend RSA 382-A:1-201(b)(36) to read as follows:

(36) "Send" in connection with a [~~writing,~~] record, or [~~notice~~] ***notification,*** means:

(A) to deposit in the mail, [~~or~~] deliver for transmission***, or transmit*** by any other usual means of communication with postage or cost of transmission provided for [~~and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none~~] ***addressed*** to any address reasonable under the circumstances; or

(B) [~~in any other way to cause to be received any record or notice within the time it would have arrived if properly sent~~] ***to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).***

236:4 Definitions; Signed. 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.~~] ***"Sign" means with present intent to authenticate or adopt a record:***

(A) execute or adopt a tangible symbol; or

(B) attach or logically associate with the record an electronic symbol, sound, or process. "Signed," "signing," and "signature" have corresponding meanings.

236:5 Uniform Commercial Code; Sales; Scope. RSA 382-A:2-102 is repealed and reenacted to read as follows:

382-A:2-102 Scope; Certain Security and Other Transactions Excluded from this Article.

(1) Unless the context otherwise requires, and except as provided in subsection (3), this Article applies to transactions in goods and, in the case of a hybrid transaction, it applies to the extent provided in subsection (2).

(2) In a hybrid transaction:

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

(b) If the sale-of-goods aspects predominate, this Article applies to the transaction but does not preclude application in appropriate circumstances of other law to aspects of the transaction which do not relate to the sale of goods.

(3) This Article does not:

(a) apply to a transaction that, even though in the form of an unconditional contract to sell or present sale, operates only to create a security interest; or

(b) impair or repeal a statute regulating sales to consumers, farmers, or other specified classes of buyers.

236:6 Definitions; Hybrid Transaction. Amend the section heading of RSA 382-A:2-106 to read as follows:

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

236:7 Definitions; Hybrid Transaction. RSA 382-A:2-106(5) is repealed and reenacted to read as follows:

(5) "Hybrid transaction" means a single transaction involving a sale of goods and:

(a) the provision of services;

(b) a lease of other goods; or

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

236:8 Sales; Statute of Frauds. Amend RSA 382-A:2-201(1) to read as follows:

(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~~] ***the party's*** 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.

236:9 Sales; Final Expression. Amend the section heading of RSA 382-A:2-202 to read as follows:

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

236:10 Modification; Rescission 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 or other signed*** 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.

236:11 Leases; Scope. RSA 382-A:2A-102 is repealed and reenacted to read as follows:

(1) This Article applies to any transaction regardless of form, that creates a lease and, in the case of a hybrid lease, it applies to the extent provided in subsection (2).

(2) In a hybrid lease:

(a) if the lease-of-goods aspects do not predominate:

(i) only the provisions of this Article which relate primarily to the lease-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply.

(ii) Section 2A-209 applies if the lease is a finance lease; and

(iii) Section 2A-407 applies to the promises of the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods; and

(b) if the lease-of-goods aspects predominate, this article applies to the transaction, but does not preclude application in appropriate circumstances of other law to the aspects of the lease which do not relate to the lease of goods.

236:12 Waiver or Renunciation of Claim or Right After Default. Amend RSA 382-A:2A-107 to read as follows:

382-A:2A-107 Waiver or Renunciation of Claim or Right After Default. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a [~~written~~] waiver or renunciation ***in a*** signed [~~and~~] ***record*** delivered by the aggrieved party.

236:13 Leases; Statute of Frauds. Amend RSA 382-A:2A-201 to read as follows:

(3) A 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~~] ***record***.

236:14 Final Expression; Parol or Extrinsic Evidence. Amend the section heading of RSA 382-A:2A-202

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

236:15 Signature Necessary for Liability on an Instrument. Amend RSA 382-A:3-401 to read as follows:

382-A:3-401 Signature ***Necessary for Liability on Instrument***.

[~~(a)~~] A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3-402.

[~~(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.~~]

236:16 Liability for Late or Improper Execution or Failure to Execute Payment Oder. Amend RSA 382-A:4A-305(c)-(d) to read as follows:

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, ***evidenced by a record.***

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express [~~written~~] agreement of the receiving bank, ***evidenced by a record,*** but are not otherwise recoverable.

236:17 Formal Requirements. Amend RSA 382-A:5-104 to read as follows:

382-A:5-104 Formal Requirements. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a ***signed*** record [~~and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in Section 5-108(e)~~].

236:18 Choice of Law and Forum. Amend RSA 382-A:5-116(a) to read as follows:

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or [~~otherwise authenticated~~] by the affected parties [~~in the manner provided in Section 5-104~~] or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

236:19 Definitions; Record; Sign. Amend RSA 382-A:7-102(a)(10)-(11) to read as follows:

[~~(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.~~

~~(11) "Sign" means, with present intent to authenticate or adopt a record:~~

~~(A) to execute or adopt a tangible symbol; or~~

~~(B) to attach to or logically associate with the record an electronic sound, symbol, or process.~~]

236:20 Control of Electronic Document of Title. RSA 382-A:7-106, (d)-(h) are repealed and reenacted to read as follows:

(d) Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B) even if:

(1) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the document of title or has protocol that is programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(e) A power of a person is not shared with another person under subsection (d)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the document of title.

(f) If a person has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) A person has control of an electronic document of title if another person, other than the transferor to the person 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.

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(i) 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 or Article 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment of any other person.

236:21 Definitions. Amend RSA 382-A:8-102(b) to read as follows:

(b) [~~Other~~] ***The following*** definitions [~~applying to~~] ***in*** this Article and [~~the sections in which they appear are~~] ***other Articles apply to this Article***:

Appropriate person	Section 8-107
Controllable account	***Section 9-102***
Controllable electronic record	***Section 12-102***
Controllable payment intangible	***Section 9-102***
Control Delivery	Section 8-106
Delivery	Section 8-301

Investment company security	Section 8-103
Issuer	Section 8-201
Overissue	Section 8-210
Protected purchaser	Section 8-303
Securities account	Section 8-501

236:22 New Paragraph; Rules for Determining Whether Certain Obligations and Interests are Securities or Financial Assets. Amend RSA 382-A:8-103 by inserting after paragraph (g) the following new paragraph:

(h) A controllable account, controllable electronic record, or controllable payment intangible is not a financial asset unless Section 8-102(a)(9)(iii) applies.

236:23 Investment Securities; Definitions. Amend the introductory paragraph of RSA 382-A:8-106(d)(3) to read as follows:

(3) another person other than the transferor ***to the purchaser*** of an interest in the security entitlement:

236:24 New Paragraph; Applicability; Choice of Law. Amend RSA 382-A:8-110 by inserting after paragraph (f) the following new paragraph:

(g) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction governs a matter or transaction specified in subsection (a) or (b) even if the matter or transaction does not bear any relation to the jurisdiction.

236:25 Definitions; Account. Amend RSA 382-A:9-102(a)(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)~~] ***"account statement", "account to", "commodity account" in paragraph (14), "customer's account", "deposit account" in paragraph (29), "on account of", and "statement of account"*** 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) 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.

236:26 Definitions; Account Debtor; Accounting. Amend RSA 382-A:9-102(a)(3)-4 to read as follows:

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the ***negotiable*** instrument[~~constitutes part of~~] ***evidences*** chattel paper.

(4) "Accounting", except as used in " accounting for", means a record:

(A) [~~authenticated~~] ***signed*** by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

236:27 Definitions; Assignee; Assignor. Amend RSA 382-A:9-102(a)(7) to read as follows:

[~~(7) "Authenticate" means:~~

~~(A) to sign; or~~

~~(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.~~]

(7A) "Assignee" except as used in "assignee for benefit of creditors", means a person (i) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not the obligation is outstanding or

(ii) to which an account, chattel paper, payment intangible, or promissory note has been sold. The term includes a person to which a security interest has been transferred by a secured party.

(7B) "Assignor" means a person that (i) under a security agreement creates or provides for a security interest that secures an obligation or (ii) sells an account, chattel paper, payment intangible, or promissory note. The term includes a secured party that has transferred a security interest to another person.

236:28 Definitions; Proposal. Amend RSA 382-A:9-102(a)(66) to read as follows:

(66) "Proposal" means a record [~~authenticated~~] ***signed*** by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9-620, 9-621, and 9-622.

236:29 Definitions; Send. Amend RSA 382-A:9-102(a)(75) to read as follows:

(75) [~~"Send", in connection with a record or notification, means:~~

~~(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or~~

~~(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).~~]

236:30 Definition; Tangible Chattel Paper. Amend RSA 382-A:9-102(a)(79) to read as follows:

(79) [~~"Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.~~]

236:31 Definitions; Protected Purchaser. 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.
"Protected purchaser"	***Section 8-303.***
"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.

236:32 Control of Electronic Copy of Record Evidencing Chattel Paper. Amend RSA 382-A:9-105 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~~] ***authoritative electronic copy*** 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 ***authoritative*** 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)~~] ***(1)*** enables the person readily to identify each electronic copy as an authoritative copy or nonauthoritative copy;

[~~(B)~~] *(2)* 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)~~] *(3)* gives the purchaser exclusive power, subject to subsection (d), to:

[~~(i)~~] *(A)* prevent others from adding or changing an identified assignee of each authoritative electronic copy; and

[~~(ii)~~] *(B)* 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~~] *Meaning of exclusive. Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B) even if:*

(1) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the authoritative electronic copy or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(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.~~] *When power not shared with another person. A power of purchaser is not shared with another person under subsection (d)(2) and the purchasers power is not exclusive if:*

(1) the purchaser can exercise the power only if the power is also exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the purchaser; or

(B) is the transferor to the purchaser of an interest in the chattel paper.

(f) Presumption of exclusivity of certain powers. If a purchaser has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) Obtaining control through another person. A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if another person, other than the transferor to the purchaser of an interest in the chattel paper:

(1) has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(2) obtains control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(3) obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

236:33 Control of Electronic Money. Amend RSA 382-A:9-105A, (a)(1)(A) to read as follows:

(A) [~~the~~] power to avail itself of substantially all the benefit from the electronic money; and

236:34 Control of Electronic Money. RSA 382-A:9-105A(b)-(d) is repealed and reenacted to read as follows:

(b) Meaning of exclusive. Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) 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 power is shared with another person.

(c) When power not shared with another person. A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the electronic money.

(d) Presumption of exclusivity of certain powers. If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e) Control through another person. A person has control of electronic money if another person other than the transferor to the person 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 controlled of the electronic money on behalf of the person.

236:35 No Requirement to Acknowledge or Confirm; No Duties. Amend RSA 382-A:107B(a) to read as follows:

(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.

236:36 After-Acquired Property; Future Advances. Amend RSA 382-A:9-204(b) to read as follows:

(b) When after-acquired property clause not effective. Subject to subsection [~~(c)~~] ***(b.1)***, 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.

(b.1) 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 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.

236:37 Duties of Secured Party After Receiving Demand from Debtor. Amend RSA 382-A:9-208(b)(1) to read as follows:

(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 a signed [~~statement~~] ***record*** that releases the bank from any further obligation to comply with instructions originated by the secured party;

236:38 Duties of Secured Party After Receiving Demand from Debtor. RSA 382-A:9-208(b)(8) is repealed and reenacted as follows:

(8) A secured party having control under Section 12-105 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

236:39 Duties of Secured Party After Receiving Demand for Debtor. Amend RSA 382-A:9-209(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, a secured party shall send to an account debtor that has received notification ***under Section 9-406(a) or 12-106(b)*** of an

assignment to the secured party as assignee [~~under Section 9-406(a) an authenticated~~] ***a signed*** record that releases the account debtor from any further obligation to the secured party.

236:40 Request for Accounting. Amend RSA 382-A:9-210 to read as follows:

382-A:9-210 Request for Accounting; Request Regarding List of Collateral or Statement of Account.

(a) Definitions. In this section:

(1) "Request" means a record of a type described in paragraph (2), (3), or (4).

(2) "Request for an accounting" means a record [~~authenticated~~] ***signed*** by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record [~~authenticated~~] ***signed*** by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record [~~authenticated~~] ***signed*** by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Duty to respond to requests. Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) in the case of a request for an accounting, by [~~authenticating~~] ***signing*** and sending to the debtor an accounting; and

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by [~~authenticating~~] ***signing*** and sending to the debtor an approval or correction.

(c) Request regarding list of collateral; statement concerning type of collateral. A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor [~~an authenticated~~] ***a signed*** record including a statement to that effect within 14 days after receipt.

(d) Request regarding list of collateral; no interest claimed. A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor [~~an authenticated~~] ***a signed*** record:

(1) disclaiming any interest in the collateral; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) Request for accounting or regarding statement of account; no interest in obligation claimed. A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor [~~an authenticated~~] ***a signed*** record:

(1) disclaiming any interest in the obligations; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) Charges for responses. A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding $25 for each additional response.

236:41 Law Governing Perfection and Priority of Security Interests in Deposit Accounts. Amend RSA 382-A:9-304(a) to read as follows:

(a) Law of bank's jurisdiction governs. The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank***, even if the transaction does not bear any relation to the bank's jurisdiction.***

236:42 New Subparagraph; Governing Law; General Rules. Amend RSA 382-A:9-305(a) by inserting after subparagraph (4) the following new subparagraph:

(5) Paragraphs (2), (3), and (4) apply even if the transaction does not bear any relation to the jurisdiction.

236:43 Chattel Paper Evidenced by Authoritative Electronic Copy. Amend RSA 382-A:9-306A(a) to read as follows:

(a) Chattel paper evidenced by authoritative electronic copy. Except as provided in subsection [~~(e)~~]***(d)***, 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***, even if the transaction does not bear any relation to the chattel paper's jurisdiction.***

236:44 Chattel Paper; Perfection. RSA 382-A:9-306A(c)-(e) is repealed and reenacted to read as follows:

(c) 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 the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(1) perfection of a security interest in the chattel paper by possession under Section 9-314A; and

(2) the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(d) When perfection governed by the law of jurisdiction where debtor located. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

236:45 Governing Law; General Rules. Amend RSA 382-A:9-306B(a) to read as follows:

(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 ***evidenced by the controllable electronic record.***

236:46 Exemptions; Filing of Financing Statement. Amend RSA 382-A:9-310(b)(9)-(11) to read as follows:

[~~(9)~~] ***(8.1)*** in chattel paper which is perfected by possession and control under Section 9-314A;

[~~(10)~~] ***(9)*** in proceeds which is perfected under Section 9-315; or

[~~(11)~~] ***(10)*** that is perfected under Section 9-316.

236:47 Specified Collateral; Time of Perfection. Amend RSA 382-A:9-314(b)-(c) to read as follows:

(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 documents, electronic money, or letter-of-credit rights is perfected by control under Section 7-106, 9-104, 9-105A, 9-107, or 9-107A [~~when~~] ***not earlier than the time*** the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection. A security interest in investment property is perfected by control under Section 9-106 [~~from~~] ***not earlier than*** the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

236:48 Perfection by Possession; Time of Perfection. Amend RSA 382-A:9-314A(b) to read as follows:

(b) Time of perfection; continuation of perfection. A security interest is perfected under subsection (a) [~~when~~] ***not earlier than the time*** the secured party takes possession and obtains control and remains perfected under subsection (a) only while the secured party retains possession and control.

236:49 Continued Perfection of Security Interest. 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), 9-305(c), [~~9-306A(c)~~] ***9-306A(d)***, or 9-306B(b) remains perfected until the earliest of:

236:50 Changed in Jurisdiction of Chattel Paper. Amend the introductory paragraph of RSA 382-A:9-316(f) to read as follows:

(f) Change in jurisdiction of ***chattel paper,*** controllable electronic record, bank, issuer, nominated person, securities intermediary, or commodity intermediary. A security interest in ***chattel paper,*** 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 ***chattel paper's jurisdiction, 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:

236:51 Buyers that Receive Delivery. Amend RSA 382-A:9-317(b) to read as follows:

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer ***other than a secured party,*** of 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.

236:52 Future Advances; Buyer of Goods. Amend the introductory paragraph of RSA 382-A:9-323(d) to read as follows:

(d) Buyer of goods. Except as otherwise provided in subsection (e), a buyer of goods [~~other than a buyer in ordinary course of business~~] takes free of a security interest to the extent that it secures advances made after the earlier of:

236:53 Future Advances; Lessee of Goods. Amend the introductory paragraph of RSA 382-A:9-323(f) to read as follows:

(f) Lessee of goods. Except as otherwise provided in subsection (g), a lessee of goods[~~, other than a lessee in ordinary course of business,~~] takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

236:54 Priority of Purchase; Inventory Purchase-Money Priority. Amend RSA 382-A:9-324(b)(2) to read as follows:

(2) the purchase-money secured party sends [~~an authenticated~~] ***a signed*** notification to the holder of the conflicting security interest;

236:55 Priority of Purchase; Livestock Purchase-Money Priority. Amend RSA 382-A:9-324(d)(2) to read as follows:

(2) the purchase-money secured party sends [~~an authenticated~~] ***a signed*** notification to the holder of the conflicting security interest;

236:56 Priority of Purchaser of Chattel Paper or Instrument. Amend RSA 382-A:9-330 to read as follows:

382-A:9-330 Priority of Purchaser of Chattel Paper or Instrument.

(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, and obtains control under RSA 382-A:9-105 of each authoritative electronic copy of the record evidencing the chattel paper; and

(2) the authoritative copies of the record evidencing the chattel paper do not indicate that [~~the copies have~~] ***the chattel paper has*** 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 and obtains control under RSA 382-A:9-105 of each authoritative electronic copy of the record evidencing the chattel paper 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.

(c) Chattel paper purchaser's priority in proceeds. Except as otherwise provided in Section 9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) Section 9-322 provides for priority in the proceeds; or

(2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Instrument purchaser's priority. Except as otherwise provided in Section 9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new value. For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) Indication of assignment gives knowledge. For purposes of subsections (b) and (d), if ***the authoritative copies of the record evidencing*** chattel paper or an instrument [~~indicates~~] ***indicate*** that [~~it~~] ***the chattel paper or instrument*** has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

236:57 Priority of Security; Fixtures. Amend RSA 382-A:9-334(f)(1) to read as follows:

(1) the encumbrancer or owner has, in [~~an authenticated~~] ***a signed*** record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

236:58 Bank's Rights and Duties with Respect to Deposit Account. Amend the introductory paragraph to RSA 382-A:9-341 to read as follows:

Except as otherwise provided in Section 9-340(c), and unless the bank otherwise agrees in [~~an authenticated~~]***a signed*** record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

236:59 Rights Acquired by Assignee. Amend RSA 382-A:9-404(a)(2) to read as follows:

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment [~~authenticated~~] ***signed*** by the assignor or the assignee.

236:60 Discharge of Account Debtor. Amend RSA 382-A:9-406(d) to read as follows:

(d) Term restricting assignment generally ineffective. ***In this subsection, "promissory note" includes a negotiable instrument that evidences chattel paper.*** 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:

236:61 New Paragraph; Promissory Note. Amend RSA 382-A:9-408 by inserting after paragraph (f) the following new paragraph:

(g) "Promissory Note." In this section, "promissory note" includes a negotiable instrument that evidences chattel paper.

236:62 Persons Entitled to File a Record. Amend RSA 382-A:9-509(a)(1) to read as follows:

(1) the debtor authorizes the filing in [~~an authenticated~~] ***a signed*** record or pursuant to subsection (b) or (c); or

236:63 Security Agreement as Authorization. Amend the introductory paragraph of RSA 382-A:9-509(b) to read as follows:

(b) Security agreement as authorization. By [~~authenticating~~] ***signing*** or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

236:64 Time for Compliance; Termination Statement. Amend RSA 382-A:9-513(b)(2) to read as follows:

(2) if earlier, within 20 days after the secured party receives [~~an authenticated~~] ***a signed*** demand from a debtor.

236:65 Other Collateral; Termination Statement. Amend the introductory paragraph of RSA 382-A:9-513(c) to read as follows:

(c) Other collateral. In cases not governed by subsection (a), within 20 days after a secured party receives [~~an authenticated~~] ***a signed*** demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

236:66 Secured Party Owes Duty to Debtor or Obligor. RSA 382-A:9-605(b) is repealed and reenacted to read as follows:

(b) Secured party owes duty to debtor or obligor. A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subsection (a)(1)(A), (B), or (C) relating to the person 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.

236:67 Application of Proceeds, Surplus, and Deficiency if Obligation is Secured. Amend RSA 382-A:9-608(a)(1)(C) to read as follows:

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives [~~an authenticated~~] ***a signed*** demand for proceeds before distribution of the proceeds is completed.

236:68 Persons to Be Notified. Amend RSA 382-A:9-611(b) - (c) to read as follows:

(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~~] ***signed*** notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send 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~~] ***a signed*** 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).

236:69 Contents and Form of Notification Before Disposition of Collateral: General. RSA 382-A:9-613 is repealed and reenacted to read as follows:

382-A:9-613 Contents and Form of Notification Before Disposition of Collateral: General.

(a) Contents and form of notification. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) information not specified by that paragraph; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in Section 9-614(a)(3),

when completed in accordance with the instructions in subsection (b) and Section 9-614(b), each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to which the notification is sent)

From: (Name, address, and telephone number of secured party)

{1} Name of debtor that is not an addressee:

(Name of each debtor)

{2} We will sell (describe collateral) to the highest qualified bidder at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date: ____)

(Time: ____)

(Place:_____)

{3} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{4} You are entitled to an accounting of the unpaid indebtedness secured by the property we intend to sell or, as applicable, lease or license.

{5} If you request an accounting, you must pay a charge of $(amount).

{6} You may request an accounting by calling us at (telephone number).

(b) Instructions for form of notification. The following instructions apply to the form of notification in subsection (a)(5):

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(5). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2) Include and complete item {1} only if there is a debtor that is not an addressee of the notification and list the name or names.

(3) Include and complete either item {2}, if the notification relates to a public disposition of the collateral, or item {3}, if the notification relates to a private disposition of the collateral. If item {2} is included, include the words "to the highest qualified bidder" only if applicable.

(4) Include and complete items {4} and {6}.

(5) Include and complete item {5} only if the sender will charge the recipient for an accounting.

236:70 Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction. RSA 382-A:9-614 is repealed and reenacted to read as follows:

382-A:9-614 Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction.

(a) Contents and form of notification. 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(a)(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 in accordance with the instructions in subsection (b), 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: (Identify transaction)

We have your (describe collateral), because you broke promises in our agreement.

{1} 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.

{2} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{3} 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.

{4} 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).

{5} If you want us to explain to you in (writing) or in (description of electronic record) how we have figured the amount you owe us,

{6} Call us at (telephone number) or write us at (secured party's address) or contact us by (description of electronic communication method).

{7} and request (a written explanation) (a written explanation or an explanation in description of electronic record).

{8} We will charge you (amount) for the explanation if we sent you another written explanation of the amount you owe us within the last six months.

{9} If you need more information about the sale(call us at (telephone number))(or) (write us at (secured party's address))(or contact us by (description of electronic communication method)).

{10} 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)

(b) Instructions for form of notification. The following instructions apply to the form of notification in subsection (a)(3):

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(3). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2) Include and complete either item {1}, if the notification relates to a public disposition of the collateral, or item {2}, if the notification relates to a private disposition of the collateral.

(3) Include and complete items {3}, {4}, {5}, {6}, and {7},

(4) In item {5}, include and complete any one of the three alternative methods for the explanation__writing, writing or electronic record, or electronic record,

(5) In item {6}, include the telephone number, In addition, the sender may include and complete either or both of the two additional alternative methods of communication__writing or electronic communication__for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included.

(6) In item {7}, include and complete the method or methods for the explanation__writing, writing or electronic record, or electronic record--included in item {5},

(7) Include and complete item {8} only if a written explanation is included in item {5} as a method for communicating the explanation and the sender will charge the recipient for another written explanation.

(8) In item {9}, include either the telephone number or the address or both the telephone number and the address. In addition, the sender may include and complete the additional method of communication--electronic communication--for the recipient of the notification to communicate with the sender. The additional method of electronic communication is not required to be included.

(9) If item {10} does not apply, insert "None" after "agreement."

236:71 Application of Proceeds of Disposition. Amend RSA 382-A:9-615(a)(3)-(4) to read as follows:

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien [~~an authenticated~~] ***a signed*** demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor [~~an authenticated~~] ***a signed*** demand for proceeds before distribution of the proceeds is completed.

236:72 Explanation of Calculation of Surplus or Deficiency. Amend RSA 382-A:9-616(a)(1)-(2) to read as follows:

(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.

236:73 Explanation of Calculation. Amend RSA 382-A:9-616(b)(1)(A) to read as follows:

(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

236:74 Transfer of Record or Legal Title. Amend the introductory statement of RSA 382-A:9-619(a) to read as follows:

(a) "Transfer statement." In this section, "transfer statement" means a record [~~authenticated~~] ***signed*** by a secured party stating:

236:75 Acceptance of Collateral in Full or Partial Satisfaction of Obligation. Amend the introductory statement of RSA 382-A:9-620(a)(2) to read as follows:

(2) The secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal [~~authenticated~~] ***signed*** by:

236:76 Purported Acceptance Ineffective. Amend RSA 382-A:9-620(b)(1) to read as follows:

(1) the secured party consents to the acceptance in [~~an authenticated~~] ***a signed*** record or sends a proposal to the debtor; and

236:77 Debtors Consent. Amend RSA 382-A:9-620(c) to read as follows:

(c) Debtor's consent. For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record [~~authenticated~~] ***signed*** after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record [~~authenticated~~] ***signed*** after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection [~~authenticated~~] ***signed*** by the debtor within 20 days after the proposal is sent.

236:78 Compliance with Mandatory Disposition Requirement. Amend RSA 382-A:9-620(f)(2) to read as follows:

(2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and [~~authenticated~~] ***signed*** after default.

236:79 Notification of Proposal to Accept Collateral. Amend RSA 382-A:9-621(a)(1) to read as follows:

(1) any person from which the secured party has received, before the debtor consented to the acceptance, [~~an authenticated~~] ***a signed*** notification of a claim of an interest in the collateral;

236:80 Waivers. Amend RSA 382-A:9-624 to read as follows:

382-A:9-624 Waiver.

(a) Waiver of disposition notification. A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 9-611 only by an agreement to that effect entered into and [~~authenticated~~] ***signed*** after default.

(b) Waiver of mandatory disposition. A debtor may waive the right to require disposition of collateral under Section 9-620(e) only by an agreement to that effect entered into and[~~authenticated~~] ***signed*** after default.

(c) Waiver of redemption right. Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 9-623 only by an agreement to that effect entered into and [~~authenticated~~] ***signed*** after default.

236:81 Limitation of Liability. RSA 382-A:9-628(f) is repealed and reenacted to read as follows:

(f) Limitation of liability under subsections (a) and (b) does not apply. Subsections (a) and (b) do not apply to limit the liability of a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subsection (b)(1)(A), (B), or (C) relating to the person 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.

236:82 Definitions. Amend RSA 382-A:12-102(a)(3) to read as follows:

(3) "Transferable record" [~~means~~] ***has the meaning provided for that term in:***

(A) [~~"Transferable record" as defined in~~] ***Section 201(a)(1) of*** 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 Uniform Electronic Transactions Act Section 16(a).

236:83 Control of Controllable Account and Controllable Payment Intangible. Amend RSA 382-A:12-104(b) to read as follows:

(b) Control of controllable account and controllable payment intangible. [~~For purposes of determining~~] ***To determine*** 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.

236:84 Limitation of Rights of Qualifying Purchasers in Other Property. Amend RSA 382-A:12-104(f) to read as follows:

(f) Limitation of rights of qualifying purchaser in other property. Except as provided in subsections (a) and (e) for[~~controllable accounts~~] ***a controllable account*** and [~~controllable payment intangibles~~] ***a controllable payment intangible*** 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.

236:85 Control of Controllable Electronic Record. RSA 382-A:12-105 is repealed and reenacted to read as follows:

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

(a) Control of controllable electronic record. A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:

(1) gives the person:

(A) 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) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having powers specified in paragraph (1).

(b) Meaning of exclusive. Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) 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 power is shared with another person.

(c) When power not shared with another person. A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(d) Presumption of exclusivity of certain powers. If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e) Control through another person. A person has control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable 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.

(f) 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.

(g) 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 or Article 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

236:86 Proof of Transfer of Control. Amend RSA 382-A:12-106 to read as follows:

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) ***Content and*** effect of notification. Subject to subsection (d), [~~an~~] ***the*** 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~~] ***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 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~~] ***the*** 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~~] ***the*** 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 ***in the agreement referred to in subsection (d)(1),*** 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 ***under subsection (e)*** that control has been transferred if the person demonstrates, using the [~~agreed~~] method ***in the agreement referred to in subsection (d)(1)***, 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~~] ***specified*** 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.

236:87 Governing Law. Amend RSA 382-A:12-107(b) to read as follows:

(b) Governing law: Section [~~12-106~~] ***12-107. For a controllable electronic record that evidences a controllable account or controllable payment intangible,*** 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.

236:88 Applicability; Relations; Rights. Amend RSA 382-A:12-107(d)-(f) to read as follows:

(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 s***ub***-section, "Article 12" means ***Article 12 of*** Uniform Commercial Code ***Amendments (2022)*** [~~Controllable Electronic Records (with Conforming Amendments to Articles 1 and 9), 2022 Official Text~~].

(e) Relation of ***matter or*** transaction to controllable electronic record's jurisdiction not necessary. [~~Subsections (b) through (d) apply even if a transaction~~] ***To the extent subsections (a) and (b) provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this article, that law governs even if the matter or a transaction to which the matter relates*** does not bear any relation to the controllable electronic record's jurisdiction.

(f) Rights of purchasers determined at time of purchase. The rights acquired ***under Section 12-104*** 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.

236:89 Article Title; Transitional Provisions. Amend the Article title preceding RSA 382-A:13 to read as follows:

ARTICLE 13

[~~ADDITIONAL~~] TRANSITION PROVISIONS FOR [~~ARTICLES 9 AND 12~~] ***UNIFORM COMMERCIAL CODE AMENDMENTS***

236:90 New Sections; Transition Provisions. Amend RSA 382-A:13 by inserting after the Article title the following new sections:

382-A:13-101 Title. This article may be cited as Transactional Provisions for Uniform Commercial Code Amendments.

382-A:13-102 Definitions.

(a) Article A Definitions. In this article:

(1) "Adjustment date" means July 1, 2025, or the date that is one year after the effective date of this article, whichever is later.

(2) "Article 12" means Article 12 of the Uniform Commercial Code.

(3) "Article 12 property" means a controllable account, controllable electronic record, or controllable payment intangible.

(b) Definitions in other Articles. The following definitions in other articles of the Uniform Commercial Code apply to this article.

"Controllable account". Section 9-102.

"Controllable electronic record". Section 12-102.

"Controllable payment intangible". Section 9-102.

"Financing statement". Section 9-102.

(c) Article 1 definitions and principles. Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

382-A:13-201 Saving Clause. Except as provided in Part 3, a transaction validly entered into before the effective date of this article and the rights, duties, and interests flowing from the transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by law other than the Uniform Commercial Code or, if applicable, the Uniform Commercial Code, as though this article had not taken effect.

236:91 Transition Provisions. RSA 382-A:13-301 through 382-A:13-306 are repealed and reenacted to read as follows:

382-A:13-301 Saving Clause.

(a) Pre-effective date transaction, lien, or interest. Except as provided in this part, Article 9 as amended by this act 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 provided in subsection (c) and sections 13-302 through 13-306:

(1) a transaction, lien, or interest in property that was validly entered into, created, or transferred before the effective date of this article, and was not governed by the Uniform Commercial Code, but would be subject to Article 9 as amended in this act or Article 12 if it had been entered into, created, or transferred on or after the effective date of this act, including the rights, duties and interests, flowing from the transaction lien, or interest, remains valid on and after the effective date of this act; and

(2) the transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that would apply if this act had not taken effect.

(c) Pre-effective date proceeding. This article does not affect an action case, or proceeding commenced from 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 chapter if, on the effective date of this article the requirements for enforceability and perfection under this chapter are satisfied without further action.

(b) Continuing perfection: enforceability or perfection requirements not satisfied. If a security interest is enforceable and perfected immediately before the effective date of this article but

the requirements for enforceability or perfection under this chapter 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 the adjustment date;

(2) remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under Section 9-203 before the adjustment date; and

(3) remains perfected thereafter only if the requirements for perfection under this chapter are satisfied before the time specified in paragraph (1).

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 is unperfected at that time:

(1) remains an enforceable security interest until the adjustment date;

(2) remains enforceable thereafter if the security interest becomes enforceable under Section 9-203 on the effective date of this article or before the adjustment date; and

(3) becomes perfected:

(A) without further action on the effective date of this article if the requirements for perfection under this chapter are satisfied before or at that time; or

(B) when the requirements for perfection are satisfied if the requirements are satisfied after that time.

382-A:13-304 Effectiveness of Action 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 chapter before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under this article before the adjustment date.

(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 requirements for perfection under this article.

(c) Pre-effective date enforceability action. 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 requirements for enforceability under this article.

382-A:13-305 Priority.

(a) Determination of priority. Subject to subsections (b) and (c), this act determines the priority of conflicting claims to collateral.

(b) Established priorities. Subject to subsection (c), if the priorities of claims to collateral were established before the effective date of this article, Article 9 as in effect before the effective date of this article determines priority.

(c) Determination of certain priorities on adjustment date. On the adjustment date, to the extent the priorities determined by Article 9 as amended by this act modify the priorities established before the effective date of this article, the priorities of claims to Article 12 property established before the effective date of this article shall 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 as amended by this act do not apply.

(b) Established priorities. Subject to subsection (c), when the priority rules of Article 9 as amended by this act do not apply and the 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 as amended by this act do not apply, to the extent the priorities determined by this act modify the priorities established before the effective date of this act, the priorities of claims to Article 12 property established before the effective date of this act cease to apply on the adjustment date.

236:92 Money; Definition. 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 ***and is not in an electronic form.*** [~~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.~~]

236:93 Money; Definition. Amend RSA 382-A:9-102(a)(54A) to read as follows:

(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~~].

236:94 No Requirement to Acknowledge or Confirm; No Duties. Amend RSA 382-A:9-107B(a) to read as follows:

(a) No requirement to acknowledge. A person that has control under Section 9-104[~~,~~] ***or*** 9-105[~~, or 9-105A~~] is not required to acknowledge that it has or will obtain control on behalf of another person.

236:95 Attachment and Enforceability of a Security Interest. Amend RSA 382-A:9-203(b) to read as follows:

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

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(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~~] ***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***; 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.

236:96 Duties and Rights When Secured Party in Possession or Control. 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, 9-107, or 9-107A:

236:97 Additional Duties of Secured Party Having Control of Collateral. Amend RSA 382-A:9-208(b)(6)-(8) to read as follows:

(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; ***and***

(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.

236:98 Law Governing Perfection and Priority of Security Interests. Amend the introductory paragraph of RSA 382-A:9-301(3) to read as follows:

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, or [~~tangible~~] money is located in a jurisdiction, the local law of that jurisdiction governs:

236:99 Perfection of Security Interests. Amend RSA 382-A:9-312(b)(2)-(4) to read as follows:

(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~~].

236:100 Perfection by Possession or Delivery. 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 goods, instruments, negotiable tangible documents, or [~~tangible~~] money, 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.

236:101 Perfection by Control. Amend RSA 382-A:9-314(a) and (b) to read as follows:

382-A:9-314 Perfection by Control.

(a) Perfection by control. A security interest in 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, [~~9-105A,~~] 9-106, 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 documents, [~~electronic money,~~] or letter-of-credit rights is perfected by control under Section 7-106, 9-104, [~~9-105A~~], 9-107, or 9-107A when the secured party obtains control and remains perfected by control only while the secured party retains control.

236:102 Licensees and Buyers of Certain Collateral. Amend RSA 382-A:9-317(d) to read as follows:

(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[~~electronic money, tangible documents,~~] goods, instruments, ***tangible documents,*** 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.

236:103 Transfer of Money; Transfer of Funds from Deposit Account. 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 if the transferee receives [~~delivery~~] ***possession*** 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 if the transferee receives the funds without acting in collusion with the debtor in violating the rights of the secured party.

236:104 Rights and Duties of Secured Party in Possession or Control. 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.

236:105 Definitions Controllable Electronic Records. Amend RSA 382-A:12-102(a)(1) to read as follows:

(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***, or an electronic record that is currently authorized or adopted by a domestic or foreign government and is not a medium of exchange that was 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.***

236:106 Definitions in Article 9. Amend RSA 382-A:12-102(b) to read as follows:

(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.

236:107 Repeal. The following are repealed:

I. RSA 382-A:9-102(a)(31)(A), relative to electronic money.

II. RSA 382-A:9-102(a)(79A), relative to tangible money.

III. RSA 382-A:9-105A, relative to control of electronic money.

236:108 Effective Date. This act shall take effect 60 days after its passage.

Approved: August 08, 2023
Effective Date: October 07, 2023

Amendments

Sen. Innis, Dist 7
May 8, 2023
2023-1692s
08/10

Amendment to HB 584

Amend the bill by replacing section 36 with the following:

36 After-Acquired Property; Future Advances. Amend RSA 382-A:9-204(b) to read as follows:

(b) When after-acquired property clause not effective. Subject to subsection [~~(c)~~] ***(b.1)***, 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.

(b.1) 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 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.

Amend the bill by replacing section 51 with the following:

51 Buyers that Receive Delivery. Amend RSA 382-A:9-317(b) to read as follows:

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer ***other than a secured party,*** of 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.

Amend the bill by replacing section 82 with the following:

82 Definitions. Amend RSA 382-A:12-102(a)(3) to read as follows:

(3) "Transferable record" [~~means~~] ***has the meaning provided for that term in:***

(A) [~~"Transferable record" as defined in~~] ***Section 201(a)(1) of*** 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 Uniform Electronic Transactions Act Section 16(a).

Amend the introductory paragraph RSA 382-A:12-106(b) as inserted by section 86 of the bill by replacing it with the following:

(b) ***Content and*** Effect of notification. Subject to subsection (d), [~~an~~] ***the*** 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:

Amend the bill by replacing section 87 with the following:

87 Governing Law. Amend RSA 382-A: 12-107(b) to read as follows:

(b) Governing law: Section [~~12-106~~] ***12-107. For a controllable electronic record that evidences a controllable account or controllable payment intangible,*** 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.

Amend the bill by replacing section 88 with the following:

88 Applicability; Relations; Rights. Amend RSA 382-A:12-107(d)-(f) to read as follows:

(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 ***sub***-section, "Article 12" means ***Article 12 of*** Uniform Commercial Code ***Amendments (2022)*** [~~Controllable Electronic Records (with Conforming Amendments to Articles 1 and 9), 2022 Official Text~~].

(e) Relation of ***matter or*** transaction to controllable electronic record's jurisdiction not necessary. [~~Subsections (b) through (d) apply even if a transaction~~] ***To the extent subsections (a) and (b) provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this article, that law governs even if the matter or a transaction to which the matter relates*** does not bear any relation to the controllable electronic record's jurisdiction.

(f) Rights of purchasers determined at time of purchase. The rights acquired ***under Section 12-104*** 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.

Amend RSA 382-A:13-102(b) as inserted by section 90 of the bill by replacing it with the following:

(b) Definitions in other Articles. The following definitions in other articles of the Uniform Commercial Code apply to this article.

"Controllable account". Section 9-102.

"Controllable electronic record". Section 12-102.

"Controllable payment intangible". Section 9-102.

"Financing statement". Section 9-102.

Amend RSA 382-A:13-305(c) as inserted by section 91 of the bill by replacing it with the following:

(c) Determination of certain priorities on adjustment date. On the adjustment date, to the extent the priorities determined by Article 9 as amended by this act modify the priorities established before the effective date of this article, the priorities of claims to Article 12 property established before the effective date of this article shall cease to apply.

Amend the bill by inserting after section 91 the following and renumbering the original section 92 to read as 108:

92 Money; Definition. 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 ***and is not in an electronic form.*** [~~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.~~]

93 Money; Definition. Amend RSA 382-A:9-102(a)(54A) to read as follows:

(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~~].

94 No Requirement to Acknowledge or Confirm; No Duties. Amend RSA 382-A:9-107B(a) to read as follows:

(a) No requirement to acknowledge. A person that has control under Section 9-104[~~,~~] ***or*** 9-105[~~, or 9-105A~~] is not required to acknowledge that it has or will obtain control on behalf of another person.

95 Attachment and Enforceability of a Security Interest. Amend RSA 382-A:9-203(b) to read as follows:

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

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(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~~] ***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***; 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.

96 Duties and Rights When Secured Party in Possession or Control. 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, 9-107, or 9-107A:

97 Additional Duties of Secured Party Having Control of Collateral. Amend RSA 382-A:9-208(b)(6)-(8) to read as follows:

(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; ***and***

(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.

98 Law Governing Perfection and Priority of Security Interests. Amend the introductory paragraph of RSA 382-A:9-301(3) to read as follows:

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, or [~~tangible~~] money is located in a jurisdiction, the local law of that jurisdiction governs:

99 Perfection of Security Interests. Amend RSA 382-A:9-312(b)(2)-(4) to read as follows:

(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~~].

100 Perfection by Possession or Delivery. 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 goods, instruments, negotiable tangible documents, or [~~tangible~~] money, 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.

101 Perfection by Control. Amend RSA 382-A:9-314(a) and (b) to read as follows:

382-A:9-314 Perfection by Control.

(a) Perfection by control. A security interest in 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, [~~9-105A,~~] 9-106, 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 documents, [~~electronic money,~~] or letter-of-credit rights is perfected by control under Section 7-106, 9-104, [~~9-105A~~], 9-107, or 9-107A when the secured party obtains control and remains perfected by control only while the secured party retains control.

102 Licensees and Buyers of Certain Collateral. Amend RSA 382-A:9-317(d) to read as follows:

(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[~~electronic money, tangible documents,~~] goods, instruments, ***tangible documents,*** 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.

103 Transfer of Money; Transfer of Funds from Deposit Account. 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 if the transferee receives [~~delivery~~] ***possession*** 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 if the transferee receives the funds without acting in collusion with the debtor in violating the rights of the secured party.

104 Rights and Duties of Secured Party in Possession or Control. 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.

105 Definitions Controllable Electronic Records. Amend RSA 382-A:12-102(a)(1) to read as follows:

(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***; or an electronic record that is currently authorized or adopted by a domestic or foreign government and is not a medium of exchange that was 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.***

106 Definitions in Article 9. Amend RSA 382-A:12-102(b) to read as follows:

(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.

107 Repeal. The following are repealed:

I. RSA 382-A:9-102(a)(31)(A), relative to electronic money.

II. RSA 382-A:9-102(a)(79A), relative to tangible money.

III. RSA 382-A:9-105A, relative to control of electronic money.

Commerce
May 16, 2023
2023-1882s
08/10

Amendment to HB 584

Amend the bill by replacing section 36 with the following:

36 After-Acquired Property; Future Advances. Amend RSA 382-A:9-204(b) to read as follows:

(b) When after-acquired property clause not effective. Subject to subsection [~~(c)~~] ***(b.1)***, 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.

(b.1) 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 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.

Amend the bill by replacing section 51 with the following:

51 Buyers that Receive Delivery. Amend RSA 382-A:9-317(b) to read as follows:

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer ***other than a secured party,*** of 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.

Amend the bill by replacing section 82 with the following:

82 Definitions. Amend RSA 382-A:12-102(a)(3) to read as follows:

(3) "Transferable record" [~~means~~] ***has the meaning provided for that term in:***

(A) [~~"Transferable record" as defined in~~] ***Section 201(a)(1) of*** 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 Uniform Electronic Transactions Act Section 16(a).

Amend the introductory paragraph RSA 382-A:12-106(b) as inserted by section 86 of the bill by replacing it with the following:

(b) ***Content and*** Effect of notification. Subject to subsection (d), [~~an~~] ***the*** 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:

Amend the bill by replacing section 87 with the following:

87 Governing Law. Amend RSA 382-A: 12-107(b) to read as follows:

(b) Governing law: Section [~~12-106~~] ***12-107. For a controllable electronic record that evidences a controllable account or controllable payment intangible,*** 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.

Amend the bill by replacing section 88 with the following:

88 Applicability; Relations; Rights. Amend RSA 382-A:12-107(d)-(f) to read as follows:

(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 s***ub***-section, "Article 12" means ***Article 12 of*** Uniform Commercial Code ***Amendments (2022)*** [~~Controllable Electronic Records (with Conforming Amendments to Articles 1 and 9), 2022 Official Text~~].

(e) Relation of ***matter or*** transaction to controllable electronic record's jurisdiction not necessary. [~~Subsections (b) through (d) apply even if a transaction~~] ***To the extent subsections (a) and (b) provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this article, that law governs even if the matter or a transaction to which the matter relates*** does not bear any relation to the controllable electronic record's jurisdiction.

(f) Rights of purchasers determined at time of purchase. The rights acquired ***under Section 12-104*** 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.

Amend RSA 382-A:13-102(b) as inserted by section 90 of the bill by replacing it with the following:

(b) Definitions in other Articles. The following definitions in other articles of the Uniform Commercial Code apply to this article.

"Controllable account". Section 9-102.

"Controllable electronic record". Section 12-102.

"Controllable payment intangible". Section 9-102.

"Financing statement". Section 9-102.

Amend RSA 382-A:13-305(c) as inserted by section 91 of the bill by replacing it with the following:

(c) Determination of certain priorities on adjustment date. On the adjustment date, to the extent the priorities determined by Article 9 as amended by this act modify the priorities established before the effective date of this article, the priorities of claims to Article 12 property established before the effective date of this article shall cease to apply.

Amend the bill by inserting after section 91 the following and renumbering the original section 92 to read as 108:

92 Money; Definition. 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 ***and is not in an electronic form.*** [~~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.~~]

93 Money; Definition. Amend RSA 382-A:9-102(a)(54A) to read as follows:

(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~~].

94 No Requirement to Acknowledge or Confirm; No Duties. Amend RSA 382-A:9-107B(a) to read as follows:

(a) No requirement to acknowledge. A person that has control under Section 9-104[~~,~~] ***or*** 9-105[~~, or 9-105A~~] is not required to acknowledge that it has or will obtain control on behalf of another person.

95 Attachment and Enforceability of a Security Interest. Amend RSA 382-A:9-203(b) to read as follows:

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

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(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~~] ***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***; 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.

96 Duties and Rights When Secured Party in Possession or Control. 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, 9-107, or 9-107A:

97 Additional Duties of Secured Party Having Control of Collateral. Amend RSA 382-A:9-208(b)(6)-(8) to read as follows:

(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; ***and***

(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.

98 Law Governing Perfection and Priority of Security Interests. Amend the introductory paragraph of RSA 382-A:9-301(3) to read as follows:

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, or [~~tangible~~] money is located in a jurisdiction, the local law of that jurisdiction governs:

99 Perfection of Security Interests. Amend RSA 382-A:9-312(b)(2)-(4) to read as follows:

(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~~].

100 Perfection by Possession or Delivery. 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 goods, instruments, negotiable tangible documents, or [~~tangible~~] money, 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.

101 Perfection by Control. Amend RSA 382-A:9-314(a) and (b) to read as follows:

382-A:9-314 Perfection by Control.

(a) Perfection by control. A security interest in 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, [~~9-105A,~~] 9-106, 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 documents, [~~electronic money,~~] or letter-of-credit rights is perfected by control under Section 7-106, 9-104, [~~9-105A~~], 9-107, or 9-107A when the secured party obtains control and remains perfected by control only while the secured party retains control.

102 Licensees and Buyers of Certain Collateral. Amend RSA 382-A:9-317(d) to read as follows:

(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[~~electronic money, tangible documents,~~] goods, instruments, ***tangible documents,*** 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.

103 Transfer of Money; Transfer of Funds from Deposit Account. 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 if the transferee receives [~~delivery~~] ***possession*** 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 if the transferee receives the funds without acting in collusion with the debtor in violating the rights of the secured party.

104 Rights and Duties of Secured Party in Possession or Control. 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.

105 Definitions Controllable Electronic Records. Amend RSA 382-A:12-102(a)(1) to read as follows:

(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***, or an electronic record that is currently authorized or adopted by a domestic or foreign government and is not a medium of exchange that was 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.***

106 Definitions in Article 9. Amend RSA 382-A:12-102(b) to read as follows:

(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.

107 Repeal. The following are repealed:

I. RSA 382-A:9-102(a)(31)(A), relative to electronic money.

II. RSA 382-A:9-102(a)(79A), relative to tangible money.

III. RSA 382-A:9-105A, relative to control of electronic money.

Committee Minutes

SENATE CALENDAR NOTICE
Commerce

Sen Bill Gannon, Chair
Sen Denise Ricciardi, Vice Chair
Sen Daniel Innis, Member
Sen Donna Soucy, Member
Sen Shannon Chandley, Member

Date: April 4, 2023

HEARINGS

Tuesday	04/11/2023
(Day)	(Date)

Commerce	State House 100	9:00 a.m.
(Name of Committee)	(Place)	(Time)

9:00 a.m.	**HB 584**	relative to the Uniform Commercial Code's article on controllable electronic records.
9:10 a.m.	**HB 210**	relative to fire insurance contracts.
9:20 a.m.	**HB 479**	relative to administrative hearings, automation of electronic notices to insurance licensees, and insurance producer activities.
9:30 a.m.	**HB 249**	establishing regulatory standards for the pet insurance industry and allowing restaurant owners to keep their dog on the premises.
9:40 a.m.	**HB 150**	relative to the certification of a collective bargaining unit.
9:50 a.m.	**HB 42-FN**	relative to the operation of certain homeowners' associations.
10:00 a.m.	**HB 261**	authorizing residential tenants to terminate their lease in instances of domestic violence or following a disabling illness or accident.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 584

Rep. Ammon	Rep. Potucek	Rep. Edwards	Rep. Osborne
Rep. Bernardy	Rep. Hunt	Sen. Watters	

HB 210

Rep. Infantine

HB 479

Rep. Infantine	Rep. Ammon	Sen. Gannon	Sen. Perkins Kwoka

HB 249

Rep. Edwards	Rep. Burroughs	Sen. Gannon	

HB 150

Rep. Bordes	Rep. Read	Rep. Coker	Rep. Wolf
Rep. Schultz	Rep. Trottier		

HB 42-FN

Rep. Stavis	Rep. Mangipudi	Rep. Grassie	Rep. Gallager

HB 261

Rep. Read	Rep. Levesque	Rep. Newell	Rep. Seibert
Rep. Staub	Rep. Veilleux	Rep. Kenney	Sen. Perkins Kwoka
Sen. Altschiller			

Aaron Jones 271-2609

Bill M. Gannon
Chairman

Senate Commerce Committee

Aaron Jones 271-2609

HB 584, relative to the Uniform Commercial Code's article on controllable electronic records.

Hearing Date: April 11, 2023

Time Opened: 9:03 a.m. **Time Closed:** 9:16 a.m.

Members of the Committee Present: Senators Ricciardi and Chandley

Members of the Committee Absent : Senators Gannon, Innis and Soucy

Bill Analysis: This bill makes changes to the Uniform Commercial Code relative to controllable electronic records.

Sponsors:

Rep. Ammon	Rep. Potucek	Rep. Edwards
Rep. Osborne	Rep. Bernardy	Rep. Hunt
Sen. Watters		

Who supports the bill: Representative Keith Ammon, Senator David Watters, Representative John Potucek, Erin Hennessey (NH Secretary of State's Office), Tom Connolly (NH Secretary of State's Office), Charles Mooney (Uniform Law Commission)

Who opposes the bill: No one

Who is neutral on the bill: No one

Summary of testimony presented in support:

Representative Keith Ammon

- Representative Ammon said this was a housekeeping bill, which would update the amendments made to the 2022 Uniform Commercial Code (UCC) in last year's HB 1503-FN.
- These amendments were developed over a period of several years by the Uniform Law Commission to promote stability and predictability in transactions dealing with digital assets.
- Representative Ammon said digital assets are a growing area.
- In 2022, Governor Sununu signed an executive order, which created a commission to study cryptocurrency and digital assets. In their final report,

Recommendation 5.3 outlined the need to keep up with the changes made to Article 12 of the UCC.

- Article 12 of the UCC deals with controllable electronic records (CERs) that cover digital assets, such as Bitcoin and non-fungible tokens (NFTs).
- Representative Ammon said Article 12 provided a foundation for an emerging economy, which allows an individual to create and store wealth in digital assets. These assets can be completely digital, or they can represent something in the physical world, such as a fiat currency.
- Rules in Article 12 would provide uniformity between states when dealing with digital assets.
- Representative Ammon said this bill aimed to facilitate the negotiability of cryptocurrency as well as address industry challenges, while also respecting the decentralization of cryptocurrencies.
- Representative Ammon said the adoption of the UCC by states would provide clarity and uniformity in the digital asset market, benefit the industry, and pave the way for a more secure and reliable market for digital assets.

Charles Mooney, Uniform Law Commission

- Mr. Mooney said he was one of the principal drafters of the amendments to the UCC.
- Since the 1960s, the UCC has been the commercial law of the land. It has governed transactions of sales and leases of goods, negotiable instruments, funds transfers, investment securities, and secured transactions of personal property.
- The Legislature previously enacted an earlier draft of the 2022 amendments, and this bill would update the statute with changes that have been made.
- In 2022, the Uniform Law Commission and the American Law Institute amended almost every article of the UCC.
- Article 12 is relative to CERs and digital assets which are analogous to the possession of tangible goods.
- Article 12 would include cryptocurrencies, or assets that are linked to other assets like precious metals or NFTs.
- Importantly, Mr. Mooney said Article 12 would provide uniform property law across CERs.
- Currently, the International Institute for the Unification of Private Law has begun the process of adopting the principles contained within Article 12.
- While assets are based on blockchain technology and public-private key cryptography, Mr. Mooney said Article 12 has been developed to include future technology.
- Mr. Mooney said concerns have arisen that Article 12 would promote, facilitate, or encourage the introduction of digital currency. If the Committee wanted to remove the provisions dealing with "electronic money," Mr. Mooney provided the Committee with potential language.

- If digital currency were adopted, Mr. Mooney believed the federal government would adopt their own rules.

Summary of testimony presented in opposition: None

Neutral Information Presented: None

AJ
Date Hearing Report completed: April 12, 2023

Speakers

PLEASE PRINT NEATLY

Senate Commerce Committee

SIGN-IN SHEET

Date: 04/11/2023 **Time:** 9:00 a.m.

HB 584 **An ACT** relative to the Uniform Commercial Code's article on controllable electronic records.
PRIME: Rep. Keith Ammon

NAME (PLEASE PRINT NEATLY)	REPRESENTING	SUBMITTED TESTIMONY					
REP. JOHN POTUCEK	ROCK 13	Yes ☐	Support ☒	Neutral ☐	Oppose ☐	Speaking?	Yes ☐
Secretary of State Erin Hennessey, Tom Connolly	SOS	Yes ☐	Support ☒	Neutral ☐	Oppose ☐	Speaking?	Yes ☐
Charles Mooney, Unif Law Commn	Unif Law Commn	Yes ☐	Support ☒	Neutral ☐	Oppose ☐	Speaking?	Yes ☒
Keith Ammon	Hills 42	Yes ☐	Support ☒	Neutral ☐	Oppose ☐	Speaking?	Yes ☒
		Yes ☐	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐
		Yes ☐	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐
		Yes ☐	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐
		Yes ☐	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐
		Yes ☐	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐
		Yes ☐	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐
		Yes ☐	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐

Senate Remote Testify

Commerce Committee Testify List for Bill HB584 on 2023-04-11

Support: 1 Oppose: 0

Name	Title	Representing	Position
Watters, David	An Elected Official	Myself	Support

Testimony

Senator Ricciardi, Members of the Commerce Committee:

[Senator Innis, Senator Chandley, Senator Soucy]

Thank you for this opportunity to testify today about the 2022 Amendments to the Uniform Commercial Code—the UCC. By way of introduction, I retired from the University of Pennsylvania Law School in 2021 after 36 years on the faculty and before that I was in private law practice for 14 years. I was also honored to be the Reporter for the 2022 UCC Amendments. Last fall I relocated to New Hampshire and I am how happily one of Senator Chandley's constituents in my new home in Amherst.

Although it is state law, the UCC has effectively been the commercial "law of the land" in the US since it became the law in all US jurisdictions during the 1960s. By "commercial" law I mean private transactional law, including many consumer transactions. The UCC governs transactions as varied as sales and leases of goods, negotiable instruments, bank collections and deposits, funds transfers, letters of credit, investment securities, and secured transactions in which personal property (as opposed to real property) is collateral. Whether you buy goods on Amazon, secure a personal loan with an automobile, or have a securities account, the same law—the UCC—applies throughout the country. This uniformity, achieved by enactment in all US jurisdictions without material deviations—is an essential element of the effectiveness and benefits of the UCC. It is this need for

uniformity and the significance of the issues addressed by the 2022 Amendments that makes it so important for New Hampshire as well as the other states to adopt the Amendments.

Admirably, New Hampshire has enacted a draft of the 2022 Amendments and the current bill would update the New Hampshire statute to include the final version of the official UCC text.

The 2022 Amendments bring the UCC fully into the 21st Century. In 2019 the Uniform Law Commission and the other UCC sponsor, the American Law Institute, charged a new committee to consider any needed modifications to the UCC as a result of emerging technologies. After more than 3 years of work, involving 18 2- or 3-day meetings of the full committee, and many meetings of smaller working groups and interested constituencies, the UCC's sponsors approved the final version of the 2022 Amendments.

The 2022 Amendments revise nearly every Article of the UCC. The "crown jewel" of the Amendments, however, is a new Article 12 on "controllable electronic records" or CERs. A CER is a type of digital asset—an electronic record—that can be subjected to "control." You can think of "control" as the equivalent of "possession" of an electronic intangible. CERs include virtual or "crypto" currencies like bitcoin, but also digital assets that may be linked to other assets, such as precious metals or certain rights or privileges to access certain

artwork such as so-called NFTs or "non-fungible tokens." More importantly, the Article 12 regime provides a uniform system of property law for CERs that may have many important uses in the financial and securities markets.

I should add that Article 12 is already having an impact internationally even before it has become law. The substance of Article 12 has been incorporated into the draft Principles on Digital Assets being prepared by the International Institute for the Unification of Private Law in Rome.

Currently CERs typically are based on a distributed ledger involving blockchain technology and public-private key cryptography. But Article 12 is drafted functionally. It will apply to CERs based on any technology if the definition of CER is satisfied. Article 12 provides building-block rules of property law to support much needed future regulations dealing with CERs. Along with Article 12, the Amendments include modernizing changes to other UCC articles and in particular new provisions that accommodate the use of CERs as collateral for loans and other obligations.

Finally, I understand that the Committee may consider some unofficial or informal amendments to the 2022 Amendments that would eliminate the very few provisions that deal with electronic money. These unofficial amendments were developed by a few of us involved with the enactment process around the country to respond to concerns expressed in some circles that the 2022 Amendments would

somehow encourage or facilitate the adoption in the US of central bank digital currency. Although I strongly disagree with that premise, I can assure you that if adopted these unofficial amendments, of which I was the principal drafter, will not in any way disrupt the operation of the 2022 amendments or diminish their principal benefits.

I hope this brief introduction to the 2022 UCC Amendments is helpful. Again, thank you for this opportunity and I am happy to answer any questions.

Penn Law UNIVERSITY of PENNSYLVANIA
UNIVERSITY of PENNSYLVANIA CAREY LAW SCHOOL

Charles W. Mooney, Jr.
Charles A. Heimbold, Jr. Professor of Law Emeritus

3501 Sansom Street
Philadelphia, PA 19104

Mobile 610.952.0675
cmooney@law.upenn.edu

Penn Law UNIVERSITY of PENNSYLVANIA
UNIVERSITY of PENNSYLVANIA CAREY LAW SCHOOL

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Term Sheet
Modifications to UCC 2022 Amendments

1. Delete in Article 1 the new sentence in the 1-201(b)(24) definition of "money." Add an exclusion from the definition for any medium of exchange in an electronic form.

2. Delete in Article 9 (i) the definitions of "electronic money" and "tangible money" in 9-102 (ii) 9-105A on control of electronic money, and (iii) new language in 9-332 providing a take-free rule for electronic money.

3. Bitcoin will continue to be included in the definition of "controllable electronic record" (CER) as it is under the official text of the 2022 Amendments; it will not be included in the definition of money because it is in an electronic form. A CBDC originally created by a government and not a "pre-existing" crypto currency such as bitcoin would be excluded from the 12-102 definition of a CER.

4. The exclusion of electronic money from the definition of CER would be eliminated as the term "electronic money" will be deleted as no longer necessary.

5. Delete new 9-312(b)(4) on control of electronic money as an exclusive means of perfection for electronic money. Retain the current law 9-312(b)(3) providing that perfection for money is only by possession (reference to "tangible" money will be deleted as no longer necessary).

6. Delete in 9-102(a)(54A) (defining "money" for Article 9) clause (ii) referring to money in an electronic form but retain clause (i) excluding a deposit account from Article 9 money.

7. Eliminate all other references to "electronic money" and references to "tangible money."

8. This approach:

a. Excludes from the definition of "money" any medium of exchange in an electronic form. As a result, CBDC of any type and issued by any government would not be covered by the rules applicable to money.

b. Because (e.g.) bitcoin would be a CER, all of the CER rules would apply to bitcoin, including perfection of security interests by filing or control and protection of qualifying purchasers of CERs against competing property interests.

* * *

Revised UCC Text
Track changes from Official Text of 2022 Amendments

Section 1-201

* * *

(24) "Money" means a medium of exchange that is currently authorized or adopted by a domestic or foreign government and is not in an electronic form. The term includes a monetary unit of account established by an intergovernmental organization, or pursuant to an 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 the government.~~

* * **

Section 9-102. Definitions and Index of Definitions.

(a) **[Article 9 definitions.]** In this article:

* * *

~~(31A) "Electronic money" means money in an electronic form.~~

* * *

(54A) "Money" has the meaning in Section 1-201(b)(24), but does not include ~~(i)~~ a deposit account ~~or (ii) money in an electronic form that cannot be subjected to control under Section 9-105A.~~

~~(79A) "Tangible money" means money in a tangible form.~~

* * *

~~**Section 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) 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) [Meaning of exclusive.] Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) 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 power is shared with another person.~~

~~(c) [When power not shared with another person.] A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:~~

~~(1) the person can exercise the power only if the power also is exercised by the other person; and~~

~~(2) the other person:~~

~~(A) can exercise the power without exercise of the power by the person; or~~

~~(B) is the transferor to the person of an interest in the electronic money.~~

~~(d) [Presumption of exclusivity of certain powers.] If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.~~

~~(e) [Control through another person.] A person has control of electronic money if another person, other than the transferor to the person 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.~~

* * *

Section 9-107B. No Requirement to Acknowledge or Confirm; No Duties.

(a) [**No requirement to acknowledge.**] A person that has control under Section 9-104~~,~~ or 9-105~~, or 9-105A~~ is not required to acknowledge that it has control on behalf of another person.

* * *

Section 9-203. Attachment and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requisites.

* * *

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

* * *

(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;

* * *

(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.

* * *

Section 9-207. Rights and Duties of Secured Party Having Possession or Control of Collateral.

* * *

(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:

* * *

Section 9-208. Additional Duties of Secured Party Having Control of Collateral.

* * *

(6) a secured party having control under Section 7-106 of an authoritative electronic copy of an electronic document shall transfer control of the electronic copy to the debtor or a person designated by the debtor; and

~~(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, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

* * *

Section 9-301. Law Governing Perfection and Priority of Security Interests.

* * *

(3) Except as otherwise provided in paragraph (4), while negotiable tangible documents, goods, instruments, or ~~tangible~~ money~~, or tangible chattel paper~~ is located in a jurisdiction, the

local law of that jurisdiction governs:

* * *

Section 9-312. Perfection of Security Interests in Chattel Paper, Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles, Deposit Accounts, Negotiable 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.

* * *

(b) **[Control or possession of certain collateral.]** Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

* * *

(2) 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~~.

* * *

Section 9-313. When Possession by or Delivery to Secured Party Perfects Security Interest Without Filing.

(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

* * *

Section 9-314. Perfection by Control.

(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 ~~deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents,~~ controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, 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~~ not earlier than the time the secured party obtains control and remains perfected by control only while the secured party retains control.

* * *

Section 9-317. Interests That Take Priority Over or Take Free of Security Interest or Agricultural Lien.

* * *

(d) **[Licensees and buyers of certain collateral.]** ~~A~~ Subject to subsections (f) through (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, tangible documents, 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.

* * *

Section 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 possession of the money without acting in collusion with the debtor in violating the rights of the secured party.

* * *

~~(c) [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.~~

* * *

Section 9-601. Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes.

* * *

(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.

* * *

Section 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, or an electronic record that is currently authorized or adopted by a domestic or foreign government and is not a medium of exchange that was 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.

* * *

(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.

* * *

Section A-102. Definitions.

* * *

(b) **[Definitions in other articles.]** The following definitions in other articles of [the Uniform Commercial Code] apply to this article.

"Controllable account". Section 9-102.

"Controllable electronic record". Section 12-102.

"Controllable payment intangible". Section 9-102.

~~"Electronic money". Section 9-102.~~

"Financing statement". Section 9-102.

* * *

Section A-305. Priority.

* * *

(c) **[Determination of certain priorities on adjustment date.]** On the adjustment date, to the extent the priorities determined by Article 9 as amended by this [act] modify the priorities established before [the effective date of this [act]], the priorities of claims to Article 12 property ~~and electronic money~~ established before [the effective date of this [act]] cease to apply.

BARRON'S

ECONOMY & POLICY

Crypto's Future Is at Stake in a Dispute Over Commercial Law's Definition of Money

COMMENTARY By Carla L. Reyes and Andrea Tosato April 7, 2023 4:00 am ET

Listen to article
7 minutes



Florida Gov. Ron DeSantis recently proposed legislation to prohibit the use of a central bank digital currency in his state.
Joeney Orr/Getty Images

About the authors: ***Carla L. Reyes*** *is an assistant professor of law at SMU Dedman School of Law. Prior to teaching, Reyes' law practice focused on blockchain and cryptocurrency at Perkins Coie LLP.* ***Andrea Tosato*** *is an associate professor in commercial law at the School of Law of the University of Nottingham and a visiting associate professor at the University of Pennsylvania Carey Law School.*

A quiet corner of commercial law has been thrust into the political spotlight. Florida Gov. Ron DeSantis and South Dakota Gov. Kristi Noem have recently intervened in routine updates to the Uniform Commercial Code, expressing concerns over federal overreach, perceived threats to individual economic liberties, and the potential emergence of a U.S. central bank digital currency. This development is worrisome. The UCC, while unfamiliar to many Americans, serves a vital function within our economic framework.

The UCC has served as the backbone of U.S. commerce since the 1950s. Adopted by all 50 states and the District of Columbia, the UCC provides buyers, sellers, lenders, and borrowers with predictable and efficient rules for their transactions and ensures a harmonized legal framework for interstate commerce. For decades, updates to the UCC were uncontroversial. States adopted revisions proposed by the Uniform Law Commission and the American Law Institute without much fanfare. But now, spurred by various political interest groups, state bills to adopt the most recent updates to the UCC have encountered vocal opposition.

These amendments are the result of a four-year revision project. They seek to modernize the UCC, to account for the impact of new technologies on commercial transactions over the past decade, including digital assets, cryptocurrencies, and NFTs.

This Document did not include Page 2

benefits of a U.S. CBDC. However, this is demonstrably false. Discussions of the proposed amendments' sections on "money" and "electronic money" began as early as 2021. Materials were available on the Uniform Law Commission's website and open for public comment.

Critics raise valid concerns about CBDCs. Issues such as unwarranted surveillance of financial transactions, diminished privacy, exposure to cyberattacks and technical failures, destabilization of regional banking, and unanticipated complications for conventional monetary policy transmission warrant thorough examination. However, connecting these apprehensions to the UCC is misguided and reveals a lack of familiarity with commercial law. The proposed amendments do not take a stance on creating a national digital currency, nor could they, as the Constitution grants that power to Congress, not the states.

Bills to adopt the UCC amendments have been introduced in 24 states, with more expected to follow suit. Legislators who choose to adopt these new rules will provide legal certainty for market participants dealing with digital assets, including cryptocurrencies, and establish the necessary framework for their effective use in commercial transactions. Conversely, states that refuse to adopt these amendments risk hindering the utilization of digital assets within their borders and obstructing interstate commerce flowing towards their state.

As the world of commerce evolves, it is vital that our laws keep pace with technological advancements. The proposed UCC amendments represent a crucial step in securing the future of digital assets and should not be delayed or derailed by misinformed opposition.

Guest commentaries like this one are written by authors outside the Barron's and MarketWatch newsroom. They reflect the perspective and opinions of the authors. Submit commentary proposals and other feedback to ideas@barrons.com.

Voting Sheets

Senate Commerce Committee
EXECUTIVE SESSION RECORD
2023-2024 Session

Bill # HB 584

Hearing date: 4/11/23

Executive Session date: 5/16/23

Motion of: Amendment (1697s) **Vote:** 5-0

Committee Member	Made by	Second	Yes	No
Sen. Gannon, Chair	☐	☑	☑	☐
Sen. Ricciardi, V-Chair	☐	☐	☑	☐
Sen. Avard	☑	☐	☑	☐
Sen. Soucy	☐	☐	☑	☐
Sen. Chandley	☐	☐	☑	☐

Motion of: OTP-A **Vote:** 5-0

Committee Member	Made by	Second	Yes	No
Sen. Gannon, Chair	☐	☐	☑	☐
Sen. Ricciardi, V-Chair	☐	☑	☑	☐
Sen. Avard	☑	☐	☑	☐
Sen. Soucy	☐	☐	☑	☐
Sen. Chandley	☐	☐	☑	☐

Motion of: Consent **Vote:** 5-0

Committee Member	Made by	Second	Yes	No
Sen. Gannon, Chair	☐	☐	☑	☐
Sen. Ricciardi, V-Chair	☐	☑	☑	☐
Sen. Avard	☑	☐	☑	☐
Sen. Soucy	☐	☐	☑	☐
Sen. Chandley	☐	☐	☑	☐

Reported out by: Sen. Avard

Notes:

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Tuesday, May 16, 2023

THE COMMITTEE ON Commerce

to which was referred **HB 584**

AN ACT relative to the Uniform Commercial Code's article on controllable electronic records.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 1882s

Senator Kevin Avard
For the Committee

This bill would update the Uniform Commercial Code statute related to controllable electronic records. These updates were recommended by the Governor's Commission on Cryptocurrencies and Digital Assets to promote stability and predictability in transactions dealing with digital assets. To address concerns raised about the potential establishment of a central bank digital currency (CBDC), the Committee Amendment would make definitional changes, remove references to electronic money, and reduce a CBDC to a least favored status.

Aaron Jones 271-2609

FOR THE CONSENT CALENDAR

COMMERCE

HB 584, relative to the Uniform Commercial Code's article on controllable electronic records.
Ought to Pass with Amendment, Vote 5-0.
Senator Kevin Avard for the committee.

This bill would update the Uniform Commercial Code statute related to controllable electronic records. These updates were recommended by the Governor's Commission on Cryptocurrencies and Digital Assets to promote stability and predictability in transactions dealing with digital assets. To address concerns raised about the potential establishment of a central bank digital currency (CBDC), the Committee Amendment would make definitional changes, remove references to electronic money, and reduce a CBDC to a least favored status.

General Court of New Hampshire - Bill Status System

Docket of HB584

Docket Abbreviations

Bill Title: relative to the Uniform Commercial Code's article on controllable electronic records.

Official Docket of **HB584.**:

Date	Body	Description
1/11/2023	H	**Introduced** (in recess of) 01/05/2023 and referred to Commerce and Consumer Affairs **HJ 3** P. 21
1/25/2023	H	Public Hearing: 02/01/2023 02:45 pm LOB 302-304
2/23/2023	H	Subcommittee Work Session: 03/07/2023 10:00 am LOB210-211
2/23/2023	H	Executive Session: 03/08/2023 01:15 pm LOB 302-304
3/15/2023	H	Majority Committee Report: Ought to Pass with Amendment **#2023-0993h** 03/15/2023 **(Vote 19-1; RC) HC 16** P. 15
3/15/2023	H	Minority Committee Report: Inexpedient to Legislate
3/22/2023	H	Amendment **#2023-0993h**: AA VV 03/22/2023 **HJ 10** P. 41
3/22/2023	H	**Ought to Pass with Amendment** 2023-0993h: MA VV 03/22/2023 **HJ 10** P. 41
3/24/2023	S	Introduced 03/23/2023 and Referred to Commerce; **SJ 12**
4/4/2023	S	**Hearing:** 04/11/2023, Room 100, SH, 09:00 am; **SC 17**
5/16/2023	S	Committee Report: Ought to Pass with Amendment **#2023-1882s**, 05/18/2023; Vote 5-0; CC; **SC 22A**
5/18/2023	S	Committee Amendment **#2023-1882s**, AA, VV; 05/18/2023; **SJ 15**
5/18/2023	S	**Ought to Pass with Amendment** 2023-1882s, MA, VV; OT3rdg; 05/18/2023; **SJ 15**
6/15/2023	H	House Concurs with Senate Amendment 2023-1882s (Rep. Hunt): MA VV 06/15/2023 **HJ 16** P. 1
7/17/2023	S	Enrolled Bill Amendment **#2023-2246e** Adopted, VV, (In recess of 06/29/2023); **SJ 20**
7/18/2023	H	Enrolled Bill Amendment **#2023-2246e**: AA VV (in recess of) 06/29/2023 **HJ 17** P. 18
7/27/2023	S	Enrolled Adopted, VV, (In recess 06/29/2023); **SJ 20**
7/28/2023	H	Enrolled (in recess of) 06/29/2023 **HJ 17** P. 18
8/10/2023	H	Signed by Governor Sununu 08/08/2023; Chapter 236; 10/07/2023 **HJ 17**

Other Referrals

July 12, 2023
2023-2246-EBA
07/10

Enrolled Bill Amendment to HB 584

The Committee on Enrolled Bills to which was referred HB 584

AN ACT relative to the Uniform Commercial Code's article on controllable electronic records.

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 584

This enrolled bill amendment makes technical corrections to the bill.

Enrolled Bill Amendment to HB 584

Amend the bill by replacing RSA 382-A:9-210(b)(2) as amended by section 40 of the bill with the following:

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by [~~authenticating~~] ***signing*** and sending to the debtor an approval or correction.

Amend the bill by replacing RSA 382-A:13-301(b) as inserted by section 91 of the bill with the following:

(b) Continuing validity. Except as provided in subsection (c) and sections 13-302 through 13-306:

Senate Inventory Checklist for Archives

Bill Number: HB 584 **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
N/A 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 # 1697S ___ - amendment # _____
X - amendment # 1882S ___ - 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):
X Enrolled Bill Amendment(s) H246 EGA
___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

X as amended by the senate ___ as amended by the house
X final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Aaron Jones 8/11/23
Committee Aide **Date**

Senate Clerk's Office AK