



## **WHY YOUR STATE SHOULD ADOPT THE 2022 AMENDMENTS TO THE UNIFORM COMMERCIAL CODE**

The Uniform Commercial Code (“UCC”) provides commercial law rules for broad categories of transactions: the sale or lease of goods, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, documents of title, investment property, and secured transactions in personal property. Its adoption in every state allowed the development of strong interstate markets. Today the UCC is the backbone of United States commerce, giving all Americans the legal structure necessary to have confidence when transacting business with strangers.

Developed in the 1940’s and 1950’s in a largely goods-based economy, the UCC has been revised by state legislatures from time to time over the years at the recommendation of the UCC’s sponsoring organizations, the American Law Institute and the Uniform Law Commission, to reflect the economy’s shift toward services, software, and information-based transactions. The latest updates are the 2022 amendments, which accommodate emerged and emerging technologies such as distributed ledger technology (a type of which is known as “blockchain”), and artificial intelligence. The amendments bring the UCC into the digital age by providing commercial law rules for a new category of transactions: the transfer and leveraging of virtual currencies and certain other digital assets. A state should adopt the amendments to facilitate modern commercial transactions involving these technologies and these assets, thus avoiding the obstacles and lack of clarity under the current law that inhibit transactions or increase their costs.

- ***The amendments promote commercial activity involving new types of property.*** New UCC Article 12 deals with a category of digital assets referred to as “controllable electronic records” (“CERs”). Examples of CERs are virtual currencies, non-fungible tokens, and electronic promises to pay. The amendments provide rules to determine the rights of a person who receives a CER and for the perfection and priority of a security interest in a CER. The updated law will stimulate economic activity by providing legal certainty to these increasingly common transactions.
- ***The amendments will reduce transaction costs and the cost of credit through uniformity.*** The UCC has been successful because of its adoption by states on a substantially uniform basis, creating greater certainty and thereby reducing the cost of credit as well as transaction costs. The need for uniformity is especially important to minimize forum shopping for disputes concerning digital assets, which by their nature cross state borders.
- ***The amendments are narrowly focused to avoid stifling innovation.*** The UCC amendments only address the rules that govern consensual transactions. They do not regulate the use of CERs, whether as a security or a commodity, address the taxation of CERs, alter the law governing money transmitters, or revise anti-money laundering rules. These matters are left to law outside of the UCC.

- ***The amendments preserve uniformity of state commercial law.*** Interstate commercial markets developed in the United States because the UCC provided standard default rules to govern transactions between parties in different jurisdictions. Adopting the latest amendments will preserve the uniformity that benefits businesses and consumers in every state.
- ***The amendments clarify rules for money in electronic form.*** Some governments and central banks are experimenting with digital currency. The amendments create a new, separate asset category called “electronic money” and contain clearer rules for transactions involving electronic money than exist under current law, which generally contemplates that money exists only in tangible form, such as bills or coins.
- ***The amendments update UCC terminology for the digital age.*** The language of many current UCC rules assumes parties still use paper documents. The amendments ensure that the law applies equally to electronic transactions.
- ***The amendments apply to future technologies.*** The new amendments facilitate transactions using distributed ledger technology but are drafted using technologically neutral language, i.e., they are not wedded to any particular technology. Consequently, the updated UCC will accommodate not only technologies known today but also technologies yet to be invented.
- ***The amendments include a grace period to preserve pre-established priorities.*** The amendments contain transition provisions designed to protect the expectations of parties to pre-effective-date transactions. For example, a secured lender who has a priority security interest in collateral under the prior law will retain its priority through a transition period, giving parties to preexisting transactions plenty of time to revise their agreements to comply with the updated law.
- ***The amendments are thoroughly vetted.*** The UCC amendments reflect the efforts of the American Law Institute and the Uniform Law Commission in conjunction with approximately 350 knowledgeable advisors and stakeholder observers who met dozens of times over a three-year period to reach consensus on updates to this crucial area of state law.

For further information about enacting the 2002 Amendments to the Uniform Commercial Code, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or [borzeske@uniformlaws.org](mailto:borzeske@uniformlaws.org).