

By: Parker, Anchia, Stephenson, Capriglione,
Perez, et al.

H.B. No. 4474

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the control of virtual currency and the rights of
3 purchasers who obtain control of virtual currency for purposes of
4 the Uniform Commercial Code.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 9.102(b), Business & Commerce Code, is
7 amended to read as follows:

8 (b) The following definitions in other chapters apply to
9 this chapter:

10 "Applicant"	Section 5.102.
11 "Beneficiary"	Section 5.102.
12 "Broker"	Section 8.102.
13 "Certificated security"	Section 8.102.
14 "Check"	Section 3.104.
15 "Clearing corporation"	Section 8.102.
16 "Contract for sale"	Section 2.106.
17 "Control" (with respect to a document of title)	Section 7.106.
18 "Customer"	Section 4.104.
19 "Entitlement holder"	Section 8.102.
20 "Financial asset"	Section 8.102.
21 "Holder in due course"	Section 3.302.
22 "Issuer" (with respect to a letter of credit 23 or letter-of-credit right)	Section 5.102.
24 "Issuer" (with respect to a security)	Section 8.201.

1	"Lease"	Section 2A.103.
2	"Lease agreement"	Section 2A.103.
3	"Lease contract"	Section 2A.103.
4	"Leasehold interest"	Section 2A.103.
5	"Lessee"	Section 2A.103.
6	"Lessee in ordinary course of business"	Section 2A.103.
7	"Lessor"	Section 2A.103.
8	"Lessor's residual interest"	Section 2A.103.
9	"Letter of credit"	Section 5.102.
10	"Merchant"	Section 2.104.
11	"Negotiable instrument"	Section 3.104.
12	"Nominated person"	Section 5.102.
13	"Note"	Section 3.104.
14	"Proceeds of a letter of credit"	Section 5.114.
15	"Prove"	Section 3.103.
16	"Sale"	Section 2.106.
17	"Securities account"	Section 8.501.
18	"Securities intermediary"	Section 8.102.
19	"Security"	Section 8.102.
20	"Security certificate"	Section 8.102.
21	"Security entitlement"	Section 8.102.
22	"Uncertificated security"	Section 8.102.
23	<u>"Virtual currency"</u>	<u>Section 12.001.</u>

24 SECTION 2. Subchapter A, Chapter 9, Business & Commerce
25 Code, is amended by adding Section 9.1071 to read as follows:

26 Sec. 9.1071. CONTROL OF VIRTUAL CURRENCY. A secured party
27 has control of virtual currency as provided by Section 12.004.

1 SECTION 3. Section 9.310(b), Business & Commerce Code, is
2 amended to read as follows:

3 (b) The filing of a financing statement is not necessary to
4 perfect a security interest:

5 (1) that is perfected under Section 9.308(d), (e),
6 (f), or (g);

7 (2) that is perfected under Section 9.309 when it
8 attaches;

9 (3) in property subject to a statute, regulation, or
10 treaty described in Section 9.311(a);

11 (4) in goods in possession of a bailee that is
12 perfected under Section 9.312(d)(1) or (2);

13 (5) in certificated securities, documents, goods, or
14 instruments which is perfected without filing, control or
15 possession under Section 9.312(e), (f), or (g);

16 (6) in collateral in the secured party's possession
17 under Section 9.313;

18 (7) in a certificated security that is perfected by
19 delivery of the security certificate to the secured party under
20 Section 9.313;

21 (8) in deposit accounts, electronic chattel paper,
22 electronic documents, investment property, virtual currencies, or
23 letter-of-credit rights that is perfected by control under Section
24 9.314;

25 (9) in proceeds that is perfected under Section 9.315;

26 (10) that is perfected under Section 9.316; or

27 (11) in oil or gas production or their proceeds under

1 Section 9.343.

2 SECTION 4. The heading to Section 9.312, Business &
3 Commerce Code, is amended to read as follows:

4 Sec. 9.312. PERFECTION OF SECURITY INTERESTS IN CHATTEL
5 PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, AND GOODS COVERED BY DOCUMENTS,
6 INSTRUMENTS, INVESTMENT PROPERTY, VIRTUAL CURRENCIES,
7 LETTER-OF-CREDIT RIGHTS, AND MONEY; PERFECTION BY PERMISSIVE
8 FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF
9 POSSESSION.

10 SECTION 5. Section 9.312(a), Business & Commerce Code, is
11 amended to read as follows:

12 (a) A security interest in chattel paper, negotiable
13 documents, instruments, ~~or~~ investment property, and virtual
14 currencies may be perfected by filing.

15 SECTION 6. Sections 9.314(a) and (b), Business & Commerce
16 Code, are amended to read as follows:

17 (a) A security interest in investment property, deposit
18 accounts, letter-of-credit rights, virtual currencies, electronic
19 chattel paper, or electronic documents may be perfected by control
20 of the collateral under Section 7.106, 9.104, 9.105, 9.106, ~~or~~
21 9.107, or 9.1071.

22 (b) A security interest in deposit accounts, electronic
23 chattel paper, virtual currencies, letter-of-credit rights, or
24 electronic documents is perfected by control under Section 7.106,
25 9.104, 9.105, ~~or~~ 9.107, or 9.1071 when the secured party obtains
26 control and remains perfected by control only while the secured
27 party retains control.

1 SECTION 7. The heading to Section 9.331, Business &
2 Commerce Code, is amended to read as follows:

3 Sec. 9.331. PRIORITY OF RIGHTS OF PURCHASERS OF
4 INSTRUMENTS, DOCUMENTS, [~~AND~~] SECURITIES, AND VIRTUAL CURRENCIES
5 UNDER OTHER CHAPTERS; PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND
6 SECURITY ENTITLEMENTS UNDER CHAPTER 8 AND VIRTUAL CURRENCIES UNDER
7 CHAPTER 12.

8 SECTION 8. Sections 9.331(a) and (b), Business & Commerce
9 Code, are amended to read as follows:

10 (a) This chapter does not limit the rights of a holder in due
11 course of a negotiable instrument, a holder to which a negotiable
12 document of title has been duly negotiated, [~~or~~] a protected
13 purchaser of a security, or a qualifying purchaser of a virtual
14 currency. These holders or purchasers take priority over an earlier
15 security interest, even if perfected, to the extent provided in
16 Chapters 3, 7, [~~and~~] 8, and 12.

17 (b) This chapter does not limit the rights of or impose
18 liability on a person to the extent that the person is protected
19 against the assertion of a claim under Chapter 8 or 12.

20 SECTION 9. Title 1, Business & Commerce Code, is amended by
21 adding Chapter 12 to read as follows:

22 CHAPTER 12. VIRTUAL CURRENCY

23 Sec. 12.001. DEFINITION. In this chapter, "virtual
24 currency":

25 (1) means a digital representation of value that:

26 (A) is used as a medium of exchange, unit of
27 account, or store of value; and

1 (B) is not legal tender, whether or not
2 denominated in legal tender; and

3 (2) does not include:

4 (A) a transaction in which a merchant grants, as
5 part of an affinity or rewards program, value that cannot be taken
6 from or exchanged with the merchant for legal tender, bank credit,
7 or virtual currency; or

8 (B) a digital representation of value issued by
9 or on behalf of a publisher and used solely within an online game,
10 game platform, or family of games sold by the same publisher or
11 offered on the same game platform.

12 Sec. 12.002. SCOPE. This chapter applies to virtual
13 currency.

14 Sec. 12.003. RIGHTS IN VIRTUAL CURRENCY. (a) In this
15 section:

16 (1) "Adverse claim" means a claim that a claimant has a
17 property interest in a virtual currency and that it is a violation
18 of the rights of the claimant for another person to hold, transfer,
19 or deal with the virtual currency.

20 (2) "Qualifying purchaser" means a purchaser that
21 obtains control of a virtual currency for value and without notice
22 of any adverse claim.

23 (b) Subject to Subsections (c) through (h), law other than
24 this chapter determines whether a person acquires rights in a
25 virtual currency and the rights that the person acquires.

26 (c) A purchaser of a virtual currency acquires all rights in
27 the virtual currency that the transferor had or had power to

1 transfer.

2 (d) A purchaser of a limited interest in a virtual currency
3 acquires rights only to the extent of the interest purchased.

4 (e) In addition to acquiring the rights of a purchaser, a
5 qualifying purchaser acquires the purchaser's rights in a virtual
6 currency free of any adverse claim.

7 (f) An action based on an adverse claim to a virtual
8 currency, whether framed in conversion, replevin, constructive
9 trust, equitable lien, or other theory, may not be asserted against
10 a qualifying purchaser that acquires the purchaser's interest in,
11 and obtains control of, the virtual currency for value and without
12 notice of the adverse claim.

13 (g) A person has notice of an adverse claim if:

14 (1) the person knows of the adverse claim; or

15 (2) the person is aware of facts sufficient to
16 indicate that there is a significant probability that the adverse
17 claim exists and deliberately avoids information that would
18 establish the existence of the adverse claim.

19 (h) Filing of a financing statement under Chapter 9 is not
20 notice of an adverse claim to a virtual currency.

21 Sec. 12.004. CONTROL OF VIRTUAL CURRENCY. (a) A person has
22 control of a virtual currency if the following conditions are met:

23 (1) the virtual currency or the system in which the
24 virtual currency is recorded, if any, gives the person:

25 (A) the power to derive substantially all the
26 benefit from the virtual currency;

27 (B) subject to Subsection (b), the exclusive

1 power to prevent others from deriving substantially all the benefit
2 from the virtual currency; and

3 (C) subject to Subsection (b), the exclusive
4 power to transfer control of the virtual currency to another person
5 or cause another person to obtain control of a virtual currency that
6 derives from the virtual currency; and

7 (2) the virtual currency, a record attached to or
8 logically associated with the virtual currency, or the system in
9 which the virtual currency is recorded, if any, enables the person
10 to readily identify the person as having the powers specified in
11 Subdivision (1).

12 (b) A power specified in Subsection (a)(1)(B) or (C) can be
13 exclusive, even if:

14 (1) the virtual currency or the system in which the
15 virtual currency is recorded, if any, limits the use to which the
16 virtual currency may be put or has protocols that are programmed to
17 result in a transfer of control; and

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

20 (c) For the purposes of Subsection (a)(2), a person may be
21 identified in any way, including by name, identifying number,
22 cryptographic key, office, or account number.

23 SECTION 10. The changes in law made by this Act apply to a
24 transaction entered into on or after the effective date of this Act.

25 SECTION 11. The changes in law made by this Act apply only
26 to an action, case, or proceeding commenced on or after the
27 effective date of this Act.

1 SECTION 12. This Act takes effect September 1, 2021.