

BILL ANALYSIS

Senate Research Center
87R18376 SRA-D

H.B. 4474
By: Parker et al. (Paxton)
Business & Commerce
5/14/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Virtual currency lacks legal tender in the United States and is excluded from the "free and clear negotiability" rules under the Uniform Commercial Code. Although Bitcoin and other virtual currencies are often treated as money, the definition of money for commercial purposes is currently limited and does not include virtual currencies. Many businesses are beginning to accept Bitcoin and other virtual "currencies" as a form of payment, though these currencies remain unregulated by most governments. H.B. 4474 seeks to adopt virtual currency standards into statute. This bill would allow individuals to know their rights regarding the control of virtual assets and help resolve disputes involving the ownership and transfer of virtual currency.

H.B. 4474 amends current law relating to the control of virtual currency and the rights of purchasers who obtain control of virtual currency for purposes of the Uniform Commercial Code.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 9.102(b), Business & Commerce Code, to define "virtual currency" for Chapter 9 (Secured Transactions).

SECTION 2. Amends Subchapter A, Chapter 9, Business & Commerce Code, by adding Section 9.1071, as follows:

Sec. 9.1071. CONTROL OF VIRTUAL CURRENCY. Provides that a secured party has control of virtual currency as provided by Section 12.004.

SECTION 3. Amends Section 9.310(b), Business & Commerce Code, to provide that the filing of a financing statement is not necessary to perfect a security interest in virtual currencies that is perfected by control under Section 9.314 (Perfection by Control).

SECTION 4. Amends the heading to Section 9.312, Business & Commerce Code, to read as follows:

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

SECTION 5. Amends Section 9.312(a), Business & Commerce Code, to authorize that a security interest in virtual currencies be perfected by filing. Makes a nonsubstantive change.

SECTION 6. Amends Sections 9.314(a) and (b), Business & Commerce Code, as follows:

(a) Authorizes that certain security interests, including a security interest in virtual currencies, be perfected by control of the collateral under certain sections, including under Section 9.1071. Makes a nonsubstantive change.

(b) Provides that certain security interests, including a security interest in virtual currencies, are perfected by control under certain sections, including Section 9.1071, when the secured party obtains control and remains perfected by control only while the secured party retains control. Makes a nonsubstantive change.

SECTION 7. Amends the heading to Section 9.331, Business & Commerce Code, to read as follows:

Sec. 9.331. PRIORITY OF RIGHTS OF PURCHASERS OF INSTRUMENTS, DOCUMENTS, SECURITIES, AND VIRTUAL CURRENCIES UNDER OTHER CHAPTERS; PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY ENTITLEMENTS UNDER CHAPTER 8 AND VIRTUAL CURRENCIES UNDER CHAPTER 12.

SECTION 8. Amends Sections 9.331(a) and (b), Business & Commerce Code, as follows:

(a) Provides that Chapter 9 does not limit the rights of certain holders or purchasers, including a qualifying purchaser of a virtual currency. Provides that these holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in certain chapters, including Chapter 12.

(b) Provides that Chapter 9 does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under certain chapters, including under Chapter 12.

SECTION 9. Amends Title 1, Business & Commerce Code, by adding Chapter 12, as follows:

CHAPTER 12. VIRTUAL CURRENCY

Sec. 12.001. DEFINITION. Defines "virtual currency" in this chapter.

Sec. 12.002. SCOPE. Provides that this chapter applies to virtual currency.

Sec. 12.003. RIGHTS IN VIRTUAL CURRENCY. (a) Defines "adverse claim" and "qualifying purchaser" in this section.

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

(c) Provides that a purchaser of a virtual currency acquires all rights in the virtual currency that the transferor had or had power to transfer.

(d) Provides that a purchaser of a limited interest in a virtual currency acquires rights only to the extent of the interest purchased.

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

(f) Prohibits an action based on an adverse claim to a virtual currency, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, from being asserted against a qualifying purchaser that acquires the purchaser's interest in, and obtains control of, the virtual currency for value and without notice of the adverse claim.

(g) Provides that a person has notice of an adverse claim if the person knows of the adverse claim or the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim.

(h) Provides that filing of a financing statement under Chapter 9 is not notice of an adverse claim to a virtual currency.

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

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

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

(B) subject to Subsection (b), the exclusive power to prevent others from deriving substantially all the benefit from the virtual currency; and

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

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

(b) Provides that a power specified in Subsection (a)(1)(B) or (C) can be exclusive, even if the virtual currency or the system in which the virtual currency is recorded, if any, limits the use to which the virtual currency is authorized to be put or has protocols that are programmed to result in a transfer of control and the person has agreed to share the power with another person.

(c) Authorizes a person, for the purposes of Subsection (a)(2), to be identified in any way, including by name, identifying number, cryptographic key, office, or account number.

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

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

SECTION 12. Effective date: September 1, 2021.