87R18376 SRA-D

By:  Parker, Anchia, Stephenson, Capriglione, H.B. No. 4474

     Perez, et al.

A BILL TO BE ENTITLED

AN ACT

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.

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

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

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

"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.

"Control" (with respect to a document of title) Section 7.106.

"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.

"Lease" Section 2A.103.

"Lease agreement" Section 2A.103.

"Lease contract" Section 2A.103.

"Leasehold interest" Section 2A.103.

"Lessee" Section 2A.103.

"Lessee in ordinary course of business" Section 2A.103.

"Lessor" Section 2A.103.

"Lessor's residual interest" Section 2A.103.

"Letter of credit" Section 5.102.

"Merchant" Section 2.104.

"Negotiable instrument" Section 3.104.

"Nominated person" Section 5.102.

"Note" Section 3.104.

"Proceeds of a letter of credit" Section 5.114.

"Prove" Section 3.103.

"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.

"Virtual currency" Section 12.001.

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

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

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

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

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

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

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

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

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

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

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

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

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

(10)  that is perfected under Section 9.316; or

(11)  in oil or gas production or their proceeds under Section 9.343.

SECTION 4.  The heading to Section 9.312, Business & Commerce Code, is amended 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.  Section 9.312(a), Business & Commerce Code, is amended to read as follows:

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

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

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

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

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

Sec. 9.331.  PRIORITY OF RIGHTS OF PURCHASERS OF INSTRUMENTS, DOCUMENTS, [~~AND~~] 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.  Sections 9.331(a) and (b), Business & Commerce Code, are amended to read as follows:

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

(b)  This chapter 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 Chapter 8 or 12.

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

CHAPTER 12. VIRTUAL CURRENCY

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

(1)  means a digital representation of value that:

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

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

(2)  does not include:

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

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

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

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

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

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

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

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

(e)  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)  An action based on an adverse claim to a virtual currency, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be 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)  A person has notice of an adverse claim if:

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

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

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

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

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

SECTION 10.  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.  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.  This Act takes effect September 1, 2021.