By:  Parker H.B. No. 4474

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, Business & Commerce Code, is amended by adding Subsection (29-a) to read as follows:

(29-a)  "Virtual currency" means a digital representation of value that functions as a medium of exchange, unit of account, and/or store of value and is often secured using blockchain technology.

SECTION 2.  Subchapter A, Chapter 9, Business & Commerce Code, is amended by adding Sections 9.1071 and 9.1072 to read as follows:

Section 9.1071.  CONTROL OF VIRTUAL CURRENCY. (a) A purchaser has control of a virtual currency if:

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

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

(B)  subject to Subsection (c), the exclusive power to:

(i)  prevent others from deriving substantially all of the benefit from the virtual currency; and

(ii)  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 or a record attached to or logically associated with the virtual currency enables the purchaser to readily identify the purchaser as the person having the powers specified under Subdivision (1); or

(3)  another person has control of the virtual currency on behalf of the purchaser or, having previously acquired control of the virtual currency, acknowledges that the person has control on behalf of the purchaser.

(b)  For the purposes of Subsection (a)(1),a purchaser may be identified in anyway, including by name, identifying number, cryptographic key, office, or account number.

(c)  A power described by Subsection (a)(1) or (2) may be considered exclusive regardless of whether:

(1)  the virtual currency or the system in which the virtual currency is recorded, if applicable, 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 purchaser has agreed to share the power with another person.

Section 9.1072.  RIGHTS OF PURCHASER THAT OBTAINS CONTROL OF VIRTUAL CURRENCY. (a) In this section, "adverse claim" means a claimant that has a property interest in a virtual currency or a right to payment evidenced by the virtual currency.

(b)  It is a violation of the rights of the claimant for another person to hold, transfer, or otherwise deal with the virtual currency or the right to payment.

(c)  Except as provided by Subsection (e), a purchaser that acquires an interest in and obtains control of a virtual currency without notice of any adverse claim takes the purchaser's interest in the virtual currency and in any right to payment evidenced by the virtual currency free of any adverse claim.

(d)  Except as provided by Subsection (e), an action based on an adverse claim to a virtual currency or a right to payment evidenced by a virtual currency, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a purchaser that:

(1)  acquires, for value and without notice of the adverse claim, a virtual currency or an interest in a virtual currency; and

(2)  obtains control of the virtual currency or interest.

(e)  A purchaser has notice of an adverse claim if the purchaser:

(1)  knows of the adverse claim; or

(2)  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.

(f)  Subsections (c) and (d) do not apply if more than one virtual currency evidences the same right to payment.

SECTION 3.  This Act takes effect September 1, 2021.