

1-1 By: Parker, et al. (Senate Sponsor - Paxton) H.B. No. 4474  
 1-2 (In the Senate - Received from the House May 12, 2021;  
 1-3 May 13, 2021, read first time and referred to Committee on Business  
 1-4 & Commerce; May 20, 2021, reported favorably by the following vote:  
 1-5 Yeas 9, Nays 0; May 20, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to the control of virtual currency and the rights of  
 1-20 purchasers who obtain control of virtual currency for purposes of  
 1-21 the Uniform Commercial Code.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 9.102(b), Business & Commerce Code, is  
 1-24 amended to read as follows:

1-25 (b) The following definitions in other chapters apply to  
 1-26 this chapter:

1-27 "Applicant"	Section 5.102.
1-28 "Beneficiary"	Section 5.102.
1-29 "Broker"	Section 8.102.
1-30 "Certificated security"	Section 8.102.
1-31 "Check"	Section 3.104.
1-32 "Clearing corporation"	Section 8.102.
1-33 "Contract for sale"	Section 2.106.
1-34 "Control" (with respect to a document of title)	Section 7.106.
1-35 "Customer"	Section 4.104.
1-36 "Entitlement holder"	Section 8.102.
1-37 "Financial asset"	Section 8.102.
1-38 "Holder in due course"	Section 3.302.
1-39 "Issuer" (with respect to a letter of credit 1-40 or letter-of-credit right)	Section 5.102.
1-41 "Issuer" (with respect to a security)	Section 8.201.
1-42 "Lease"	Section 2A.103.
1-43 "Lease agreement"	Section 2A.103.
1-44 "Lease contract"	Section 2A.103.
1-45 "Leasehold interest"	Section 2A.103.
1-46 "Lessee"	Section 2A.103.
1-47 "Lessee in ordinary course of business"	Section 2A.103.
1-48 "Lessor"	Section 2A.103.
1-49 "Lessor's residual interest"	Section 2A.103.
1-50 "Letter of credit"	Section 5.102.
1-51 "Merchant"	Section 2.104.
1-52 "Negotiable instrument"	Section 3.104.
1-53 "Nominated person"	Section 5.102.
1-54 "Note"	Section 3.104.
1-55 "Proceeds of a letter of credit"	Section 5.114.
1-56 "Prove"	Section 3.103.
1-57 "Sale"	Section 2.106.
1-58 "Securities account"	Section 8.501.
1-59 "Securities intermediary"	Section 8.102.
1-60 "Security"	Section 8.102.
1-61 "Security certificate"	Section 8.102.

2-1 "Security entitlement" Section 8.102.  
2-2 "Uncertificated security" Section 8.102.  
2-3 "Virtual currency" Section 12.001.

2-4 SECTION 2. Subchapter A, Chapter 9, Business & Commerce  
2-5 Code, is amended by adding Section 9.1071 to read as follows:

2-6 Sec. 9.1071. CONTROL OF VIRTUAL CURRENCY. A secured party  
2-7 has control of virtual currency as provided by Section 12.004.

2-8 SECTION 3. Section 9.310(b), Business & Commerce Code, is  
2-9 amended to read as follows:

2-10 (b) The filing of a financing statement is not necessary to  
2-11 perfect a security interest:

2-12 (1) that is perfected under Section 9.308(d), (e),  
2-13 (f), or (g);

2-14 (2) that is perfected under Section 9.309 when it  
2-15 attaches;

2-16 (3) in property subject to a statute, regulation, or  
2-17 treaty described in Section 9.311(a);

2-18 (4) in goods in possession of a bailee that is  
2-19 perfected under Section 9.312(d)(1) or (2);

2-20 (5) in certificated securities, documents, goods, or  
2-21 instruments which is perfected without filing, control or  
2-22 possession under Section 9.312(e), (f), or (g);

2-23 (6) in collateral in the secured party's possession  
2-24 under Section 9.313;

2-25 (7) in a certificated security that is perfected by  
2-26 delivery of the security certificate to the secured party under  
2-27 Section 9.313;

2-28 (8) in deposit accounts, electronic chattel paper,  
2-29 electronic documents, investment property, virtual currencies, or  
2-30 letter-of-credit rights that is perfected by control under Section  
2-31 9.314;

2-32 (9) in proceeds that is perfected under Section 9.315;

2-33 (10) that is perfected under Section 9.316; or

2-34 (11) in oil or gas production or their proceeds under  
2-35 Section 9.343.

2-36 SECTION 4. The heading to Section 9.312, Business &  
2-37 Commerce Code, is amended to read as follows:

2-38 Sec. 9.312. PERFECTION OF SECURITY INTERESTS IN CHATTEL  
2-39 PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, AND GOODS COVERED BY DOCUMENTS,  
2-40 INSTRUMENTS, INVESTMENT PROPERTY, VIRTUAL CURRENCIES,  
2-41 LETTER-OF-CREDIT RIGHTS, AND MONEY; PERFECTION BY PERMISSIVE  
2-42 FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF  
2-43 POSSESSION.

2-44 SECTION 5. Section 9.312(a), Business & Commerce Code, is  
2-45 amended to read as follows:

2-46 (a) A security interest in chattel paper, negotiable  
2-47 documents, instruments, ~~or~~ investment property, and virtual  
2-48 currencies may be perfected by filing.

2-49 SECTION 6. Sections 9.314(a) and (b), Business & Commerce  
2-50 Code, are amended to read as follows:

2-51 (a) A security interest in investment property, deposit  
2-52 accounts, letter-of-credit rights, virtual currencies, electronic  
2-53 chattel paper, or electronic documents may be perfected by control  
2-54 of the collateral under Section 7.106, 9.104, 9.105, 9.106, ~~or~~  
2-55 9.107, or 9.1071.

2-56 (b) A security interest in deposit accounts, electronic  
2-57 chattel paper, virtual currencies, letter-of-credit rights, or  
2-58 electronic documents is perfected by control under Section 7.106,  
2-59 9.104, 9.105, ~~or~~ 9.107, or 9.1071 when the secured party obtains  
2-60 control and remains perfected by control only while the secured  
2-61 party retains control.

2-62 SECTION 7. The heading to Section 9.331, Business &  
2-63 Commerce Code, is amended to read as follows:

2-64 Sec. 9.331. PRIORITY OF RIGHTS OF PURCHASERS OF  
2-65 INSTRUMENTS, DOCUMENTS, ~~AND~~ SECURITIES, AND VIRTUAL CURRENCIES  
2-66 UNDER OTHER CHAPTERS; PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND  
2-67 SECURITY ENTITLEMENTS UNDER CHAPTER 8 AND VIRTUAL CURRENCIES UNDER  
2-68 CHAPTER 12.

2-69 SECTION 8. Sections 9.331(a) and (b), Business & Commerce

3-1 Code, are amended to read as follows:

3-2 (a) This chapter does not limit the rights of a holder in due  
3-3 course of a negotiable instrument, a holder to which a negotiable  
3-4 document of title has been duly negotiated, ~~or~~ a protected  
3-5 purchaser of a security, or a qualifying purchaser of a virtual  
3-6 currency. These holders or purchasers take priority over an earlier  
3-7 security interest, even if perfected, to the extent provided in  
3-8 Chapters 3, 7, ~~and~~ 8, and 12.

3-9 (b) This chapter does not limit the rights of or impose  
3-10 liability on a person to the extent that the person is protected  
3-11 against the assertion of a claim under Chapter 8 or 12.

3-12 SECTION 9. Title 1, Business & Commerce Code, is amended by  
3-13 adding Chapter 12 to read as follows:

3-14 CHAPTER 12. VIRTUAL CURRENCY

3-15 Sec. 12.001. DEFINITION. In this chapter, "virtual  
3-16 currency":

3-17 (1) means a digital representation of value that:

3-18 (A) is used as a medium of exchange, unit of  
3-19 account, or store of value; and

3-20 (B) is not legal tender, whether or not  
3-21 denominated in legal tender; and

3-22 (2) does not include:

3-23 (A) a transaction in which a merchant grants, as  
3-24 part of an affinity or rewards program, value that cannot be taken  
3-25 from or exchanged with the merchant for legal tender, bank credit,  
3-26 or virtual currency; or

3-27 (B) a digital representation of value issued by  
3-28 or on behalf of a publisher and used solely within an online game,  
3-29 game platform, or family of games sold by the same publisher or  
3-30 offered on the same game platform.

3-31 Sec. 12.002. SCOPE. This chapter applies to virtual  
3-32 currency.

3-33 Sec. 12.003. RIGHTS IN VIRTUAL CURRENCY. (a) In this  
3-34 section:

3-35 (1) "Adverse claim" means a claim that a claimant has a  
3-36 property interest in a virtual currency and that it is a violation  
3-37 of the rights of the claimant for another person to hold, transfer,  
3-38 or deal with the virtual currency.

3-39 (2) "Qualifying purchaser" means a purchaser that  
3-40 obtains control of a virtual currency for value and without notice  
3-41 of any adverse claim.

3-42 (b) Subject to Subsections (c) through (h), law other than  
3-43 this chapter determines whether a person acquires rights in a  
3-44 virtual currency and the rights that the person acquires.

3-45 (c) A purchaser of a virtual currency acquires all rights in  
3-46 the virtual currency that the transferor had or had power to  
3-47 transfer.

3-48 (d) A purchaser of a limited interest in a virtual currency  
3-49 acquires rights only to the extent of the interest purchased.

3-50 (e) In addition to acquiring the rights of a purchaser, a  
3-51 qualifying purchaser acquires the purchaser's rights in a virtual  
3-52 currency free of any adverse claim.

3-53 (f) An action based on an adverse claim to a virtual  
3-54 currency, whether framed in conversion, replevin, constructive  
3-55 trust, equitable lien, or other theory, may not be asserted against  
3-56 a qualifying purchaser that acquires the purchaser's interest in,  
3-57 and obtains control of, the virtual currency for value and without  
3-58 notice of the adverse claim.

3-59 (g) A person has notice of an adverse claim if:

3-60 (1) the person knows of the adverse claim; or

3-61 (2) the person is aware of facts sufficient to  
3-62 indicate that there is a significant probability that the adverse  
3-63 claim exists and deliberately avoids information that would  
3-64 establish the existence of the adverse claim.

3-65 (h) Filing of a financing statement under Chapter 9 is not  
3-66 notice of an adverse claim to a virtual currency.

3-67 Sec. 12.004. CONTROL OF VIRTUAL CURRENCY. (a) A person has  
3-68 control of a virtual currency if the following conditions are met:

3-69 (1) the virtual currency or the system in which the

4-1 virtual currency is recorded, if any, gives the person:  
4-2 (A) the power to derive substantially all the  
4-3 benefit from the virtual currency;  
4-4 (B) subject to Subsection (b), the exclusive  
4-5 power to prevent others from deriving substantially all the benefit  
4-6 from the virtual currency; and  
4-7 (C) subject to Subsection (b), the exclusive  
4-8 power to transfer control of the virtual currency to another person  
4-9 or cause another person to obtain control of a virtual currency that  
4-10 derives from the virtual currency; and  
4-11 (2) the virtual currency, a record attached to or  
4-12 logically associated with the virtual currency, or the system in  
4-13 which the virtual currency is recorded, if any, enables the person  
4-14 to readily identify the person as having the powers specified in  
4-15 Subdivision (1).  
4-16 (b) A power specified in Subsection (a)(1)(B) or (C) can be  
4-17 exclusive, even if:  
4-18 (1) the virtual currency or the system in which the  
4-19 virtual currency is recorded, if any, limits the use to which the  
4-20 virtual currency may be put or has protocols that are programmed to  
4-21 result in a transfer of control; and  
4-22 (2) the person has agreed to share the power with  
4-23 another person.  
4-24 (c) For the purposes of Subsection (a)(2), a person may be  
4-25 identified in any way, including by name, identifying number,  
4-26 cryptographic key, office, or account number.  
4-27 SECTION 10. The changes in law made by this Act apply to a  
4-28 transaction entered into on or after the effective date of this Act.  
4-29 SECTION 11. The changes in law made by this Act apply only  
4-30 to an action, case, or proceeding commenced on or after the  
4-31 effective date of this Act.  
4-32 SECTION 12. This Act takes effect September 1, 2021.

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