

HB 1503-FN - VERSION ADOPTED BY BOTH BODIES

15Mar2022... 0828h
04/28/2022 1661s
05/05/2022 1939s
05/05/2022 1974s
26May2022... 2077CofC

2022 SESSION

22-2784
08/04

HOUSE BILL ***1503-FN***

AN ACT adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and establishing state procurement policies intended to promote the use of American materials.

SPONSORS: Rep. Ammon, Hills. 40; Rep. Alexander Jr., Hills. 6; Rep. Osborne, Rock. 4; Rep. Warden, Hills. 15; Rep. Edwards, Rock. 4; Rep. Berezhny, Graf. 9; Rep. Baxter, Rock. 20; Rep. White, Merr. 20; Sen. Avard, Dist 12

COMMITTEE: Commerce and Consumer Affairs

AMENDED ANALYSIS

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws. This bill also adopts the Uniform Commercial Code on controllable electronic records. This bill also establishes the requirement and fraud processes, for the use of American made steel products in state public works projects.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and establishing state procurement policies intended to promote the use of American materials.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Statement of Intent.

2 I. The Joint Committee on the Uniform Commercial Code and Emerging Technologies of the
3 Uniform Law Commission has developed draft Uniform Commercial Code provisions governing
4 certain digital assets, specifically those that fall within the definition of "controllable electronic
5 records." The current draft has been extensively vetted by those who understand and participate in
6 digital transactions.

7 II. Adoption of the Uniform Law Commission's draft by the New Hampshire general court
8 will create a considerable advantage for New Hampshire to lead in emerging industries utilizing
9 blockchain, digital ledger technology, virtual currencies, and other digital assets and would provide a
10 sensible framework and legal certainty for transactions of controllable electronic records. In
11 subsequent sessions, if necessary, the New Hampshire general court will review and adopt
12 conforming amendments to the provisions of the Uniform Commercial Code on controllable electronic
13 records to remain consistent with the language and intent of the final proposal of the Joint
14 Committee on the Uniform Commercial Code and Emerging Technologies of the Uniform Law
15 Commission.

16 2 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(10) to read as follows:

17 (10) "Conspicuous," with reference to a term, means so written, displayed, or
18 presented that a reasonable person against which it is to operate ought to have noticed it. Whether
19 a term is "conspicuous" or not is a decision for the court. ~~[Conspicuous terms include the following:~~

20 ~~(A) a heading in capitals equal to or greater in size than the surrounding text, or~~
21 ~~in contrasting type, font, or color to the surrounding text of the same or lesser size; and~~

22 ~~(B) language in the body of a record or display in larger type than the~~
23 ~~surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set~~
24 ~~off from surrounding text of the same size by symbols or other marks that call attention to the~~
25 ~~language.]~~

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3 New Paragraph; Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b) by inserting after paragraph (16) the following new paragraph:

(16A) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

4 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(21) to read as follows:

(21) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control, ***other than pursuant to Section 7-106(d)***, of a negotiable electronic document of title.

5 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(24) to read as follows:

(24) "Money" means a medium of exchange ***that is*** currently authorized or adopted by a domestic or foreign government. ~~[The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.]~~ ***The term does not include an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by a government, or organization or pursuant to such an agreement.***

6 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(27) to read as follows:

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity. ***The term includes a protected series, however denominated, of an entity if the protected series is established under law other than this chapter that limits, or limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.***

7 Uniform Commercial Code; Definitions. Amend RSA 382-A:1-201(b)(37) to read as follows:

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing ***and, with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record. "Sign" and "Signature" have corresponding meanings.***

8 Uniform Commercial Code; Definitions. Amend the introductory paragraph of RSA 382-A:1-204 to read as follows:

1 Except as otherwise provided in Articles 3, 4,~~and~~ 5, **6, and 12**, a person gives value for rights if the
2 person acquires them:

3 9 Uniform Commercial Code; Sales; Scope. RSA 382-A:2-102 is repealed and reenacted to read
4 as follows:

5 (1) Unless the context otherwise requires and except as provided in subsections (3)
6 and (4), this Article applies to transactions in goods.

7 (2) If the goods aspects of a hybrid transaction predominate, this Article applies to
8 the transaction.

9 (3) If the goods aspects of a hybrid transaction do not predominate, the provisions of
10 this Article which relate primarily to the goods aspects of the transaction and not to the transaction
11 as a whole apply.

12 (4) This article does not apply to any transaction which although in the form of an
13 unconditional contract to sell or present sale is intended to operate only as a security transaction nor
14 does this Article impair or repeal any statute regulating sales to consumers, farmers, or other
15 specified classes of buyers.

16 (5) This Section does not preclude in appropriate circumstances the application of
17 other law to the aspects of a hybrid transaction which do not relate to the goods even if the goods
18 aspects of the transaction predominate.

19 10 Uniform Commercial Code; Sales; Definitions. RSA 382-A:2-106 is repealed and reenacted to
20 read as follows:

21 382-A:2-106 Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale";
22 "Conforming" to Contract; "Termination"; "Cancellation".

23 (1) In this Article unless the context otherwise requires "contract" and "agreement"
24 are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a
25 present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of
26 title from the seller to the buyer for a price (Section 2-401). A "present sale" means a sale which is
27 accomplished by the making of the contract.

28 (2) Goods or conduct including any part of a performance are "conforming" or
29 conform to the contract when they are in accordance with the obligations under the contract.

30 (3) "Termination" occurs when either party pursuant to a power created by
31 agreement or law puts an end to the contract otherwise than for its breach. On "termination" all
32 obligations which are still executory on both sides are discharged but any right based on prior breach
33 or performance survives.

34 (4) "Cancellation" occurs when either party puts an end to the contract for breach by
35 the other and its effect is the same as that of "termination" except that the cancelling party also
36 retains any remedy for breach of the whole contract or any unperformed balance.

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1 (5) “Hybrid transaction” means a single transaction involving a sale of goods and a
2 sale, lease, or license of other property or the provision of services.

3 11 Uniform Commercial Code; Sales; Statute of Frauds. RSA 382-A:2-201 is repealed and
4 reenacted to read as follows:

5 382-A:2-201 Formal Requirements; Statute of Frauds.

6 (1) Except as otherwise provided in this section a contract for the sale of goods for
7 the price of \$500 or more is not enforceable by way of action or defense unless there is some record
8 sufficient to indicate that a contract for sale has been made between the parties and signed by the
9 party against whom enforcement is sought or by his authorized agent or broker. A record is not
10 insufficient because it omits or incorrectly states a term agreed upon but the contract is not
11 enforceable under this paragraph beyond the quantity of goods shown in such record.

12 (2) Between merchants if within a reasonable time a record in confirmation of the
13 contract and sufficient against the sender is received and the party receiving it has reason to know
14 its contents, it satisfies the requirements of subsection (1) against such party unless a record
15 containing a notice of objection to its contents is given with 10 days after it is received.

16 12 Uniform Commercial Code; Sales; Final Written Expression. Amend RSA 382-A:2-202 to
17 read as follows:

18 382-A:2-202 Final Written Expression; Parol or Extrinsic Evidence.

19 Terms with respect to which the confirmatory memoranda of the parties agree or which are
20 otherwise set forth in a ~~[writing]~~ **record** intended by the parties as a final expression of their
21 agreement with respect to such terms as are included therein may not be contradicted by evidence of
22 any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

23 (a) by course of performance, course of dealing, or usage of trade (Section 1-303); and

24 (b) by evidence of consistent additional terms unless the court finds the ~~[writing]~~ **record**
25 to have been intended also as a complete and exclusive statement of the terms of the agreement.

26 13 Uniform Commercial Code; Sales; Seals Inoperative. Amend RSA 382-A:2-203 to read as
27 follows:

28 382-A:2-203 Seals Inoperative. The affixing of a seal to a ~~[writing]~~ **record** evidencing a contract
29 for sale or an offer to buy or sell goods does not constitute the ~~[writing]~~ **record** a sealed instrument
30 and the law with respect to sealed instruments does not apply to such a contract or offer.

31 14 Uniform Commercial Code; Sales; Firm Offers. Amend RSA 382-A:2-205 to read as follows:

32 382-A:2-205 Firm Offers. An offer by a merchant to buy or sell goods in a signed ~~[writing]~~
33 **writing** which by its terms gives assurance that it will be held open is not revocable, for lack of
34 consideration, during the time stated or if no time is stated for a reasonable time, but in no event
35 may such period of irrevocability exceed three months; but any such term of assurance on a form
36 supplied by the offeree must be separately signed by the offeror.

1 15 Uniform Commercial Code; Sales; Modification, Recission, and Waiver. Amend RSA 382-A:2-
2 209(2) to read as follows:

3 (2) A signed agreement which excludes modification or rescission except by a signed
4 [~~writing~~] **record** cannot be otherwise modified or rescinded, but except as between merchants such a
5 requirement on a form supplied by the merchant must be separately signed by the other party.

6 16 Uniform Commercial Code; Leases; Scope. RSA 382-A:2A-102 is repealed and reenacted to
7 read as follows:

8 382-A:2A-102 Scope.

9 (1) Except as provided in subsection (3), this article applies to any transaction,
10 regardless of form, that creates a lease.

11 (2) If the lease-of-goods aspects of a hybrid lease predominate, this article applies to
12 the transaction.

13 (3) If the lease-of-goods aspects of a hybrid lease do not predominate:

14 (A) only the provisions of this article which relate primarily to the lease-of-goods
15 aspects of the transaction and not to the transaction as a whole apply;

16 (B) RSA 382-A:2A-209 applies if the lease is a finance lease; and

17 (C) RSA 382-A:2A-407 applies to the promises of a person that is the lessee in a
18 finance lease to the extent the promises are consideration for the right to possession and use of the
19 leased goods.

20 (4) This Section does not preclude the application in appropriate circumstances of
21 other law to the aspects of a hybrid lease which do not relate to the lease of goods even if the lease-
22 of-goods aspects of the transaction predominate.

23 17 New Subparagraph; Definitions; Uniform Commercial Code; Leases; Definitions. Amend
24 RSA 382-A:2A-103 by inserting after subparagraph (1)(h) the following new subparagraph:

25 (hh) "Hybrid lease" means a single transaction involving a lease of goods and:

26 (i) the provision of services;

27 (ii) a sale of other goods; or

28 (iii) a sale, lease, or license of property other than goods.

29 18 Uniform Commercial Code; Leases; Statute of Frauds. Amend RSA 382-A:2A-201 to read as
30 follows:

31 382-A:2A-201 Statute of Frauds.

32 (1) A lease contract is not enforceable by way of action or defense unless:

33 (a) the total payments to be made under the lease contract, excluding payments for
34 options to renew or buy, are less than \$1,000; or

35 (b) there is a [~~writing~~] **record**, signed by the party against whom enforcement is sought
36 or by that party's authorized agent, sufficient to indicate that a lease contract has been made
37 between the parties and to describe the goods leased and the lease term.

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1 (2) Any description of leased goods or of the lease term is sufficient and satisfies
2 subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

3 (3) A [~~writing~~] **record** is not insufficient because it omits or incorrectly states a term
4 agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term
5 and the quantity of goods shown in the writing.

6 (4) A lease contract that does not satisfy the requirements of subsection (1), but
7 which is valid in other respects, is enforceable:

8 (a) if the goods are to be specially manufactured or obtained for the lessee and are not
9 suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor,
10 before notice of repudiation is received and under circumstances that reasonably indicate that the
11 goods are for the lessee, has made either a substantial beginning of their manufacture or
12 commitments for their procurement;

13 (b) if the party against whom enforcement is sought admits in that party's pleading,
14 testimony or otherwise in court that a lease contract was made, but the lease contract is not
15 enforceable under this provision beyond the quantity of goods admitted; or

16 (c) with respect to goods that have been received and accepted by the lessee.

17 (5) The lease term under a lease contract referred to in subsection (4) is:

18 (a) if there is a [~~writing~~] **record** signed by the party against whom enforcement is
19 sought or by that party's authorized agent specifying the lease term, the term so specified;

20 (b) if the party against whom enforcement is sought admits in that party's pleading,
21 testimony, or otherwise in court a lease term, the term so admitted; or

22 (c) a reasonable lease term.

23 19 Uniform Commercial Code; Leases; Final Written Expression. Amend RSA 382-A:2A-202 to
24 read as follows:

25 382-A:2A-202 Final Written Expression; Parol or Extrinsic Evidence.

26 Terms with respect to which the confirmatory memoranda of the parties agree or which are
27 otherwise set forth in a [~~writing~~] **record** intended by the parties as a final expression of their
28 agreement with respect to such terms as are included therein may not be contradicted by evidence of
29 any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

30 (a) by course of dealing or usage of trade or by course of performance; and

31 (b) by evidence of consistent additional terms unless the court finds the [~~writing~~] **record**
32 to have been intended also as a complete and exclusive statement of the terms of the agreement.

33 20 Uniform Commercial Code; Leases; Seals Inoperative. Amend RSA 382-A:2A-203 to read as
34 follows:

35 382-A:2A-203 Seals Inoperative. The affixing of a seal to a [~~writing~~] **record** evidencing a lease
36 contract or an offer to enter into a lease contract does not render the [~~writing~~] **record** a sealed

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1 instrument and the law with respect to sealed instruments does not apply to the lease contract or
2 offer.

3 21 Uniform Commercial Code; Leases; Firm Offers. Amend RSA 382-A:2A-205 to read as
4 follows:

5 382-A:2A-205 Firm Offers. An offer by a merchant to lease goods to or from another person in a
6 signed ~~[writing]~~ **record** that by its terms gives assurance it will be held open is not revocable, for
7 lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no
8 event may the period of irrevocability exceed 3 months. Any such term of assurance on a form
9 supplied by the offeree must be separately signed by the offeror.

10 22 Uniform Commercial Code; Leases; Modification, Rescission, and Waiver. Amend RSA 382-
11 A:2A-208(2) to read as follows:

12 (2) A signed lease agreement that excludes modification or rescission except by a
13 signed ~~[writing]~~ **record** may not be otherwise modified or rescinded, but, except as between
14 merchants, such a requirement on a form supplied by a merchant must be separately signed by the
15 other party.

16 23 Uniform Commercial Code; Negotiable Instruments. Amend RSA 382-A:3-104(3) to read as
17 follows:

18 (3) does not state any other undertaking or instruction by the person promising or
19 ordering payment to do any act in addition to the payment of money, but the promise or order may
20 contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an
21 authorization or power to the holder to confess judgment or realize on or dispose of collateral, ~~[or]~~
22 (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor; **(iv) a**
23 **term that specifies the law that governs the promise or order; or (v) an undertaking to**
24 **resolve in a specified forum a dispute concerning the promise or order.**

25 24 Uniform Commercial Code; Negotiable Instruments; Issue of Instrument. Amend RSA 382-
26 A:3-105(a) to read as follows:

27 (a) "Issue" means:

28 **(1) the first delivery of an instrument by the maker or drawer, whether to a holder**
29 **or nonholder, for the purpose of giving rights on the instrument to any person; or**

30 **(2) if agreed by the payee, first transmission by the drawer to the payee of an**
31 **image of an item and information derived from the item in a manner that enables the**
32 **depository bank to collect the item by transferring or presenting under federal law an**
33 **electronic check.**

34 25 Uniform Commercial Code; Negotiable Instruments; Discharge by Cancellation or
35 Renunciation. Amend RSA 382-A:3-604 to read as follows:

36 382-A:3-604 Discharge by Cancellation or Renunciation.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed ~~[writing]~~ **record**. ***The obligation of a party to pay a check is not discharged solely by the destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made, and subsequently, the information and image are transmitted for payment.***

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement

26 Uniform Commercial Code; Funds Transfers; Payment Order. Amend the introductory paragraph of RSA 382-A:4A-103(a)(1) to read as follows:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, ~~[electronically]~~, or in ~~[writing]~~ **a record**, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

27 Uniform Commercial Code; Funds Transfers; Security Procedure. Amend RSA 382-A:4A-201 to read as follows:

382-A:4A-201 Security Procedure. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure ***may impose an obligation on the receiving bank or the customer and*** may require the use of algorithms or other codes, identifying words, ~~[or]~~ numbers, ***symbols, sounds or biometrics***, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer ***or requiring that a payment order be sent from a known email address, IP address or phone number*** is not by itself a security procedure.

28 Uniform Commercial Code; Funds Transfers; Authorized and Verified Payment Orders. Amend RSA 382-A:4A-202(a)-(c) to read as follows:

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of

1 providing security against unauthorized payment orders, and (ii) the bank proves that it accepted
2 the payment order in good faith and in compliance with *the bank's obligation under* the security
3 procedure and any ~~written~~ agreement or instruction of the customer, *evidenced by a record*,
4 restricting acceptance of payment orders issued in the name of the customer. The bank is not
5 required to follow an instruction that violates ~~a written~~ *an* agreement *evidenced by a record* with
6 the customer or notice of which is not received at a time and in a manner affording the bank a
7 reasonable opportunity to act on it before the payment order is accepted.

8 (c) Commercial reasonableness of a security procedure is a question of law to be
9 determined by considering the wishes of the customer expressed to the bank, the circumstances of
10 the customer known to the bank, including the size, type, and frequency of payment orders normally
11 issued by the customer to the bank, alternative security procedures offered to the customer, and
12 security procedures in general use by customers and receiving banks similarly situated. A security
13 procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the
14 customer after the bank offered, and the customer refused, a security procedure that was
15 commercially reasonable for that customer, and (ii) the customer expressly agreed in ~~writing~~ *a*
16 *record* to be bound by any payment order, whether or not authorized, issued in its name and
17 accepted by the bank in compliance with the *bank's obligations under the* security procedure
18 chosen by the customer.

19 29 Uniform Commercial Code; Funds Transfers; Unenforceability of Certain Verified Payment
20 Orders. Amend RSA 382-A:4A-203(a)(1) to read as follows:

21 (1) By express ~~written~~ agreement *evidenced by a record*, the receiving bank may
22 limit the extent to which it is entitled to enforce or retain payment of the payment order.

23 30 Uniform Commercial Code; Funds Transfers; Misdistribution of Beneficiary. Amend RSA
24 382-A:4A-207(c)(2) to read as follows:

25 (2) If the originator is not a bank and proves that the person identified by number
26 was not entitled to receive payment from the originator, the originator is not obliged to pay its order
27 unless the originator's bank proves that the originator, before acceptance of the originator's order,
28 had notice that payment of a payment order issued by the originator might be made by the
29 beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person
30 different from the named beneficiary. Proof of notice may be made by any admissible evidence. The
31 originator's bank satisfies the burden of proof if it proves that the originator, before the payment
32 order was accepted, signed a ~~writing~~ *record* stating the information to which the notice relates.

33 31 Uniform Commercial Code; Funds Transfer; Misdistribution of Intermediary Bank or
34 Beneficiary's Bank. Amend RSA 382-A:4A-208(b)(2) to read as follows:

35 (2) If the sender is not a bank and the receiving bank proves that the sender, before
36 the payment order was accepted, had notice that the receiving bank might rely on the number as the
37 proper identification of the intermediary or beneficiary's bank even if it identifies a person different

from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a ~~[writing]~~ **record** stating the information to which the notice relates.

32 Uniform Commercial Code; Funds Transfers; Rejection of Payment Order. Amend RSA 382-A:4A-210(a) to read as follows:

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally~~[-electronically, or in writing]~~ **or in a record**. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

33 Uniform Commercial Code; Funds Transfer; Cancellation and Amendment of Payment Order. Amend RSA 382-A:4A-211(a) to read as follows:

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally~~[-electronically, or in writing]~~ **or in a record**. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

34 Uniform Commercial Code; Letters of Credit; Choice of Law and Forum. Amend RSA 382-A:5-116(c)-(e) to read as follows:

(c) ***For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under subsection (d).***

(d) ***A branch of a bank is considered to be located at the address indicated in the branch's undertaking. If more than one address is indicated, the branch is considered to be located at the address from which the undertaking was issued.***

(e) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or

practice, and (iii) there is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 5-103(c).

~~[(d)]~~ **(f)** If there is conflict between this article and Article 3, 4, 4A, or 9, this article governs.

~~[(e)]~~ **(g)** The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

35 Uniform Commercial Code; Documents of Title; Control of Electronic Document of Title.
Amend RSA 382-A:7-106(b) to read as follows:

(b) A system satisfies subsection (a), and a person~~[is deemed to have]~~ **has** control of an electronic document of title, if the document is created, stored, and ~~[assigned]~~ **transferred** in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified ~~[assignee]~~ **transferee** of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) A system satisfies subsection (a) and a person has control of an electronic document of title if an electronic copy of the document, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(1) enables the person to readily identify each electronic copy as an authoritative copy or nonauthoritative copy;

(2) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number as the person to which each authoritative electronic copy was issued or transferred; and

(3) gives the person exclusive power, subject to subsection (h) to:

(A) *prevent others from altering the person to which each authoritative electronic copy has been issued or transferred; and*

(B) *transfer control of each authoritative electronic copy.*

(d) *If a person has the powers that are specified in subsection (c)(3), the powers are presumed to be exclusive.*

(e) *A person has control of an electronic document of title if another person, other than the transferor of an interest in the document:*

(1) *has control of the document and acknowledges that it has control on behalf of the person; or*

(2) *obtains control of the document after having acknowledged that it will obtain control of the document on behalf of the person.*

(f) *A person that has control under this section is not required to acknowledge that it has or will obtain control on behalf of another person.*

(g) *If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.*

(h) *A power is exclusive under subsection (c)(3), even if:*

(1) *the authoritative electronic copy, a record attached to or logically associated with the electronic copy or a system in which the electronic copy is recorded limits the use of the document or has a protocol that is programmed to cause a change, including a transfer or loss of control; or*

(2) *the person shares the power with another person.*

36 Uniform Commercial Code; Investment Securities; Definitions. Amend RSA 382-A:8-102(6)(i) to read as follows:

(i) *send a signed [writing] record; or*

37 Uniform Commercial Code; Investment Securities; Definitions. Amend RSA 382-A:8-106(d)-(g) to read as follows:

(d) *A purchaser has "control" of a security entitlement if:*

(1) *the purchaser becomes the entitlement holder;*

(2) *the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or*

(3) *another person [has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser] other than the transferor of an interest in the security entitlement:*

(A) *has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or*

(B) obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c) or (d) has control even if the registered owner in the case of subsection (c) or the entitlement holder in the case of subsection (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of a purchaser.

(i) If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the purchaser and is not required to confirm the acknowledgment to another person.

38 Uniform Commercial Code; Investment Securities; Protected Purchaser. Amend RSA 382-A:8-303(b) to read as follows:

(b) ~~[In addition to acquiring the rights of a purchaser, a]~~ A protected purchaser also acquires its interest in the security free of any adverse claim.

39 Uniform Commercial Code; Investment Securities; Acquisition of Security Entitlement from Securities Intermediary. Amend RSA 382-A:8-501(d) to read as follows:

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the ~~[other]~~ person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

40 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(2) to read as follows:

(2) "Account", except as used in "account for", **"account to," "account statement," "customer's account," "on account of," "statement of account," and paragraphs (14) and (29)**

means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes ***controllable accounts and*** health-care-insurance receivables. The term does not include (i) ~~[rights to payment evidenced by chattel paper or an instrument]~~ ***chattel paper***, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card, ***or (vii) rights to payment evidenced by an instrument.***

41 New Paragraphs; Definitions; Uniform Commercial Code; Secured Transactions; Assignee. Amend RSA 382-A:9-102 by inserting after paragraph (6) the following new paragraphs:

(6A) "Assignee" means a person:

(A) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not an obligation to be secured is outstanding; or

(B) to which an account, chattel paper, payment intangible, or promissory note has been sold.

(6B) "Assignor" means a person that:

(A) under a security agreement creates or provides for a security interest that secures an obligation; or

(B) sells an account, chattel paper, payment intangible, or promissory note.

42 Uniform Commercial Code; Secured Transactions; Definitions. RSA 382-A:9-102(11) is repealed and reenacted to read as follows:

(11) "Chattel paper" means:

(A) a right to payment of a monetary obligation secured by specific goods, if the right to payment and security agreement are evidenced by a record; or

(B) a right to payment of a monetary obligation owed by a lessee under a lease agreement with respect to specific goods and a monetary obligation owed by the lessee in connection with the transaction giving rise to the lease, if:

(i) the right to payment and lease agreement are evidenced by a record; and

(ii) the predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

1 The term does not include (i) a right to payment arising out of a charter or other contract involving
2 the use or hire of a vessel or (ii) a right to payment arising out of the use of a credit or charge card or
3 information contained on or for use with the card.

4 43 New Paragraphs; Uniform Commercial Code; Secured Transactions; Definitions. Amend
5 RSA 382-A:9-102 by inserting after paragraph 27 the following new paragraphs:

6 (27A) "Controllable account" means an account evidenced by a controllable electronic
7 record that provides that the account debtor undertakes to pay the person that under Section 12-105
8 has control of the controllable electronic record.

9 (27B) "Controllable payment intangible" means a payment intangible evidenced by a
10 controllable electronic record that provides that the account debtor undertakes to pay the person
11 that under Section 12-105 has control of the controllable electronic record.

12 44 New Paragraph; Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA
13 382-A:9-102 by inserting after paragraph 31 the following new paragraph:

14 (31A) "Electronic money" means money in an electronic form.

15 45 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(42)
16 to read as follows:

17 (42) "General intangible" means any personal property, including things in action,
18 other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods,
19 instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or
20 other minerals before extraction. The term includes **controllable electronic records**, payment
21 intangibles and software.

22 46 Uniform Commercial Code; Secured Transactions; Definitions. Amend RSA 382-A:9-102(47)
23 to read as follows:

24 (47) "Instrument" means a negotiable instrument (defined in Section 3-104), or any
25 other writing that evidences a right to the payment of a monetary obligation, is not itself a security
26 agreement or lease, and is of a type that in ordinary course of business is transferred by delivery
27 with any necessary indorsement or assignment. The term does not include (i) investment property,
28 (ii) letters of credit, ~~[or]~~ (iii) writings that evidence a right to payment arising out of the use of a
29 credit or charge card or information contained on or for use with the card, **or (iv) writings that**
30 **evidence chattel paper.**

31 47 New Paragraph; Definitions; Money; Secured Transactions; UCC. Amend RSA 382-A:9-102
32 by inserting after paragraph (54) the following new paragraph:

33 (54A) "Money" has the meaning provided in Section 1-201(24), but the term does not
34 include (i) a deposit account or (ii) money in an electronic form that cannot be subjected to control
35 under Section 9-105A.

36 48 Definitions; Payment Intangible; Secured Transactions; UCC. Amend RSA 382-A:9-102(61)
37 to read as follows:

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. ***The term includes a controllable payment intangible.***

49 New Paragraph; Definitions; Tangible Money; Secured Transactions; UCC. Amend RSA 382-A:9-102 by inserting after paragraph (79) the following new paragraph:

(79A) "Tangible money" means money in a tangible form.

50 Definitions; Controllable Electronic Record; Qualified Purchaser; Secured Transactions; UCC. Amend RSA 382-A:9-102(b) to read as follows:

(b) "Control" as provided in Section 7-106 and the following definitions in other articles apply to this article:

"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.

"Controllable electronic record" Section 12-102.

"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.

"Issuer" (with respect to documents of title) Section 7-102.

"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.

1 "Note" Section 3-104.

2 "Proceeds of a letter of credit" Section 5-114.

3 "Prove" Section 3-103.

4 ***"Qualifying purchaser" Section 12-102.***

5 "Sale" Section 2-106.

6 "Securities account" Section 8-501.

7 "Securities intermediary" Section 8-102.

8 "Security" Section 8-102.

9 "Security certificate" Section 8-102.

10 "Security entitlement" Section 8-102.

11 "Uncertificated security" Section 8-102.

12 51 Control of Deposit Account; Secured Transactions; UCC. Amend RSA 382-A:9-104 to read as
13 follows:

14 382-A:9-104 Control of Deposit Account.

15 (a) Requirements for control. A secured party has control of a deposit account if:

16 (1) the secured party is the bank with which the deposit account is maintained;

17 (2) the debtor, secured party, and bank have agreed in ~~[an authenticated]~~ ***a signed***
18 record that the bank will comply with instructions originated by the secured party directing
19 disposition of the funds in the deposit account without further consent by the debtor; ~~[or]~~

20 (3) the secured party becomes the bank's customer with respect to the deposit
21 account; ***or***

22 ***(4) another person, other than the debtor:***

23 ***(A) has control of the deposit account and acknowledges that it has***
24 ***control on behalf of the secured party; or***

25 ***(B) obtains control of the deposit account after having acknowledged***
26 ***that it will obtain control of the deposit account on behalf of the secured party.***

27 (b) Debtor's right to direct disposition. A secured party that has satisfied subsection (a)
28 has control, even if the debtor retains the right to direct the disposition of funds from the deposit
29 account.

30 52 Control of Electronic Copy of Record Evidencing Chattel Paper; Secured Transactions; UCC.
31 RSA 382-A:9-105 is repealed and reenacted to read as follows:

32 382-A:9-105 Control of Electronic Copy of Record Evidencing Chattel Paper.

33 (a) General rule: control of electronic copy of record evidencing chattel paper. A
34 purchaser has control of each authoritative electronic copy of a record evidencing chattel paper if a
35 system employed for evidencing the assignment of interests in the chattel paper reliably establishes
36 the purchaser as the person to which the chattel paper was assigned.

1 (b) Single authoritative copy. A system satisfies subsection (a) if the record or records
2 evidencing the chattel paper are created, stored, and assigned in such a manner that:

3 (1) a single authoritative copy of the record or records exists which is unique,
4 identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

5 (2) the authoritative copy identifies the purchaser as the assignee of the record or
6 records;

7 (3) the authoritative copy is communicated to and maintained by the purchaser or
8 its designated custodian;

9 (4) copies or amendments that add or change an identified assignee of the
10 authoritative copy can be made only with the consent of the purchaser;

11 (5) each copy of the authoritative copy and any copy of a copy is readily identifiable
12 as a copy that is not the authoritative copy; and

13 (6) any amendment of the authoritative copy is readily identifiable as authorized or
14 unauthorized.

15 (c) One or more authoritative copies. A system satisfies subsection (a) and a purchaser
16 has control of an electronic copy of a record evidencing chattel paper if:

17 (1) the electronic copy, a record attached to or logically associated with the electronic
18 copy, or a system in which the electronic copy is recorded:

19 (A) enables the person readily to identify each electronic copy as an authoritative
20 copy or nonauthoritative copy;

21 (B) enables the purchaser readily to identify itself in any way, including by
22 name, identifying number, cryptographic key, office, or account number, as the assignee of each
23 authoritative electronic copy; and

24 (C) gives the purchaser exclusive power, subject to subsection (d), to:

25 (i) prevent others from adding or changing an identified assignee of each
26 authoritative electronic copy; and

27 (ii) transfer control of each authoritative electronic copy; or

28 (2) another person, other than the debtor:

29 (A) has control of each authoritative electronic copy and acknowledges that it
30 has control on behalf of the purchaser; or

31 (B) obtains control of each authoritative electronic copy after having
32 acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

33 (d) Presumption of exclusivity of certain powers. If a person has the powers that are
34 specified in subsection (c)(1)(C), the powers are presumed to be exclusive.

35 (e) Meaning of exclusive. A power is exclusive under subsection (b)(1)(C), even if:

(1) the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the purchaser shares the power with another person.

53 New Section; Control of Electronic Money. Amend RSA 382-A by inserting after section 9-105 the following new section:

382-A: 9-105A Control of Electronic Money.

(a) General rule: control of electronic money. A person has control of electronic money if:

(1) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded gives the person:

(A) the power to avail itself of substantially all the benefit from the electronic money; and

(B) exclusive power, subject to subsection (b), to:

(i) prevent others from availing themselves of substantially all the benefit from the electronic money; and

(ii) transfer control of the electronic money to another person or cause another person to obtain control of other electronic money as a result of the transfer of the electronic money; and

(2) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers under paragraph (1).

(b) Presumption of exclusivity of certain powers. If a person has the powers that are specified in subsection (a)(1)(B), the powers are presumed to be exclusive.

(c) Control through another person. A person has control of electronic money if another person, other than the transferor of an interest in the electronic money:

(1) has control of the electronic money and acknowledges that it has control on behalf of the person, or

(2) obtains control of the electronic money after having acknowledged that it will obtain control of the electronic money on behalf of the person.

(d) Meaning of exclusive. A power is exclusive under subsection (a)(1)(B), even if:

(1) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded limits the use of the electronic money or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the person shares the power with another person.

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1 54 New Sections; Control of Controllable Electronic Record, Controllable Account, or
2 Controllable Payment Intangible; Nor Requirement to Confirm; Secured Transactions; UCC. Amend
3 RSA 382-A by inserting after section 107 the following new sections:

4 382-A:9-107A Control of Controllable Electronic Record, Controllable Account, or Controllable
5 Payment Intangible.

6 (a) Control under Section 12-105. A secured party has control of a controllable electronic
7 record as provided in Section 12-105.

8 (b) Control of controllable account and controllable payment intangible. A secured party
9 has control of a controllable account or controllable payment intangible if the secured party has
10 control of the controllable electronic record that evidences the controllable account or controllable
11 payment intangible.

12 382-A:9-107B No Requirement to Acknowledge or Confirm; No Duties.

13 (a) No requirement to acknowledge. A person that has control under Section 9-104, 9-
14 105, or 9-105A is not required to acknowledge that it has or will obtain control on behalf of another
15 person.

16 (b) No duties or confirmation. If a person acknowledges that it has or will obtain control
17 on behalf of another person, unless the person otherwise agrees or law other than this article
18 otherwise provides, the person does not owe any duty to the other person and is not required to
19 confirm the acknowledgment to another person.

20 55 Attachment and Enforceability of Security Interest; Secured Transactions; UCC. Amend
21 RSA 382-A:9-203(b)(3) to read as follows:

22 (3) one of the following conditions is met:

23 (A) the debtor has ~~[authenticated]~~ **signed** a security agreement that provides a
24 description of the collateral and, if the security interest covers timber to be cut, a description of the
25 land concerned;

26 (B) the collateral is not a certificated security and is in the possession of the
27 secured party under Section 9-313 pursuant to the debtor's security agreement;

28 (C) the collateral is a certificated security in registered form and the security
29 certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's
30 security agreement; ~~[or]~~

31 (D) the collateral is **controllable accounts, controllable electronic records,**
32 **controllable payment intangibles,** deposit accounts, ~~[electronic chattel paper,]~~ **electronic**
33 **documents, electronic money,** investment property, **or** letter-of-credit rights~~[, or electronic~~
34 ~~documents,]~~ and the secured party has control under Section 7-106, 9-104, 9-105, **9-105A,** 9-106, ~~[or]~~
35 9-107, **or 9-107A** pursuant to the debtor's security agreement; **or**

36 (E) **the collateral is chattel paper and the secured party has possession**
37 **and control under Section 9-314A pursuant to the debtor's security agreement.**

56 Attachment and Enforceability; Secured Transactions; UCC. Amend RSA 382-A:9-203(b)-(c) to read as follows:

(b) When after-acquired property clause not effective. ***Subject to subsection (c), a security interest does not attach under a term constituting an after-acquired property clause to:***

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) a commercial tort claim.

(c) ***Limitation on subsection (b). Subsection (b) does not prevent a security interest from attaching:***

(1) ***to consumer goods as proceeds under Section 9-315(a) or commingled goods under section 9-336(c);***

(2) ***to a commercial tort claim as proceeds under Section 9-315(a); or***

(3) ***under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.***

(d) Future advances and other value. A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

57 Duties and Rights; Secured Party in Control; Secured Transactions; UCC. Amend the introductory paragraph of RSA 382-A:9-207(c) to read as follows:

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, ***9-105A***, 9-106, ~~[or]~~ 9-107, ***or 9-107A***:

58 Additional Duties of Secured Party; Secured Transactions; UCC. Amend RSA 382-A:9-208(b) to read as follows:

(b) Duties of secured party after receiving demand from debtor. Within 10 days after receiving~~[-an authenticated]~~ ***a signed*** demand by the debtor:

(1) a secured party having control of a deposit account under Section 9-104(a)(2) shall send to the bank with which the deposit account is maintained ~~[an authenticated]~~ ***a signed*** statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under Section 9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control ~~[of electronic chattel paper]~~ under Section 9-105 ***of an electronic copy of a record evidencing chattel paper*** shall ***transfer control of the electronic copy to the debtor or a person designated by the debtor;*** ~~;~~

~~[(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;~~

~~[(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and~~

~~[(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;]~~

(4) a secured party having control of investment property under Section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an ~~[authenticated record]~~ ***a signed record*** that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under Section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party ~~[an authenticated]~~ ***a signed*** release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; ~~[and~~

~~(6) a secured party having control of an electronic document shall:~~

~~(A) give control of the electronic document to the debtor or its designated custodian;~~

~~(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and~~

~~(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.]~~

(6) a secured party having control under Section 7-106 of an authoritative copy of an electronic document of title shall transfer control of the authoritative copy to the debtor or a person designated by the debtor;

(7) *a secured party having control under Section 9-105A of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor; and*

(8) *a secured party having control under Section 12-105 of a controllable electronic record shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.*

59 Law Governing Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-301 to read as follows:

382-A:9-301 Law Governing Perfection and Priority of Security Interests. Except as otherwise provided in Sections 9-303 through [9-306] **9-306B**, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, **or tangible** money[~~or tangible chattel paper~~] is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

60 New Sections; Chattel Paper Evidenced by Authoritative Electronic Copy. Amend RSA 382-A by inserting after section 9-306 the following new sections:

382-A:9-306A Law Governing Perfection and Priority of Security Interests in Chattel Paper.

(a) Chattel paper evidenced by authoritative electronic copy. Except as provided in subsection (e), if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the electronic chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper.

1 (b) Electronic Chattel Paper's Jurisdiction. The following rules determine the electronic
2 chattel paper's jurisdiction under this section:

3 (1) If the authoritative electronic copy of chattel paper, or a record attached to or
4 logically associated with the electronic copy which is readily available for review, expressly provides
5 that a particular jurisdiction is the electronic chattel paper's jurisdiction for purposes of this part,
6 this article, or the [Uniform Commercial Code], that jurisdiction is the electronic chattel paper's
7 jurisdiction.

8 (2) If paragraph (1) does not apply and the rules of the system in which the
9 electronic copy is recorded are readily available for review and expressly provide that a particular
10 jurisdiction is the controllable electronic record's jurisdiction for purposes of this part, this article, or
11 the [Uniform Commercial Code], that jurisdiction is the electronic chattel paper's jurisdiction.

12 (3) If paragraphs (1) and (2) do not apply and the electronic copy, or a record
13 attached to or logically associated with the electronic copy which is readily available for review,
14 expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that
15 jurisdiction is the electronic chattel paper's jurisdiction.

16 (4) If paragraphs (1) through (3) do not apply and the rules of the system in which
17 the electronic copy is recorded are readily available for review and expressly provide that the chattel
18 paper or the system is governed by the law of a particular jurisdiction, that jurisdiction is the
19 electronic chattel paper's jurisdiction.

20 (5) If paragraphs (1) through (4) do not apply, the electronic chattel paper's
21 jurisdiction is the jurisdiction in which the debtor is located.

22 (c) Relation of transaction to electronic chattel paper's jurisdiction not necessary.
23 Subsections (a) and (b) apply even if a transaction does not bear any relation to the electronic chattel
24 paper's jurisdiction.

25 (d) Chattel paper evidenced by authoritative tangible copy. If an authoritative tangible
26 copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative
27 electronic copy, while an authoritative tangible copy of a record evidencing chattel paper is located in
28 a jurisdiction, the local law of that jurisdiction governs:

29 (A) perfection of a security interest in the chattel paper by possession under
30 Section 9-314A; and

31 (B) the effect of perfection or nonperfection and the priority of a security interest
32 in the chattel paper.

33 (e) When perfection governed by law of jurisdiction where debtor is located. The local
34 law of the jurisdiction in which the debtor is located governs perfection of a security interest in
35 chattel paper by filing.

36 382-A:9-306B Law Governing Perfection and Priority of Security Interests in Controllable
37 Accounts, Controllable Electronic Records, and Controllable Payment Intangibles.

(a) Governing law: general rules. Except as provided in subsection (b), the local law of the controllable electronic record's jurisdiction as specified in Section 12-107(c) and (d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable account, controllable electronic record, or controllable payment intangible.

(b) When perfection governed by law of jurisdiction where debtor is located. The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and

(2) automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible.

61 When Filing Required; Secured Transactions; UCC. Amend RSA 382-A:9-310(b)(8)-(10) to read as follows:

(8) in ***controllable accounts, controllable electronic records, controllable payment intangibles***, deposit accounts, ~~[electronic chattel paper,]~~ electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 9-314;

(9) ***in chattel paper which is perfected by possession and control under Section 9-314A;***

(10) in proceeds which is perfected under Section 9-315; or

~~[(10)]~~ (11) that is perfected under Section 9-316.

62 Perfection of Security Interests; Secured Transactions; UCC. Amend RSA 382-A:9-312 to read as follows:

382-A:9-312 Perfection of Security Interests in Chattel Paper, ***Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles***, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(a) Perfection by filing permitted. A security interest in chattel paper, ~~[negotiable documents,]~~ ***controllable accounts, controllable electronic records, controllable payment intangibles***, instruments, ~~[or]~~ investment property, ***or negotiable documents*** may be perfected by filing.

(b) Control or possession of certain collateral. Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under Section 9-314;

(2) and except as otherwise provided in Section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314; ~~[and]~~

(3) a security interest in *tangible* money may be perfected only by the secured party's taking possession under Section 9-313; *and*

(4) *a security interest in electronic money may be perfected only by control under Section 9-314.*

(c) Goods covered by negotiable document. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) Goods covered by nonnegotiable document. While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) Temporary perfection: new value. A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under ~~[an authenticated]~~ *a signed* security agreement.

(f) Temporary perfection: goods or documents made available to debtor. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) Temporary perfection: delivery of security certificate or instrument to debtor. A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) Expiration of temporary perfection. After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

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63 Possession By Secured Party Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-313(a) to read as follows:

(a) Perfection by possession or delivery. Except as otherwise provided in subsection (b), a secured party may perfect a security interest in ~~[tangible negotiable documents,]~~ goods, instruments, ***negotiable tangible documents, or tangible*** money, ~~[or tangible chattel paper]~~ by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8-301.

64 Possession by a Secured Party; Perfection; Secured Transactions; UCC. Amend RSA 382-A:9-313(c) to read as follows:

(c) Collateral in possession of person other than debtor. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession ~~[authenticates]~~ ***signs*** a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having ~~[authenticated]~~ ***signed*** a record acknowledging that it will hold possession of collateral for the secured party's benefit.

65 Perfection by Control; Secured Transactions; UCC. Amend RSA 382-A:9-314(a)-(b) to read as follows:

(a) Perfection by control. A security interest in ~~[investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents]~~ ***controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, or letter-of-credit rights*** may be perfected by control of the collateral under Section 7-106, 9-104, ~~[9-105,]~~ ***9-105A***, 9-106, ~~[or]~~ 9-107, ***or 9-107A***.

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in ***controllable accounts, controllable electronic records, controllable payment intangibles,*** deposit accounts, ~~[electronic chattel paper, letter-of-credit rights, or]~~ electronic documents, ***electronic money, or letter-of-credit rights*** is perfected by control under Section 7-106, 9-104, ~~[9-105,]~~ ***9-105A***, ~~[or]~~ 9-107, ***or 9-107A*** when the secured party obtains control and remains perfected by control only while the secured party retains control.

66 New Section; Perfection by Possession; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 9-314 the following new section:

9-314A Perfection by Possession and Control of Chattel Paper.

(a) Perfection by possession and control. A secured party may perfect a security interest in chattel paper by taking possession of each authoritative tangible copy of the record evidencing the

1 chattel paper and obtaining control of each authoritative electronic copy of the electronic record
2 evidencing the chattel paper.

3 (b) Time of perfection; continuation of perfection. A security interest is perfected under
4 subsection (a) when the secured party takes possession and obtains control and remains perfected
5 under subsection (a) only while the secured party retains possession and control.

6 (c) Application of Section 9-313 to Perfection by Possession of Chattel Paper. Section 9-
7 313(c) and (f) through (i) applies to perfection by possession of an authoritative tangible copy of a
8 record evidencing chattel paper.

9 67 Continued Perfection of Security Interest; Secured Transactions; UCC. Amend the
10 introductory paragraph of RSA 382-A:9-316(a) to read as follows:

11 (a) General rule: effect on perfection of change in governing law. A security interest
12 perfected pursuant to the law of the jurisdiction designated in Section 9-301(1), ~~or~~ 9-305(c), **9-**
13 **306A(e), or 9-306B(b)** remains perfected until the earliest of:

14 68 Continued Perfection of Security Interest; Secured Transactions; UCC. Amend RSA 382-A:9-
15 316(f) to read as follows:

16 (f) Change in jurisdiction of **controllable electronic record**, bank, issuer, nominated
17 person, securities intermediary, or commodity intermediary. A security interest in **controllable**
18 **accounts, controllable electronic records, controllable payment intangibles, chattle paper,**
19 deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of
20 the **controllable electronic record's jurisdiction, the electronic chattel paper's jurisdiction,**
21 **the** bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities
22 intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains
23 perfected until the earlier of:

24 (1) the time the security interest would have become unperfected under the law of
25 that jurisdiction; or

26 (2) the expiration of 4 months after a change of the applicable jurisdiction to another
27 jurisdiction.

28 69 Interest that Take Priority Over or Take Free of Security Interest or Agricultural Lien;
29 Secured Transactions; UCC. Amend RSA 382-A:9-317 to read as follows:

30 382-A:9-317 Interests That Take Priority Over or Take Free of Security Interest or Agricultural
31 Lien.

32 (a) Conflicting security interests and rights of lien creditors. A security interest or
33 agricultural lien is subordinate to the rights of:

34 (1) a person entitled to priority under Section 9-322; and

35 (2) except as otherwise provided in subsection (e), a person that becomes a lien
36 creditor before the earlier of the time:

37 (A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in Section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer~~[, other than a secured party,]~~ of ~~[tangible chattel paper, tangible documents,]~~ goods, instruments, **tangible documents**, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. **Subject to subsections (f), (g), (h), and (i)** a licensee of a general intangible or a buyer, other than a secured party, of collateral other than ~~[tangible chattel paper,]~~ **electronic money**, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. Except as otherwise provided in Sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

(f) Buyers of chattel paper. A buyer, other than a secured party, of chattel paper takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and:

(1) receives delivery of each authoritative tangible copy of the record evidencing the chattel paper; and,

(2) if each authoritative electronic copy of the record evidencing the chattel paper can be subjected to control under Section 9-105, obtains control of each authoritative electronic copy.

(g) Buyers of electronic documents. A buyer of an electronic document takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and, if each authoritative electronic copy of the document can be subjected to control under Section 7-106, obtains control of each authoritative electronic copy.

(h) Buyers of controllable electronic records. A buyer of a controllable electronic record takes free of a security interest if, without knowledge of the security

interest and before it is perfected, the buyer gives value and obtains control of the controllable electronic record.

(i) Buyers of controllable accounts and controllable payment intangibles. A buyer, other than a secured party, of a controllable account or a controllable payment intangible takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable account or controllable payment intangible.

70 New Section; Priority of Security Interests; Secured Transactions; UCC. Amend RSA 382-A by inserting after section 9-326 the following new section:

382-A:9-326A Priority of Security Interests in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible. A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.

71 Priority of Purchaser of Chattel Paper or Instrument; Secured Transactions; UCC. Amend RSA 382-A:9-330(a)-(b) to read as follows:

(a) Purchaser's priority: security interest claimed merely as proceeds. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of ***each authoritative tangible copy of the record evidencing*** the chattel paper ~~[or]~~ ***and obtains control under RSA 382-A:9-105 of each authoritative electronic copy of the record evidencing*** the chattel paper ~~[under Section 9-105];~~ and

(2) the ~~[chattel paper does]~~ ***authoritative copies of the record evidencing the chattel paper do*** not indicate that ~~[it has]~~ ***the copies have*** been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority: other security interests. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of ***each authoritative tangible copy of the record evidencing*** the chattel paper ~~[or]~~ ***and obtains control under RSA 382-A:9-105 of each authoritative electronic copy of the record evidencing*** the chattel paper ~~[under Section 9-105]~~ in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

72 Priority Rights of Purchasers; Secured Transactions; UCC. Amend RSA 382-A:9-331 to read as follows:

382-A:9-331 Priority of Rights of Purchasers of ***Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles***, Instruments, Documents, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements ***and Protections Against Assertions of Claims*** Under ~~[Article 8]~~ ***Articles 8 and 12***.

(a) Rights under Articles 3, 7, ~~and~~ ***8, and 12*** not limited. This article 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 controllable account, controllable electronic record, or controllable payment intangible***. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, ~~and~~ ***8, and 12***.

(b) Protection under ~~[Article 8]~~ ***Articles 8 and 12***. This article 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 ~~[Article 8]~~ ***Articles 8 and 12***.

(c) Filing not notice. Filing under this article does not constitute notice of a claim or defense to the holders, ~~or~~ purchasers, or persons described in subsections (a) and (b).

73 Transfer of Money; Transfer of Funds; Secured Transactions; UCC. Amend RSA 382-A:9-332 to read as follows:

382-A:9-332 Transfer of Money; Transfer of Funds From Deposit Account.

(a) Transferee of ***tangible*** money. A transferee of ***tangible*** money takes the money free of a security interest ~~[unless the transferee acts]~~ ***if the transferee receives delivery of the money without acting*** in collusion with the debtor in violating the rights of the secured party.

(b) ***Transferee of electronic money. A transferee of electronic money takes the money free of a security interest if the transferee obtains control of the money without acting in collusion with the debtor in violating the rights of the secured party.***

(c) Transferee of funds from deposit account. A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account ~~[unless the transferee acts]~~ ***if the transferee receives the funds without acting*** in collusion with the debtor in violating the rights of the secured party.

74 Discharge of Account Debtor; Secured Transactions; UCC. Amend RSA 382-A:9-406 to read as follows:

382-A:9-406 Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.

(a) Discharge of account debtor; effect of notification. Subject to subsections (b) through (i) ***and (l)***, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, ~~[authenticated]~~ ***signed*** by the assignor or the assignee, that the amount due or to become due has

1 been assigned and that payment is to be made to the assignee. After receipt of the notification, the
2 account debtor may discharge its obligation by paying the assignee and may not discharge the
3 obligation by paying the assignor.

4 (b) When notification ineffective. Subject to ~~[subsection (h)]~~ **subsections (h) and (l)**,
5 notification is ineffective under subsection (a):

6 (1) if it does not reasonably identify the rights assigned;

7 (2) to the extent that an agreement between an account debtor and a seller of a
8 payment intangible limits the account debtor's duty to pay a person other than the seller and the
9 limitation is effective under law other than this article; or

10 (3) at the option of an account debtor, if the notification notifies the account debtor
11 to make less than the full amount of any installment or other periodic payment to the assignee, even
12 if:

13 (A) only a portion of the account, chattel paper, or payment intangible has been
14 assigned to that assignee;

15 (B) a portion has been assigned to another assignee; or

16 (C) the account debtor knows that the assignment to that assignee is limited.

17 (c) Proof of assignment. Subject to ~~[subsection (h)]~~ **subsections (h) and (l)**, if requested
18 by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment
19 has been made. Unless the assignee complies, the account debtor may discharge its obligation by
20 paying the assignor, even if the account debtor has received a notification under subsection (a).

21 (d) Term restricting assignment generally ineffective. Except as otherwise provided in
22 subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement
23 between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

24 (1) prohibits, restricts, or requires the consent of the account debtor or person
25 obligated on the promissory note to the assignment or transfer of, or the creation, attachment,
26 perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible,
27 or promissory note; or

28 (2) provides that the assignment or transfer or the creation, attachment, perfection,
29 or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim,
30 defense, termination, right of termination, or remedy under the account, chattel paper, payment
31 intangible, or promissory note.

32 (e) Inapplicability of subsection (d) to certain sales. Subsection (d) does not apply to the
33 sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under
34 Section 9-610 or an acceptance of collateral under Section 9-620.

35 (f) Legal restrictions on assignment generally ineffective. Except as otherwise provided
36 in Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or
37 regulation that prohibits, restricts, or requires the consent of a government, governmental body or

official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subsection (b)(3) not waivable. Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. This section does not apply to:

(1) an assignment of a health-care-insurance receivable; or

(2) an assignment or transfer of or creation of a security interest in:

(A) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C.A § 104(a)(1) or (2), as amended from time to time; or

(B) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C.A § 1396p(d)(4), as amended from time to time.

(j) Section prevails over inconsistent law. Except as otherwise provided in subsection (i), this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(k) Inapplicability to interests in certain entities. Subsections (d), (f), and (j) do not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.

(l) Inapplicability of certain subsections. Subsections (a) through (c) and (g) do not apply to a controllable account or controllable payment intangible.

75 Rights After Default; Secured Transactions; UCC. Amend RSA 382-A:9-601(b) to read as follows:

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, **9-105A**, 9-106, [or] 9-107, **or 9-107A** has the rights and duties provided in Section 9-207.

76 Unknown Debtor or Secondary Obligor; Secured Transactions; UCC. RSA 382-A:9-605 is repealed and reenacted to read as follows:

(a) When no duty owed by secured party. Except as provided in subsection (b), a secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(b) When secured party owes duty to debtor notwithstanding subsection (a). A secured party owes a duty based on its status as a secured party to a person that is a debtor if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible, the secured party knows that the information specified in subsection (a)(1)(A), (B), or (C) is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

77 Notification Before Disposition of Collateral; Secured Transactions; UCC. Amend RSA 382-A:9-611 to read as follows:

382-A:9-611 Notification Before Disposition of Collateral.

(a) "Notification date." In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor ~~[an authenticated]~~ **a signed** notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required. Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send ~~[an authenticated]~~ **a signed** notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

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1 (i) identified the collateral;
2 (ii) was indexed under the debtor's name as of that date; and
3 (iii) was filed in the office in which to file a financing statement against the
4 debtor covering the collateral as of that date; and

5 (C) any other secured party that, 10 days before the notification date, held a
6 security interest in the collateral perfected by compliance with a statute, regulation, or treaty
7 described in Section 9-311(a).

8 (d) Subsection (b) inapplicable: perishable collateral; recognized market. Subsection (b)
9 does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type
10 customarily sold on a recognized market.

11 (e) Compliance with subsection (c)(3)(B). A secured party complies with the requirement
12 for notification prescribed by subsection (c)(3)(B) if:

13 (1) not later than 20 days or earlier than 30 days before the notification date, the
14 secured party requests, in a commercially reasonable manner, information concerning financing
15 statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

16 (2) before the notification date, the secured party:

17 (A) did not receive a response to the request for information; or

18 (B) received a response to the request for information and sent ~~an~~
19 ~~authenticated~~ **a signed** notification of disposition to each secured party or other lienholder named
20 in that response whose financing statement covered the collateral.

21 78 Contents and Form of Notification Before Disposition of Collateral; Secured Transactions;
22 UCC. Amend RSA 382-A:9-614 to read as follows:

23 382-A:9-614 Contents and Form of Notification Before Disposition of Collateral: Consumer-
24 Goods Transaction.

25 In a consumer-goods transaction, the following rules apply:

26 (1) A notification of disposition must provide the following information:

27 (A) the information specified in Section 9-613(1);

28 (B) a description of any liability for a deficiency of the person to which the
29 notification is sent;

30 (C) a telephone number from which the amount that must be paid to the secured
31 party to redeem the collateral under Section 9-623 is available; and

32 (D) a telephone number or mailing address from which additional information
33 concerning the disposition and the obligation secured is available.

34 (2) A particular phrasing of the notification is not required.

35 (3) The following form of notification, when completed, provides sufficient
36 information:

37 [Name and address of secured party]

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1 [Date]

2 NOTICE OF OUR PLAN TO SELL PROPERTY

3 [Name and address of any obligor who is also a debtor]

4 Subject: [Identification of Transaction]

5 We have your [describe collateral] , because you broke promises in our agreement.

6 [For a public disposition:]

7 We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will
8 be held as follows:

9 Date:

10 Time:

11 Place:

12 You may attend the sale and bring bidders if you want.

13 [For a private disposition:]

14 We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or
15 license.

16 The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we
17 get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get
18 more money than you owe, you will get the extra money, unless we must pay it to someone else.

19 You can get the property back at any time before we sell it by paying us the full amount you owe (not
20 just the past due payments), including our expenses. To learn the exact amount you must pay, call
21 us at [telephone number].

22 If you want us to explain to you in writing **or in an electronic document** how we have figured the
23 amount that you owe us, you may call us at [telephone number] [or write us at secured party's
24 address **or a description of electronic communication method**] and request a written
25 explanation **or an explanation in an electronic document**. [We will charge you \$_____ for the
26 explanation if we sent you another written explanation of the amount you owe us within the last six
27 months.]

28 If you need more information about the sale call us at [telephone number] [or write us at [secured
29 party's address] [**or description of electronic communication method**]].

30 We are sending this notice to the following other people who have an interest in [describe collateral]
31 or who owe money under your agreement:

32 [Names of all other debtors and obligors, if any]

33 [End of Form]

34 (4) A notification in the form of paragraph (3) is sufficient, even if additional
35 information appears at the end of the form.

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(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

79 Explanation of Calculation of Surplus or Deficiency; Secured Transactions; UCC. Amend RSA 382-A:9-616(a)-(c) to read as follows:

382-A:9-616 Explanation of Calculation of Surplus or Deficiency.

(a) Definitions. In this section:

(1) "Explanation" means a ~~writing~~ **record** that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) ~~authenticated~~ **signed** by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under Section 9-610.

(b) Explanation of calculation. In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9-615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes ~~written~~ demand **in a record** on the consumer obligor after the disposition for payment of the deficiency; and

(B) within 14 days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) Required Information. To comply with subsection (a)(1)(B), ~~a writing~~ **an explanation** must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) the amount of the surplus or deficiency.

80 Nonliability and Limitation on Liability of Secured Party; Secured Transactions; UCC.
Amend RSA 382-A:9-628 to read as follows:

382-A:9-628 Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.

(a) Limitation of liability of secured party for noncompliance with article. ***Subject to subsection (f),*** unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. ***Subject to subsection (f)*** a secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

1 (B) the identity of the person.

2 (c) Limitation of liability if reasonable belief that transaction not a consumer-goods
3 transaction or consumer transaction. A secured party is not liable to any person, and a person's
4 liability for a deficiency is not affected, because of any act or omission arising out of the secured
5 party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer
6 transaction or that goods are not consumer goods, if the secured party's belief is based on its
7 reasonable reliance on:

8 (1) a debtor's representation concerning the purpose for which collateral was to be
9 used, acquired, or held; or

10 (2) an obligor's representation concerning the purpose for which a secured obligation
11 was incurred.

12 (d) Limitation of liability for statutory damages. A secured party is not liable to any
13 person under Section 9-625(c)(2) for its failure to comply with Section 9-616.

14 (e) Limitation of multiple liability for statutory damages. A secured party is not liable
15 under Section 9-625(c)(2) more than once with respect to any one secured obligation.

16 ***(f) Notwithstanding subsection (b), a secured party owes a duty based on its***
17 ***status as a secured party to a person that is a debtor if, at the time the secured party***
18 ***obtains control of collateral that is a controllable account, controllable electronic record,***
19 ***or controllable payment intangible, the secured party knows that it will not be provided***
20 ***with the information specified in subsection (b)(1)(A), (B), or (C) by the collateral, a record***
21 ***attached to or logically associated with the collateral, or the system in which the collateral***
22 ***is recorded.***

23 81 New Subdivisions; Uniform Commercial Code; Article 12 and 13; Controllable Electronic
24 Records; Transition Provisions. Amend RSA 382-A by inserting after section 9-809 the following new
25 subdivisions:

26 ARTICLE 12

27 CONTROLLABLE ELECTRONIC RECORDS

28 382-A:12-101 Short Title. This article may be cited as Uniform Commercial Code-Controllable
29 Electronic Records.

30 382-A:12-102 Definitions.

31 (a) Article 12 definitions. In this article:

32 (1) "Controllable electronic record" means a record stored in an electronic medium
33 that can be subjected to control under Section 12-105. The term does not include a controllable
34 account, a controllable payment intangible, a deposit account, an electronic copy of a record
35 evidencing chattel paper, an electronic document of title, electronic money, investment property, or a
36 transferable record.

1 (2) “Qualifying purchaser” means a purchaser of a controllable electronic record or
2 an interest in the controllable electronic record that obtains control of the controllable electronic
3 record for value, in good faith, and without notice of a claim of a property right in the controllable
4 electronic record.

5 (3) “Transferable record” means:

6 (A) “Transferable record” as defined in the Electronic Signatures in Global and
7 National Commerce Act, 15 U.S.C. Section 7001 et seq., as amended; or

8 (B) “Transferable record” as defined in [cite to Uniform Electronic Transactions
9 Act Section 16(a)].

10 (4) “Value” has the meaning provided in Section 3-303(a).

11 (b) Definitions in Article 9. The definitions in Article 9 of “account debtor”, “controllable
12 account”, “controllable payment intangible”, “chattel paper”, “deposit account”, “electronic money”,
13 and “investment property” apply to this article.

14 382-A:12-103 Relationship to Article 9 and Consumer Laws.

15 (a) Article 9 governs in case of conflict. If there is conflict between this article and
16 Article 9, Article 9 governs.

17 (b) Applicable consumer law and other laws. A transaction subject to this article is
18 subject to any applicable rule of law that establishes a different rule for consumers and [insert
19 reference to (i) any other statute or regulation that regulates the rates, charges, agreements, and
20 practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection statute
21 or regulation].

22 382-A:12-104 Rights in Controllable Account, Controllable Electronic Record, and Controllable
23 Payment Intangible.

24 (a) Applicability of section to controllable account and controllable payment intangible.
25 This section applies to the acquisition and purchase of rights in a controllable account or controllable
26 payment intangible, including the rights and benefits of a purchaser and a qualifying purchaser
27 under subsections (d), (e), (g), and (h), in the same manner this section applies to a controllable
28 electronic record.

29 (b) Control of controllable account and controllable payment intangible. For purposes of
30 determining whether a purchaser of a controllable account or a controllable payment intangible is a
31 qualifying purchaser, the purchaser obtains control of the account or payment intangible if it obtains
32 control of the controllable electronic record that evidences the account or payment intangible.

33 (c) Applicability of other law to acquisition of rights. Except as provided in this section,
34 law other than this article determines whether a person acquires a right in a controllable electronic
35 record and the right the person acquires.

36 (d) Shelter principle and purchase of limited interest. A purchaser of a controllable
37 electronic record acquires all rights in the controllable electronic record that the transferor had or

1 had power to transfer, except that a purchaser of a limited interest in a controllable electronic record
2 acquires rights only to the extent of the interest purchased.

3 (e) Rights of qualifying purchaser. A qualifying purchaser acquires its rights in the
4 controllable electronic record free of a claim of a property right in the controllable electronic record.

5 (f) Limitation of rights of qualifying purchaser in other property. Except as provided in
6 subsections (a) and (e) for controllable accounts and controllable payment intangibles or law other
7 than this article, a qualifying purchaser takes a right to payment, right to performance, or interest
8 in property evidenced by the controllable electronic record subject to a claim of a property right in
9 the right to payment, right to performance, or other interest in property.

10 (g) No-action protection for qualifying purchaser. An action may not be asserted against
11 a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable
12 electronic record and a claim of a property right in another controllable electronic record, whether
13 framed in conversion, replevin, constructive trust, equitable lien, or other theory.

14 (h) Filing not notice. Filing of a financing statement under Article 9 is not notice of a
15 claim of a property right in a controllable electronic record.

16 382-A:12-105 Control of Controllable Electronic Record.

17 (a) General rule: control of controllable electronic record. A person has control of a
18 controllable electronic record if:

19 (1) the electronic record, a record attached to or logically associated with the
20 electronic record, or a system in which the electronic record is recorded gives the person:

21 (A) the power to avail itself of substantially all the benefit from the electronic
22 record; and

23 (B) exclusive power, subject to subsection (b), to:

24 (i) prevent others from availing themselves of substantially all the benefit
25 from the electronic record; and

26 (ii) transfer control of the electronic record to another person or cause
27 another person to obtain control of another controllable electronic record as a result of the transfer of
28 the electronic record; and

29 (2) the electronic record, a record attached to or logically associated with the
30 electronic record, or a system in which the electronic record is recorded enables the person readily to
31 identify itself in any way, including by name, identifying number, cryptographic key, office, or
32 account number, as having the powers specified in paragraph (1).

33 (b) Presumption of exclusivity of certain powers. If a person has the powers that are
34 specified in subsection (a)(1)(B), the powers are presumed to be exclusive.

35 (c) Control through another person. A person has control of a controllable electronic
36 record if another person, other than the transferor of an interest in the electronic record:

(1) has control of the electronic record and acknowledges that it has control on behalf of the person, or

(2) obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.

(d) No requirement to acknowledge. A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(e) No duties or confirmation. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to another person.

(f) Meaning of exclusive. A power specified in subsection (a)(1) is exclusive, even if:

(1) the controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control or a modification of benefits afforded by the electronic record; or

(2) the person shares the power with another person.

382-A:12-106 Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible.

(a) Discharge of account debtor. An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

(1) the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2) except as provided in subsection (b), a person that formerly had control of the controllable electronic record.

(b) Effect of notification. Subject to subsection (d), an account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1) is signed by a person that formerly had control or the person to which control was transferred;

(2) reasonably identifies the controllable account or controllable payment intangible;

(3) notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5) provides a commercially reasonable method by which the account debtor is to pay the transferee.

1 (c) Discharge following effective notification. After receipt of a notification that complies
2 with subsection (b), the account debtor may discharge its obligation by paying in accordance with the
3 notification and may not discharge the obligation by paying a person that formerly had control.

4 (d) When notification ineffective. Subject to subsection (h), notification is ineffective
5 under subsection (b):

6 (1) unless, before the notification is sent, an account debtor and the person that, at
7 that time, had control of the controllable electronic record that evidences the controllable account or
8 controllable payment intangible agree in a signed record to a commercially reasonable method by
9 which a person may furnish reasonable proof that control has been transferred;

10 (2) to the extent an agreement between an account debtor and seller of a payment
11 intangible limits the account debtor's duty to pay a person other than the seller and the limitation is
12 effective under law other than this article; or

13 (3) at the option of an account debtor, if the notification notifies the account debtor
14 to:

15 (A) divide a payment;

16 (B) make less than the full amount of an installment or other periodic payment;

17 or

18 (C) pay any part of a payment by more than one method or to more than one
19 person.

20 (e) Proof of transfer of control. Subject to subsection (h), if requested by the account
21 debtor, the person giving the notification seasonably shall furnish reasonable proof, using the agreed
22 method, that control of the controllable electronic record has been transferred. Unless the person
23 complies with the request, the account debtor may discharge its obligation by paying a person that
24 formerly had control, even if the account debtor has received a notification under subsection (b).

25 (f) What constitutes reasonable proof. A person furnishes reasonable proof that control
26 has been transferred if the person demonstrates, using the agreed method, that the transferee has
27 the power to:

28 (1) avail itself of substantially all the benefit from the controllable electronic record;

29 (2) prevent others from availing themselves of substantially all the benefit from the
30 controllable electronic record; and

31 (3) transfer the powers mentioned in paragraphs (1) and (2) to another person.

32 (g) Rights not waivable. Subject to subsection (h), an account debtor may not waive or
33 vary its rights under subsections (d)(1) and (e) or its option under subsection (d)(3).

34 (h) Rule for individual under other law. This section is subject to law other than this
35 article which establishes a different rule for an account debtor who is an individual and who
36 incurred the obligation primarily for personal, family, or household purposes.

1 (a) Governing law: general rule. Except as provided in subsection (b), the local law of a
2 controllable electronic record's jurisdiction governs a matter covered by this article.

3 (b) Governing law: Section 12-106. The local law of the controllable electronic record's
4 jurisdiction for a controllable electronic record that evidences a controllable account or controllable
5 payment intangible governs a matter covered by Section 12-106 unless an effective agreement
6 determines that the local law of another jurisdiction governs.

7 (c) Controllable electronic record's jurisdiction. The following rules determine a
8 controllable electronic record's jurisdiction under this section:

9 (1) If the controllable electronic record, or a record attached to or logically associated
10 with the controllable electronic record which is readily available for review, expressly provides that a
11 particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or
12 this chapter, that jurisdiction is the controllable electronic record's jurisdiction.

13 (2) If paragraph (1) does not apply and the rules of the system in which the
14 controllable electronic record is recorded are readily available for review and expressly provide that
15 a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article
16 or the [Uniform Commercial Code], that jurisdiction is the controllable electronic record's
17 jurisdiction.

18 (3) If paragraphs (1) and (2) do not apply and the controllable electronic record, or a
19 record attached to or logically associated with the controllable electronic record which is readily
20 available for review, expressly provides that the controllable electronic record is governed by the law
21 of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

22 (4) If paragraphs (1) through (3) do not apply and the rules of the system in which
23 the controllable electronic record is recorded are readily available for review and expressly provide
24 that the controllable electronic record or the system is governed by the law of a particular
25 jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

26 (5) If paragraphs (1) through (4) do not apply, the controllable electronic record's
27 jurisdiction is the District of Columbia.

28 (d) Applicability of Article 12. If subsection (c)(5) applies and Article 12 is not in effect
29 in the District of Columbia without material modification, the governing law for a matter covered by
30 this article is the law of the District of Columbia as though Article 12 were in effect in the District of
31 Columbia without material modification. In this section, "Article 12" means Uniform Commercial
32 Code—Controllable Electronic Records (with Conforming Amendments to Articles 1 and 9), 2022
33 Official Text.

34 (e) Relation of transaction to controllable electronic record's jurisdiction not necessary.
35 Subsections (b) through (d) apply even if a transaction does not bear any relation to the controllable
36 electronic record's jurisdiction.

1 (f) Rights of purchasers determined at time of purchase. The rights acquired by a
2 purchaser or a qualifying purchaser under Section 12-104 are governed by the law applicable under
3 this section at the time of purchase.

4 **ARTICLE 13**

5 **ADDITIONAL TRANSITION PROVISIONS FOR ARTICLES 9 AND 12**

6 **382-A:13-301 Savings Clause.**

7 (a) Pre-effective-date transactions, liens, or interests. Except as otherwise provided in
8 this part, Article 9 and Article 12 apply to a transaction, lien, or other interest in property, even if
9 the transaction, lien, or interest was entered into, created, or acquired before the effective date of
10 this Article.

11 (b) Continuing validity. Except as otherwise provided in subsection (c) and Sections 13-
12 302 through 13-306:

13 (1) a transaction, lien, or interest in property that was not governed by this chapter
14 and was validly entered into, created, or transferred before the effective date of this Article, and
15 would be subject to Article 9 as amended or Article 12 if it had been entered into, created, or
16 transferred after the effective date of this Article, and the rights, duties, and interests flowing from
17 the transaction, lien, or interest in property remain valid after the effective date of this Article; and

18 (2) the transaction, lien, or interest in property may be terminated, completed,
19 consummated, and enforced as required or permitted by this act or by the law that otherwise would
20 apply if this act had not taken effect.

21 (c) Pre-effective-date proceedings. This Article does not affect an action, case, or
22 proceeding commenced before the effective date of this Article.

23 **382-A:13-302 Security Interest Perfected Before Effective Date.**

24 (a) Continuing perfection: perfection requirements satisfied. A security interest that is
25 enforceable and perfected immediately before the effective date of this Article is a perfected security
26 interest under this Article if, on the effective date of this Article, the applicable requirements for
27 enforceability and perfection under this Article are satisfied without further action.

28 (b) Continuing perfection: perfection requirements not satisfied. If, immediately before
29 the effective date of this Article, a security interest is enforceable and perfected, but the applicable
30 requirements for enforceability or perfection under this Article, are not satisfied on the effective date
31 of this Article, the security interest:

32 (1) is a perfected security interest until the earlier of the time perfection would have
33 ceased under the law in effect immediately before the effective date of this Article or January 1,
34 2025;

35 (2) remains enforceable thereafter only if the security interest satisfies the
36 requirements for enforceability under Section 9-203 before January 1, 2025; and

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1 (3) remains perfected thereafter only if the applicable requirements for perfection
2 under this Article are satisfied before January 1, 2025.

3 382-A:13-303 Security Interest Unperfected Before Effective Date. A security interest that is
4 enforceable immediately before the effective date of this Article but which would be unperfected at
5 that time:

6 (1) remains an enforceable security interest until January 1, 2025;

7 (2) remains enforceable thereafter if the security interest becomes enforceable under
8 Section 9-203 on the effective date of this Article or before January 1, 2025; and

9 (3) becomes perfected:

10 (A) without further action, on the effective date of this Article if the applicable
11 requirements for perfection under this Article are satisfied before or at that time; or

12 (B) when the applicable requirements for perfection are satisfied if the
13 requirements are satisfied after that time.

14 382-A:13-304 Effectiveness of Actions Taken Before Effective Date.

15 (a) Pre-effective-date action; attachment and perfection before adjustment date. If
16 action, other than the filing of a financing statement, is taken before the effective date of this Article
17 and the action would have resulted in perfection of the security interest had the security interest
18 become enforceable before the effective date of this Article, the action is effective to perfect a security
19 interest that attaches under this Article before January 1, 2025. An attached security interest
20 becomes unperfected on January 1, 2025 unless the security interest becomes a perfected security
21 interest under this Article before January 1, 2025.

22 (b) Pre-effective-date filing. The filing of a financing statement before the effective date
23 of this Article is effective to perfect a security interest on the effective date of this Article to the
24 extent the filing would satisfy the applicable requirements for perfection under this Article.

25 (c) Pre-effective-date enforceability actions. The taking of an action before the effective
26 date of this Article is sufficient for the enforceability of a security interest on the effective date of
27 this Article if the action would satisfy the applicable requirements for enforceability under this
28 Article.

29 382-A:13-305 Priority

30 (a) Determination of priority. Subject to subsections (b) and (c), this Article determines
31 the priority of conflicting claims to collateral.

32 (b) Established priorities. Subject to subsection (c), if the relative priorities of claims to
33 collateral were established before the effective date of this Article, Article 9 determines priority.

34 (c) Determination of certain priorities on adjustment date. On January 1, 2025, to the
35 extent that the relative priorities determined by this Article modify the relative priorities
36 established before the effective date of this Article, the relative priorities of claims to Article 12

property and electronic money which were established before the effective date of this Article cease to apply.

382-A:13-306 Priority of Claims When Priority Rules of Article 9 Do Not Apply.

(a) Determination of priority. Subject to subsections (b) and (c), Article 12 determines the priority of conflicting claims to Article 12 property when the priority rules of Article 9 do not apply.

(b) Established priorities. Subject to subsection (c), when the priority rules of Article 9 do not apply and the relative priorities of claims to Article 12 property were established before the effective date of this Article, law other than Article 12 determines priority.

(c) Determination of certain priorities on adjustment date. When the priority rules of Article 9 do not apply, to the extent that the relative priorities determined by this Article modify the relative priorities established before the effective date of this Article, on January 1, 2025 the relative priorities of claims to Article 12 property which were established before the effective date of this Article cease to apply.

82 New Paragraph; Uniform Securities Act; Definitions; Open Blockchain Token. Amend RSA 421-B:1-102 by inserting after paragraph (35) the following new paragraph:

(35-a) "Open blockchain token" means a digital unit which is:

(A) Created:

(i) In response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(ii) By deploying computer code to a blockchain network that allows for the creation of digital tokens or other units; or

(iii) Using any combination of the methods specified in subparagraphs (i) and (ii) of this paragraph;

(B) Recorded in a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature, especially relating to the supply of units and their distribution; and

(C) Capable of being traded or transferred between persons without an intermediary or custodian of value.

83 New Paragraph; Uniform Securities Act; Exempt Transaction; Open Blockchain Token. Amend RSA 421-B:2-202 by inserting after paragraph (24) the following new paragraph:

(25) A purchase or sale of an open blockchain token if all of the following are met:

(A) The issuer or seller of the token, or the registered agent of the developer or seller, files a notice of intent with the secretary of state, as specified in subsection (D) of this section;

(B) The purpose of the token is for a consumptive purpose, which shall only be exchangeable for, or provided for the receipt of, goods, services or content, including rights of access to goods, services or content; and

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(C) The issuer or seller of the token did not sell the token to the initial buyer as a financial investment. For purposes of this subsection, a developer seller of the token will be deemed not to have sold the token to the initial buyer as a financial investment if:

(i) The issuer or seller did not market the token as a financial investment; and

(ii) At least one of the following is true:

(a) The issuer or seller of the token reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

(b) The token has a consumptive purpose that is available at the time of sale and can be used at or near the time of sale for use for a consumptive purpose;

(c) If the token does not have a consumptive purpose available at the time of sale, the initial buyer of the token is prevented from reselling the token until the token is available for use for a consumptive purpose; or

(d) The issuer or seller takes other reasonable precautions to prevent buyers from purchasing the token as a financial investment.

(D) The issuer, seller or person who facilitates the exchange of an open blockchain token, or the registered agent of the applicable person, files a notice of intent with the secretary of state prior to offering or selling the tokens in this state. The notice of intent shall contain the name of the person acting as an issuer, seller or facilitator, the contact information of the person or the registered agent of the person, and a statement that any marketing or advertising materials, including web sites offering or selling open blockchain tokens, will contain a disclosure that the tokens are not registered as securities pursuant to a transaction exemption under RSA 421-B, the New Hampshire Uniform Securities Act. The notice shall also specify whether the person will be acting as an issuer, seller or facilitator. A form shall be made available by the office of the secretary of state on its Internet website for this purpose. The secretary of state shall charge a fee of \$100 per filing.

84 New Subparagraph; Uniform Securities Act; Broker-Dealer Registration Requirements and Exemption. Amend RSA 421-B:4-401(b) by inserting after subparagraph (2) the following new subparagraph:

(3)(A) Except as otherwise provided by RSA 421-B:5-511, a person who exclusively facilitates the exchange of an open blockchain token if all of the following are met:

(i) The person, or the registered agent of the person, files a notice of intent with the secretary of state, as specified in RSA 421-B:2-202(26)(d);

(ii) The person has a reasonable and good faith belief that a token subject to exchange conforms to the requirements of paragraphs RSA 421-B:2-202(25)(a)-(c); and

(iii) The person takes reasonably prompt action to terminate the exchange of a token that does not conform to the requirements of this subsection.

1 85 New Section; Uniform Securities Act; Liability of Issuers, Seller, and Others Who Facilitate
2 Exchange of Open Blockchain Tokens. Amend RSA 421-B by inserting after section 5-510 the
3 following new section:

4 421-B:5-511 Liability of Issuers, Sellers, and Others Who Facilitate Exchange of Open
5 Blockchain Tokens. Notwithstanding any other provision of law, an issuer, seller, or a person who
6 facilitates the exchange of an open blockchain token is subject to the provisions of RSA 421-B:5-501
7 through RSA 421-B:5-503 and RSA 421-B:5-505 through RSA 421-B:5-510 only to the extent
8 necessary to carry out those sections. The secretary of state shall have the authority provided under
9 RSA 421-B:6-601 through RSA 421-B:6-613 to determine compliance with the provisions of this
10 section, including whether a person qualifies for the exemptions set forth in this section. The
11 evidentiary burdens specified in RSA 421-B:5-503 shall apply in any proceeding initiated by the
12 secretary of state pursuant to this subsection.

13 86 New Subparagraphs; Department of Administrative Services; Division of Procurement and
14 Support Services; Structural Steel Defined. Amend RSA 21-I:11, II by inserting after subparagraph
15 (f) the following new subparagraphs:

16 (g) "Structural steel" shall mean a product consisting of the elements of the structural
17 frame that are shown and sized in the structural design documents, essential to support the design
18 loads as defined in the 2016 American Institute of Steel Construction (AISC) code of standard
19 practice for steel buildings and bridges 303-16.

20 (h) "Domestic fabricated structural steel" shall mean an iron or steel product where all
21 manufacturing must take place in the United States, from the initial melting stage, through
22 fabrication, and application of coatings, except metallurgical processes involving the refinement of
23 steel additives.

24 (i) "Permanently incorporated product" shall mean a product that is required to remain
25 in place at the end of the project contract, in a fixed location, affixed to the public work to which it
26 was incorporated and shall not mean a product that is capable of being moved from one location to
27 another.

28 (j) "Fabrication" shall mean all manufacturing of iron or steel products, from the initial
29 melting stage, through fabrication and application of coatings, except metallurgical processes
30 involving the refinement of steel additives.

31 87 New Paragraph; Department of Administrative Services; Division of Procurement and
32 Support Services; Established Preference of American Made Materials in State Contracts. Amend
33 RSA 21-I:11 by inserting after paragraph II the following new paragraph:

34 III.(a) Notwithstanding any law to the contrary relating to procurement and to the extent
35 permitted by federal law, any contract for construction, reconstruction, alteration, repair,
36 improvement, or maintenance of a public building or public works with the state as a party shall
37 contain a provision that for the permanently incorporated iron, structural steel, and fabricated

1 structural steel used or supplied in the performance of the contract or any subcontract, strong
2 consideration and preference shall be given for iron or steel fabricated in the United States. If the
3 competitive bidding process results in all qualifying factors being equal, the contract shall be
4 awarded to the contractor offering steel fabricated in the United States. In instances where
5 qualifying factors are equal, absent of low price, and using domesticated structural steel, the state
6 may reserve the option to purchase steel fabricated in the United States.

7 (b) If a court or federal or state agency has determined that any person intentionally
8 affixed a "Made in America" label to structural steel under this paragraph that was not made in the
9 United States or otherwise falsely represented that structural steel under this paragraph was
10 produced in the United States, the department of administrative services shall withhold contract
11 payment until the structural steel can be replaced, or the noncompliance of this paragraph is
12 otherwise remedied. Failure to comply with and/or produce a satisfactory remedy to the state may
13 result in debarment proceedings under RSA 21-I:11-c, III.

14 (c) If any provision of this paragraph or application thereof is held to be invalid or in
15 conflict with any applicable laws, this invalidity or conflict shall not affect the other provisions or
16 applications which shall be given affect without the invalid provisions or applications, and to this
17 end, the provisions and applications of this paragraph are severable.

18 88 Effective Date. This act shall take effect January 1, 2023.

HB 1503-FN- FISCAL NOTE

AS AMENDED BY THE SENATE (AMENDMENTS #2022-1939s and #2022-1974s)

AN ACT adopting the Uniform Commercial Code relative to controllable electronic records, relative to exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws and establishing state procurement policies intended to promote the use of American materials.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws. This bill also adopts the Uniform Commercial Code on controllable electronic records. Lastly, this bill requires the use of American made steel products in all public works projects where the state administers the contract and the contract involves at least \$1,000,000 state dollars.

The Department of State has determined the portion of the bill dealing with open blockchain tokens and the adoption of the Uniform Commercial Code on controllable electronic records has a total fiscal impact of less than \$10,000 in each of the fiscal years for 2024 through 2025.

The Department of Administrative Services state there will be an indeterminable impact to state General fund expenditures for the portion of the bill requiring the use of American made steal products in all public works projects. The Department states the cost impacts of using American manufactured iron, steel and manufactured goods is indeterminable due to wide-ranging price fluctuations for these goods, supply-chain shortages, and United States imposed tariffs.

AGENCIES CONTACTED:

Department of State and Department of Administrative Services