

Amendment No. 666

Senate Amendment to Assembly Bill No. 231 First Reprint	(BDR 8-604)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is newly added language; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~fuchsia double strikethrough~~ is new language in the bill proposed to be deleted in this amendment; (6) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment.

SHORT FORM AMENDMENT

Section 25 of this act is the only section affected by this amendment.





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**If this amendment is adopted, the Legislative Counsel's Digest will be changed as follows:**

**Legislative Counsel's Digest:**

Existing law contains the Uniform Commercial Code, which is a set of uniform laws governing commercial transactions. (Chapters 104 and 104A of NRS) This bill enacts the 2022 amendments to the Uniform Commercial Code, which: (1) adds Article 12 governing controllable electronic records; and (2) makes various changes to Articles 1, 2, 3, 5, 7, 8, 9, 2A and 4A of the Code. **Sections 75 and 76** of this bill also enact the 2018 amendments to Article 9 of the Code.

**Sections 9-15** of this bill enact Article 12, which provides rules for transactions involving controllable electronic records. **Section 10** of this bill defines certain terms for the purposes of Article 12. **Section 26** of this bill makes a conforming change to account for the definition of "value" set forth in **section 10**. **Section 11** of this bill: (1) establishes that Article 9 will govern if it is in conflict with Article 12; and (2) provides that a transaction that is subject to Article 12 is also subject to certain other laws that establish different rules for consumers. **Sections 12, 13 and 70** of this bill establish the circumstances under which a purchaser obtains control of and certain rights in a controllable account, controllable payment intangible or controllable electronic record. **Section 14** of this bill sets forth certain circumstances under which an account debtor on a controllable account or controllable payment intangible may discharge his or her obligation under certain circumstances. **Section 15** of this bill establishes rules for determining the jurisdiction whose law governs a controllable electronic record. **Section 27** of this bill provides that the provisions of an agreement specifying applicable law for a transaction governed by **section 15** is effective only to the extent permitted by **section 15**.

**Sections 16-24** of this bill enact the transitional rules included in the 2022 amendments to the Code and define certain related terms. **Section 18** of this bill provides that a transaction validly entered into before the effective date of this bill, which is October 1, 2023, and the rights, duties and interests flowing from the transaction remain valid thereafter.

Existing law contains Article 1 of the Code, which sets forth the definitions and other general provisions that, in the absence of any conflicting provision in the Code, apply as default rules for transactions and matters otherwise covered in other articles of the Code. (NRS 104.1101-104.1310) **Section 25** of this bill enacts the uniform amendments to the definitions of certain terms which are defined for the purposes of the Code. Among other changes, **section 25** revises the definition of the term "sign" to encompass the authentication or adoption of all records and not just writings and the definition of the term "money" to exclude ~~any medium of exchange in an electronic form~~ **certain forms of digital currency, digital mediums of exchange and digital monetary units of account**. **Sections 28, 38-41, 52, 55-57, 62, 63, 68, 72-75, 77, 78, 81, 82 and 85-90** of this bill make conforming changes to account for the new definition of "sign." **Sections 25, 31-35, 44, 86, 94-100 and 102-108** of this bill replace the term "writing" with "record" and make certain other changes to allow for certain documents and communications to take a form other than a written or otherwise tangible form.

Existing law contains Article 2 of the Code, the uniform law governing sales. (NRS 104.2101-104.2725) **Sections 29 and 30** of this bill define the term "hybrid transaction" and describe the extent to which Article 2 governs hybrid transactions.

Existing law contains Article 3 of the Code, the uniform law governing negotiable instruments. (NRS 104.3101-104.3605) **Section 36** of this bill authorizes a negotiable instrument to contain certain provisions specifying which laws govern the instrument and how certain disputes will be resolved. **Section 37** of this bill expands the definition of "issue" to include certain electronic transmissions. **Section 38** of this bill removes certain requirements relating to the generation and form of a signature that makes a person liable on a negotiable

instrument. **Section 39** provides that an obligation to pay a check is not discharged solely by the destruction of the check, under certain circumstances.

Existing law contains Article 5 of the Code, the uniform law governing letters of credit. (NRS 104.5101-104.5118) **Section 41** prescribes the method for determining the location of a branch of a bank for certain purposes.

Existing law contains Article 7 of the Code, the uniform law governing warehouse receipts, bills of lading and other documents of title. (NRS 104.7101-104.7603) **Section 42** of this bill removes certain definitions made unnecessary by the revisions made in **section 25**. **Section 43** of this bill: (1) makes various changes related to the process for determining when a person has control of an electronic document of title after a certain system evidences that the document was issued or transferred to the person; and (2) defines when a person is deemed to have obtained control of an electronic document of title through another person.

Existing law contains Article 8 of the Code, the uniform law governing investment securities. (NRS 104.8101-104.8511) **Section 44** revises certain definitions for the purposes of Article 8. **Section 45** of this bill provides that a controllable account, controllable electronic record or controllable payment intangible is a financial asset only to the extent that a securities intermediary and an entitled person agree that it should be treated as a financial asset. **Section 46** of this bill revises the circumstances under which a purchaser is deemed to have control of a security entitlement that is controlled by another person and makes various related changes. **Section 47** of this bill establishes that the local law of the jurisdiction of the issuer or of the securities intermediary governs certain matters related to a security or security entitlement. **Section 48** of this bill makes technical changes to certain provisions governing protected purchasers.

Existing law contains Article 9 of the Code, the uniform law governing secured transactions. (NRS 104.9101-104.9717) **Section 49** of this bill revises certain definitions relating to secured transactions and defines certain terms relating to controllable electronic records. **Sections 3, 50 and 51** of this bill set forth the circumstances under which a person is deemed to have control of a controllable electronic record, a deposit account or an authoritative electronic copy of a record evidencing chattel paper. **Sections 4, 54-56 and 79** of this bill revise certain rights and duties of a party possessing or controlling certain collateral. **Section 52** identifies the circumstances under which a security interest is enforceable against the debtor and third parties with respect to collateral that is controllable electronic records, electronic documents or certain other collateral. **Section 53** of this bill revises the circumstances under which a security interest may attach to certain proceeds.

**Sections 5, 6 and 58-60** of this bill revise and establish certain rules for determining the applicable law governing the perfection, the effect of perfection or nonperfection and the priority of a security interest in certain property. **Sections 7, 8 and 61-65** of this bill revise certain provisions related to the perfection of certain security interests and prescribe certain methods for perfecting those security interests. **Sections 66, 67 and 71** of this bill revise the circumstances under which a buyer or lessee of goods, a buyer of an electronic document, chattel paper, controllable electronic record, controllable account or controllable payment intangible or a transferee of money takes free of a security interest or leasehold interest. **Section 69** of this bill revises the circumstances under which a purchaser of chattel paper has priority over a security interest in the chattel paper. **Section 75** exempts a controllable account or controllable payment intangible from certain requirements relating to an assignment of debt. **Section 80** of this bill provides that a secured party that obtains control of a controllable account, controllable electronic record or controllable payment intangible owes a duty to a debtor or obligor under certain circumstances. **Section 91** of this bill provides that certain provisions which limit the liability of a secured party do not apply to a secured party that obtains control of a controllable account, controllable electronic record or controllable payment intangible under certain circumstances. **Sections 83 and 84** of this bill make certain revisions to the content and form of notification before the disposition of certain collateral.

Existing law provides that, with certain exceptions, any rule of law, statute, regulation or term in an agreement between an account debtor and an assignor or in a promissory note that imposes certain restrictions on the assignment of a security interest in certain collateral is ineffective. (NRS 104.9406, 104.9408) **Sections 75 and 76**, which enact the 2018 amendments to Article 9, provide that those provisions do not apply to a security interest in an ownership interest in a general partnership, limited partnership or limited-liability company.

Existing law contains Article 2A of the Code, the uniform law governing leases. (NRS 104A.2101-104A.2532) **Section 93** of this bill defines the term “hybrid lease” to mean a single transaction involving a lease of goods and the provision of services or the sale, lease or license of certain property. **Section 92** of this bill describes the extent to which Article 2A governs hybrid leases.

Existing law contains Article 4A of the Code, the uniform law governing funds transfers. (NRS 104A.4101-104A.4507) **Section 101** of this bill authorizes the imposition of certain obligations in a security procedure established by agreement between a customer and a receiving bank.

**Sections 109-112** of this bill make conforming changes to internal references to sections amended in this bill.

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**Section 25 of Assembly Bill No. 231 First Reprint is hereby amended as follows:**

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**Sec. 25.** NRS 104.1201 is hereby amended to read as follows:

104.1201 1. Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other Articles of the Uniform Commercial Code that apply to particular Articles or parts thereof, have the meanings stated.

2. Subject to definitions contained in other Articles of the Uniform Commercial Code that apply to particular Articles or parts thereof:

(a) “Action,” in the sense of a judicial proceeding, includes recoupment, counterclaim, set off, suit in equity and any other proceeding in which rights are determined.

(b) “Aggrieved party” means a party entitled to pursue a remedy.

(c) “Agreement,” as distinguished from “contract,” means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in NRS 104.1303.

(d) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union and trust company.

(e) “Bearer” means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title or certificated security that is payable to bearer or endorsed in blank.

(f) “Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(g) “Branch” includes a separately incorporated foreign branch of a bank.

(h) “Burden of establishing” a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(i) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if

the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(j) "Conspicuous," with reference to a term, means so written, displayed or presented that , *based on the totality of the circumstances*, a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. ~~{Conspicuous terms include the following:~~

~~(1) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font or color to the surrounding text of the same or lesser size; and~~

~~(2) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.}~~

(k) "Consumer" means a natural person who enters into a transaction primarily for personal, family or household purposes.

(l) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(m) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(n) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim or third-party claim.

(o) "Delivery," with respect to an electronic document of title , means voluntary transfer of control and , with respect to an instrument, a tangible document of title or *an authoritative tangible copy of a record evidencing* chattel paper, means voluntary transfer of possession.

(p) "Document of title" means a record:

(1) That in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold and dispose of the record and the goods the record covers; and

(2) That purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

➤ The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(q) *“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.*

(r) “Fault” means a default, breach or wrongful act or omission.

~~[(s)]~~ (s) “Fungible goods” means:

(1) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(2) Goods that by agreement are treated as equivalent.

~~[(t)]~~ (t) “Genuine” means free of forgery or counterfeiting.

~~[(u)]~~ (u) “Good faith,” except as otherwise provided in Article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

~~[(v)]~~ (v) “Holder” means:

(1) 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;

(2) 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

(3) The person in control, *other than pursuant to subsection 7 of NRS 104.7106*, of a negotiable electronic document of title.

~~[(w)]~~ (w) “Insolvency proceeding” includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

~~[(x)]~~ (x) “Insolvent” means:

(1) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(2) Being unable to pay debts as they become due; or

(3) Being insolvent within the meaning of federal bankruptcy law.

~~[(y)]~~ (y) “Money” means a medium of exchange *that is* currently authorized or adopted by a domestic or foreign government ~~and is not in an electronic form,~~ *a central bank digital currency.* The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries. *As used in this paragraph, “central bank digital currency”:*

*(1) Means a digital currency, a digital medium of exchange or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank or a foreign reserve system that is made directly available to a consumer by such entities; and*

*(2) Includes a digital currency, a digital medium of exchange or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank or a foreign reserve system that is processed or validated directly by such entities.*

~~[(z)]~~ (z) “Organization” means a person other than a natural person.

~~[(aa)]~~ (aa) “Party,” as distinguished from “third party,” means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.

~~[(bb)]~~ (bb) “Person” means a natural person, 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 the Uniform Commercial Code 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.*

~~[(bb)]~~ *(cc)* “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

~~[(ee)]~~ *(dd)* “Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

~~[(dd)]~~ *(ee)* “Purchaser” means a person that takes by purchase.

~~[(ee)]~~ *(ff)* “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~[(ff)]~~ *(gg)* “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

~~[(gg)]~~ *(hh)* “Representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate.

~~[(hh)]~~ *(ii)* “Right” includes remedy.

~~[(ii)]~~ *(jj)* “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible or a promissory note in a transaction that is subject to Article 9. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under NRS 104.2401, but a buyer may also acquire a “security interest” by complying with Article 9. Except as otherwise provided in NRS 104.2505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a “security interest,” but a seller or lessor may also acquire a “security interest” by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under NRS 104.2401 is limited in effect to a reservation of a “security interest.” Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to NRS 104.1203.

~~[(jj)]~~ *“Send”*

*(kk)* “Send,” in connection with a ~~[writing]~~ record or ~~[notice]~~ notification, means:

(1) To deposit in the mail, ~~[or]~~ deliver for transmission *or transmit* by any other usual means of communication, with postage or cost of transmission provided for and ~~[properly]~~ addressed ~~[and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none]~~ to any address reasonable under the circumstances; or

(2) ~~[In any other way to]~~ *To* cause *the record or notification* to be received ~~[any record or notice]~~ within the time it would have ~~[arrived]~~ *been received* if properly sent ~~[-~~

~~—(kk) “Signed” includes using any symbol executed or adopted with present intention to adopt or accept a writing.] under subparagraph (1).~~

(l) “Sign” means, with present intent to authenticate or adopt a record:

(1) *Execute or adopt a tangible symbol; or*

(2) *Attach to or logically associate with the record an electronic symbol, sound or process.*

↪ *“Signed,” “signing” and “signature” have corresponding meanings.*



1       ~~(mm)~~ (mm) “State” means a state of the United States, the District of Columbia,  
2       Puerto Rico, the United States Virgin Islands, or any territory or insular possession  
3       subject to the jurisdiction of the United States.

4       ~~{{(mm)}} (nn)~~ (nn) “Surety” includes a guarantor or other secondary obligor.

5       ~~{{(nn)}} (oo)~~ (oo) “Term” means a portion of an agreement that relates to a particular  
6       matter.

7       ~~{{(oo)}} (pp)~~ (pp) “Unauthorized signature” means a signature made without actual,  
8       implied or apparent authority. The term includes a forgery.

9       ~~{{(pp)}} (qq)~~ (qq) “Warehouse receipt” means a document of title issued by a person  
10      engaged in the business of storing goods for hire.

11      ~~{{(qq)}} (rr)~~ (rr) “Writing” includes printing, typewriting or any other intentional  
12      reduction to tangible form. “Written” has a corresponding meaning.