House Study Bill 678 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON HOLT)

A BILL FOR

1 An Act relating to the uniform commercial code by providing for
2 controllable electronic records.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

CONTROLLABLE ELECTRONIC RECORDS

Section 1. NEW SECTION. **554.14101 Short title.**

This Article may be cited as Uniform Commercial Code — Controllable Electronic Records.

Sec. 2. NEW SECTION. **554.14102 Definitions.**

1. *Controllable electronic record defined.* In this Article, *"controllable electronic record"* means a controllable electronic record that can be subjected to control under section 554.14105. The term does not include deposit accounts, electronic chattel paper, electronic documents of title, intangible money, investment property, or *"transferable records"*, as defined in the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7021(a)(1) or as defined in the uniform electronic transactions Act, section 554.118, subsection 1.

2. *Article 9 definitions applicable to this Article.* The definitions of *"account debtor"*, *"authenticate"*, *"controllable account"*, *"controllable payment intangible"*, *"deposit account"*, *"electronic chattel paper"*, *"intangible money"*, *"investment property"*, and *"proceeds"* in Article 9 apply to this Article.

3. *Definition of value.* *"Value"* has the meaning provided in section 554.3303, subsection 1.

Sec. 3. NEW SECTION. **554.14103 Scope.**

1. *General scope of Article.* This Article applies to controllable electronic records, controllable accounts, and controllable payment intangibles.

2. *Conflict with Article 9.* If there is conflict between this Article and Article 9, Article 9 governs.

3. *Applicable consumer laws and other laws.* A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, including as provided in chapter 537, or any other statute or regulation of this state that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of

1 credit, and to any consumer protection statute or regulation.
2 Sec. 4. NEW SECTION. **554.14104 Rights in controllable**
3 **electronic records, controllable accounts, and controllable**
4 **payment intangibles.**
5 1. *Definition of qualifying purchaser.* *"Qualifying*
6 *purchaser"* means a purchaser of a controllable electronic
7 record or an interest in the controllable electronic record
8 that obtains control of the controllable electronic record
9 for value, in good faith, and without notice of a claim of
10 a property right in the controllable electronic record or
11 a controllable account or controllable payment intangible
12 evidenced by the controllable electronic record.
13 2. *Applicability of other law.* Except as provided in this
14 section, law other than this Article determines whether a
15 person acquires a right in a controllable electronic record and
16 the right, if any, the person acquires.
17 3. *Rights acquired by purchaser.* A purchaser of a
18 controllable electronic record acquires all rights in the
19 controllable electronic record that the transferor had or had
20 power to transfer.
21 4. *Purchase of limited interest.* A purchaser of a limited
22 interest in a controllable electronic record acquires rights
23 only to the extent of the interest purchased.
24 5. *Rights acquired by qualifying purchaser.* In addition to
25 acquiring the rights of a purchaser, a qualifying purchaser
26 acquires its rights in the controllable electronic record and
27 a controllable account or controllable payment intangible
28 evidenced by the controllable electronic record free of a claim
29 of a property right in the controllable electronic record,
30 controllable account, or controllable payment intangible.
31 6. *Exception for claim of property right in right to*
32 *payment, right to performance, or interest in property.* Except
33 as provided in subsection 5 or law other than the Uniform
34 Commercial Code, as provided in this chapter, a qualifying
35 purchaser takes a right to payment, right to performance, or

interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or interest in property.

7. *Rights of a purchaser of a controllable electronic record traceable to another controllable electronic record.* The following rules apply to a purchaser of a controllable electronic record traceable to another controllable electronic record:

a. An action based on a claim of a property right in the other controllable electronic record or a controllable account or controllable payment intangible evidenced by the other controllable electronic record, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against the purchaser if the purchaser acquires its interest in and obtains control of the traceable controllable electronic record for value, in good faith, and without notice of a claim of a property right in the traceable controllable electronic record or a controllable account or controllable payment intangible evidenced by the traceable controllable electronic record.

b. The purchaser takes free of a security interest in the traceable controllable electronic record and a controllable account or controllable payment intangible evidenced by the traceable controllable electronic record if:

(1) the purchaser acquires its interest in and obtains control of the traceable controllable electronic record for value, in good faith, and without notice of a claim of a property right in the traceable controllable electronic record or a controllable account or controllable payment intangible evidenced by the traceable controllable electronic record; and

(2) the traceable controllable electronic record constitutes proceeds of the other controllable electronic record.

8. *Filing not notice.* Filing of a financing statement under Article 9 is not notice of a claim of a property interest in a

controllable electronic record.

Sec. 5. NEW SECTION. **554.14105 Control of controllable electronic record.**

1. *Requirements for control.* A person has control of a controllable electronic record if:

a. the controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, gives the person:

(1) the power to avail itself of substantially all the benefit from the controllable electronic record; and

(2) subject to subsection 2, the exclusive power to:

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

(b) transfer control of the controllable electronic record to another person or cause another person to obtain control of a controllable electronic record that is traceable to the controllable electronic record; and

b. the controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, enables the person to readily identify itself as having the powers specified in paragraph *"a"*. The person may be identified in any way, including by name, identifying number, cryptographic key, office, or account number.

2. *Certain limitations on exclusivity permitted.* A power specified in subsection 1, paragraph *"a"*, is exclusive, even if:

a. the controllable electronic record or the system in which the controllable electronic record is recorded, if any, limits the use to which the controllable electronic record may be put or has a protocol that is programmed to result in a transfer of control; or

b. the person has agreed to share the power with another

1 person.
2 Sec. 6. NEW SECTION. **554.14106 Discharge of account debtor**
3 **on controllable account or controllable payment intangible.**
4 1. *General rule — discharge of account debtor on*
5 *controllable account or controllable payment intangible.* Except
6 as provided in this section, an account debtor on a
7 controllable account or controllable payment intangible may
8 discharge its obligation:
9 *a.* by paying the person having control of the controllable
10 electronic record that evidences the controllable account or
11 controllable payment intangible; or
12 *b.* by paying a person that formerly had control of the
13 controllable electronic record.
14 2. *Discharge of account debtor — effect of notification of*
15 *transfer of control.* Subject to subsections 3 and 7, an account
16 debtor may not discharge its obligation by paying a person that
17 formerly had control of the controllable electronic record if
18 the account debtor receives a notification, authenticated by a
19 person that formerly had control or the person to which control
20 was transferred, that reasonably identifies the controllable
21 account or controllable payment intangible, notifies the
22 account debtor that control of the controllable electronic
23 record that evidences the controllable account or controllable
24 payment intangible was transferred, identifies the transferee,
25 and provides a commercially reasonable method by which the
26 account debtor is to pay the transferee. The transferee may be
27 identified in any way, including by name, identifying number,
28 cryptographic key, office, or account number. After receipt
29 of the notification, the account debtor may discharge its
30 obligation only by paying in accordance with the notification
31 and may not discharge the obligation by paying a person that
32 formerly had control.
33 3. *When notification ineffective.* Subject to subsection 7,
34 notification is ineffective under subsection 2:
35 *a.* unless, before the notification is sent, the account

debtor and the person that at that time had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in an authenticated record to a commercially reasonable method by which a person can furnish reasonable proof that control has been transferred;

b. to the extent that an agreement between the account debtor and the seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

c. at the option of the account debtor, if the notification notifies the account debtor to divide a payment and pay portions by more than one method.

4. *Proof of transfer.* Subject to subsection 7, if requested by the account debtor, the person giving the notification shall seasonably furnish reasonable proof, using the agreed method, that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection 2.

5. *When proof sufficient.* A person furnishes reasonable proof that control has been transferred if the person demonstrates, using the agreed method, that the transferee has the power to avail itself of substantially all the benefit from the controllable electronic record, prevent others from availing themselves of substantially all the benefit from the controllable electronic record, and transfer these powers to another person.

6. *Subsection 3, paragraph "c", not waivable.* Subject to subsection 7, an account debtor may not waive or vary its option under subsection 3, paragraph *"c"*.

7. *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.

Sec. 7. NEW SECTION. **554.14107 Governing law.**

Unless otherwise agreed to by the parties, the laws of this state shall govern any actions taken pursuant to this Article.

Sec. 8. NEW SECTION. **554.14108 Applicability.**

This Article applies to any transaction involving a controllable electronic record that arises on or after the effective date of this section. This Article does not apply to any transaction involving a controllable electronic record that arises before the effective date of this section even if the transaction would be subject to this Article if the transaction had arisen on or after the effective date of this section. This Article does not apply to a right of action with regard to any transaction involving a controllable electronic record that has accrued before the effective date of this section.

Sec. 9. NEW SECTION. **554.14109 Savings clause.**

Any transaction involving a controllable electronic record that arose before the effective date of this section and the rights, obligations, and interests flowing from that transaction are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

DIVISION II

CORRESPONDING CHANGES

PART A

GENERAL PROVISIONS

Sec. 10. Section 554.1201, subsection 2, Code 2022, is amended by adding the following new paragraph:

NEW PARAGRAPH. *0q. "Electronic"* means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Sec. 11. Section 554.1201, subsection 2, paragraph x, Code

2022, is amended to read as follows:

x. *"Money"* means a medium of exchange 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.~~

Sec. 12. Section 554.1204, unnumbered paragraph 1, Code 2022, is amended to read as follows:

Except as otherwise provided in Articles 3, 4, ~~and~~ 5, and 14, a person gives value for rights if the person acquires them:

PART B

SECURED TRANSACTIONS

Sec. 13. Section 554.9102, subsection 1, paragraphs b, ac, and bi, Code 2022, are amended to read as follows:

b. *"Account"*, except as used in *"account for"*, means a right to payment of a monetary obligation, whether or not earned by performance, for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; for services rendered or to be rendered; for a policy of insurance issued or to be issued; for a secondary obligation incurred or to be incurred; for energy provided or to be provided; for the use or hire of a vessel under a charter or other contract; arising out of the use of a credit or charge card or information contained on or for use with the card; or 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 rights to payment evidenced by chattel paper or an instrument, commercial tort claims, deposit accounts, investment property, letter-of-credit rights or letters of credit, or 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.

ac. "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term includes an account that is money under section 554.1201, subsection 2, paragraph *"x"*. The term does not include investment property or accounts evidenced by an instrument.

bi. "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. The term includes controllable payment intangibles.

Sec. 14. Section 554.9102, subsection 1, Code 2022, is amended by adding the following new paragraphs:

NEW PARAGRAPH. *0ab. "Controllable account"* means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control of the controllable electronic record under section 554.14105.

NEW PARAGRAPH. *00ab. "Controllable payment intangible"* means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control of the controllable electronic record under section 554.14105.

NEW PARAGRAPH. *0av. "Intangible money"* means money that is represented or evidenced by an electronic record. The term does not include money that is a deposit account.

NEW PARAGRAPH. *0cb. "Tangible money"* means money that is represented or evidenced by a record consisting of information that is inscribed on a tangible medium.

Sec. 15. Section 554.9102, subsection 2, Code 2022, is amended by adding the following new paragraph:

NEW PARAGRAPH. *0i.* "Controllable electronic record".....Section 554.14102.

Sec. 16. NEW SECTION. **554.9105A Control of intangible money.**

1. *Requirements for control.* A person has control of

intangible money if the following conditions are met:

a. the intangible money or the system in which the intangible money is recorded, if any, gives the person:

(1) the power to avail itself of substantially all the benefit from the intangible money; and

(2) subject to subsection 2, the exclusive power to:

(a) prevent others from availing themselves of substantially all the benefit from the intangible money; and

(b) transfer control of the intangible money to another person or cause another person to obtain control of intangible money that is traceable to the intangible money; and

b. the intangible money, a record attached to or logically associated with the intangible money, or the system in which the intangible money is recorded, if any, enables the person to readily identify itself as having the powers under paragraph *"a"*. The person may be identified in any way, including by name, identifying number, cryptographic key, office, or account number.

2. *Certain limitations on exclusivity permitted.* A power specified in subsection 1 is exclusive, even if:

a. the intangible money or the system in which the intangible money is recorded, if any, limits the use to which the intangible money may be put or has protocols that are programmed to result in a transfer of control; or

b. the person has agreed to share the power with another person.

Sec. 17. NEW SECTION. **554.9107A Control of controllable electronic record, controllable account, or controllable payment intangible.**

1. *Control under section 554.14105.* A secured party has control of a controllable electronic record as provided in section 554.14105.

2. *Controllable account or controllable payment intangible.* A secured party has control of a controllable account or controllable payment intangible if the secured

party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

Sec. 18. Section 554.9203, subsection 2, Code 2022, is amended to read as follows:

2. *Enforceability.* Except as otherwise provided in subsections 3 through ~~9~~ 10, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

a. value has been given;

b. the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

c. one of the following conditions is met:

(1) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(2) the collateral is not a certificated security and is in the possession of the secured party under section 554.9313 pursuant to the debtor's security agreement;

(3) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 554.8301 pursuant to the debtor's security agreement; or

(4) the collateral is controllable electronic records, controllable accounts, controllable payment intangibles, deposit accounts, electronic chattel paper, intangible money, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under section 554.7106, 554.9104, 554.9105, 554.9105A, 554.9106, ~~or~~ 554.9107, or 554.9107A pursuant to the debtor's security agreement.

Sec. 19. Section 554.9203, Code 2022, is amended by adding the following new subsection:

NEW SUBSECTION. 10. *Controllable account or payment intangible.* The attachment of a security interest in a

1 controllable electronic record that evidences a controllable
2 account or controllable payment intangible is also attachment
3 of a security interest in the controllable account or
4 controllable payment intangible.
5 Sec. 20. Section 554.9207, subsection 3, Code 2022, is
6 amended to read as follows:
7 3. *Duties and rights when secured party in possession or*
8 *control.* Except as otherwise provided in subsection 4, a
9 secured party having possession of collateral or control
10 of collateral under section 554.7106, 554.9104, 554.9105,
11 554.9106, ~~or~~ 554.9107, or 554.9107A:
12 *a.* may hold as additional security any proceeds, except
13 money or funds, received from the collateral;
14 *b.* shall apply money or funds received from the collateral
15 to reduce the secured obligation, unless remitted to the
16 debtor; and
17 *c.* may create a security interest in the collateral.
18 Sec. 21. Section 554.9301, subsection 3, Code 2022, is
19 amended to read as follows:
20 3. Except as otherwise provided in subsection 4, while
21 tangible negotiable documents, goods, instruments, tangible
22 money, or tangible chattel paper is located in a jurisdiction,
23 the local law of that jurisdiction governs:
24 *a.* perfection of a security interest in the goods by filing
25 a fixture filing;
26 *b.* perfection of a security interest in timber to be cut;
27 and
28 *c.* the effect of perfection or nonperfection and the
29 priority of a nonpossessory security interest in the
30 collateral.
31 Sec. 22. Section 554.9308, Code 2022, is amended by adding
32 the following new subsection:
33 NEW SUBSECTION. 8. *Controllable account or payment*
34 *intangible.* Perfection of a security interest in a controllable
35 electronic record that evidences a controllable account or

controllable payment intangible also perfects a security interest in the controllable account or controllable payment intangible.

Sec. 23. Section 554.9310, subsection 2, paragraph h, Code 2022, is amended to read as follows:

h. in deposit accounts, electronic chattel paper, electronic documents, intangible money, investment property, controllable electronic records, controllable accounts, controllable payment intangible, or letter-of-credit rights which is perfected by control under section 554.9314;

Sec. 24. Section 554.9312, Code 2022, is amended to read as follows:

554.9312 Perfection of security interests in controllable electronic records, controllable accounts, controllable payment intangibles, chattel paper, 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.

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

2. *Control or possession of certain collateral.* Except as otherwise provided in section 554.9315, subsections 3 and 4, for proceeds:

a. a security interest in a deposit account may be perfected only by control under section 554.9314;

b. and except as otherwise provided in section 554.9308, subsection 4, a security interest in a letter-of-credit right may be perfected only by control under section 554.9314; ~~and~~

c. a security interest in tangible money may be perfected only by the secured party's taking possession under section 554.9313; and

1 *d.* a security interest in intangible money may be perfected
2 only by control under section 554.9105A.
3 3. *Goods covered by negotiable document.* While goods are
4 in the possession of a bailee that has issued a negotiable
5 document covering the goods:
6 *a.* a security interest in the goods may be perfected by
7 perfecting a security interest in the document; and
8 *b.* a security interest perfected in the document has
9 priority over any security interest that becomes perfected in
10 the goods by another method during that time.
11 4. *Goods covered by nonnegotiable document.* While goods are
12 in the possession of a bailee that has issued a nonnegotiable
13 document covering the goods, a security interest in the goods
14 may be perfected by:
15 *a.* issuance of a document in the name of the secured party;
16 *b.* the bailee's receipt of notification of the secured
17 party's interest; or
18 *c.* filing as to the goods.
19 5. *Temporary perfection — new value.* A security
20 interest in certificated securities, negotiable documents,
21 or instruments is perfected without filing or the taking of
22 possession or control for a period of twenty days from the time
23 it attaches to the extent that it arises for new value given
24 under an authenticated security agreement.
25 6. *Temporary perfection — goods or documents made available*
26 *to debtor.* A perfected security interest in a negotiable
27 document or goods in possession of a bailee, other than one
28 that has issued a negotiable document for the goods, remains
29 perfected for twenty days without filing if the secured
30 party makes available to the debtor the goods or documents
31 representing the goods for the purpose of:
32 *a.* ultimate sale or exchange; or
33 *b.* loading, unloading, storing, shipping, transshipping,
34 manufacturing, processing, or otherwise dealing with them in a
35 manner preliminary to their sale or exchange.

7. *Temporary perfection — delivery of security certificate or instrument to debtor.* A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

a. ultimate sale or exchange; or

b. presentation, collection, enforcement, renewal, or registration of transfer.

8. *Expiration of temporary perfection.* After the twenty-day period specified in subsection 5, 6, or 7 expires, perfection depends upon compliance with this Article.

Sec. 25. Section 554.9313, subsection 1, Code 2022, is amended to read as follows:

1. *Perfection by possession or delivery.* Except as otherwise provided in subsection 2, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, 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 554.8301.

Sec. 26. Section 554.9314, subsections 1 and 2, Code 2022, are amended to read as follows:

1. *Perfection by control.* A security interest in investment property, deposit accounts, intangible money, letter-of-credit rights, controllable electronic records, controllable accounts, controllable payment intangibles, electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 554.7106, 554.9104, 554.9105, 554.9105A, 554.9106, ~~or~~ 554.9107, or 554.9107A.

2. *Specified collateral — time of perfection by control — continuation of perfection.* A security interest in controllable electronic records, controllable accounts, controllable payment intangibles, deposit accounts, intangible money, electronic

chattel paper, letter-of-credit rights, or electronic documents is perfected by control under section 554.7106, 554.9104, 554.9105, ~~or~~ 554.9107, or 554.9107A when the secured party obtains control and remains perfected by control only while the secured party retains control.

Sec. 27. NEW SECTION. **554.9326A Priority of security interests in controllable electronic records, controllable accounts, and controllable payment intangibles.**

A security interest in a controllable electronic record, controllable account, or controllable payment intangible held by a secured party having control of the controllable electronic record, controllable account, or controllable payment intangible has priority over a conflicting security interest held by a secured party that does not have control.

Sec. 28. Section 554.9331, Code 2022, is amended to read as follows:

554.9331 Priority of rights of purchasers of instruments, documents, ~~and~~ securities, controllable electronic records, controllable accounts, and controllable payment intangibles under other ~~articles~~ Articles — priority of interests in financial assets and security entitlements under Article 8 and controllable electronic records under Article 14.

1. *Rights under Articles 3, 7, ~~and~~ 8, and 14 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 electronic record. 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 14.

2. *Protection under ~~Article~~ Articles 8 and 14.* 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 or 14.

3. *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 1 and 2.

Sec. 29. Section 554.9406, subsections 1, 2, and 3, Code 2022, are amended to read as follows:

1. *Discharge of account debtor — effect of notification.* Subject to subsections 2 through 9 and 11, 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 by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

2. *When notification ineffective.* Subject to ~~subsection~~ subsections 8 and 11, notification is ineffective under subsection 1:

a. if it does not reasonably identify the rights assigned;

b. to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

c. at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

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

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

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

3. *Proof of assignment.* Subject to ~~subsection~~ subsections 8 and 11, if requested by the account debtor, an assignee shall

seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection 1.

Sec. 30. Section 554.9406, Code 2022, is amended by adding the following new subsection:

NEW SUBSECTION. 11. *Inapplicability of certain subsections.* Subsections 1 through 3 and 7 do not apply to a controllable account or controllable payment intangible.

Sec. 31. Section 554.9601, subsection 2, Code 2022, is amended to read as follows:

2. *Rights and duties of secured party in possession or control.* A secured party in possession of collateral or control of collateral under section 554.7106, 554.9104, 554.9105, 554.9106, ~~or~~ 554.9107, or 554.9107A has the rights and duties provided in section 554.9207.

Sec. 32. Section 554.9605, Code 2022, is amended to read as follows:

554.9605 Unknown debtor or secondary obligor.

1. *Duties to unknown persons — general rule.* ~~A~~ Subject to subsection 2, a secured party does not owe a duty based on its status as secured party:

~~1.~~ *a.* to a person that is a debtor or obligor, unless the secured party knows:

~~a.~~ (1) that the person is a debtor or obligor;

~~b.~~ (2) the identity of the person; and

~~c.~~ (3) how to communicate with the person; or

~~2.~~ *b.* to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

~~a.~~ (1) that the person is a debtor; and

~~b.~~ (2) the identity of the person.

2. *When subsection 1 not applicable — notice that nature of collateral or system in which collateral recorded prevents*

acquisition of knowledge. Subsection 1 does not apply to a secured party that, at the time the secured party's security interest attaches to a controllable electronic record, controllable account, or controllable payment intangible, has notice that the nature of the collateral or the system in which the collateral is recorded, if any, would prevent the secured party from acquiring the knowledge specified in that subsection.

Sec. 33. Section 554.9628, subsection 2, Code 2022, is amended to read as follows:

2. *Limitation of liability based on status as secured party.* ~~A~~ Subject to subsection 2A, a secured party is not liable because of its status as secured party:

a. to a person that is a debtor or obligor, unless the secured party knows:

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

(2) the identity of the person; and

(3) how to communicate with the person; or

b. to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(1) that the person is a debtor; and

(2) the identity of the person.

Sec. 34. Section 554.9628, Code 2022, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. *When subsection 2 not applicable — notice that nature of collateral or system in which collateral recorded prevents acquisition of knowledge.* Subsection 2 does not apply to a secured party that, at the time the secured party's security interest attaches to a controllable electronic record, controllable account, or controllable payment intangible, has notice that the nature of the collateral or the system in which the collateral is recorded, if any, would prevent the secured party from acquiring the knowledge specified in that subsection.

EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

BACKGROUND. This bill creates a new article within Code chapter 554, Iowa's version of the uniform commercial code (UCC) covering commercial transactions involving personal property. New Article 12 cited as "Uniform Commercial Code — Controllable Electronic Records" was drafted by a committee appointed jointly by the uniform law commission and the American law institute. The bill incorporates the provisions of that draft under new Article 14 (new Code section 554.14101). New Article 14 governs commercial transactions involving digital assets, including those involving virtual currencies, and the use of distributed ledger technology (DLT). Traditionally, a currency is a government-authorized medium of exchange and specifically money (Code section 554.1201(2)(x)). By comparison, a virtual currency is only available as an electronic record and is decentralized. An electronic record is used to create or transfer rights to receive payment, to receive performance of services or delivery of goods, and to transfer an interest in property. It may also be used as a medium of exchange and assigned intrinsic value.

CONTROLLABLE ELECTRONIC RECORDS. The bill applies to a form of digital assets used in electronic commerce and referred to as controllable electronic records. The UCC defines a record as information retrievable in an electronic form (Code section 554.1201(2)(ae)). A controllable electronic record is a record that is stored in an electronic or other intangible medium and that must be subject to control (new Code section 554.14105). Control is determined by the type of property involved and new Article 14 specifies the rights of a purchaser of a controllable electronic record who acquires whatever rights the transferor had or had the power to transfer; the rule recognized generally under the UCC as shelter (new Code section 554.14104). Specifically, control involves

1 the power to (1) derive substantially all the benefit from
2 the controllable electronic record, (2) prevent others from
3 deriving substantially all the benefit from the controllable
4 electronic record, and (3) transfer control of the controllable
5 electronic record to another person or cause another person to
6 obtain control of a controllable electronic record.
7 QUALIFIED PURCHASERS. A purchaser who is transferred
8 control of a controllable electronic record for value, in good
9 faith, and without notice of any claim of a property interest
10 in the controllable electronic record is referred to as a
11 qualified purchaser who takes the controllable electronic
12 record free of any claims against the property. Generally, law
13 outside Article 14 determines what rights a person must take
14 in order to acquire an interest in a controllable electronic
15 record which would include the creditor-debtor provisions in
16 Article 9. A security interest in a controllable electronic
17 record, controllable account, or controllable payment
18 intangible perfected by control has priority over a conflicting
19 security interest perfected by another method (e.g., the
20 filing of an Article 9 financing statement) (new Code section
21 554.9326A).
22 SPECIAL TYPES OF PROPERTY. Special provisions apply to
23 accounts and payment intangibles in the form of controllable
24 electronic records. The right to payment under these
25 intangibles is referred to as controllable accounts and
26 controllable payment intangibles (amended Code section
27 554.9102(2)). Under Article 9, the attachment and perfection
28 of a security interest in a controllable electronic record
29 would also be attachment of a security interest in controllable
30 accounts and controllable payment intangibles evidenced by
31 the controllable electronic record (amended Code section
32 554.9203(10)). Under Article 14, a qualifying purchaser
33 of a controllable electronic record acquires rights in the
34 controllable account or controllable payment intangible
35 free of any claim (new Code section 554.14104). The bill

1 also recognizes intangible money evidenced by a controllable
2 electronic record (amended Code section 554.9102(1)).
3 Similarly, a person having control over the controllable
4 electronic record takes free of any claim (new Code section
5 554.9105A).
6 BACKGROUND — ARTICLES 1 AND 9. Article 1 includes general
7 provisions, including definitions, that apply throughout the
8 Code chapter. This includes providing a definition of the
9 term "electronic" and amending the definition of "account"
10 to include "controllable accounts" (Code section 554.1201).
11 Closely connected to new Article 14 is current Article 9, cited
12 as the "Uniform Commercial Code — Secured Transactions" (Code
13 section 554.9101). Article 9 governs how a debtor provides
14 the debtor's property as collateral to secure financing
15 provided by a creditor. The creditor obtains a lien in the
16 collateral to secure the debt. Article 9 provides for the
17 rights and obligations of the debtor and creditor as well
18 as other persons, including other creditors, engaged in
19 commercial transactions which involve that debtor's collateral.
20 Generally, the creditor becomes a secured party able to enforce
21 rights against the debtor when a security interest attaches to
22 the debtor's collateral. The secured party is able to enforce
23 creditor rights against other persons when the creditor's
24 security agreement is perfected. Article 9 provides different
25 procedures to attach a security interest to collateral, and
26 to perfect that security interest, depending upon how Article
27 9 classifies that collateral. Generally, Article 9 covers
28 two broad categories of collateral described as tangible or
29 intangible property. Tangible property includes firm assets
30 such as cars, equipment, inventory, and goods. In the case of
31 a security interest in money, perfection requires possession.
32 Intangible property includes accounts receivable, promissory
33 notes, securities, letters of credit, and interests in business
34 entities. The two principal forms of perfection are (1) the
35 secured party's possession of the collateral and (2) the filing

1 of a financing statement with the secretary of state, in which
2 case the secured party receives priority over secured parties
3 who do not file a financing statement or who file a financing
4 statement later in time.