

# STATE OF NEW YORK

7244

2023-2024 Regular Sessions

## IN SENATE

May 19, 2023

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the uniform commercial code, in relation to controllable electronic records

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The uniform commercial code is amended by adding a new  
2 article 12 to read as follows:

### ARTICLE 12

#### CONTROLLABLE ELECTRONIC RECORDS

##### PART 1

#### GENERAL PROVISIONS AND DEFINITIONS.

7 Section 12--101. Short title.

8 This article may be cited as Uniform Commercial Code--Controllable  
9 Electronic Records.

10 Section 12--102. Definitions.

11 (a) In this article, unless the context otherwise requires:

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

18 (2) "Qualifying purchaser" means a purchaser of a controllable elec-  
19 tronic record or an interest in a controllable electronic record that  
20 obtains control of the controllable electronic record for value, in good  
21 faith, and without notice of a claim of a property right in the control-  
22 lable electronic record. In the case of a controllable electronic record  
23 that would be a "draft" or a "note", as those terms are defined in

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 Section 3--104, if the controllable electronic record were a signed  
2 writing, Section 3--304(7) applies to the determination of whether a  
3 purchaser obtains control of the controllable electronic record without  
4 notice of a claim of a property right in it as if the reference in that  
5 subsection to "the instrument" referred to the controllable electronic  
6 record. The preceding sentence applies even if the controllable elec-  
7 tronic record contains a term by which an obligor or account debtor on  
8 the controllable account or controllable payment intangible evidenced by  
9 the controllable electronic record waives or agrees not to assert  
10 against an assignee of the controllable electronic record any claim or  
11 defense that the obligor or account debtor may have against the assig-  
12 nor.

13 (3) "Transferable record" means an electronic record that either:

14 (A) is a "transferable record" under Section 201(a)(1) of the Elec-  
15 tronic Signatures in Global and National Commerce Act, 15 U.S.C.  
16 Section 7021(a)(1), as amended; or,

17 (B) is governed by the law of any State that has enacted or adopted  
18 the Uniform Electronic Transactions Act substantially as approved and  
19 recommended for enactment in all the States by the National Conference  
20 of Commissioners on Uniform State Laws in 1999 and is a "transferable  
21 record" under Section 16(a) of that Act.

22 (4) "Value" has the meaning provided in Section 3-303(a), as if refer-  
23 ences in that subsection to an "instrument" were references to a  
24 controllable account, controllable electronic record, or controllable  
25 payment intangible.

26 (b) Definitions in other articles. The following definitions in other  
27 articles apply to this article:

28 (1) The definitions in Article 9 apply to this article.

29 (2) Article 1 contains general definitions and principles of  
30 construction and interpretation applicable throughout this article.  
31 Section 12--103. Relation to Article 9 and Consumer Laws.

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

34 (b) Applicable consumer law and other laws. A transaction subject to  
35 this article is subject to any applicable rule of law that establishes a  
36 different rule for consumers.

37 (c) If an electronic record is a controllable electronic record under  
38 this article, Section 307.2 of the Electronic Signatures and Records Act  
39 (State Technology Law 301 et seq.) shall not impair the enforceability  
40 or effectiveness of such electronic record under this article nor shall  
41 such Act cause such controllable electronic record to be governed by  
42 Article 3 rather than this article, except to the extent the electronic  
43 record expressly provides otherwise or was created prior to the effec-  
44 tive date of this article.

## 45 PART 2

### 46 TITLE AND DEFINITIONS.

47 Section 12--104. Rights in Controllable Account, Controllable Electronic  
48 Record, and Controllable Payment Intangible.

49 (a) Applicability of section to controllable account and controllable  
50 payment intangible. This section applies to the acquisition and  
51 purchase of rights in a controllable account or controllable payment  
52 intangible, including the rights and benefits under subsections (c),  
53 (d), (e), (g), and (h) of a purchaser and qualifying purchaser, in the  
54 same manner this section applies to a controllable electronic record.

1 (b) Control of controllable account and controllable payment intangi-  
2 ble. To determine whether a purchaser of a controllable account or a  
3 controllable payment intangible is a qualifying purchaser, the purchaser  
4 obtains control of the account or payment intangible if it obtains  
5 control of the controllable electronic record that evidences the account  
6 or payment intangible.

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

11 (d) Shelter principle and purchase of limited interest. A purchaser of  
12 a controllable electronic record acquires all rights in the controllable  
13 electronic record that the transferor had or had power to transfer,  
14 except that a purchaser of a limited interest in a controllable elec-  
15 tronic record acquires rights only to the extent of the interest  
16 purchased.

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

20 (f) Limitation of rights of qualifying purchaser in other property.  
21 Except as provided in subsections (a) and (e) for a controllable account  
22 and a controllable payment intangible or law other than this article, a  
23 qualifying purchaser takes a right to payment, right to performance, or  
24 other interest in property evidenced by the controllable electronic  
25 record subject to a claim of a property right in the right to payment,  
26 right to performance, or other interest in property.

27 (g) No-action protection for qualifying purchaser. An action may not  
28 be asserted against a qualifying purchaser based on both a purchase by  
29 the qualifying purchaser of a controllable electronic record and a claim  
30 of a property right in another controllable electronic record, whether  
31 the action is framed in conversion, replevin, constructive trust, equi-  
32 table lien, or other theory.

33 (h) Filing not notice. Filing of a financing statement under Article 9  
34 is not notice of a claim of a property right in a controllable electron-  
35 ic record.

#### 36 Section 12--105. Control of Controllable Electronic Record.

37 (a) General rule: control of controllable electronic record. A person  
38 has control of a controllable electronic record if the electronic  
39 record, a record attached to or logically associated with the electronic  
40 record, or a system in which the electronic record is recorded:

41 (1) gives the person:

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

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

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

47 (ii) transfer control of the electronic record to another person or  
48 cause another person to obtain control of another controllable electron-  
49 ic record as a result of the transfer of the electronic record; and

50 (2) enables the person readily to identify itself in any way, includ-  
51 ing by name, identifying number, cryptographic key, office, or account  
52 number, as having the powers specified in paragraph (1).

53 (b) Meaning of exclusive. Subject to subsection (c), a power is exclu-  
54 sive under subsection (a)(1)(B)(i) and (ii) even if:

55 (1) the controllable electronic record, a record attached to or  
56 logically associated with the electronic record, or a system in which

1 the electronic record is recorded limits the use of the electronic  
2 record or has a protocol programmed to cause a change, including a  
3 transfer or loss of control or a modification of benefits afforded by  
4 the electronic record; or

5 (2) the power is shared with another person.

6 (c) When power not shared with another person. A power of a person is  
7 not shared with another person under subsection (b)(2) and the person's  
8 power is not exclusive if:

9 (1) the person can exercise the power only if the power also is exer-  
10 cised by the other person; and

11 (2) the other person:

12 (A) can exercise the power without exercise of the power by the  
13 person; or

14 (B) is the transferor to the person of an interest in the controllable  
15 electronic record or a controllable account or controllable payment  
16 intangible evidenced by the controllable electronic record.

17 (d) Presumption of exclusivity of certain powers. If a person has the  
18 powers specified in subsection (a)(1)(B)(i) and (ii), the powers are  
19 presumed to be exclusive.

20 (e) Control through another person. A person has control of a control-  
21 lable electronic record if another person, other than the transferor to  
22 the person of an interest in the controllable electronic record or a  
23 controllable account or controllable payment intangible evidenced by the  
24 controllable electronic record:

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

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

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

33 (g) No duties or confirmation. If a person acknowledges that it has or  
34 will obtain control on behalf of another person, unless the person  
35 otherwise agrees or law other than this article or Article 9 otherwise  
36 provides, the person does not owe any duty to the other person and is  
37 not required to confirm the acknowledgment to any other person.

38 Section 12--106. Discharge of Account Debtor on Controllable Account or  
39 Controllable Payment Intangible.

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

43 (1) the person having control of the controllable electronic record  
44 that evidences the controllable account or controllable payment intangi-  
45 ble; or

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

48 (b) Content and effect of notification. Subject to subsection (d), the  
49 account debtor may not discharge its obligation by paying a person that  
50 formerly had control of the controllable electronic record if the  
51 account debtor receives a notification that:

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

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

1 (3) notifies the account debtor that control of the controllable elec-  
2 tronic record that evidences the controllable account or controllable  
3 payment intangible was transferred;

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

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

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

14 (d) When notification ineffective. Subject to subsection (h), notifi-  
15 cation is ineffective under subsection (b):

16 (1) unless, before the notification is sent, the account debtor and  
17 the person that, at that time, had control of the controllable elec-  
18 tronic record that evidences the controllable account or controllable  
19 payment intangible agree in a signed record to a commercially reasonable  
20 method by which a person may furnish reasonable proof that control has  
21 been transferred;

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

26 (3) at the option of the account debtor, if the notification notifies  
27 the account debtor to:

28 (A) divide a payment;

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

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

33 (e) Proof of transfer of control. Subject to subsection (h), if  
34 requested by the account debtor, the person giving the notification  
35 under subsection (b) seasonably shall furnish reasonable proof, using  
36 the method in the agreement referred to in subsection (d)(1), that  
37 control of the controllable electronic record has been transferred.  
38 Unless the person complies with the request, the account debtor may  
39 discharge its obligation by paying a person that formerly had control,  
40 even if the account debtor has received a notification under subsection  
41 (b).

42 (f) What constitutes reasonable proof. A person furnishes reasonable  
43 proof under subsection (e) that control has been transferred if the  
44 person demonstrates, using the method in the agreement referred to in  
45 subsection (d)(1), that the transferee has the power to:

46 (1) avail itself of substantially all the benefit from the controlla-  
47 ble electronic record;

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

50 (3) transfer the powers specified in paragraphs (1) and (2) to another  
51 person.

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

55 (h) Rule for individual under other law. This section is subject to  
56 law other than this article which establishes a different rule for an

1 account debtor who is an individual and who incurred the obligation  
2 primarily for personal, family, or household purposes.

3 Section 12--107. Governing Law.

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

7 (b) Governing law: Section 12--106. For a controllable electronic  
8 record that evidences a controllable account or controllable payment  
9 intangible, the local law of the controllable electronic record's juris-  
10 isdiction governs a matter covered by Section 12--106 unless an effective  
11 agreement determines that the local law of another jurisdiction governs.

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

15 (1) If the controllable electronic record, or a record attached to or  
16 logically associated with the controllable electronic record and readily  
17 available for review, expressly provides that a particular jurisdiction  
18 is the controllable electronic record's jurisdiction for purposes of  
19 this article or this Act, that jurisdiction is the controllable elec-  
20 tronic record's jurisdiction.

21 (2) If paragraph (1) does not apply and the rules of the system in  
22 which the controllable electronic record is recorded are readily avail-  
23 able for review and expressly provide that a particular jurisdiction is  
24 the controllable electronic record's jurisdiction for purposes of this  
25 article or this Act, that jurisdiction is the controllable electronic  
26 record's jurisdiction.

27 (3) If paragraphs (1) and (2) do not apply and the controllable elec-  
28 tronic record, or a record attached to or logically associated with the  
29 controllable electronic record and readily available for review,  
30 expressly provides that the controllable electronic record is governed  
31 by the law of a particular jurisdiction, that jurisdiction is the  
32 controllable electronic record's jurisdiction.

33 (4) If paragraphs (1), (2), and (3) do not apply and the rules of the  
34 system in which the controllable electronic record is recorded are read-  
35 ily available for review and expressly provide that the controllable  
36 electronic record or the system is governed by the law of a particular  
37 jurisdiction, that jurisdiction is the controllable electronic record's  
38 jurisdiction.

39 (5) If paragraphs (1) through (4) do not apply, the controllable elec-  
40 tronic record's jurisdiction is the District of Columbia.

41 (d) Applicability of Article 12. If subsection (c)(5) applies and  
42 Article 12 is not in effect in the District of Columbia without material  
43 modification, the governing law for a matter covered by this article is  
44 the law of the District of Columbia as though Article 12 were in effect  
45 in the District of Columbia without material modification. In this  
46 subsection, "Article 12" means Article 12 of Uniform Commercial Code  
47 Amendments (2022).

48 (e) Relation of matter or transaction to controllable electronic  
49 record's jurisdiction not necessary. To the extent subsections (a) and  
50 (b) provide that the local law of the controllable electronic record's  
51 jurisdiction governs a matter covered by this article, that law governs  
52 even if the matter or a transaction to which the matter relates does not  
53 bear any relation to the controllable electronic record's jurisdiction.

54 (f) Rights of purchasers determined at time of purchase. The rights  
55 acquired under Section 12--104 by a purchaser or qualifying purchaser

1 are governed by the law applicable under this section at the time of  
2 purchase.

3 § 2. This act shall take effect immediately.