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:

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

ARTICLE 12
CONTROLLABLE ELECTRONIC RECORDS

PART 1
GENERAL PROVISIONS AND DEFINITIONS.

Section 12--101. Short title.

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

Section 12--102. Definitions.

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

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

(2) "Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record. In the case of a controllable electronic record 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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Section 3--104, if the controllable electronic record were a signed writing, Section 3--304(7) applies to the determination of whether a purchaser obtains control of the controllable electronic record without notice of a claim of a property right in it as if the reference in that subsection to "the instrument" referred to the controllable electronic record. The preceding sentence applies even if the controllable electronic record contains a term by which an obligor or account debtor on the controllable account or controllable payment intangible evidenced by the controllable electronic record waives or agrees not to assert against an assignee of the controllable electronic record any claim or defense that the obligor or account debtor may have against the assignor.

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

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

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

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

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

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

(2) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 12--103. Relation to Article 9 and Consumer Laws.

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

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

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

PART 2
TITLE AND DEFINITIONS.

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

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

(b) Control of controllable account and controllable payment intangible. To determine whether a purchaser of a controllable account or a controllable payment intangible is a qualifying purchaser, the purchaser obtains control of the account or payment intangible if it obtains control of the controllable electronic record that evidences the account or payment intangible.

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

(d) Shelter principle and purchase of limited interest. A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

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

(f) Limitation of rights of qualifying purchaser in other property. Except as provided in subsections (a) and (e) for a controllable account and a controllable payment intangible or law other than this article, a qualifying purchaser takes a right to payment, right to performance, or other 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 other interest in property.

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

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

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

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

(1) gives the person:

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

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

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

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

(2) 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 specified in paragraph (1).

(b) Meaning of exclusive. Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) 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 power is shared with another person.

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

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

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

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

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

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

(f) 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.

(g) 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 or Article 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

Section 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) Content and effect of notification. Subject to subsection (d), the 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.

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

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

(1) 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 a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;

(2) to the extent an agreement between the account debtor and 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

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

(A) divide a payment;

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

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

(e) Proof of transfer of control. Subject to subsection (h), if requested by the account debtor, the person giving the notification under subsection (b) seasonably shall furnish reasonable proof, using the method in the agreement referred to in subsection (d)(1), 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 (b).

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

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

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

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

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

Section 12--107. Governing Law.

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

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

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

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

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

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

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

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

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

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

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

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

§ 2. This act shall take effect immediately.