



Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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Representative Tyler Lindholm
P.O. Box 691
Sundance, WY 82729
Sent via email to Tyler.Lindholm@wyoleg.gov

January 29, 2019

Dear Representative Lindholm:

I am writing on behalf of the Uniform Law Commission (“ULC”) to express the ULC’s concerns about Wyoming SF 125, which seeks to create commercial law rules for “digital asset” transactions. I urge the sponsors of SF 125 to consider the Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act (“Supplemental Act”), a uniform act designed to solve issues similar to those that Wyoming SF 125 tries to address.

By way of background, the ULC is a non-profit law reform organization founded in 1892. Its mission is to draft non-partisan state legislation in areas in which uniformity is practical and desirable. One of the most well-known uniform acts is the Uniform Commercial Code (“UCC”), which states began to enact in 1962 and that has been amended since as technology changes or market factors have occurred.

As mentioned previously, the ULC has already developed its Supplemental Act, which covers much of the subject matter discussed in SF 125. The Supplemental Act provides certainty and finality to virtual-currency transactions by incorporating Article 8 of the UCC into the agreement made between a virtual-currency business and the users of its service. The Supplemental Act also provides a clear, efficient method for perfecting a security interest in virtual currency and for the security interest to have the desired priority. The Supplemental Act addresses some of the key concerns in Wyoming’s bill while promoting uniformity across the states.

We have three separate types of concerns with SF 125, which we understand is moving quickly. These three types of concerns include (1) additional compliance questions and related costs when a state takes a non-uniform approach to commercial law subjects, and particularly those involving electronic transactions; (2) the availability, as mentioned above, of a uniform act that, in addition to being approved by the ULC, has also received the American Bar Association’s approval; and (3) various technical issues with SF 125 that appear to our experts on Uniform Commercial Code Articles 8 and 9 to be likely to raise more concerns than they solve. We will address these three concerns in turn.

First, non-uniform enactments of commercial laws cause problems in a nationwide economy. The need for uniformity triggered the drafting of the original UCC and subsequent amendments and helped replace disparate commercial laws and drive more nationwide lending and sales

transactions, among others. SF 125 would depart from existing provisions of UCC Article 9 in a manner that we predict will make it harder for persons trying to use their virtual-currency assets as collateral for loans and raise the pricing for lenders and borrowers to create and perfect such a security interest. Thus, we are concerned that non-uniformity will drive lenders away from Wyoming, not to its borders.

Second, the Supplemental Act mentioned above approaches many of the goals of SF 125 in a manner that is destined to be more uniform across states, and that does not suffer from the technical issues we have identified in SF 125's drafting. For example, virtual currencies already are governed by the definition of the term "general intangibles" under UCC Article 9, but perfection of security interests in "general intangibles" and obtaining the desired priority are more costly and complicated than our proposed solution in the Supplemental Act. The Supplemental Act provides for virtual currencies held by a provider of virtual-currency business services to be "financial assets" and, thus, "investment property" under UCC Article 8, Part 5. The approach in the Supplemental Act offers a one-step method for the perfection and obtaining the desired priority of a security interest in the virtual currency through a single "control agreement" (a term well understood by providers of more traditional custodial services), that is far cheaper and faster to execute.

Third, we also have concerns with SF 125 as drafted in terms of the breadth of the definition of the term "virtual currency" and the references to it as "money." You may be aware that both Texas and Pennsylvania authorities have recently opined virtual currency is not money for purposes of their "money transmission" licensure statutes. We think it likely that other states will follow. We are also concerned about the choice-of-law provisions that would apply if SF 125 were enacted. Without a uniform choice-of-law solution, SF 125 could well result in disputes arising in jurisdictions other than Wyoming, should disputes arise. Those jurisdictions under their choice-of-law rules may not apply the provisions of SF 125. Such a result would defeat the intentions in SF 125 and cause unintended consequences for businesses and owners that may have relied on the substantive provisions of SF 125.

We appreciate that the Supplemental Act that the ULC approved in 2018 does not answer every possible question that SF 125 may be intended to address. The ULC, in conjunction with the American Law Institute, has been authorized to commence work on the subjects discussed in the bill in the near future. The ULC and the American Law Institute have a longstanding, formal partnership through which the organizations jointly study and craft amendments to the Uniform Commercial Code. This month, the ULC and American Law Institute decided to form a committee to review the official text of the Uniform Commercial Code to recommend amendments or revisions to the UCC to accommodate technological developments. If Wyoming rushes ahead with SF 125, it will lead to non-uniformity and the Wyoming system may not function as designed. Wyoming may also need to amend its statute again to keep pace with amendments proposed by the ULC and the American Law Institute.

Finally, the ULC has identified several technical concerns with SF 125. These concerns range from overbroad definitions to doubts about the method of perfection under SF 125. These technical concerns underscore the importance of addressing commercial law rules for virtual-currency transactions in a careful, deliberate fashion.

The ULC strongly urges Wyoming to set aside SF 125 and to consider enacting the Supplemental Act instead. The Supplemental Act tackles the same subject matter, while avoiding the technical issues presented by SF 125. In any event, we urge that Wyoming set aside SF 125 while the ULC and American Law Institute consider uniform choice-of-law and substantive changes addressing the issues raised in SF 125. Should you have questions, or wish to discuss this further, I may be reached at (206) 616-8441 or aramasastry@uniformlaws.org. You may also wish to contact ULC Commissioner Ed Smith at (617) 951-8615 or edwin.smith@morganlewis.com.

Best Regards,

A handwritten signature in black ink, reading "Anita Ramasastry". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Anita Ramasastry
President, Uniform Law Commission