Comments of Rick Clayburgh
North Dakota Bankers Association
HB 1082
March 6, 2023

The Uniform Commercial Code (UCC) provides commercial law for broad categories of transactions: the sale or lease of goods, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, documents of title, investment property, and secured transactions in personal property. Its adoption in every state allowed the development of strong interstate markets. Today, the UCC is the backbone of United States' commerce, giving all Americans the legal structure necessary to have confidence when transacting business with strangers.

Through its model acts, the Uniform Law Commission protects states' rights. Adoption of model acts allows states to cooperate when uniformity of state law is desirable and keeps Congress from imposing federal law into areas where states should be sovereign.

The adoption of the Uniform Commercial Code (UCC) is the reason interstate commerce thrives in the United States. Because the UCC provides uniform rules across state lines, consumers can buy goods on Amazon or eBay without worrying about which state's law applies to the seller. North Dakota businesses can sell to customers in any state and the same laws apply. North Dakota banks and other lenders can lend or borrow money to businesses and individuals in any state. Similarly, banks and other lenders located outside of North Dakota can reliably make loans to businesses in North Dakota.

Definitions in the UCC only apply within the UCC. In addition to "money," the UCC defines terms like "bank," "contract," "consumer," and "person." These definitions apply only when the terms are used in the UCC – they do not change the general meaning of the words. The same is true for the definition of "money."

The UCC definition of money was recently updated because other countries have adopted Bitcoin as legal tender. We do not want to let other countries define what "money" means under our state laws.

Certainty of law is good for business. With the recent addition of Article 12, the UCC added rules that give transactions in digital assets legal certainty. This will allow the blockchain industry to grow in the United States.

Unlike traditional currency, it is impossible to "possess" digital currency. Rather it is "controlled." So the existing rules for "money" did not work well. Under the new UCC amendments, "control" of a digital asset is treated similarly to possession of a tangible asset. The new UCC rules will give transactions in digital currency the same legal certainty as transactions in traditional currency.

The amendments give bitcoin and other cryptocurrencies significant benefits by providing for their ready and confident transfer in commerce. Current law does not provide anything near that level of confidence, which is why most businesses still don't accept bitcoin/crypto.

The UCC takes the world as it is – it does not try to change the world. It takes no position as to whether as a policy matter any country should adopt a central bank digital currency (CBDC). The UCC doesn't create CBDC. However, because two countries already have CBDCs and others are likely to follow, the UCC needs rules to provide certainty to transactions using these currencies.