

*Complaining about a problem without proposing a solution is called whining.*

*-Teddy Roosevelt*



**Bette B. Grande**  
*President & CEO*

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**HB 1082 Testimony before the Senate Judiciary Committee**  
**March 6, 2023**

Chairwoman Larson and members of the Judiciary Committee my name is Bette Grande, I am the CEO of Roughrider Policy Center and Policy Director for the ProFamily Legislative Network, thank you for allowing me to testify on HB 1082.

First, I want to acknowledge the work of the Uniform Law Commission (ULC) and everyone involved, I know first-hand the work that Rep. Klemin puts in to our uniform laws. While we support the primary intent of HB 1082 and the majority of changes to the Uniform Commercial Code (UCC) proposed in HB 1082 we are opposed only to a limited section.

The strength of uniform laws comes from the slow, deliberate, and intentional way the laws are put together and amended as the need arises. The primary intent of this bill is to address issues relating to digital assets that have developed over the past 10 or so years.

The proposed new Chapter 12, beginning in Section 89 of HB 1082, is an example of the traditional approach to amending our uniform laws. Chapter 12 defines a new class of assets, Controllable Electronic Records (CERs), defined to include crypto currencies, such as Bitcoin, and other digital assets, non-fungible tokens for example.

Bitcoin has been around since 2009 and the ULC didn't form a working group to address it until 2019. The issues that came about related to these new digital assets over the past 10+ years have been wrestled with in our economy and in the courts. The measured and reasonable work dealing with these digital assets in the UCC is commendable.

This is in contrast to the provisions in HB 1082 dealing with the definition of money and introduction of a new term 'electronic currency'. As clearly indicated in the Bill, electronic money does not exist today and it is not included definition of CERs (page 103, line 9). Unlike the measured approach to the digital assets that already exist, the attempt to codify uncertain aspects of an asset that does not yet exist is rushed and premature.

The concerns with the 'electronic money' provisions in HB 1082 will be attacked as just another conspiracy theory but frankly the track record on conspiracy theories coming true has been pretty good lately. Uniform laws must be held to a high standard, not subject to a talking point.

When read in context with the entire bill the sections related to electronic money anticipate a new digital currency and can only refer to the Central Bank Digital Currency (CBDC) under consideration and testing by the Federal Reserve. The push for a CBDC comes from President Biden's Executive Order 14067 issued in March of 2022. Given the significant impacts of a CBDC many in Congress are pushing for an open and transparent debate over the role and function of a CBDC. There are far too many unknowns about what electronic money will look and act like to attempt to codify this unknown into the UCC.

The strength of our uniform laws comes from the confidence and acceptance that we have for the deliberate and thoughtful process they undergo. Attempting to codify rules on something that does not exist raises unneeded questions and undermines confidence in the uniform law process.

The debate over the adoption and implementation of CBDC should be done in an open, transparent, and fair process. The concern here is using the UCC to pick a winner in the CBDC debate. That is not the role of uniform laws.

The risk of codifying rules for something that does not exist is obvious in the section dealing with ‘control’ of ‘electronic money’ (Section 45 of HB 1082 starting on pg. 58, line 20). The wording in this new section provides that a person has ‘exclusive control’ over electronic money *even if*:

“The electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded, limits the use of the electronic money or has a **protocol programmed** to cause a change, including a transfer or loss of control,” (pg. 59, lines 10-14)

The CBDC under consideration is *programmable*. In practice, this means that the Federal Reserve or the federal government will retain the authority/ability to alter or change the CBDC. This fits with the protocol or programed language highlighted above. As written, this definition of ‘exclusive control’ would apply to electronic money that remains subject to actions from a 3<sup>rd</sup> party, the federal reserve or the federal government depending on how the CBDC is designed and programmed.

At a minimum, defining exclusive control to apply to an asset that a person cannot exclusively control is problematic in future application and will be the subject of litigation.

The concerns over the definition of money and the electronic money provisions in HB 1082 can be addressed without jeopardizing the work and effort of the Uniform Law Commission on CERs. I offer a proposed amendment that simply removes the portions related to currency and electronic money. This change will not impact the primary intent of HB 1082 which is to address known issues with digital assets that already exist.

Put simply, the new UCC Chapter 12 and many of the other proposed amendments to the UCC deal with things that actually exist, Bitcoin and other crypto currencies, NFTs, etc. and setting up ground rules to address known issues is appropriate.

Electronic money does not now exist and the question of digital currency is being debated at the federal level. A CBDC may, or may not, come about. We do not know the form or function of a digital currency. Amending the UCC in anticipation of this new thing is unnecessary and premature. The authority and acceptance of the UCC is at risk if it takes sides in an ideological debate.

I ask the Committee to follow the traditional and accepted practices for our uniform laws and amend HB 1082.

With that I am happy to answer any questions you may have.

For Liberty,



Proposed Amendment to **HB 1082**

Page 5, Line 15, remove “that is”

Page 5, Lines 18 to 21, remove “The term does not include an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government.”

Page 49, Lines 9, 10, remove “or money in an electronic form that cannot be subjected to control under section 41-09-05.1.”

Page 58, Beginning with Line 20, remove Section 45

Renumber accordingly