NEW YORK CITY BAR

REPORT ON LEGISLATION BY THE PRESIDENTIAL TASK FORCE ON ARTIFICAL INTELLIGENCE AND DIGITAL TECHNOLOGIES

A.3307-A **M. of A. Bores**
S.1840-A **Sen. Hoylman-Sigal**

New York Emerging Technologies Amendments to the Uniform Commercial Code

THIS BILL IS APPROVED

The New York City Bar Association (City Bar), through its Presidential Task Force on Artificial Intelligence and Digital Technologies (Task Force),[1] supports the enactment of A.3307-A/S.1840-A, the New York Emerging Technologies Amendments (Amendments)[2] to the Uniform Commercial Code (UCC).

New York commercial and financial law has long been favored by those conducting business transactions and their lawyers because of its robust respect for freedom of contract and strong protections for the negotiability of commercial instruments. This has made New York the preferred US jurisdiction for paper-based commercial, financial and other business transactions. With the enactment of the Amendments, the City Bar expects New York to become the preferred US jurisdiction for transactions involving digital assets such as electronic payment rights, tokenized assets, and other digital assets.

[1] The Task Force is composed of 245 representatives of more than 50 committees and councils of the City Bar and adjunct members of the City Bar. Task Force members represent a wide range of practice areas, and many members represent a range of stakeholders on digital technologies issues. For more information on the Task Force, its members, and its work, please visit https://www.nycbar.org/committees/task-force-on-digital-technologies/ and https://www.nycbar.org/wp-content/uploads/2025/02/PTFAIDT-Leadership-250224.pdf (All websites last accessed on June 26, 2025).

[2] For related resources about the Amendments, including reports, podcasts, seminars and webinars, please visit: https://www.nycbar.org/issues-policy/policy-department-resources/talking-points-resources-ny-emerging-technologies-amendments-to-the-ucc/.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 20,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

BACKGROUND

In July 2022, the Uniform Law Commission and the American Law Institute promulgated the Emerging Technologies amendments (Model UCC Amendments)[3] to the UCC after a three-year open process involving approximately 350 observers, including a number of observers from New York. The Task Force, in collaboration with the New York Uniform Law Commissioners and drafters of the Model UCC Amendments, drafted a tailored version of the Model UCC Amendments designed specifically for the New York UCC, which differs in some important respects from the current uniform text of the UCC. The tailored version is otherwise consistent with the Model UCC Amendments in the interest of uniformity with the laws of other states.

In February 2023, the Task Force, after approximately 18 months of research and analysis by Task Force members, issued a report[4] outlining its reasons for endorsing the Amendments. The Amendments have also been endorsed by a number of organizations, including the American Bar Association, the American College of Commercial Finance Lawyers, the American Fintech Council, the Bankers Association for Finance and Trade, the Baltic and International Maritime Council, the Clearinghouse, Enigio AB, the Equipment Leasing and Finance Association, the Financial Technology Association, the ICC Digital Standards Initiative, the International Factoring Association, the International Trade and Forfaiting Association, the Kozolchyk National Law Center, the Loan Syndications and Trading Association, PrimeRevenue, Unchained Capital, Inc., and XR Safety Initiative.[5]

THE STATUS OF THE ENACTMENT OF THE AMENDMENTS

The Amendments have strong support from a wide range of stakeholders,[6] and there has been no opposition to the Amendments.[7] The only issue that has been raised relates to the length of the Amendments and the complexity of the Amendments. While it is certainly true that the Amendments are relatively lengthy (approximately 50 pages in length), the primary changes from the current NY UCC are to modernize the text to account for advances in technology by, among other things, (1) adding a new Article 12 (Controllable Electronic Records) to help the NY UCC address new technologies and digital assets; (2) providing for electronic promissory notes and bills of exchange to facilitate trade finance; and (3) facilitating electronic commerce by augmenting rules that require a "writing" or a "signed" writing so that they can be satisfied with the electronic equivalents of those terms.

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[3] A copy of the Model UCC Amendments is available at https://www.uniformlaws.org/viewdocument/archive-committee-55?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac&tab=librarydocuments.

[4] Report by The Task Force on Digital Technologies in Support of Enactment of the New York Version of the Amendments to the Official Text of the Uniform Commercial Code (2022) (February 2023) available at https://www.nycbar.org/reports/emerging-technology-amends-ucc-ny/.

[5] For an up to date list of supporters, please visit https://www.nycbar.org/wp-content/uploads/2024/07/EmergingTechAmends_SupportersList.pdf.

[6] *Id*.

[7] Over the course of approximately three years, the Task Force has conducted numerous outreach efforts, hosted a number of webinars and in-person seminars, recorded a number of podcasts, and published reports on the Amendments, no opposition to the Amendments has been brought to the attention of the Task Force.

WHAT THE AMENDMENTS ARE DESIGNED TO ACCOMPLISH

The Amendments are designed to modernize, rationalize and clarify New York's UCC so that it effectively governs important transactions in digital assets, while applying to certain digital assets the robust characteristics of New York law that facilitate the negotiability of written instruments and, thereby, enhance transactional certainty. To accomplish these goals, the Amendments utilize the concept of a controllable electronic record to provide legal recognition for, and thereby facilitate the creation of, a broad range of new forms of intangible property or digital assets and to define the rights of purchasers and other transferees of such digital assets in order to enhance their commercial utility. A controllable electronic record is defined broadly so that it is technology- neutral and not limited to any particular existing technology utilized to establish control. The Amendments also specifically recognize certain rights to payment referred to as controllable accounts and controllable payment intangibles. These are accounts and payment intangibles (as those terms are defined in UCC Article 9) evidenced by a controllable electronic record, if the obligor has to pay the person in control of the controllable electronic record.

Appendix B of the Task Force February 2023 report provides a detailed description of the changes to each Article of the New York UCC proposed by the Amendments, including, particularly, the creation of a new Article 12 (Controllable Electronic Records), and the amendments to other provisions of the New York UCC as well as transition rules that determine the effect of the Amendments on transactions entered into before the effective date of the Amendments.[8]

URGENCY TO ENACT THE AMENDMENTS AND THE BENEFITS TO NEW YORK

Thirty-one states and the District of Columbia have adopted the Model UCC Amendments, but New York is not one of those states.[9] A number of other states, including New York, have introduced bills to enact the Model UCC Amendments. We expect more states to adopt the Model UCC Amendments. Meanwhile, the New York UCC has not been updated since 2014. As a result, New York now finds itself, with other jurisdictions having adopted or in the process of adopting the Model UCC Amendments, in a difficult position. If New York does not adopt the Amendments, its law will become increasingly outdated and ill-suited to many modern commercial and financial transactions. Every time another state adopts the Model UCC Amendments, the more likely it is that market participants will prefer one of those states for transactions involving digital assets instead of New York. Once that business is lost to other states, it will become progressively more difficult to get it back.

While there are many benefits to New York's enactment of the Amendments, which benefits are fully laid out in the Task Force's February 2023 report, we highlight and emphasize four of the most important benefits to New York.

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[8] Supra note 4.

[9] As of July 9, 2025, 31 states and the District of Columbia had adopted the Model UCC Amendments. See https://www.uniformlaws.org/committees/community-home?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac.

First, enactment of the Amendments during the current legislative session will promote and encourage technological and commercial advances that decrease transactional costs and enhance the efficiency, certainty and security of commercial and financial transactions governed by the New York UCC. These are major factors that are considered when market participants decide whether to choose New York as the governing law and the jurisdiction to resolve disputes and whether businesses will decide to locate to New York. The importance of these improvements to the New York UCC cannot be overstated.

Second, enactment of the Amendments during the current legislative session will also help ensure New York's leadership in commercial and financial progress and growth and will disincentivize migration of digital commerce to other jurisdictions. This is critically important because every time another state adopts the Model UCC Amendments, the more likely it is that market participants will view those other states, and not New York, as leaders in modern commerce and finance, which could have the effect of incentivizing migration of digital commerce and finance to those other states.

Third, enactment of the Amendments during this legislative session will also help persuade multinational and international market participants to continue to choose New York law over the law of other countries, such as England, which are rapidly reforming their commercial laws to accommodate emerging technologies and electronic transactions. New York must act expeditiously to preserve and strengthen its attractiveness to multinational and international businesses. The preference of multinational and international businesses for New York law is one of the reasons New York City remains the world's financial capital and retains its leading position in Fintech rankings.

Fourth, enactment of the Amendments during this legislative session will assist judges in the Commercial Division of the New York Supreme and County Courts. The Chief Administrative Judge of the Courts, with the advice and consent of the Administrative Board of the Courts, recently adopted a proposal to add to the definition of "commercial cases" within the jurisdiction of the Commercial Division under the Rules of Practice for the Commercial Division "technology transactions and/or commercial disputes involving or arising out of technology."[10] But the new provision does not define "technology transactions" and "disputes involving or arising out of technology." Enactment of the Amendments, however, will eliminate any uncertainty as to the jurisdiction of the Commercial Division over the matters addressed in the Amendments inasmuch as Rule 202.70(b)(2) of the Rules of Practice confers jurisdiction over "[t]ransactions governed by

[10] In a memorandum dated October 5, 2023, the Administrative Board of the Courts issued a Request for Public Comment on Amending 22 N.Y.C.R.R. § 202.70(b)(1) of the Uniform Rules for the New York Supreme and County Courts (Rules of Practice for the Commercial Division) to Add a Reference to Technology in the Description of Commercial Cases. The proposal was offered by the Commercial Division Advisory Council to amend the Rules of the Commercial Division to include "technology transactions and/or other matters involving or arising out of technology" as an example of a commercial case that the Commercial Division has jurisdiction over. The memorandum is available at https://www.nycourts.gov/LegacyPDFS/rules/comments/pdf/RPC-Commercial-Division-Rules-technology.pdf. The proposal was adopted and became effective on February 14, 2024. See AO/77/24 at https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO77-Commercial-Division.pdf. The proposal asserted that the clarification was needed because, unlike New York, other court systems such as Maryland, Delaware, Georgia, Iowa, Michigan, North Carolina, Tennessee, Utah, and West Virginia have made it clear which courts have jurisdiction over technology-related disputes.

the Uniform Commercial Code." Thus, enactment of the Amendments, especially the addition of new UCC Article 12 and the amended version of existing UCC Article 9, will bolster the policy decision embodied in the recent addition to the Rules of Practice by assuring that transactions within the augmented scope of the UCC will be adjudicated by the Commercial Division so long as they meet the applicable monetary threshold.

CONCLUSION

Modernizing New York laws and making sure New York receives the considerable benefits of electronic commerce and emerging technologies are important priorities of the City Bar. We urge the Legislature and Governor to enact the Amendments.

Presidential Task Force on Artificial Intelligence and Digital Technologies
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