

## Testimony in Support of LD 91

Angela Robbin

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Good morning, Senator Carney, Representative Moonen, and members of the Joint Standing Committee on Judiciary.

My name is Angela Robbin, and I am a resident of Manchester. I am a licensed Maine attorney and have worked in banking for over 10 years. I currently serve as Regulatory Counsel and Senior Compliance Officer at Kennebec Savings Bank, a mutual bank headquartered here in Augusta for the last 154 years.

In partnership with other members of the Maine Bankers Association Legislative Committee, I have followed the work of the judiciary subcommittee with great interest and with appreciation for their efforts. I am here today to speak in support of LD 91 and full adoption of the Model Amendments to the Uniform Commercial Code.

The Uniform Commercial Code (UCC) is a set of shared definitions and default provisions for transactions between individuals and companies. It is implemented through state laws, and applies only to “private” transactions, that is transactions entered into voluntarily by private parties. It does not change any regulatory provisions, such as what may be bought and sold, how banks are regulated, or governmental financial matters, such as taxation.

When the UCC was first drafted in the mid-19<sup>th</sup> century, laws regarding trade and sale of goods were complex and varied greatly across state lines. Contracts were often full of industry jargon and shorthand, making them difficult to read. A valid contract in one state might be invalid in another, creating uncertainty and confusion for buyers and sellers. Imagine trying to buy something online, but then discovering the seller’s state requires you to fill out additional forms describing the item purchased, the expected quality, and the methods by which you will accept delivery. The seller then has to expressly accept your terms, and there’s a pretty good chance you will both end up in court (somewhere).

The UCC is primarily the handiwork of the Uniform Law Commission. The Uniform Law Commission is a nonprofit, nonpartisan group of legal experts that has worked to promote high-quality legal drafting and uniformity among states since 1892. Commissioners from every state volunteer their expertise to draft, review, debate, and improve model uniform laws, including the UCC.

Over time, careful additions to the UCC have ensured its framework accommodates evolutions in business and technology while preserving uniformity and predictability. When technology or other developments begin to create challenges or ambiguities in the existing model UCC, the Uniform Law Commission works to provide model amendments. These updates build on the existing framework by providing clarity on how the rules apply to new situations.

The current Model Amendments were crafted through an open, public process including the Uniform Law Commission, leading experts in relevant fields, and the input of approximately 350 observers from a wide range of industries and geographies. Dozens of meetings over the course of three years resulted in consensus on a set of updates needed to ensure the Model UCC adequately addresses the needs of the modern economy.

The Model Amendments include a variety of updates to ensure the ongoing relevance of the UCC. The largest change is the addition of a new section (UCC Article 12) that addresses “Controllable Electronic Records.” Controllable Electronic Record (CER) is a technologically neutral category of asset that includes virtual currencies (such as Bitcoin), non-fungible tokens, and other similar digital assets. The new Article 12 provides a definition for CERs and guidelines for determining:

- who owns and who controls a CER
- how to establish (and terminate) a security interest in a CER,

- if there are multiple security interests in a CER, which takes priority
- when a good-faith purchaser of a CER gets to take the CER free of other claims

Current law treats cryptocurrency as a “general intangible,” a sort of “miscellaneous” category in the UCC for a wide array of assets that are not able to be physically held or kept. Cryptocurrencies and other CERs present a common set of challenges, but challenges that are different from other general intangibles. The lack of uniform guidance has left many questions subject to interpretation by courts in each state, making the rules less uniform and creating significant expense. Those of you with loans secured by cryptocurrency are likely paying the price for that uncertainty; in the lending world, less certainty means higher risks and higher rates.

It is also important to include the definition of “electronic money” from the Model Amendments. Money, essentially currency issued by a government that is declared to be legal tender (also sometimes referred to a “fiat” currency) is treated differently than other assets under the UCC. Some governments have begun to accept or issue currency that is electronic only, which, if the amendments were not carefully drafted, could fall under the rules for CERs.

The Model Amendments therefore create a separate definition for “electronic money” to separate actual electronic currencies issued by governmental authorities from other types of CER. This definition applies only to government-created and -issued digital currencies, not to preexisting digital currencies that a government may adopt. For instance, El Salvador has adopted Bitcoin as currency. Bitcoin existed before El Salvador adopted it, so it is not a currency created and issued by El Salvador. The new Article 12 (with the “electronic money” definition) would continue to treat Bitcoin as a CER, not electronic money.

As a counterexample, the Central Bank of the Bahamas introduced the “Sand Dollar” in 2020. This is a true legal currency, equivalent to the traditional Bahamian dollar, that was created and issued by the Bahamian government. This would be “electronic money” under the new Article 12.

It is important to clarify that the UCC only addresses how different types of asset, whether CERs, electronic money, or paper currency, are defined and treated in transactions between private parties. The UCC does not create, endorse, reject, or prefer any form of asset or currency over any other. Much like preparing for a fire drill does not express support for setting fires. The US Constitution gives exclusive control over determining what is “money” to the federal government. Still, for the sake of clarity and for those who have not read the “Legal Tender Cases” of 1871, (I think you’d call them “normal people”), Representative Moriarty’s draft language includes a provision stating that Maine’s inclusion of the definition of Electronic Money does not change federal monetary policy.

Including the “electronic money” definition gives Maine the appropriate tools to treat complex emerging topics in a consistent way. Leaving out the definition would create a significant gap in Maine law. Omitting the definition will not stop changes in technology or the economy, but Maine consumers and businesses will be left to fill the gap in the legislation with litigation. This litigation will certainly be expensive, it will likely lead to confusion for Maine people, and the outcome of that litigation may be so fact-specific that it creates new challenges.

You have the opportunity to advance well crafted, thoroughly vetted amendments to the UCC, including all of its definitions. This holistic approach will give Maine people a solid, uniform foundation for economic growth. I urge you to support LD 91 and the inclusion of the full scope of the Model Amendments. Thank you for your time. I would be happy to answer any questions you have to the best of my ability.

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