

BILL ANALYSIS

C.S.H.B. 4474

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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Virtual currency lacks legal tender in the United States and is excluded from the "free and clear negotiability" rules under the Uniform Commercial Code. Although Bitcoin and other virtual currencies are often treated as money, the definition of money for commercial purposes is currently limited and does not include virtual currencies. Many businesses are beginning to accept Bitcoin and other virtual "currencies" as a form of payment, though these currencies remain unregulated by most governments. C.S.H.B. 4474 seeks to adopt virtual currency standards into statute. This bill would allow individuals to know their rights regarding the control of virtual assets and help resolve disputes involving the ownership and transfer of virtual currency.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4474 amends the Business & Commerce Code to establish that a purchaser of a virtual currency, as defined by the bill, acquires all rights in the virtual currency that the transferor had or had power to transfer and that a purchaser of a limited interest in a virtual currency acquires rights only to the extent of the interest purchased. In addition, the bill does the following:

- establishes that a qualifying purchaser acquires the purchaser's rights in a virtual currency free of any adverse claim in addition to acquiring the rights of a purchaser;
- prohibits an action based on an adverse claim to a virtual currency, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, from being asserted against a qualifying purchaser that acquires the purchaser's interest in, and obtains control of, the virtual currency for value and without notice of the adverse claim;
- sets out the circumstances under which a person has notice of an adverse claim;
- establishes, subject to the bill's provisions regarding virtual currency, that law other than the bill's provisions relating to rights in and control of virtual currency determines whether a person acquires rights in a virtual currency and the rights that the person acquires; and
- sets out the conditions under which a person has control of virtual currency and provides for the exclusivity of certain powers specified in the conditions.

C.S.H.B. 4474 makes the definition of "virtual currency" provided by the bill applicable to provisions relating to secured transactions. The bill establishes that:

- a secured party has control of virtual currency as provided by the bill's provisions relating to control of virtual currency;
- the filing of a financing statement is not necessary to perfect a security interest in virtual currency;
- a security interest in virtual currency may be perfected by filing a financing statement; and
- provisions relating to secured transactions do not limit the rights of a holder in due course of a qualifying purchaser of a virtual currency.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4474 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the original's definitions of "virtual currency" and "adverse claim" and includes a definition of "qualifying purchaser" that is not in the original.

The substitute includes the following provisions that were not included in the original:

- provisions making the definition of "virtual currency" under the bill's provisions applicable to provisions relating to secured transactions;
- provisions establishing that filing a financing statement is not notice of an adverse action;
- provisions relating to certain rights of a purchaser of virtual currency;
- provisions establishing that a secured party has control of virtual currency as provided by the bill's provisions establishing such control;
- provisions establishing that a filing of a financing statement is not necessary to perfect a security interest in virtual currency but a security interest in virtual currency may be perfected by filing a financing statement;
- provisions making conforming changes; and
- certain savings provisions.

The substitute does not include the provision included in the original establishing that a purchaser that acquires an interest in and obtains control of a virtual currency without notice of any adverse claim takes the purchaser's interest in the virtual currency and in any right to payment evidenced by the virtual currency free of any adverse claim.