



WYOMING LEGISLATIVE SERVICE OFFICE

# Memorandum

## WYOMING LAW AND UCC ARTICLE 12 COMPARISON CHART

December 2021

The Uniform Law Commission and the American Law Institute organized the Uniform Commercial Code and Emerging Technologies Committee to consider changes to the Uniform Commercial Code (UCC) in 2019. Proposed UCC Article 12 is currently under development with the first draft issued July 2021. Work continues with the intention of obtaining the approval of the American Law Institute at its May 2022 annual meeting, followed by final approval of the Uniform Law Commission at its July 2022 annual meeting.

The purpose of the proposed Article, along with concurrent changes to Articles 1 and 9, is to establish a framework for digital assets that governs the transfer of interests in certain electronic records. The proposed amendments to the UCC are comparable but distinct from amendments Wyoming made in 2019 SF 0125 (later further amended by 2020 SF 0047 and 2021 HB 0043), which created W.S. 34-29-101 through 34-29-105 and provided changes to Wyoming's UCC law. A summary chart highlighting differences is located below.

The proposed Article 12 may be found on the Uniform Law Commission website here: <https://www.uniformlaws.org/committees/community-home?communitykey=cb5f9e0b-7185-4a33-9e4c-1f79ba560c71&tab=groupdetails>

2019 SF 0125 may be found here: <https://www.wyoleg.gov/Legislation/2019/SF0125>

2020 SF 0047 may be found here: <https://www.wyoleg.gov/Legislation/2020/SF0047>

2021 HB 0043 may be found here: <https://www.wyoleg.gov/Legislation/2021/HB0043>

This chart is not comprehensive and only highlights certain aspects. The proposed Article 12 is not final, and may change in future drafts.

	Wyoming	UCC
<b>Definitions</b>  W.S. 34-29-101 (a)(i)  And  Article 12-102(a)(1) and (2)	(i) "Digital asset" means a representation of economic, proprietary or access rights that is stored in a computer readable format and is either a digital consumer asset, digital security or virtual currency;  (ii) "Digital consumer asset" means a digital asset that is used or bought primarily for consumptive, personal or household purposes and includes:  (A) An open blockchain token constituting intangible personal property as otherwise provided by law;  (B) Any other digital asset which does not fall within paragraphs (iii) and (iv) of this subsection.  (iii) "Digital security" means a digital asset which constitutes a security, as defined in W.S. 17-4-102(a)(xxviii), but shall exclude digital consumer assets and virtual currency;  (iv) "Virtual currency" means a digital asset that is:  (A) Used as a medium of exchange, unit of account or store of value; and  (B) Not recognized as legal tender by the United States government.	(1) "Controllable electronic record" means an electronic record that can be subjected to control under Section 12-105. [Except as otherwise provided or the context otherwise requires, the] [The] term includes a controllable account or a controllable payment intangible evidenced by a controllable electronic record. The term does not include deposit accounts, electronic chattel paper, electronic documents of title, intangible money, investment property, or "transferable records", as defined in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7021(a)(1) or as defined in [cite to Uniform Electronic 4 Transaction Act Section 16(a)].  (2) "Electronic record" means a record stored in an electronic medium.
<b>Control</b>  W.S. 34-29-103(e)(i)  And  Article 12-105	(i) "Control," when used in article 9, title 34.1, Wyoming statutes and this section, consistent with W.S. 34.1-9-314, includes the following:  (A) A secured party, or an agent, custodian, fiduciary or trustee of the party, has complied with W.S. 34.1-8-106, including by means of a private key or the use of a multi-	(a) A person has control of a controllable electronic record if:  (1) the controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, gives the person:

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	<p>signature arrangement exclusive to the secured party or any substantially similar analogue;</p> <p>(B) Use of a smart contract created by a secured party to comply with W.S. 34.1-8-106. As used in this subparagraph, "smart contract" means an automated transaction, as defined in W.S. 40-21-102(a)(ii), or any substantially similar analogue, which is comprised of code, script or programming language that executes the terms of an agreement, and which may include taking custody of and transferring an asset, or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.</p>	<p>(A) the power to avail itself of substantially all the benefit from the controllable electronic record; and</p> <p>(B) subject to subsection (b), the exclusive power to: (i) prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and (ii) transfer control of the controllable electronic record to another person or cause another person to obtain control of a controllable electronic record that is traceable to derived from the controllable electronic record; and</p> <p>(2) the controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, enables the person to readily identify itself in any way as having the powers specified in paragraph (1). The person may be identified in any way, including by name, identifying number, cryptographic key, office, or account number.</p> <p>(b) A power specified in subsection (a)(1) is exclusive, even if: (1) the controllable electronic record or the system in which the controllable electronic record is recorded, if any, limits the use to which the controllable electronic record may be put or has a protocol that is programmed to result in a transfer of control; or (2) the person has agreed to share the power with another person</p>
<p><b>Perfection</b></p> <p>W.S 34-29-103(a)</p>	<p>(a) Notwithstanding the financing statement requirement specified by W.S. 34.1-9-310(a) as otherwise applied to general intangibles or any other provision of law, perfection of a security interest in virtual currency may be achieved through possession and perfection of a security interest in digital securities may be achieved by control. A security interest held by a secured party having possession or control, as applicable, of virtual currency or digital securities has priority over a security interest held by a secured party that does not have</p>	<p>Amendments made to Article 9 allow for perfection by control or filing. The governing law of the jurisdiction</p> <p>A proposed Section 9-306A reads:</p> <p>Section 9-306A. Law Governing Perfection and Priority of Security Interests in Controllable Electronic Records.</p> <p>(a) [Governing law: general rules.] Except as provided in subsection (b), perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record is governed by:</p>

	possession or control, as applicable. Other provisions of law relating to perfection and priority of security interests, including W.S. 34.1-9-322(c) and priority of control over delivery, shall apply, except that W.S. 34.1-9-322(a)(i) and (b) shall not apply. W.S. 34.1-9-207 shall apply to this section.	<p>(1) the local law of the controllable electronic record's jurisdiction as specified in Section 12-107(c)(1) through (4), or (2) if none of those paragraphs applies, the local law of the jurisdiction in which the debtor is located.</p> <p>(b) [Governing law: perfection by filing.] The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in a controllable electronic record intangibles by filing.</p> <p>(c) [Location of debtor.] If the location of the debtor cannot readily be determined, the debtor is [deemed to be] located in [the District of Colombia][insert name of state that has adopted Article 12].</p>
<p><b>Jurisdiction</b></p> <p>W.S. 34-29-103(g)</p> <p>And</p> <p>Article 12-107(c)</p>	<p>(g) For purposes of article 9, title 34.1 and this section, if collateral is required to be "located in a jurisdiction," a digital asset is located in Wyoming if the asset is possessed or controlled by a Wyoming bank, trust company or other custodian, the debtor or secured party is physically located in Wyoming or the debtor or secured party is incorporated or organized in Wyoming, based on the following factors:</p> <p>(i) Whether a security agreement typically accompanying a possessory security interest or other secured transaction exists, consistent with W.S. 34.1-9-201(a), including an agreement describing the possessory nature of a private key or any substantially similar analogue;</p> <p>(ii) Choice of law in a security agreement, evidencing the intent and understanding of the parties relating to a transaction, including waivers of litigation in jurisdictions other than Wyoming, access to the Wyoming chancery court and judicial economy; and</p>	<p>(c)The following rules determine a controllable electronic record's jurisdiction for purposes of this section:</p> <p>(1) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or [the UCC], that jurisdiction is the controllable electronic record's jurisdiction.</p> <p>(2) If paragraph 1 does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or [the UCC], that jurisdiction is the controllable electronic record's jurisdiction.</p> <p>(3) If none of the preceding paragraphs applies and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record which is readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular</p>

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	<p>(iii) The relative clarity of the laws of other jurisdictions relating to a digital asset, consequences relating to unknown liens in those jurisdictions and the ability of a court to exercise jurisdiction over a particular digital asset.</p>	<p>jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.</p> <p>(4) If none of the preceding paragraphs applies and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.</p>
<p><b>Take free rule</b></p> <p>W.S. 34-29-103(d)</p> <p>Article 12-104(a) through (f)</p>	<p>(d) Notwithstanding any other provision of law, including article 9 of the Uniform Commercial Code, title 34.1, Wyoming statutes, a transferee takes a digital asset free of any security interest two (2) years after the transferee takes the asset for value and does not have actual notice of an adverse claim at any time during the two (2) year period. This subsection only applies to a security interest perfected by filing.</p>	<p>(a) In this section, "qualifying purchaser" means a purchaser of a controllable electronic record or an interest in the controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record.</p> <p>(b) Except as provided in this section, law other than this article determines whether a person acquires a right in a controllable electronic record and the right, if any, the person acquires.</p> <p>(c) A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer.</p> <p>(d) A purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.</p> <p>(e) A qualifying purchaser acquires its rights in the controllable electronic record free of claim of a property right in the controllable electronic record.</p> <p>(f) Except as provided in subsection (e) or law other than [this article], a qualifying purchaser takes a right to payment, right to performance, or interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.</p>

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