



# 2024 Amendments to Georgia Uniform Commercial Code

May 20, 2024

On May 6, 2024, Georgia's governor signed the Uniform Commercial Code Modernization Act of 2024. The changes to Georgia's UCC will take effect on July 1, 2024. To date, 19 other states and the District of Columbia have adopted similar legislation.

The amendments address market concerns regarding the lack of sufficient commercial laws for transactions involving digital assets and include the following updates to Georgia's UCC:

- Adoption of a new Article 12 that addresses controllable electronic records,
- Amendments to Article 9 that address perfection of security interests in digital assets, including controllable electronic records, controllable accounts, controllable payment intangibles and electronic money,
- Amendments to address "mixed" transactions that involve both goods and services, including hybrid lease transactions that include a lease of goods and a provision of services when the use or possession of goods is the predominate purpose of the transaction, and
- Amendments to address electronic signatures and electronic documents.

## What Lenders Need to Know about the Amendments to the Georgia UCC

Under the new amendments (i) a controllable electronic record is a type of general intangible, (ii) a controllable account is a type of account, and (iii) a controllable payment intangible is a type of payment intangible. A security interest in a controllable electronic record, controllable account or controllable payment intangible may be perfected either by taking control pursuant to the rules described in the Georgia UCC or by filing a UCC financing statement. A lender having control over a controllable electronic record, controllable account or controllable payment intangible has priority over a conflicting security interest held by a secured party that does not have control.

Chattel paper is now defined to include the right to payment of a monetary obligation secured by specific

goods if evidenced by a record or a right to payment of a monetary obligation owed by a lessee under a lease of specific goods, rather than being defined as the record itself. The amendments recognize that there may be multiple records (tangible or electronic) evidencing a single right to payment. A lender that has possession of all authoritative tangible copies of a record evidencing chattel paper and control over all authoritative electronic copies of a record evidencing such chattel paper generally is afforded a priority security interest in such chattel paper.

The amendments allow perfection by control of a security interest in electronic money that is not credited to a deposit account. The amendments clarify that “money” does not include an electronic record that existed and operated as a medium exchange before it was authorized or adopted as a medium of exchange by a government. For example, although Bitcoin has been adopted by certain foreign governments as their official currency, for purposes of the Georgia UCC, Bitcoin would not be treated as money; rather, it would constitute a controllable electronic record. Note that certain states have adopted an alternative approach to expressly exclude from the UCC definition of “money” any medium of exchange in electronic form authorized or adopted by a government regardless of whether it existed or operated as a medium exchange before it was authorized or adopted by such government.

The amendments define what steps are sufficient to take control over documents of title (which would include electronic bills of lading).

Article 12A addresses perfection and priority rules for security interests in place prior to July 1, 2024, during the one-year transition period after such date.

## Opportunities for Lenders and Borrowers

By clarifying perfection and priority rules for certain digital assets and “mixed” transactions involving both goods and services, the amendments will create new opportunities for lenders to provide financing based on the value of those assets and enhance the potential ability of borrowers to monetize those assets.

## Next Steps for Lenders

Lenders may wish to review their security documents with existing borrowers and their form security documents to address the following:

- The definitional changes to chattel paper,
- The new types of digital assets,
- Whether and under what circumstances the applicable lender will require control over digital assets,
- What law must govern the applicable digital assets, and
- The circumstances, if any, under which their borrowers may grant control to others.

## Caveat and Challenges for Lenders and Borrowers

Because (i) the UCC amendments have not been adopted in all of the states, (ii) the effective date and transition periods for those states that have adopted the UCC amendments are not uniform, and (iii) certain

states have adopted alternative provisions regarding electronic money, parties to financing transactions face certain challenges that must be considered on a case-by-case basis.

- Determining appropriate changes to loan documents will be challenging if the laws of multiple states apply to a transaction or the digital assets applicable to a transaction.
- Not only will lenders and borrowers need to consider what law governs their loan documents and whether the applicable state has adopted the UCC amendments, parties also must consider what law governs the applicable controllable electronic records, controllable accounts or controllable payment intangibles. Article 12 includes a waterfall approach to determine what law governs for purposes of Article 12 only, and it provides for a default to the District of Columbia if the other options under Article 12 do not apply for such purposes.

### Status of Adoption of UCC Amendments in Other States

For information regarding the adoption of the UCC amendments in other states, visit [UCC, 2022 Amendments to - Uniform Law Commission \(uniformlaws.org\)](https://www.uniformlaws.org).

## AUTHORS

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For additional questions regarding the amendments to the Georgia UCC, feel free to contact Kathleen Currey, Bobbi Acord Noland, or Thomas Powell.



**Kathleen O. Currey**

Partner  
Atlanta  
404.420.4317  
[kcurrey@phrd.com](mailto:kcurrey@phrd.com)



**Bobbi Acord Noland**

Partner  
Atlanta  
404.420.5537  
[bnoland@phrd.com](mailto:bnoland@phrd.com)



**Thomas D. Powell**

Associate  
Atlanta  
404.420.4336  
[tpowell@phrd.com](mailto:tpowell@phrd.com)

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