A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 36‑1‑201, RELATING TO COMMERCIAL CODE GENERAL DEFINITIONS, SO AS TO ADD THE DEFINITION OF “CENTRAL BANK DIGITAL CURRENCY” AND TO AMEND THE DEFINITION OF “MONEY” TO EXCLUDE CENTRAL BANK DIGITAL CURRENCY; BY AMENDING SECTION 26‑6‑160, RELATING TO CONTROL OF TRANSFERABLE RECORDS PURSUANT TO THE UNIFORM ELECTRONIC TRANSACTIONS ACT, SO AS TO MAKE A TECHNICAL CHANGE; BY AMENDING SECTION 34‑3‑210, RELATING TO THE GENERAL POWERS OF A BANKING CORPORATION, SO AS TO PROHIBIT A BANKING CORPORATION FROM OFFERING ANY SERVICE OR APPROVING OF OR CONDUCTING ANY TRANSACTION THAT INVOLVES CENTRAL BANK DIGITAL CURRENCY; AND TO REQUIRE THE STATE BOARD OF FINANCIAL INSTITUTIONS TO PROMULGATE REGULATIONS TO PROHIBIT ENTITIES WITHIN ITS JURISDICTION FROM OFFERING OR PROVIDING ANY SERVICE OR CONDUCTING ANY TRANSACTION THAT WOULD UTILIZE CENTRAL BANK DIGITAL CURRENCY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 36‑1‑201(b) of the S.C. Code is amended to read:

(b) Subject to definitions contained in other chapters of this title that apply to particular chapters or parts thereof:

(1) “Action,”, in the sense of a judicial proceeding, includes recoupment, counterclaim, set‑off, suit in equity, and any other proceeding in which rights are determined.

(2) “Aggrieved party” means a party entitled to pursue a remedy.

(3) “Agreement,”, as distinguished from “contract,”, means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in Section 36‑1‑303.

(4) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) “Bearer” means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, a negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) “Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing” a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in the ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Chapter 2 may be a buyer in the ordinary course of business. “Buyer in ordinary course of business” does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) “Central bank digital currency” means a digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is made directly available to a consumer by such entities. The term includes a digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is processed or validated directly by such entities.

(10)(11) “Conspicuous,”, with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11)(12) “Consumer” means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12)(13) “Contract,”, as distinguished from “agreement,”, means the total legal obligation that results from the parties’ agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(13)(14) “Creditor” includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor’s or assignor’s estate.

(14)(15) “Defendant” includes a person in the position of defendant in a counterclaim, cross‑claim, or third‑party claim.

(15)(16) “Delivery,”, with respect to an electronic document of title means voluntary transfer of control, and with respect to an instrument, a tangible document of title, or chattel paper means voluntary transfer of possession.

(16)(17) “Document of title” means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee’s possession that are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(17)(18) “Fault” means a default, breach, or wrongful act or omission.

(18)(19) “Fungible goods” means:

(A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) goods that by agreement are treated as equivalent.

(19)(20) “Genuine” means free of forgery or counterfeiting.

(20)(21) “Good faith,”, except as otherwise provided in Chapter 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21)(22) “Holder” means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or an identified person that is the person in possession;

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control of a negotiable electronic document of title.

(22)(23) “Insolvency proceeding” includes an assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23)(24) “Insolvent” means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of Federal Bankruptcy Law.

(24)(25) “Money” means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries. The term does not include a central bank digital currency.

(25)(26) “Organization” means a person other than an individual.

(26)(27) “Party,”, as distinguished from “third party,”, means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.

(27)(28) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28)(29) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29)(30) “Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(30)(31) “Purchaser” means a person that takes by purchase.

(31)(32) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32)(33) “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33)(34) “Representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate.

(34)(35) “Right” includes remedy.

(35)(36) “Security interest” means an interest in personal property or fixtures, which secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Chapter 9. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 36‑2‑401, but a buyer also may acquire a “security interest” by complying with Chapter 9. Except as otherwise provided in Section 36‑2‑505, the right of a seller or lessor of goods under Chapter 2 or 2A to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor also may acquire a “security interest” by complying with Chapter 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Section 36‑2‑401 is limited in effect to a reservation of a “security interest”. Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to Section 36‑1‑203.

(36)(37) “Send” in connection with a writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) in any other way, to cause to be received any records or notice within the time it would have arrived if properly sent.

(37)(38) “Signed” includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38)(39) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39)(40) “Surety” includes a guarantor or other secondary obligor.

(40)(41) “Term” means a portion of an agreement that relates to a particular matter.

(41)(42) “Unauthorized signature” means a signature made without actual, implied or apparent authority. The term includes a forgery.

(42)(43) “Warehouse receipt” means a document of title issued by a person engaged in the business of storing goods for hire.

(43)(44) “Writing” includes printing, typewriting or any other intentional reduction to tangible form. “Written” has a corresponding meaning.

SECTION 2. Section 26‑6‑160(D) of the S.C. Code is amended to read:

(D) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Section 36‑1‑201(20)(22), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing pursuant to Title 36, including the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively if the applicable statutory requirements pursuant to Section 36‑3‑302, 36‑7‑501, or 36‑9‑308 are satisfied. Delivery, possession, and endorsement are not required to obtain or exercise the rights pursuant to this subsection.

SECTION 3. Section 34‑3‑210 of the S.C. Code is amended to read:

Section 34‑3‑210. (A) Every banking corporation may:

(1) Receive and pay out the lawful currency of the country;

(2) Deal in exchange, gold and silver coin, bullion, uncurrent paper, public and other securities and stocks of other corporations;

(3) Purchase and hold such real estate and personal property as (a) may be conveyed to it to secure debts to the corporation, (b) may be sold under execution to satisfy debts due in whole or in part to the corporation or (c) may be deemed necessary or convenient for the transaction of its business, and sell and dispose of such real estate and personal property at pleasure;

(4) Discount notes, bills of exchange, bonds and other evidences of debt and lend money on such terms as may be agreed on, subject to the usury laws of the State;

(5) Receive on deposit moneys on such terms as may be agreed on with the depositor and issue certificates therefor, negotiable or assignable in such way as may be stipulated in the certificates;

(6) Sue and be sued and plead and be impleaded in any court of this State;

(7) Adopt and use a corporate seal and alter it at its pleasure; and

(8) Adopt all such bylaws for the general management and direction of the business and affairs of the corporation, not inconsistent with the laws of the United States and of this State, as may be deemed proper, and add to, alter or amend them from time to time as may be desired;

And shall have generally all the rights, powers and privileges in law incident or appertaining to such corporations.

(B) A banking corporation must not offer any service nor approve of or conduct any transaction that involves central bank digital currency as defined in Section 36‑1‑201.

SECTION 4. The State Board of Financial Institutions must promulgate regulations to prohibit entities within its jurisdiction from offering or providing any service and from conducting any transaction that would utilize central bank digital currency.

SECTION 5. This act takes effect upon approval by the Governor.

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