

ALABAMA'S UNIFORM COMMERCIAL CODE AMENDMENTS 2022

Alabama Act [#2023-492](#)
effective July 1, 2024

The need for the Amendments

- Has current technologies advanced beyond the existing UCC?
- How should the UCC embrace the movement to an electronic and digital world?
- How to use **Digital Assets (which are general intangibles under current law)** in today's commercial practice?
- **How to deal with Electronic Money/Virtual Currency (Not in Alabama)?**
- Are the present concepts of **"Control"** workable in tomorrow's practice?
- Is **Chattel Paper** the paper or the obligation?
- Can there be **electronic instruments** (i.e. not a "writing")?
- Can there be **electronic documents of title** (i.e. not a "writing")?
- Are "transferable records" under E-Sign and the UETA our only purely electronic alternatives?
- **What are the legal guardrails to allow emerging systems to operate?**



Article 12 – Controllable Electronic Records (CER)

- **Controllable Digital Assets** (Bitcoins, crypto, some NFTs)
- **General Intangible** under Article 9A (Ala Code §7-9A-102(a)(42))
- ❖ **CER** are defined in Ala Code §7-12-102(a)(1) as a **“record”** (Ala Code §7-1-201(b)(31)) that is **“electronic”** (Ala Code §7-1-201(b)(16A)) and that is **susceptible to “control”*** (Ala Code §7-12-105)

Exclusions

- **Controllable Account** and **Controllable Payment Intangible**
- **Chattel paper** in electronic form (handled in Article 9A)
- **Electronic documents of title** (handled in Article 7)
- **Investment property** (handled in Article 8) (however a CER can opt in to being a financial asset under Article 8 and be subject to Article 8 control rules)
- **Transferable records** (handled in UETA and E-SIGN)
- **Deposit accounts** (handled in Article 9A)
- **Electronic (fiat) money**
- ***A digital asset that cannot be subject to control**



Article 12 – Control §7-12-105

- ❖ Power to enjoy “substantially all the benefit” of the CER (does not have to be “exclusive”)
- ❖ The exclusive power (which may be shared or obtained through another person) to prevent others from enjoying “substantially all the benefit” of the CER
- ❖ Exclusive power to transfer control to another person
- ❖ The person must be able to identify itself to a third party as the person having these powers (can be done by cryptographic key or account number)

These requirements are generic formulations of what industry is presently embracing

[Articles 7, 8, and 9A amended to embrace this control test for electronic records governed by those articles]

- As to controllable accounts and controllable payment intangibles, must have control over CER evidencing the controllable account or controllable payment intangible



Article 12 – Transfer §7-12-104 (Qualifying Purchaser)



- ✓ **Take Free Rule** (takes free of any Article 12 claim to the CER) if a Qualifying Purchaser
 - A “**qualifying purchaser**” is a purchaser who obtains control of a CER for value (Article 3 Value), in good faith, and without notice of a property claim to the CER
- ✓ **Shelter Principle** (if not Qualified purchaser)
- ✓ **Only dealing with Article 12 CER rights, not property rights that support or are evidenced by the CER (ie copyrights, licenses, rights not covered under Article 12 etc.)**

The filing of a financing statement of itself is not notice of a claim to the CER

Take Free Rule also apply to Controllable Accounts and Controllable Payment Intangible if Qualifying Purchaser of CER

Article 12 – Controllable Account; Controllable Payment Intangible; Account Debtors §7-12-106

- An “account” or “payment intangible” evidenced by a CER is a “controllable account” or “controllable payment intangible” if the account debtor has agreed to pay the person in control
- A controllable account or a controllable payment intangible travels with the CER, and the transferee benefits from the same “take-free” rule as is available with the CER
- The effect is to create an electronic instrument
- If the terms of the CER provide that the account debtor will not assert claims or defenses against the transferee of the CER (see Ala Code §7-9A-403), then the effect is to create an electronic *negotiable* instrument
- Account debtor discharge rule (similar to Ala Code §§ 7-3-602 and 7-9A-406)



Article 12 – Choice of Law §7-12-107

Look to the law where the CER is located

- The CER is located in the jurisdiction by which the CER is expressly stated to be governed
- If the CER is not expressly stated to be governed by the law of a jurisdiction, the CER is located in the jurisdiction which is stated to govern the system in which the CER is recorded
- Otherwise, the CER is located in the District of Columbia or, if DC has not adopted the UCC amendments, the Official Text applies.
- But for the account debtor discharge rule, look to
 - The law governing the agreement under which the controllable account or controllable payment intangible arose if that agreement is effective under applicable law
 - Otherwise, look to the law of the location of the CER



Article 12A – Transition

ALABAMA

EFFECTIVE DATE: July 1, 2024

ADJUSTMENT DATE: July 1, 2025

- Revisions effective in Alabama July 1, 2024
- Prior to July 1, 2025 (the Adjustment Date) the parties' perfection priorities established on Effective Date control
- Following July 1, 2025 (the Adjustment Date) the parties' perfection priority are governed by the Ala Code §7-9A-326A.
 - Designed to protect the expectations to parties to pre-amendments effective date transactions and to provide for sufficient time for parties to plan transactions post-amendments effective date
 - The adjustment date gives transacting parties a grace period to preserve priorities already established on the effective date if the amendments would otherwise affect those priorities.

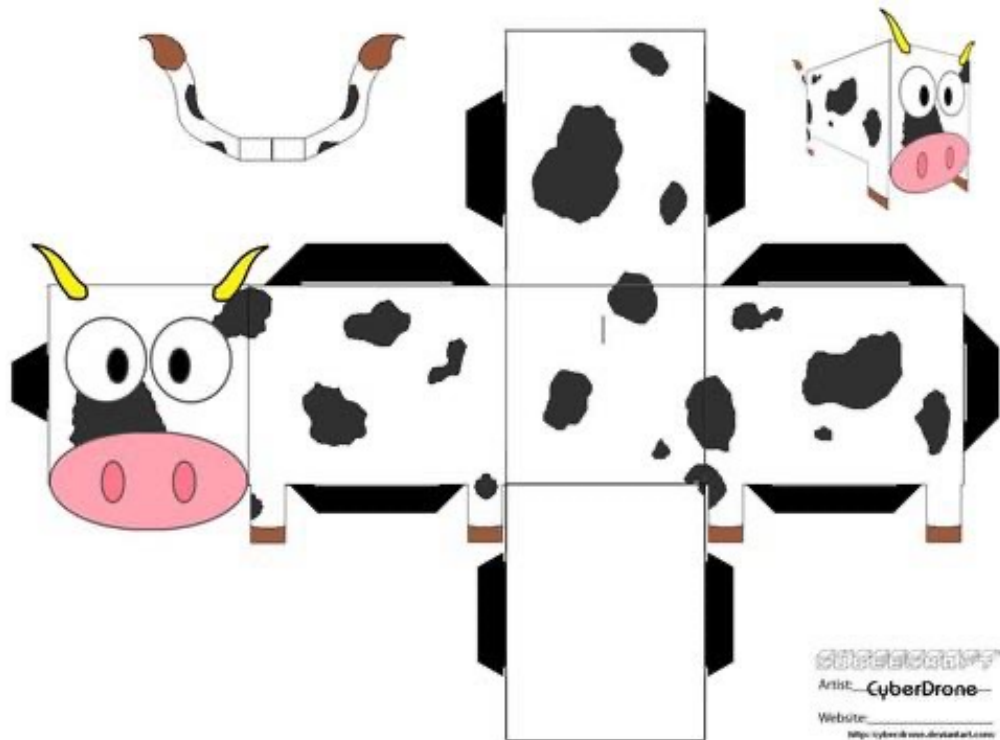


Article 9A – Defined Terms


- Collateral categorization: no need to change collateral descriptions in security agreements or collateral indications on financing statements
 - A CER is a “general intangible” Ala Code §7-9A-102(a)(42)
 - A controllable account is an “account” Ala Code §7-9A-102(a)(2) and (27A)
 - A controllable payment intangible is a “payment intangible” Ala Code §7-9A-102(a)(61) and (27B)
- Assignee/Assignor definitions added - Ala Code §7-9A-102(a)(7A) and (7B)
- Deletion of term “Authenticate” Ala Code ~~§7-9-102(a)(7)~~



Article 9A – Chattel Paper



- Chattel Paper redefined to represent obligation as opposed to paper - Ala Code §7-9A-102(a)(11)
- Perfection by Possession and Control of Chattel Paper. - Ala Code §7-9A-314A
- Chattel Paper choice of law – Ala Code §7-9A-306A



Article 9A – Notifications and Miscellaneous

- **Attachment:** no change - normal rules apply
- **Perfection** - By filing, or by control (updated control rules) with non-temporal priority for a secured party who perfects by control Ala Code §7-9A-326A
- **Updated control test** - Ala Code §§7-9A-104, 7-9A-105, 7-9A-107A, and 7-9A-107B
- After-Acquired Property; Future Advances. Ala Code §7-9A-204.
- **Clarified Notification of Disposition of Collateral** Ala Code §§7-9A-613 (non consumer) and 7-9A-614 (consumer)

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Article 1 - Definitions

- ❑ “bearer” (Ala Code §7-1-201(b)(5)) is expanded to include one having control
- ❑ “electronic” (Ala Code §7-1-201(b)(16A))
- ❑ “deliver” (Ala Code §7-1-201(b)(15)) is expanded to include transfer of control
- ❑ “holder” (Ala Code §7-1-201(b)(21)) is expanded to include one having control
- ❑ the term “record” (Ala Code §7-1-201(b)(31)) is substituted for “writing” throughout the UCC to encompass electronic documents
- ❑ “send” (revised Ala Code §7-1-201(b)(36)) redefined to permit electronic transmission
- ❑ “sign” (revised Ala Code §7-1-201(b)(37)15) is redefined to include electronic signatures
- ❑ the term “conspicuous” (Ala Code §7-1-201(b)(10)) is redefined to apply more broadly based on a “totality of circumstances/reasonable person” test administered by the Court to the terms of both paper and electronic documents.



Article 2 & 2A – Hybrid Transactions



A **hybrid transaction** is a transaction where services or licenses of information are supplied in connection with the sale or lease of goods.

Ala Code §§7-2-102(2), and 7-2-106(5) for the sale of goods and Ala Code §§7-2A-102(2) and 7-2A-103(1)(h.1) now statutorily **recognize, using Alabama's prevailing purpose test hybrid transactions in connection with the sale or leasing of goods.**

➤ **Finance Lease exception**

Article 3 & 4 - Instruments

The UCC revisions allow certain ministerial terms within an instrument to not affect the instruments' negotiability, non "wet" signatures, and permit images of certain instruments to be substituted for the instrument in accordance with federal banking regulations.

- Ala Code §7-3-104(a)(3) – choice of law and choice of forum clause does not affect negotiability
- Ala Code §7-3-105(a)(2) – image may be substituted for actual instrument in accordance with banking regulations
- Ala Code §7-3-401 - a "wet" signature is no longer required on an instrument
- Ala Code §7-3-604(a) – obligation to pay not discharged solely by destruction of check when image is thereafter transmitted

<p>Promissory Note</p> <p>I, <u>Jane Monroe</u>, do promise to pay <u>City Finance Co.</u> the sum of <u>\$50,000</u>. Repayment is to be made in the form of <u>300</u> equal payments at <u>6%</u> interest, or <u>\$322.15</u> payable on the <u>1st</u> of each month, beginning <u>8/1/2005</u> until the total debt is satisfied.</p> <p>Signed, <u>Jane Monroe</u> <u>7/1/2005</u></p>

PROMISSORY NOTE

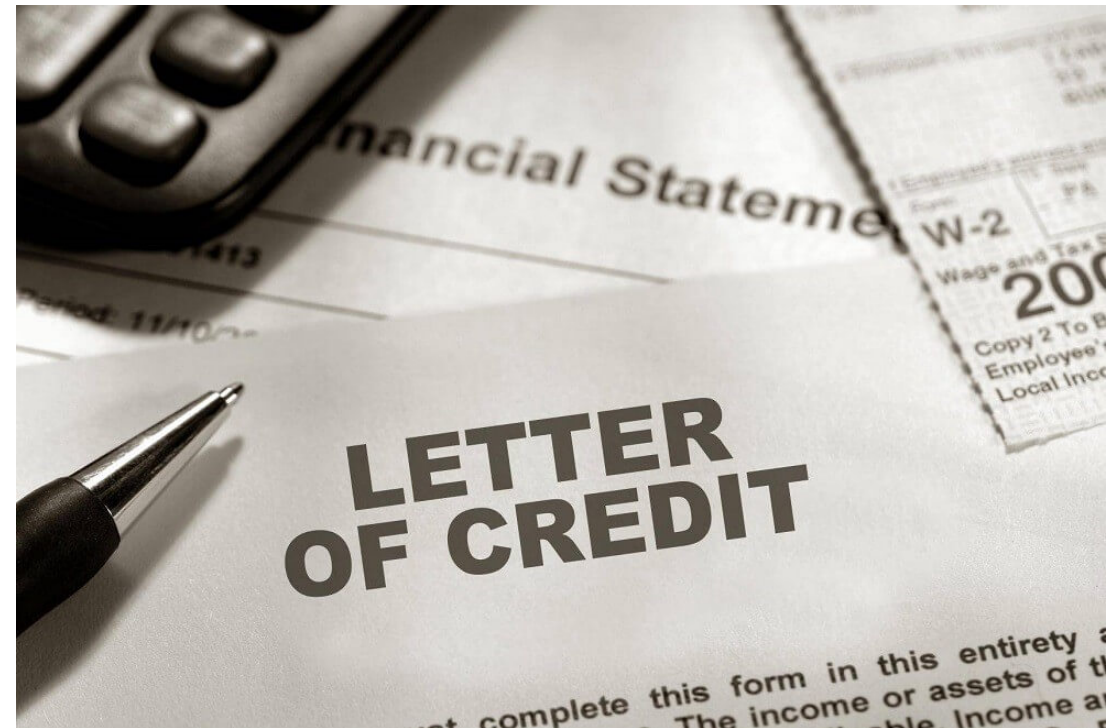
Article 4A – Security Procedures

Ala Code § 7-4A-201 has been amended to permit a security procedure to impose an obligation on the receiving bank or the customer, and to clearly delineate that simply requiring a payment order to be sent from a known email address, IP address or telephone number is not by itself a security procedure



Article 5 – Letters of Credit

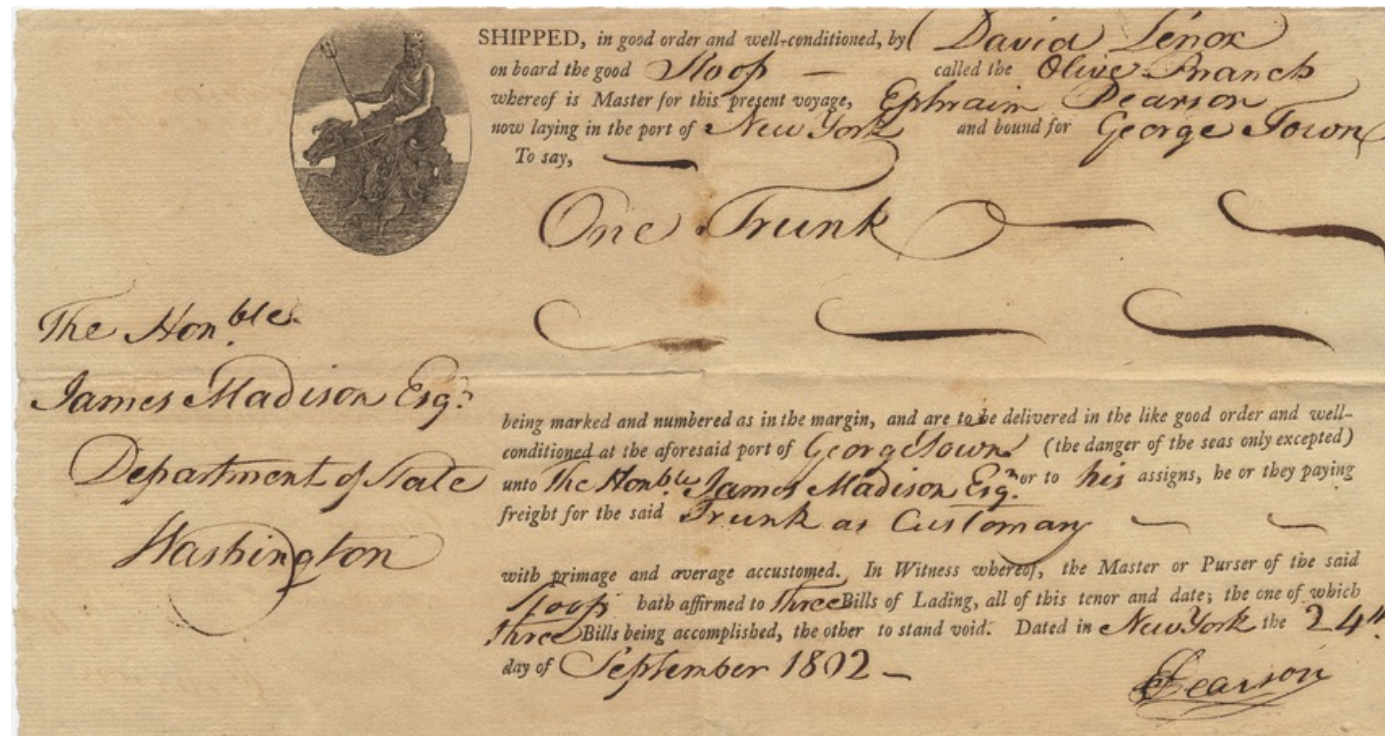
- ❖ Ala Code §7-5-104 – signed electronic records have same legal effect as signed tangible documents. Electronic Signatures are now permitted on letters of credit.
- ❖ Ala Code §7-5-116(d) underscores branch separateness



Article 7 – Control of Documents of Title

Ala Code §7-7-106

incorporates the updated
control test for documents of
title





Article 8 – Control of Security Entitlements

Ala Code §7-8-106 incorporates the
updated control test for Security
Entitlements

Aside: If Ala Code §7-8-102(a)(9)(iii) applies, Controllable Electronic Record, Controllable Account and Controllable Payment Intangible can be a Financial Asset



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