



March 25, 2023

Fellow Representatives -

We write to you today after receiving the arguments from the South Dakota Bankers Association, to ask that you critically consider what was presented and to again encourage you to uphold Governor Noem's veto of House Bill 1193, an act to amend the provisions of the Uniform Commercial Code (UCC).

Our issue with this legislation is, and has been, the redefinition of money as seen under HB 1193 § 1(24), which redefines money in a manner that excludes cryptocurrency from such definition, instead creating a legal definitional framework that recognizes a central bank digital currency as money. There are vast implications to this definitional change, and while the proponents of this legislation would lead you to believe that the UCC is a small set of laws, as the Uniform Law Commission (ULC) describes, "[t]he Uniform Commercial Code (UCC) is a comprehensive set of laws governing all commercial transactions in the United States." (Emphasis is ours)

Additionally to the misrepresentation of the scale and impact of the UCC, the proponents of this legislation have sent South Dakota Representatives and Senators numerous documents which are inconsistent and logically flawed.

For example, yesterday we received a document entitled, "*The Uniform Commercial Code Amendments: Fact v. Fiction*" where they state that "[t]he UCC does not regulate money, nor does it regulate anything else," but then under their talking points, entitled "*HB 1193 UCC Talking Points 3 3 23*," they state that the "UCC definition of money was recently updated." While it could be argued that this is a definition, and not a regulation, which is defined as rules issued by a governmental authority, we see within the same document, "*The Uniform Commercial Code Amendments: Fact v. Fiction*," where they describe the UCC as a "uniform set of rules," or in other words, a comprehensive set of commercial regulations.

The proponents of this definitional change of money have postulated two primary reasons, including:

1. Inability to possess an intangible money, like cryptocurrency; and
2. Restricting foreign governments from defining money.

In regards to the first postulated reason for the definitional change the proponents argue, as Karlton Adam in his Op-Ed "*We stand on the Facts: HB 1193*" wrote, "[u]nder current UCC, 'money' is synonymous with cash[,] [b]ut cryptocurrency is categorized currently for UCC purposes as a 'general intangible.'" This is because, as they argue, "[t]he UCC rules for money do not work well for transactions in cryptocurrency because rights in money are based on 'possession'" as stated in the "*The Uniform Commercial Code Amendments: Fact v. Fiction*" document.

However, this illustrates the inconsistency in how the UCC proposes to, and currently does, treat other intangible currencies. Central bank digital currency (CBDC), recognized as money under this new definition



which is also “intangible,” did not necessitate a new definition outside of ‘money’ as seen with cryptocurrencies, but “treat[s] CBDCs as a subcategory of money— ‘electronic money’—and subject[s] them to many of the same rules applicable to traditional bank accounts,” as explained by Karlton Adam in his Op-Ed: “*We Stand on the Facts: HB 1193.*”

Furthermore, the UCC currently treats these intangible currencies differently. As of February 28 this year, there is \$2.2 trillion U.S. dollars physically in total circulation, with \$15.7 trillion on account ledgers,¹ meaning “almost 90% of US dollars have no physical existence,”² thus making Karlton Adam’s statement “money is a tangible or an item that you can possess,” on his interview with SBPB “*Where should you keep your money?*” provably false approximately 90% of the time. As explained by Karlton Adam in “*The Uniform Commercial Code Amendments: Fact v. Fiction*” under the UCC “cryptocurrency is a ‘general intangible’ ... [requiring] a lender [to] file a financing statement in a public office to protect its interest in the cryptocurrency in case a borrower defaults,” while U.S. dollars are not, nor will CBDCs be, subject to the same restrictions, even though “90% of US dollars have no physical existence”² and CBDCs are an intangible “electronic money.”

Finally, on the first postulation for money definitional change, it should also be noted that the statement in the “*Uniform Commercial Code Amendments: Correcting Misconceptions*” article by Keith Gauer that “digital assets are, by definition, not capable of being reduced to physical form,” is obviously false, as the majority of our U.S. currency is not in physical form but can be “reduced to physical form” as we see in our U.S. cash currency. Similarly, bitcoin and other cryptocurrencies exist in cold storage units, moon money, and crypto-chips, as described in our document “*Debunking the Spin*” or as you can readily find by searching online.

Second, the proponents postulate that this definitional change is necessary “because other countries have adopted Bitcoin as legal tender [and] [w]e do not want to let other countries define what ‘money’ means under our state laws,” as stated in the “*HB 1193 UCC Talking Points 3 3 23*” document, but then in the same document they argue that the definition needed to change to accommodate CBDC “because two countries already have CBDCs and others are likely to follow, the UCC needs rules to provide certainty to transactions using these currencies.” In other words, they **exclude** cryptocurrencies because it was adopted by a foreign country but argue they must **include** CBDC because it was adopted by foreign countries.

Additionally, this argument is completely fallacious, as under the current UCC definition they already define money to be any “medium of exchange that is currently authorized or adopted by a ... foreign government,” and have made clear that is what triggered the effort to exclude cryptocurrencies as money, when “El Salvador announced that Bitcoin would be accepted as a second form of legal tender ... [and] arguably could be categorized as ‘money’ under the UCC,” as stated in the SD Bankers Association paper “*House Bill 1193 Fact Check.*” Thus, making clear, that it is not the foreign countries adoption of electronic currency that is the issue for the proponents, but whether or not the control of the money lies with the individual, in a decentralized digital currency such as cryptocurrencies like Bitcoin, which they exclude, or whether it is

¹ “Money Stock Measures,” *Federal Reserve System*. Feb. 28, 2023.

² “Who needs cryptocurrency Fed Coin when we already have a national digital currency?” David B. Black, *Forbes*. Mar. 1, 2020.



centrally controlled by the government, such as a central bank digital currency (CBDC), which they include in the definition of money.

Ultimately, this definitional change for ‘money’ is unnecessary, because “at this moment in time, such a government-backed electronic currency has not been created. It would be imprudent to create regulations governing something that does not yet exist,” as Governor Noem explained in her veto of HB 1193 and was similarly supported by the Wall Builders in their coalition letter opposing this legislation dated March 10, 2023, when they said “[t]he UCC is establishing rules for a programmable digital currency, even though this does not exist and is not in use in the United States today ... [but the UCC amendments are] prematurely setting the framework should the federal government ever implement a central bank digital currency.” And as Senator David Wheeler recently pointed out there are several states that have adopted earlier versions to address many of the non-controversial issues the ULC identified without a definitional change of ‘money,’ including: Iowa (H. 2445), Nebraska (LB 649), Indiana (HB 351), Arkansas (HB 1926) and Texas (HB 4474).

But while it is unnecessary, as Congressman Warren Davidson recently wrote in his letter dated March 21, 2023 opposing this legislation, it is clear that “the UCC language would ensure that any future CBDC could be considered ‘money’” and as Justin Haskins of the Heartland Institute pointed out in his Fox News article, *“Politicians are quietly preparing for a digital dollar. It’s not good for your freedom,”* that if a CBDC were adopted “it would pose significant threats to Americans’ liberty and privacy rights,” especially when considering the provisions under Section 45 of this act, which “includes a provision that states ‘a power is exclusive ... even if: (1) The electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded, limits the use of the electronic money or has a protocol programmed to cause a change, including a transfer or loss of control.’”

For these reasons, we vehemently oppose House Bill 1193 in its current form which includes language that recognizes a CBDC as money, while excluding such other cryptocurrencies.

We are proud to be joined in our opposition to this legislation by the following: South Dakota Governor Kristi Noem; Florida Governor Ron DeSantis; Congressman Warren Davidson; Glenn Beck; Daniel Horowitz of the Conservative Review; Tim & David Barton of the Wall Builders; Justin Haskins of The Heartland Institute; Ted Patterson of Young Americans for Liberty; Matthew Staver of Liberty Counsel; Former Congresswoman Michele Bachmann; Tony Perkins of the Family Research Council; Andy Roth of the State Freedom Caucus Network; Charlie Kirk of Turning Point USA; Retired Lieutenant General William Boykin of Family Research Council; Kris Ullman of the Eagle Forum; Former Congressman Bob McEwen; Michael Farris of the Home School Legal Defense Association; Former Congressman James Forbes; Mike Carter of the National Security Investment Consultant Institute; Retired Lieutenant Colonel Allen West; Tim Macy of the Gun Owners of America; Chad Connelly of Faith Wins; Rick Green of Patriot Academy; Tim Wildmon of the American Family Association; Jason Yates of My Faith Votes; Kevin Freeman of Economic War Room on Blaze TV; Brad Dacus of Pacific Justice Institute; Bette Grande of Roughrider Policy Center; John Graves of Million Voices; South Dakota Citizens for Liberty; Young Americans for Liberty South Dakota Chapter; and thousands of South Dakotan citizens who have risen up and made their voices heard.



That is why we ask that you join us in our coalition to oppose this legislation by voting to sustain Governor Kristi Noem's veto and defeat House Bill 1193 as it is written.

Sincerely,

A handwritten signature in blue ink, appearing to read "Aaron Aylward".

Rep. Aaron Aylward
Chairman, SD Freedom Caucus

A handwritten signature in blue ink, appearing to read "Tony Randolph".

Rep. Tony Randolph
Vice, SD Freedom Caucus

A handwritten signature in blue ink, appearing to read "Tina Mulally".

Rep. Tina Mulally
Treasurer, SD Freedom Caucus