

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 23-02 Central Bank Digital Currency

SPONSOR(S): Commerce Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee	15 Y, 5 N	Fletcher	Hamon

SUMMARY ANALYSIS

Digital currency is a virtual representation of a value that is not available in physical form but which can be used as a medium of exchange, a unit of account, or a store of value. Digital currency is stored and transacted in electronic form and does not have the status of U.S. currency in any U.S. jurisdiction. Digital currency includes a subset of currencies referred to as cryptocurrencies (i.e., Bitcoin) which are protected by cryptography.

Central bank digital currency (CBDC) is a digital currency authorized by a sovereign central bank or government as a digital representation of a certain denomination of currency. In the U.S. today, standard U.S. currency is the only type of central bank money available for use by the general public.

Proponents of CBDC claim it would accomplish goals of financial inclusion and promoting the U.S. currency's international role as a reserve currency and a medium of exchange for international trade. However, the issuance of a CBDC would rewire the fundamental infrastructure of America's banking and financial system by changing the relationship between citizens and money.

While the Federal Reserve has made no decisions on whether to pursue or implement a CBDC, the Uniform Law Commission (ULC) and American Law Institute (ALI) have drafted model amendments to the Uniform Commercial Code to address emerging technologies and provide updated rules for commercial transactions involving virtual currencies, distributed ledger technologies (including blockchain), and other technological developments. These suggested model amendments have not been adopted by Florida.

The bill amends Florida's Uniform Commercial Code (UCC), codified at ch. 670-680, F.S., to expressly prohibit the use of a CBDC in Florida.

The bill has no impact on state or local revenues and expenditures and an indeterminate impact on the private sector.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Money in the U.S.

In 1792, Congress passed the Mint Act which established the coinage system of the United States and dollar as the principal unit of U.S. currency.¹ The first U.S. coins were struck in 1793 at the Philadelphia Mint, and the first paper money was issued in 1861.² In the interim years, the U.S. government issued "Treasury notes" intermittently during periods of financial stress, such as the War of 1812, the Mexican War of 1846, and the Panic of 1857.³

Years later in 1913, Congress passed the Federal Reserve Act, establishing America's Federal Reserve System and authorized the Federal Reserve Banks to issue Federal Reserve Bank notes, which they began issuing in 1914.⁴ The first electronic payment was made in the 1871, when Western Union debuted the electronic fund transfer system.⁵

Money serves as a medium of exchange⁶, a store of value⁷, and a unit of account⁸. In the U.S. today, money takes multiple forms:

- **Central bank money** is a liability of the central bank. In the U.S., central bank money comes in the form of physical currency issued by the Federal Reserve and digital balances held by commercial banks at the Federal Reserve.⁹
- **Commercial bank money** is the digital form of money that is most commonly used by the public. Commercial bank money is held in accounts at commercial banks.¹⁰
- **Nonbank money** is digital money held as balances at nonbank financial service providers. These firms typically conduct balance transfers on their own books using a range of technologies, including mobile apps.¹¹

U.S. currency is largely digital today. According to Harvard Business Review, over 97% of the money in circulation today is from checking deposits – U.S. currency deposited online and converted into a string

¹ National Credit Union Administration, History of the United States Currency, <https://mycreditunion.gov/financial-resources/history-united-states-currency#:~:text=After%20the%20U.S.%20Constitution%20was.the%20decimal%20system%20for%20currency>. (last visited Mar. 24, 2023).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ CSG Forte, *Electronic Payments: A Brief History*, Jul. 27, 2021, <https://www.forte.net/electronic-payments-a-brief-history/> (last visited Mar. 24, 2023).

⁶ "A 'medium of exchange' is a function of money that expedites trade between a buyer and seller because it is widely accepted as payment for a good or service. Most societies use their currency, but stones, salt, gold, and tobacco have been used as a medium of exchange." Higher Rock Education, *Medium of Exchange*, <https://www.higherrockeducation.org/glossary-of-terms/medium-of-exchange> (last visited Mar. 24, 2023).

⁷ "Store of value" describes a currency that can be stored and retrieved at a later date, without depreciating. Amoussou, Madela, *What is a 'Store of Value'?* Securities.io, Jan. 4, 2023, <https://www.securities.io/what-is-a-store-of-value/> (last visited Mar. 24, 2023).

⁸ "A unit of account refers to a measurement that can be used to value goods and services, make calculations and record debt." Study Smarter, *Unit of Account Costs*, <https://www.studysmarter.us/explanations/macroeconomics/economic-performance/unit-of-account-costs/> (last visited Mar. 24, 2023).

⁹ Board of Governors of the Federal Reserve System, *Money and Payments: The U.S. Digital Dollar in the Age of Digital Transformation*, Jan. 2022, <https://www.federalreserve.gov/publications/files/money-and-payments-2020120.pdf> (last visited Mar. 24, 2023).

¹⁰ *Id.*

¹¹ *Id.*

of digital code by a commercial bank.¹² The digitization of credit and debit card transactions and the development of banking apps has moved many traditionally cash-based transactions into the digital space.¹³

Digital Currencies

Digital currency is a virtual representation of a value that is not available in physical form but which can be used as a medium of exchange, a unit of account, or a store of value.¹⁴ Digital currency is stored and transacted in electronic form and does not have the status of U.S. currency in any U.S. jurisdiction.¹⁵ Digital currencies can be issued in two ways: decentralized and centralized.¹⁶ Most privately issued digital currencies, such as Bitcoin, belong to decentralized digital currencies, while central bank digital currencies (CBDCs) are centralized currencies issued by central banks.¹⁷

Some specific characteristics of a CBDC include:

- Liability of the central bank or government that authorizes and/or issues the CBDC;
- Issuance directly to consumers (i.e., circumventing the intermediary role of commercial banks);
- Usage of distributed ledger technology (such as blockchain) that allow computers in different locations to propose and validate transactions and update records in a synchronized way across a network.¹⁸

Notwithstanding the above, a CBDC does not need to have all of the above characteristics to be considered as a CBDC.

Westlaw defines CBDC as a digital currency issued by a sovereign central bank or government as a digital representation of a certain denomination of currency.¹⁹ The value of a CBDC does not fluctuate other than as the value of the underlying currency moves in relation to other currencies.²⁰ In the U.S. today, standard U.S. currency is the only type of central bank money available for use by the general public.²¹

In March 2022, President Biden issued an executive order directing federal agencies to assess the benefits and potential risks of the integration of digital assets into the mainstream and, notably, the development and integration of a CBDC in America.²² Proponents of CBDC claim it would accomplish

¹² Mookerjee, Ajay S., *What If Central Banks Issued Digital Currency?* Harvard Business Review, Oct. 15, 2021, <https://hbr.org/2021/10/what-if-central-banks-issued-digital-currency#:~:text=Over%2097%25%20of%20the%20money.code%20by%20a%20commercial%20bank>. (last visited Mar. 24, 2023).

¹³ *Id.*

¹⁴ Westlaw, *Definition of virtual currency*, <https://1.next.westlaw.com/Document/11c0f4fc4505011e89bf199c0ee06c731/View/FullText.html?ppcid=d154a21215fa49b2b97bc6db2c6392a5&originationContext=knowHow&transitionType=KnowHowItem&contextData=%28sc.Default%29> (last visited Mar. 22, 2023).

¹⁵ *Id.*

¹⁶ Yang, Zhou, *A study on the influence mechanism of CBDC on monetary policy: An analysis based on e-CNY*, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0268471> (last visited Mar. 23, 2023).

¹⁷ *Id.*

¹⁸ Bank for International Settlements, *Central bank digital currencies – executive summary*, <https://www.bis.org/publ/othp42.pdf> (last visited Mar. 24, 2023).

¹⁹ Westlaw, *Definition of central bank digital currency*, [https://1.next.westlaw.com/w-032-2803?VR=3.0&RS=cblt1.0&lrTS=20230323210728711&transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://1.next.westlaw.com/w-032-2803?VR=3.0&RS=cblt1.0&lrTS=20230323210728711&transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1) (last visited Mar. 23, 2023).

²⁰ *Id.*

²¹ Board of Governors of the Federal Reserve System, *Central Bank Digital Currency (CBDC)*, <https://www.federalreserve.gov/central-bank-digital-currency.htm> (last visited Mar. 22, 2023).

²² See *Executive Order on Ensuring Responsible Development of Digital Assets*, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/> (last visited Mar. 22, 2023).

goals of financial inclusion and promoting the U.S. currency's international role as a reserve currency and a medium of exchange for international trade.²³

Others claim the issuance of a CBDC is not needed to digitize U.S. currency, as U.S. currency is largely digital today.²⁴ Moreover, the issuance of a CBDC would rewire the fundamental infrastructure of America's banking and financial system by changing the relationship between citizens and money.²⁵ According to the Acting Comptroller of the Currency Michael Hsu, America's current two-tier banking system (i.e., the use of commercial banks as an intermediary between the public and the Federal Reserve) "is not an accident. It is the result of a carefully architected monetary and banking system." Moreover, the American Banking Association has argued that "any potential benefits of a CBDC are uncertain and unlikely to be realized; the costs of offering a CBDC are real and acute; and there are better ways to achieve the shared objectives that do not put America's financial system or economy at risk."²⁶

2022 Model Amendments to the UCC

While the Federal Reserve has made no decisions on whether to pursue or implement a CBDC, the Uniform Law Commission (ULC) and American Law Institute (ALI) have drafted model amendments to the Uniform Commercial Code (UCC) to address emerging technologies and provide updated rules for commercial transactions involving virtual currencies, distributed ledger technologies (including blockchain), and other technological developments.²⁷

The UCC model amendments add to the definition of "money:"

"The term does not include an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government."²⁸

In other words, the definition of "money" in the UCC model amendments excludes digital currency, unless such digital currency has been authorized or adopted by the federal government. In effect, the UCC model amendments open the door for the implementation of U.S. CBDC while excluding any other digital currency not issued by a centralized bank that has not been adopted by the government (i.e., Bitcoin or the like, cannot be elevated to the status of money). These suggested model amendments have not been adopted by Florida.

Florida's UCC

Florida's Uniform Commercial Code (UCC), codified at ch. 670-680, F.S., regulates commercial and secured transactions in the state. Florida's UCC currently defines "money" as "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."²⁹

²³ Board of Governors of the Federal Reserve System, *Money and Payments: The U.S. Digital Dollar in the Age of Digital Transformation*, supra.

²⁴ American Bankers Association, supra.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Uniform Law Commission, *UCC, 2022 Amendments to*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac> (last visited Mar. 22, 2023).

²⁸ Uniform Law Commission and the American Law Institute, *Uniform Commercial Code Amendments (2022)*, https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/f12fdae2-9355-569d-d66d-88c0e68ff080_file.pdf?AWSAccessKeyId=AKIAVRDO7IE REB57R7MT&Expires=1679518672&Signature=%2BH%2Fxe85ZlpwlyZarD36lOpgHeg%3D, Section 1-201(b)(24).

²⁹ S. 671.201(24), F.S.

Effect of the Bill

The bill amends Florida's UCC to:

- Provide a definition for the term “central bank digital currency.” CBDC is:
 - 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; and
- Exclude CBDC from the definition of “money.”

In effect, the bill amends Florida's UCC to exclude CBDC as “money” for purposes of Florida's UCC. Therefore, CBDC, as defined in the bill, could not be used in Florida as money.

B. SECTION DIRECTORY:

Section 1: Amends s. 671.201, F.S., relating to general definitions.

Section 2: Amends s. 328.0015, F.S., relating to definitions.

Section 3: Amends s. 559.9232, F.S., relating to definitions; exclusion of rental-purchase agreements from certain regulations.

Section 4: Amends s. 563.022, F.S., relating to relations between beer distributors and manufacturers.

Section 5: Amends s. 668.50, F.S., relating to Uniform Electronic Transaction Act.

Section 6: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the federal government enacts a U.S. CBDC, as defined by the bill, it could not be used as “money” for purposes of the Florida UCC. This could have an indeterminate fiscal impact on financial transactions in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

If the federal government enacts a U.S. CBDC, the bill could implicate the Supremacy Clause.³⁰ Notwithstanding whether or not the federal government enacts a U.S. CBDC, the bill could also implicate the Dormant Commerce Clause.³¹

B. RULE-MAKING AUTHORITY:

Not applicable. The bill does not appear to create or modify rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the U.S. today, physical currency only represents 3% of U.S. currency in circulation. The remainder is essentially “electronic” or “digital” now. However, both physical and electronic U.S. currency are distributed, processed, and validated through the complex and private U.S. financial system. The bill does not appear to negatively impact this current system.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

³⁰ “The Constitution’s Supremacy Clause provides that federal law is ‘the supreme Law of the Land’ notwithstanding any state law to the contrary. This language is the foundation for the doctrine of federal preemption, according to which federal law supersedes conflicting state laws.” Congressional Research Service, *Federal Preemption: A Legal Primer*, <https://sgp.fas.org/crs/misc/R45825.pdf> (last visited Mar. 23, 2023).

³¹ “In contrast to the doctrine of preemption, which generally applies in areas where Congress has acted, the so-called Dormant Commerce Clause may bar state or local regulations even where there is no relevant congressional legislation. Although the Commerce Clause is framed as a positive grant of power to Congress and not an explicit limit on states’ authority, the Supreme Court has also interpreted the Clause to prohibit state laws that unduly restrict interstate commerce even in the absence of congressional legislation—i.e., where Congress is dormant. [... Under the Dormant Commerce Clause,] states may not take actions that are facially neutral but unduly burden interstate commerce.” Constitution Annotated, ArtI.S8.C3.7.1 Overview of Dormant Commerce Clause, https://constitution.congress.gov/browse/essay/artI-S8-C3-7-1/ALDE_00013307/ (last visited Mar. 23, 2023).