



2025 South Dakota Legislature

House Bill 1122

Introduced by: **Representative Auch**

1 **An Act to amend provisions of the Uniform Commercial Code.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 57A-8-110 be AMENDED:**

4 **57A-8-110.** (a) The local law of the issuer's jurisdiction, as specified in subsection
5 (d), governs:

6 (1) The validity of a security;

7 (2) The rights and duties of the issuer with respect to registration of transfer;

8 (3) The effectiveness of registration of transfer by the issuer;

9 (4) Whether the issuer owes any duties to an adverse claimant to a security; and

10 (5) Whether an adverse claim can be asserted against a person to whom transfer of a
11 certificated or uncertificated security is registered or a person who obtains control
12 of an uncertificated security.

13 (b) The local law of the ~~securities intermediary's~~ entitlement holder's jurisdiction,
14 ~~as specified in subsection (e),~~ governs:

15 (1) ~~Acquisition of a security entitlement from the securities intermediary;~~

16 (2) ~~The rights and duties of the securities intermediary and entitlement holder~~
17 ~~arising out of a security entitlement;~~

18 (3) ~~Whether the securities intermediary owes any duties to an adverse claimant to~~
19 ~~a security entitlement; and~~

20 (4) ~~Whether an adverse claim can be asserted against a person who acquires a~~
21 ~~security entitlement from the securities intermediary or a person who purchases a security~~
22 ~~entitlement or interest therein from an entitlement holder~~ governs the rights of the
23 entitlement holder to make a claim for a security entitlement.

24 (c) The local law of the jurisdiction in which a security certificate is located at the
25 time of delivery governs whether an adverse claim can be asserted against a person to
26 whom the security certificate is delivered.

1 (d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the
2 security is organized or, if permitted by the law of that jurisdiction, the law of another
3 jurisdiction specified by the issuer. An issuer organized under the law of this State may
4 specify the law of another jurisdiction as the law governing the matters specified in
5 subsection (a)(2) through (5).

6 ~~(e) The following rules determine a "securities intermediary's jurisdiction" for~~
7 ~~purposes of this section:~~

8 ~~(1) If an agreement between the securities intermediary and its entitlement holder~~
9 ~~governing the securities account expressly provides that a particular jurisdiction is~~
10 ~~the securities intermediary's jurisdiction for purposes of this part, this article, or~~
11 ~~this chapter, that jurisdiction is the securities intermediary's jurisdiction.~~

12 ~~(2) If paragraph (1) does not apply and an agreement between the securities~~
13 ~~intermediary and its entitlement holder governing the securities account expressly~~
14 ~~provides that the agreement is governed by the law of a particular jurisdiction, that~~
15 ~~jurisdiction is the securities intermediary's jurisdiction.~~

16 ~~(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the~~
17 ~~securities intermediary and its entitlement holder governing the securities account~~
18 ~~expressly provides that the securities account is maintained at an office in a~~
19 ~~particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.~~

20 ~~(4) If none of the preceding paragraphs applies, the securities intermediary's~~
21 ~~jurisdiction is the jurisdiction in which the office identified in an account statement~~
22 ~~as the office serving the entitlement holder's account is located.~~

23 ~~(5) If none of the preceding paragraphs applies, the securities intermediary's~~
24 ~~jurisdiction is the jurisdiction in which the chief executive office of the securities~~
25 ~~intermediary is located.~~

26 ~~(f) A securities intermediary's jurisdiction is not determined by the physical location~~
27 ~~of certificates representing financial assets, or by the jurisdiction in which is organized the~~
28 ~~issuer of the financial asset with respect to which an entitlement holder has a security~~
29 ~~entitlement, or by the location of facilities for data processing or other record keeping~~
30 ~~concerning the account.~~

31 ~~(g) The local law of the issuer's jurisdiction or the securities intermediary's~~
32 ~~jurisdiction governs a matter or transaction specified in subsection (a) or (b) even if the~~
33 ~~matter or transaction does not bear any relation to the jurisdiction.~~

34 **Section 2. That § 57A-8-503 be AMENDED:**

1 **57A-8-503.** (a) To the extent necessary for a securities intermediary to satisfy all
2 security entitlements with respect to a particular financial asset, all interests in that
3 financial asset held by the securities intermediary are held by the securities intermediary
4 for the entitlement holders, are not property of the securities intermediary, and are not
5 subject to claims of creditors of the securities intermediary, ~~except as otherwise provided~~
6 ~~in § 57A-8-511.~~

7 (b) An entitlement holder's property interest with respect to a particular financial
8 asset under subsection (a) is a pro rata property interest in all interests in that financial
9 asset held by the securities intermediary, without regard to the time the entitlement
10 holder acquired the security entitlement or the time the securities intermediary acquired
11 the interest in that financial asset.

12 (c) An entitlement holder's property interest with respect to a particular financial
13 asset under subsection (a) may be enforced against the securities intermediary only by
14 exercise of the entitlement holder's rights under §§ 57A-8-505 to 57A-8-508, inclusive.

15 (d) An entitlement holder's property interest with respect to a particular financial
16 asset under subsection (a) may be enforced against a purchaser of the financial asset or
17 interest therein only if:

- 18 (1) Insolvency proceedings have been initiated by or against the securities
19 intermediary;
- 20 (2) The securities intermediary does not have sufficient interests in the financial asset
21 to satisfy the security entitlements of all of its entitlement holders to that financial
22 asset;
- 23 (3) The securities intermediary violated its obligations under § 57A-8-504 by
24 transferring the financial asset or interest therein to the purchaser; and
- 25 (4) The purchaser is not protected under subsection (e).

26 The trustee or other liquidator, acting on behalf of all entitlement holders having
27 security entitlements with respect to a particular financial asset, may recover the financial
28 asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not
29 to pursue that right, an entitlement holder whose security entitlement remains unsatisfied
30 has the right to recover its interest in the financial asset from the purchaser.

31 (e) An action based on the entitlement holder's property interest with respect to a
32 particular financial asset under subsection (a), whether framed in conversion, replevin,
33 constructive trust, equitable lien, or other theory, may not be asserted against any
34 purchaser of a financial asset or interest therein who gives value, obtains control, and

1 does not act in collusion with the securities intermediary in violating the securities
2 intermediary's obligations under § 57A-8-504.

3 **Section 3. That § 57A-8-511 be AMENDED:**

4 **57A-8-511.** (a) ~~Except as otherwise provided in subsections (b) and (c), if~~ If a
5 securities intermediary does not have sufficient interests in a particular financial asset to
6 satisfy both its obligations to entitlement holders who have security entitlements to that
7 financial asset and its obligation to a creditor of the securities intermediary who has a
8 security interest in that financial asset, the claims of entitlement holders, other than the
9 creditor, have priority over the claim of the creditor.

10 ~~(b) A claim of a creditor of a securities intermediary who has a security interest in~~
11 ~~a financial asset held by a securities intermediary has priority over claims of the securities~~
12 ~~intermediary's entitlement holders who have security entitlements with respect to that~~
13 ~~financial asset if the creditor has control over the financial asset.~~

14 ~~(c) If a clearing corporation does not have sufficient financial assets to satisfy both~~
15 ~~its obligations to entitlement holders who have security entitlements with respect to a~~
16 ~~financial asset and its obligation to a creditor of the clearing corporation who has a security~~
17 ~~interest in that financial asset, the claim of the creditor has priority over the claims of~~
18 ~~entitlement holders.~~

19 **Section 4. That § 57A-9-305 be AMENDED:**

20 **57A-9-305.** (a) Except as otherwise provided in subsection (c), the following rules
21 apply:

22 (1) While a security certificate is located in a jurisdiction, the local law of that
23 jurisdiction governs perfection, the effect of perfection or nonperfection, and the
24 priority of a security interest in the certificated security represented thereby.

25 (2) The local law of the issuer's jurisdiction as specified in § 57A-8-110(d) governs
26 perfection, the effect of perfection or nonperfection, and the priority of a security
27 interest in an uncertificated security.

28 ~~(3) The local law of the securities intermediary's jurisdiction as specified in § 57A-8-~~
29 ~~110(e) governs perfection, the effect of perfection or nonperfection, and the~~
30 ~~priority of a security interest in a security entitlement or securities account.~~

31 ~~(4)~~ (4) The local law of the commodity intermediary's entitlement holder's jurisdiction
32 governs perfection, the effect of perfection or nonperfection, and the priority of a
33 security interest in a commodity contract or commodity account.

1 ~~(5) Paragraphs (2), (3), and (4) apply even if the transaction does not bear any~~
2 ~~relation to the jurisdiction.~~

3 (b) The following rules determine a commodity ~~intermediary's~~ entitlement holder's
4 jurisdiction for purposes of this part:

5 (1) If an agreement between the commodity intermediary and commodity customer
6 governing the commodity account expressly provides that a particular jurisdiction
7 is the commodity intermediary's jurisdiction for purposes of this part, this chapter,
8 or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's
9 jurisdiction.

10 (2) If paragraph (1) does not apply and an agreement between the commodity
11 intermediary and commodity customer governing the commodity account
12 expressly provides that the agreement is governed by the law of a particular
13 jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

14 (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the
15 commodity intermediary and commodity customer governing the commodity
16 account expressly provides that the commodity account is maintained at an office
17 in a particular jurisdiction, that jurisdiction is the commodity intermediary's
18 jurisdiction.

19 (4) If none of the preceding paragraphs applies, the commodity intermediary's
20 jurisdiction is the jurisdiction in which the office identified in an account statement
21 as the office serving the commodity customer's account is located.

22 (5) If none of the preceding paragraphs applies, the commodity intermediary's
23 jurisdiction is the jurisdiction in which the chief executive office of the commodity
24 intermediary is located.

25 (c) The local law of the jurisdiction in which the debtor is located governs:

26 (1) perfection of a security interest in investment property by filing;

27 (2) automatic perfection of a security interest in investment property created by a
28 broker or securities intermediary; and

29 (3) automatic perfection of a security interest in a commodity contract or commodity
30 account created by a commodity intermediary.