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**TO:** House Judiciary Committee

**FROM:** Representatives Adam Mathews and Dani Isaacsohn

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### **Sponsor Testimony on House Bill 195: Updating Ohio's Uniform Commercial Code**

Chairman Thomas and members of the House Judiciary Committee:

Thank you for the opportunity to provide sponsor testimony on House Bill 195. We believe this legislation is a common-sense fix that revises Ohio's Uniform Commercial Code (UCC) to address developments in digital technologies. Namely, introducing comprehensive rules for transactions involving digital assets, including cryptocurrency and non-fungible tokens (NFTs). These changes ensure the UCC remains adaptable to both current and future innovations.

The Uniform Commercial Code is a comprehensive set of standardized laws governing commercial transactions in the United States when the parties do not define terms and conditions otherwise. While the UCC is not a federally set standard, UCCs are adopted by states, meaning that for more than 60 years, the UCC has facilitated commerce by providing consistent legal rules across state lines, reducing uncertainty in business dealings, and encouraging economic growth. Whether parties are buying goods, securing loans, leasing equipment, or negotiating payment obligations, the UCC provides the predictable legal framework that makes those transactions possible.

Most importantly, the UCC comprises default rules. When two parties enter a contract and do not specify terms, the UCC provides the gap-filling legal standards. This gives individuals and businesses alike the confidence to engage in commerce, knowing the law will fairly govern their dealings.

Additionally, commerce is changing, so it is important that the UCC addresses the current realities of all kinds of transactions. Today, transactions involving digital assets such as cryptocurrencies, non-fungible tokens (NFTs), and electronic payment obligations are becoming increasingly common, yet our current UCC does not adequately address these innovations. HB 195 modernizes Ohio's commercial law by adopting the 2022 amendments developed by the Uniform Law Commission and the American Law Institute. These revisions respond to real-world developments in digital technology and clarify the legal status of transactions involving emerging forms of property.

### Key provisions updating the Ohio UCC:

- A new UCC article governs transactions involving digital assets like cryptocurrency and NFTs, now classified as Controllable Electronic Records (CERs). CERs are defined broadly to cover assets created with current or future technologies, ensuring long-term applicability.
- A person has control of a digital asset if they can transfer it and prevent others from doing so, similar to possession of physical property. Control requires verifiable identification (e.g., cryptographic key), even if the controller remains anonymous.
- The amended article will provide that a lender with control of digital assets has a perfected security interest and has priority over others who do not have control. Previously, there was no effective way for a lender to perfect a security interest in cryptocurrency except by filing a financing statement, and no way to ensure priority of the security interest without obtaining a release from all other secured parties.
- Some digital assets may not have intrinsic value, but rather represent a right to payment. The new amendments will provide similar rules of tethered assets to “controllable accounts” and “controllable payment intangibles,” which are simply digital versions of a tethered asset.
- New UCC provisions will protect innocent parties who acted in good faith, paid value, and had no knowledge of the claim, similar to protections for buyers of stolen cash.
- Because digital assets have no physical location, conflict of laws questions may arise. An added amendment will allow the parties to a digital asset transaction to choose the applicable governing law. If none is chosen, the law of the District of Columbia applies by default.
- An added amendment expands the definition of money to include government-issued virtual currencies, but pre-existing virtual currencies, like Bitcoin, while they may be CERs, are not “money” for purposes of the UCC.
- The new amendments modify the definition of “chattel paper” to focus on the right to payment rather than the physical record. Rules for electronic chattel paper align with those for CERs.
- Added amendments clarify the UCC rules that preside over transactions involving both goods and services. The amendment clarifies that if goods predominate, the UCC applies to the entire transaction, and if services predominate, the UCC applies only to goods-related components.
- Changes are made to clarify that a choice-of-law or choice-of-forum clause included in an instrument does not affect the negotiability of the instrument, and that an image of a negotiable instrument (i.e., photos of the front and back of a check) may be substituted for the actual instrument in accordance with federal banking regulations.

The UCC has been historically successful because of its adoption by states on a substantially uniform basis, creating greater certainty and thereby reducing the cost of credit as well as transaction costs. The need for state uniformity is especially important in this context to minimize forum shopping for disputes concerning digital assets, which by their nature cross state borders. The amendments proposed in this legislation provide rules to determine the rights of a person who receives a CER and for the perfection and priority of a security interest in a CER, more effectively governing transactions in the digital age and protecting the parties involved through neutral language that will adapt as technologies continue to advance.

These amendments are thoroughly vetted. The UCC amendments reflect the efforts of the American Law Institute and the Uniform Law Commission in conjunction with approximately 350 knowledgeable

advisors and stakeholder observers who met dozens of times over a three-year period to reach consensus on updates to this crucial area of state law. Furthermore, these changes are supported by the Ohio State Bar Association.

House Bill 195 is a forward-looking, carefully considered modernization of Ohio's commercial laws. **By adopting the updated UCC amendments, Ohio will provide its businesses, consumers, and financial institutions with the legal clarity and confidence they need to thrive in a digital economy.** These changes ensure that our legal infrastructure keeps pace with innovation, supporting investment, access to credit, and economic resilience.

We respectfully urge your favorable consideration of House Bill 195.

