



STATEMENT OF THE OHIO STATE BAR ASSOCIATION IN SUPPORT OF HOUSE BILL 195

Before the House Judiciary Committee
Rep. Jim Thomas, Chair

Chairman Thomas, Vice-Chair Swearingen, Ranking Member Isaacsohn, and members of the House Judiciary Committee: Thank you for the opportunity to submit proponent testimony for House Bill 195 on behalf of the Ohio State Bar Association (Ohio Bar).

My name is Jeff Ferriell. I'm a retired member of the Capital University Law School faculty. Before retiring in 2023, I taught courses for 45 years in Contracts, Bankruptcy, and the Uniform Commercial Code at Capital, Ohio State, Ohio Northern and occasionally at law schools in other states.

I'm here today as a representative of the Ohio Bar. I'm also here as a member of the Ohio Council on Uniform State Laws, which we believe is the single smallest state agency, established in § 105.21 of the Ohio Revised Code. I was initially appointed by the Governor in 2007 and have been reappointed every three years since then. I'm currently awaiting reappointment for what I hope will be my 7th term. As a member of the Ohio Council, I'm a member of Ohio's official state delegation to the National Conference of Commissioners on Uniform State Laws, more commonly now known as the Uniform Law Commission (ULC). The ULC is comprised of lawyers representing all 50 states that since 1892 has worked to research, draft, and promote enactment of uniform laws in areas of state law where uniformity is desirable and practical. As part of my work as a member of Ohio's 4-person delegation, together with Ohio State Law Professor Larry Garvin, I serve on the ULC's Uniform Commercial Code Committee.

House Bill 195. House Bill 195, sponsored by Reps. Mathews and Isaacsohn, is based on a set of complicated amendments, finalized by the ULC in 2022, to the Uniform Commercial Code (UCC). The UCC is the Uniform Law Commission's single most important piece of state legislation. Developed in 1952, it is in effect in all 50 states, the District of Columbia, and other US territories. It is a bulwark of commercial law in the United States. It was first adopted in Ohio in 1962, when I was 9 years old. It has been updated and amended many times over the last 63 years to respond to changes in society and commercial business practice.

If adopted, House Bill 195 will adapt the Uniform Commercial Code in Ohio to apply to a variety of modern transactions dealing with several types of digital electronic property. It will do this in three key ways: 1) it will adopt a completely new Article of the UCC, to be adopted as new Ohio Revised Code Chapter 1314; 2) it will make changes to existing Chapter 1309 dealing with security interests in digital assets; and 3) it will implement an

array of other minor changes to other portions of the UCC in Ohio that deal with other transactions involving digital assets.

First: New Chapter 1314. House Bill 195 will enact new UCC Article 12 as new Ohio Revised Code Chapter 1314. Chapter 1314 will enhance the value of digital forms of property, referred to as “controllable electronic records,” by providing clear statutory rules for determining ownership of these types of property and for facilitating their safe and effective transfer. It follows existing patterns that have been long established in Chapters 1303 and 1308 of the Ohio Revised Code dealing with negotiable instruments and investment securities. Effective transfer of these digital assets is accomplished through “control.” The concept of control takes advantage of the features of blockchain technology to ensure that the owner of a digital asset can 1) be readily identified, 2) have the exclusive power to exclude others from the benefits of ownership, and 3) have the exclusive ability to transfer ownership.

Second: Security Interests in Digital Assets. House Bill 195 also makes several key changes to existing Chapter 1309, which generally deals with security interests in tangible & intangible personal property, to ensure that lenders, by obtaining “control,” can achieve “perfection” of their security interest. Via control, creditors will enjoy the same measure of protection they would have over the rights of competing creditors, and any bankruptcy trustee, that they would have through “perfection” of their security interests by filing notice of their security interest with the state secretary of state. Providing lenders with these protections enhances the value of digital assets, by permitting lenders to have greater confidence that their collateral will be protected from claims of competing creditors and will remain enforceable in bankruptcy.

Third: Other Amendments. House Bill 195 also makes a variety of other amendments to other portions of the Uniform Commercial Code in Ohio, in Chapters 1301 (definitions & other general provisions), 1302 (sales of goods), 1303 (negotiable instruments), 1304 (bank deposits & electronic funds transfers) 1305 (letters of credit), 1308 (investment securities), and 1310 (leases of goods), that are designed to facilitate the changes made by the addition of Chapter 1314 or resolve other issues that have arisen in interpreting the Uniform Commercial Code in Ohio or other states. Finally, new Chapter 1316 of the Ohio Revised Code contains a set of transition rules ensuring that secured lenders, with pre-existing and previously perfected security interests in digital assets as “general intangibles,” can retain their protected status when the changes implemented by this act go into effect.

History of Enactment. The revisions contained in House Bill 195 have been enacted in the District of Columbia and 29 states, including Ohio’s neighboring states of Indiana, Kentucky, and Pennsylvania. As of last Monday, they’re pending in 7 other states (Connecticut, Maryland, Massachusetts, New York, North Carolina, South Carolina, and Texas), where they have attracted little controversy.

Thank you very much for your time and attention. I'll be happy to try to answer any questions you might have about House Bill 195, the Uniform Commercial Code, or the Uniform Law Commission.

Respectfully Submitted,

Jeff Ferriell, Ohio Uniform Law Commissioner