

Proponent Testimony on House Bill 195
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On behalf of the Ohio State Bar Association

Chair Thomas, Vice Chair Swearingen, Ranking Member Isaacsohn, and members of the House Judiciary Committee:

Thank you for the opportunity to provide proponent testimony on House Bill 195 on behalf of the Ohio State Bar Association (Ohio Bar).

My name is Andy Nicoll, and I am a member of the Ohio Bar's Banking, Commercial & Bankruptcy Law Committee. I am also a partner in Benesch's Commercial Finance and Banking Practice, where I advise lenders and borrowers in Ohio and across the United States on a wide variety of commercial loan transactions.

I will not repeat Professor Ferriell's summary of the bill's content, but I want to emphasize the value this amendment to the Uniform Commercial Code (UCC) brings in facilitating financing transactions involving virtual currencies and certain other digital assets. As the use of virtual currencies and other digital assets continues to grow, both lenders and borrowers are increasingly looking to use these assets as collateral for loans. As with any form of collateral, the interests of all parties are best served when the law governing the perfection and priority of security interests is predictable and uniformly applied across jurisdictions.

Even for technologically proficient Ohio attorneys and judges, describing blockchain technology with enough precision to understand how it fits within existing legal frameworks can be difficult. This amendment would eliminate much of the guesswork involved in handling digital assets. Moreover, it would allow Ohio practitioners to draw guidance from case law developing in the 30 other jurisdictions that have already adopted this UCC amendment.

If Ohio were to remain an outlier by not adopting these changes, Ohio businesses may not be able to borrow against the value of these digital assets or, if borrowing is possible, only at increased costs. Many lenders may view the certainty provided by the amendment's protections to good faith purchasers of such assets essential to avoiding competing claims from anonymous prior owners of such assets. Other lenders may insist that loan agreements be governed by the laws of states that have enacted the amendment. When loan documents for Ohio-based borrowers are governed by out-of-state law, those borrowers may need to engage additional legal counsel to negotiate documents and provide required legal opinions on enforceability and perfection. While this type of local counsel engagement is not uncommon for loans with real property collateral (where state laws are not uniform), it almost always results in higher costs for the borrower.

The Ohio Bar's Banking, Commercial & Bankruptcy Law Committee has closely followed this amendment to the Uniform Commercial Code for over two years. Along with the broader Ohio Bar, we strongly support its adoption here in Ohio.

Thank you to the sponsors, Representatives Mathews and Isaacsohn, for introducing House Bill 195. We respectfully urge the Committee to support this important legislation. I'm happy to answer any questions you may have.