RHODE ISLAND COMMISSION ON UNIFORM STATE LAWS

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February 3, 2025

Corporations Committee
Rhode Island House of Representatives

Re: H.5109, Uniform Commercial Code transition provisions—technical corrections

Mr. Chairperson and members of the Committee:

Thank you for the opportunity to testify about this bill on behalf of the State of Rhode Island's Commission on Uniform State Laws. For over 120 years, the Commission has been part of the Uniform Law Commission. The ULC is a government organization composed of commissions from all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

Last session, the General Assembly enacted a comprehensive set of technology-related changes to the Uniform Commercial Code, effective on June 10, 2024 (P.L. 2024 chapters 65 and 66). Changes include a new Chapter 12 on controllable electronic records (an umbrella term for digital assets). Before these changes, there was no clear way for a person to prove ownership of a CER, and the only way to perfect a security interest in a CER was to file a financing statement. Chapter 12 created a new concept of "control" to show definitively who owns or has a security interest in a CER. Control is the digital equivalent to possession of a physical thing; in that it's based on the control person having the full benefit of the CER and the exclusive power to either transfer the CER or block anyone else from transferring the CER. This new mechanism provides certainty for transactions in CER's.

Since this was a new concept, the bills included extensive transition rules (R.I. Gen. Laws Sections 6A-11-101 through 6A-11-306) taken from the uniform law. The uniform law's transition rules preserve persons' expectations in transactions that might straddle the effective date of the new law. For example, they achieve the following objectives:

1) They validate things that a person does to comply with the new law during the window before it takes effect. Most notably, the uniform rules validate pre-effective date steps to obtain control of a CER.

2) They give persons a grace period (to July 1, 2025) to comply with the new rules.

3) They make clear that the new rules do not apply to a court proceeding that starts before the new law takes effect.

For these provisions to work properly, the demarcation date must be the effective date of the new law.

However, the Rhode Island enactments use January 1, 2024 as the demarcation date. As a result, the Rhode Island enactments currently fail to accomplish any of the objectives listed above. Moreover, they create great uncertainty in transactions that straddle the effective date of the new law, and uncertainty is the enemy of smooth commercial or consumer transactions.

For example, the enactments do not validate steps that parties took to anticipate the new law during the first five months and ten days of 2024. In fact, because the bills were introduced on January 18, 2024 in the House and March 8, 2024 in the Senate, the window noted in point #1 above actually ended before the public could have known of the bills' existence. Further, courts are given no guidance on whether to apply the new law or the old law to a court case that started during the first part of 2024.

Given these problems, no one benefits from the perpetuation of this error.

This bill corrects this error by changing the demarcation date to June 10, 2024, the effective date of the original legislation, and would go into effect on passage.

For these reasons, we urge prompt passage of this bill.

We will do our best to answer any questions you may have.

Very truly yours,

Thomas S. Hemmendinger, Chair