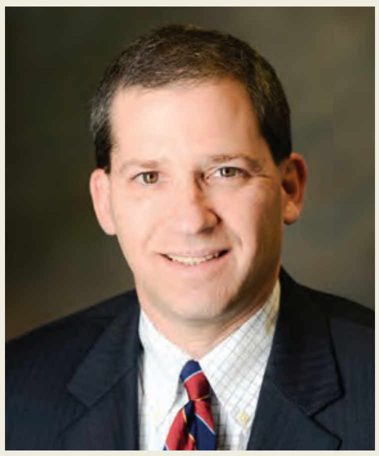
Ohio's new blockchain legislation

Unpacking the law's economic upside for region, state



Blockchain is on its way to becoming mainstream, as more companies, organizations and governments accept the technology as the preferred mechanism for completing electronic contracts and transactions. Blockchain is a decentralized digital ledger, mainly known for its use in digital cryptocurrencies such as Bitcoin. Picture a file that has been disseminated across a network of computers. Each user has a copy of the shared document, and users can append the file simultaneously, without having to wait for another party to unlock their version first. Synching is automatic, so blockchain improves accuracy and workflow. Since the database is not stored in one centralized location, the information is harder to hack.

But there is some ambiguity around blockchain. In early August, Gov. John Kasich signed into law a bill that added Ohio to a list of U.S. states enacting blockchain legislation. On the local level, Blockland Cleveland helped to review the bill's impacts, said Michael D. Stovsky, who is co-chair of the organization's legislation subcommittee. Blockland Cleveland's goal is to make Northeast Ohio an economic center for blockchain technology.

"The legislation subcommittee is charged with reviewing, analyzing and proposing legislation that will further not only the advance of blockchain in Cleveland and in Ohio generally, but also the advance of entrepreneurship in Cleveland and in Ohio," said Stovsky, who is partner and chair of the Innovations, Information Technology & Intellectual Property (3iP) Practice Group at Benesch. In that role, Stovsky helps clients negotiate and execute high-value, intellectual property and technology transactions.

Ohio's blockchain law takes effect Nov. 2. Stovsky elaborates on the legislation's potential fintech and economic opportunities.

The new legislation legally recognizes records or contracts and signatures secured through blockchain technology. What does this mean?

Ohio, like every state, generally acknowledges an electronic record as a "writing" under existing law. This is important because, under the law, many types of records and contracts must actually be in writing to have legal effect. While people have speculated that an electronic record or smart contract created using blockchain-based technologies and platforms constitutes an electronic record under the law and is therefore a writing, the prior law did not specifically state this. The business community and markets like certainty, and Ohio is at the forefront of advancing law that provides this kind of certainty for companies contemplating using blockchain in commercial transactions.

Why is this new law significant?

It puts Ohio on the map in terms of advancing the commercial viability of the use of blockchain platforms for commercial purposes. Many states are passing legislation which, on its face, seems to appeal to businesses that utilize blockchain-based technologies or try to solve business problems with blockchain-based technologies. When we read these other legislative initiatives, we don't see great advantages except that they have good optics. They are overly complex and do more harm than good. Our approach in Ohio is to keep it simple and to focus on real issues that we understand to be important to real people and their businesses. This differentiates Ohio from other states seeking to become receptive environments for the growth of blockchain.

What specifically does the bill address, and how does it impact businesses?

The legislation addresses a key concern among those who would use blockchain for essential business purposes. For example, highly fragmented and inefficient tasks like the transfer of title to property could be made more efficient using blockchain, but the record has to be legal. Companies can enter into business relationships with their trading partners and transmit confidential information to them in a seamless and protected manner using blockchain-based smart contracts, but the contracts must have legal effect. The legislation recently passed in Ohio codifies this legal effect so that it is not left to speculation.

What are some of the concerns with this new state-level legislation?

One of the concerns is that states will each pass their own legislation on the subject and that the legislation will not be uniform, so people seeking to transmit records, or companies looking to enter into business transactions using blockchain-based technologies across state lines will not be certain their records or transactions pass legal muster.

Other states such as Nevada, Delaware, Tennessee and Wyoming have enacted similar laws relating to blockchain. What are some of the advantages and disadvantages between the different pieces of legislation?

The bottom line is that the legislation passed in each of these states has some merit. When we look at this legislation as a whole compared to other states, we believe the beauty of the Ohio legislation is its simplicity. It does not seek to do too much. It has a relatively simple purpose and accomplishes that purpose. It does not seek to set up new and unique legal entities, create fiduciary duties for blockchain business owners, or establish complicated regulatory mechanisms.

What are some of the proposed local pieces of legislation that are being discussed within Blockland Cleveland?

There are some very interesting new initiatives on the horizon, and we continue to seek the contribution of ideas from the public about ways that we can help foster not only blockchain but all forms of entrepreneurship in Ohio. We are collaborating with the local venture community on these efforts. We are working on establishing economic incentive zones within Ohio, with state incentives built in for development stage companies. We also are working on developing a new set of economic incentives and intellectual property rights with the working title "beta rights" for companies that locate in Ohio, employ Ohio residents and wish to beta test and commercialize new technologies.

What other legislative changes may be on the horizon?

We know that for many people, there are privacy and data security concerns any time personal data is stored in a distributed environment — even if the distributed environment is more secure than their own local systems. We have seen this with the advent of software as a service and hosted data centers. I think that there will probably be advances in legislation at the state and/or federal level. We have already seen important new legislation passed in California and the implementation of the European Union's General Data Protection Regulation, which sets guidelines and fines pertaining to data collection and processing of its residents. I think we can expect more of this in the coming months and years to bring U.S. law into line with that of the rest of the world.

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