

UNIFORM REGULATION OF VIRTUAL-CURRENCY BUSINESSES ACT

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

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IN ALL THE STATES

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM REGULATION OF VIRTUAL-CURRENCY BUSINESSES ACT

PREFATORY NOTE

Purpose of the Act

The purpose of this act is to create a statutory structure for regulating the “virtual currency business activity” of persons offering services or products to residents of enacting states. This act does not regulate virtual currency as such and should not be interpreted as doing so.

“Virtual-currency business activity” covered by this act is similar to services whose providers are already subject to licensure and prudential regulation by “money transmitter” or “money services” statutes in many states. In particular, the act would require licensure of and impose prudential regulations and customer protection requirements on businesses whose products and services include

- (1) the exchange of virtual currencies for cash, bank deposits, or other virtual currencies;
- (2) the transfer from one customer to another person of virtual currencies; or
- (3) certain custodial or fiduciary services in which the property or assets under the custodian’s control or under management include property or assets recognized as “virtual currency.”

The underlying assumption motivating this act is that regulations that are predictable and tailored to virtual-currency businesses will provide assurance to persons using virtual-currency products and services and to providers that they will in fairness be regulated like other providers of financial services and products. Accordingly, this act regulates providers of “virtual-currency business services” and certain issuers of “virtual currency” in a manner similar to the manner that states that enacted the Uniform Money Services Act regulate money transmitters, check cashers, and similar businesses, and to the manner in which prudential regulators of banks and similar providers are developing regulatory regimes, such as the Conference of State Bank Supervisors’(CSBS) September 2015 Framework, for regulating virtual-currency businesses. This act also should serve to clarify which state laws – those regulating “money transmission” or general “money services” or this specialty virtual-currency business law – will govern the licensure, prudential regulation, and customer protection requirements placed on those engaged in “virtual-currency business activity.” Clarity about which regulatory regime will govern virtual-currency business activity will assist virtual-currency businesses in many states and the greater legitimacy that uniform acts can bring to industry sectors will enhance the ability of these types of businesses to attract investment and customers.

The key factors for determining which providers of virtual-currency products and services are subject to this act are found in two definitions in section 102 – the definitions of the terms “virtual currency” and “virtual-currency business activity.” In addition, this act contains numerous complete exemptions from its provisions. These exemptions are similar to those found in the Uniform Money Services Act or in other state “money transmitter” statutes, as well as others found in guidance published by the Department of the Treasury’s Financial Crimes

Enforcement Network (“FinCEN”) since March 2013. The exemptions are found in section 103 of this act.

This act has some novel features designed to modernize even relatively recent uniform laws to meet contemporary regulatory issues. Features of this act that distinguish it from the many state “money services” or “money transmitter” statutes include:

- (1) a three-tier system for determining which providers are exempt from the act consisting of persons engaging in only minor activity, an intermediate registration status that is modeled as an “on-ramp” or “regulatory sandbox” that is designed to facilitate innovations in virtual-currency businesses with more modest regulatory requirements, and full licensure for providers with specified business volumes;
- (2) the provisions of Section 502 that (a) require the virtual-currency business with “control” over virtual currency that belongs to residents of the enacting state to maintain an amount of each type of virtual currency sufficient to satisfy the aggregate entitlements of the persons to each type of virtual currency for the benefit of its resident customers, and (b) favor the interests of persons who place virtual currency under the control of a licensee or registrant over the interests of creditors of the licensee or registrant. Because the licensee or registrant will not have rights in the collateral, the balance sheets of licensees and registrants should not show the virtual currency under their control. To clarify the rights of persons that place their virtual currency under the control of virtual-currency businesses and of the virtual-currency businesses themselves, the Uniform Law Commission is developing an act that will provide, when approved and enacted, a substitute for Section 502 of this act that instead adopts UCC Article 8’s more balanced approach to this matter. This act is expected to be ready for enactment in 2018;
- (3) a heightened focus on enabling cross-state “reciprocal licensure” for providers to enable providers to provide new products to more customers at lower regulatory costs. These features are described in greater detail below; and
- (4) more flexible provisions on net worth and reserve requirements than have been found in money transmitter acts that are related to the inclusion of Section 502’s mandate that virtual-currency businesses with control over other persons’ virtual currency must maintain virtual currency in the types and values of those they have in custody and also protect customers’ virtual-currency assets from the reach of the provider’s creditors.

This act is modeled after the licensing and prudential safeguards found in the Commission’s Uniform Money Services Act and also adheres to the contours of FinCEN’s published guidance and the Framework issued by the Conference of State Bank Supervisors. FinCEN’s guidance, as issued from March 2013 to the present, focuses on which types of “virtual currency” are covered by its “prepaid access” regulations promulgated under the Bank Secrecy Act, and which are not. FinCEN’s guidance thus clarifies which providers of services and products are required to register with FinCEN as “money services businesses” in

order to comply with the Bank Secrecy Act and to avoid being in violation of 18 U.S.C. §1960.

This Prefatory Note and Comments to this act explain in more detail how the Uniform Money Services Act, FinCEN regulations and guidance, and the CSBS Framework influenced this act' provisions.

It is not common for the Uniform Law Commission to sponsor drafting projects for industries as young as the virtual-currency business industry. Some of the driving factors behind this act have been mentioned above, but there are two additional important reasons for regulating virtual-currency businesses now. The first of these additional reasons for this project, and a reason for states to enact this act, is that for innovators to succeed they need customers. Customers want to know how new products and services work, and are likely in the financial services "space" to know whether the business has been vetted by a financial services regulator. This act addresses the needs of these future customers.

The second reason is that virtual-currency businesses need banking relationships and credit opportunities as well as early-round investors to succeed. This act is intended to put virtual-currency businesses more firmly on the public radar so as to afford these businesses banking services and greater regulatory certainty and supervision behind them.

What is Virtual Currency and How is it Used?

What is Virtual Currency?

Virtual currency is intangible. Its "manifestation" is in the form of lengthy computer addresses referred to as the private key and the public key. At this time, in order to transfer the value that the addresses represent, one needs to have access to both the public and private keys. The value of virtual currency is a function of what the market will bear, not a value decreed by a government or determined by an international organization. Thus, virtual-currency values are capable of fluctuations more like commodities than many government-dictated "exchange" values even if the exchange values "float."

Transfers of virtual currency operate much like sending an electronic mail ("email") message over the Internet. The sender sends a message to the addressee; the message contains the addresses that represent the value to be transferred. A "node" system of moving the messages that closely resembles the operation of the Internet is employed. If the virtual currency is centrally issued, the issuer may track the transfer of ownership. If the virtual currency is not centrally issued, such as with bitcoins, the address of the transferee will be added to a distributed ledger that holds records of value issued or earned and of transfers of interests in that value.

Virtual currencies currently are in one of two forms – they emanate, as described above, from a centralized issuer or they result from the work of a person solving a puzzle with the virtual currency being "issued" as a reward for the work expended. The former are referred to as centralized; the latter are decentralized.

The distributed ledger (or asset registry) that records the issuance or earning of virtual currencies and the transfers of interests can be public or private. These ledgers are often called “blockchains” because of the algorithms employed and the manner in which changes are recorded, as additions to the earlier blocks of information stored by the ledger. In centralized systems, a single operator manages the issuance and transfers. In decentralized systems, a group of managers work to maintain the integrity of the registry. In Bitcoin, the form of virtual currency created by “Satoshi Nakamoto,” the group of problem-solver managers are known as “miners.” Centralized issuers of virtual currencies do not require miners to help create units or record their transfers.

Virtual currencies are a subset of cryptocurrencies. As media of exchange, they offer a communications technology that facilitates peer-to-peer (P2P) transactions that is the equivalent of paying cash – irreversible and not dependent on a third-party (*i.e.*, a bank) to carry out the transaction. That does not mean, however, that users do not use third party custodians or intermediaries to perform transaction execution or facilitate storage of virtual-currency assets.

A key feature of some virtual currencies is that peer-to-peer transactions operate through pseudonyms or the addresses mentioned above. It is possible to reconstruct a series of transfers affecting one unit of value, but not necessarily to identify the person owning the unit or initiating the transfer.

How is Virtual Currency Defined for this Act’s Purposes?

Virtual currency, as defined in § 102(23),

(A) means a digital representation of value that:

- (1) is used as a medium of exchange, unit of account, or store of value; and
- (2) is not legal tender, whether or not denominated in legal tender; and

(B) does not include:

(1) a transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for legal tender, bank credit, or virtual currency; or

(2) a digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

The term “legal tender” is defined in Section 102(8) of this act. Although “virtual currency” is not “legal tender” under the definition, virtual currency is used as a substitute for “money” between an obligor and obligee that have agreed to transact business as if a barter transaction is occurring, that is, where the transaction is not subject to laws that specify when the discharge of the “debt” occurs.

To be covered by this act, the transaction must involve “virtual currency” and “virtual-currency business activity,” which is defined in Section 102(25), a definition that relies on active verbs – control, exchange, store, and transfer.

Section 102(3)(A) defines the term “control” of virtual currency itself – as opposed to control of an entity – as:

“Control” means:

(A) When used in reference to a transaction or relationship involving virtual currency, power to execute unilaterally or prevent indefinitely a virtual-currency transaction; ...

...

Section 102(5) defines the term “exchange” as:

...to assume control of virtual currency from or on behalf of a resident, at least momentarily, to sell, trade or convert:

(A) virtual currency for legal tender, bank credit, or for one or more forms of virtual currency; or

(B) legal tender or bank credit for one or more forms of virtual currency.

The terms “storage” and “transfer” are defined in sections 102(20) and (21) as:

(20) “Store,” except in the phrase “store of value,” means to maintain control of virtual currency on behalf of a resident by a person other than the resident.

“Storage” and “storing” have corresponding meanings.

(21) “Transfer” means to assume control of virtual currency from or on behalf of a resident and to:

(A) credit the virtual currency to the account of another person;

(B) move the virtual currency from one account of a resident to another account of the same resident; or

(C) relinquish control of virtual currency to another person.

What Types of Virtual-currency Business Activities Does this Act Cover?

There are three factors that determine whether this act will apply to a particular provider of a product or service that relates to virtual currency. The first factor is whether the product or service deals with “virtual currency” as defined in section 102 of this act. The second factor is whether the product or service qualifies as “virtual-currency business activity” under section 102 of this act. This factor depends on the four definitions mentioned above – control, exchange, storage, and transfer.

The term “virtual-currency business activity” in section 102(25) means:

(A) exchanging, transferring, or storing virtual currency or engaging in virtual-currency administration, whether directly or through an agreement with a virtual-currency control-services vendor;

(B) holding electronic precious metals or electronic certificates representing interests in precious metals on behalf of another person or issuing shares or electronic certificates representing interests in precious metals; or

(C) exchanging one or more digital representations of value used within one or more online games, game platforms, or family of games for

(i) virtual currency offered by or on behalf of the same publisher from which the original digital representation of value was received, or

(ii) legal tender or bank credit outside the online game, game platform, or family of games offered by or on behalf of the same publisher from which the original digital representation of value was received.

The third factor is whether the provider is exempt from this act under section 103. Section 103 contains 14 specific types of exemptions from this act's coverage. Many are commonly found in "money services" and "money transmitter" statutes enacted by the states. A few derive from guidance that FinCEN has issued to date, such as the exemption for "dealers in foreign exchange."

A few examples illustrate how these three factors work together in Section 102(25).

"Control" is intended to signal a case in which the "owner" of virtual currency gives power to another person who engages in virtual-currency business activity that permits the second person to unilaterally transact or permanently prevent transactions with the "owner's" virtual currency. To effectuate this, the "owner" gives both the public and private keys that enable transactions in the virtual currency. If the "owner" gives less than the power to transact without more or to prevent transactions, "control" is not present. There is a product or service known in that community as "multi sig." In "multi sig" situations, a provider may have one of several private keys and two or more of these keys are needed to allow transactions to take place. A "multi sig" provider that has no ability alone to transact or prevent transactions does not have "control."

"Transfer" is comparable to a transaction execution under ordinary systems involving "money services" or "money transmission" or, indeed, one that "pushes" or "pulls" in a wire transfer or check collection operation, respectively. The provider merely agrees to take funds or value on one end of the transaction and to deliver them to the designated person on the other end. The virtual-currency business subject to this act would need to possess sufficient credentials to be recognized in its community as having the power to act, and also verifiable virtual currency to "transfer." The definitions of the terms "control," "exchange," "store," and "transfer" are crucial to the operation of this act.

To illustrate, assume A wants to transfer a virtual currency "coin" or "token" identified by a specific address and value to B. A is identified only by a computer code known only to A and contacts the server running the distributed ledger and directs transfer to B, who also is identified only by a computer code known to A and B. The server updates the ledger, and from then on the "coin" or "token" belongs to B. If A tries to spend this coin again by sending it to C, the server will detect that and refuse as A no longer owns it.

Transactions, such as using a debit or credit card to buy a cup of coffee — are tied to a bank. If you have enough money in your account, or credit on the card, the bank authorizes the transaction and you get your coffee. If you bought the same cup of coffee with bitcoins, you could proceed as follows: You could simply transfer ownership to the coffee house in a direct person-to-business transaction via an instruction to update the ledger to show the coffee house as the new owner, and you would be finished. The ledger would validate the transaction and, if valid, record the change of ownership on the public ledger without the bank or any other financial institution (and all their transaction fees) being involved. The merchant gets its money and you get your coffee.

“Virtual-currency business activity” under the various definitions in this act replaces the P2P transaction to the coffee house just described with a transaction that uses an intermediary that holds itself out to the public as an entity worthy of trust. Thus, this act is focused on intermediary providers of virtual-currency products and services – not on the virtual currency itself or on the “owner” of virtual currency that has the requisite tools to effect that payment for coffee on its own behalf. Person-to-person (“P2P”) transactions are exempt from the coverage of this act under subsection 103(b)(7).

“Store” is analogous to deposit-taking and holding, or to safe deposit business. The virtual-currency provider has the capacity to receive particular forms of virtual currency or many of the extant forms, and to offer safekeeping services to its clientele. Storage of virtual currency is likely to involve the “owner” of the virtual currency giving some credentials to the “storage” company, and it is highly likely that the credentials would enable the storage company to return the virtual currency to the “owner” or its designee. Thus, storage is similar to placing a deposit of funds with a bank. Storage in the world of virtual currency may be on an “electronic wallet” or in another form.

When the person wants to spend virtual currency it has stored with a third-party virtual-currency business, it sends a message to the virtual-currency business to transfer some or all of the stored virtual currency to the seller of the goods, services, or real estate. This virtual-currency payment instruction is comparable to one involving a bank intermediary, except that the former may be faster, is not generally subject to countermand, and at least theoretically is more secure than the latter.

Does this act cover multiple forms of virtual currency?

The baseline answer to this question is “yes.” This act is drafted to capture as many of the possible types of virtual currency, whether issued on a centralized or decentralized basis, which are currently in the marketplace. It also covers contemporary equivalents of “e-Gold,” a system that issued against holdings of precious metals, certificates that could be transferred by agreement from one owner to another.

A final point also may assist understanding: one can make payments by delivering cash. The point here is not that the transfer of virtual currency is superior in most respects to payment in cash, as indeed is true for most modern payment methods, but why the merchant agrees to receiving cash (ignore the legal rule there is no choice where legal tender is involved). It is not

because the paper money has intrinsic value, or can be exchanged for gold (which also has no intrinsic value), but because people perceive value in dollar bills because of the governments and legal rules that govern them. Likewise for virtual currency—people see value in using payment methods when the legal rules for it are clear and workable, and the act will enhance that perception of value since present “money transmission” rules that could be applied to govern virtual-currency business transactions are at best not designed to do so or are unclear in application. It also is critical that the rules, since the act will be state law, be uniform for businesses operating across state lines, and that is what the products of the Uniform Law Commission are designed to be.

Why should the regulation of virtual-currency businesses occur now?

Despite all of the media attention, pro and con, for virtual currency, it is important to appreciate (1) the intrinsic opportunities that virtual currency and blockchain technologies offer – for faster, cross-border or long-distance, and inexpensive transactions, and (2) the basis for development that a balanced regulatory system can provide.

Blockchain technology is an ingenious computer code, stored entirely by computers, that forms the underlying architecture for thousands of payment systems and also shows great promise in extending beyond the realm of just currency, such as to the transfer of records, securities, and more. The blockchain provides a permanent record of all transactions that have ever happened, a history that normally within an hour is unalterable. In the case of bitcoin millions of independent computers record transactions. That is the important value — the mathematical verification by millions of computers reaching a consensus that they witnessed the same thing at the same time.

Distributed ledgers are mutual, shared ledgers. They create a single record of transactions among multiple parties. Consequently, parties do not need to maintain their own copies and reconcile with each other. Distributed ledgers are append-only databases that maintain audit trails of who did what and when they did it. Trust is a product of the blockchain, and regulation fosters that trust.

Continuing with the reasons for acting now, the value of virtual currency arises from demand by people for the attributes it has, such as the absence of an expensive middleman such as a bank, the blockchain serving that purpose instead (which banks do in more traditional systems); the speed and certainty of transactions in virtual currency; and the security of such transactions, even when balanced against a number of risks since, unlike in the case of a bank account or a securities account, there is no government insurance against insolvency.

A virtue of blockchain technology is its ability to put a person’s security and online identity into their own hands. Databases filled with personal information are under attack from nation-states and organized crime. Hackers who target governments, cause data breaches at large department stores and even credit reporting agencies, are the result of the same problem: criminal elements breaking through cybersecurity to their prize; databases filled with valuable personal information. Blockchain technology offers a secure alternative to consumers who do not wish to see their personal information fall prey on the Internet. It offers the ability to transact

on the Internet without sharing their personal information with third parties whose databases make targets for hackers. Instead, blockchain technology gives consumers the power to provide their own hack-proof online security. The security offered by blockchain technology on the Internet has a flip side, however. The anonymity it provides presents an opportunity for criminals and terrorists to send and receive money over the internet, nearly anonymously, without a third party. Thus money laundering, terrorist financing, and tax evasion are risks inherent in technology and therefore a certain amount of regulation to ameliorate these issues also is prudent. Article 6 of this act requires virtual-currency businesses to establish and implement compliance programs aimed at deterring money laundering and the financing of terrorist activity. The transfer is fast as the transactions are grouped in blocks every 10 minutes but many can be instantaneous; generally transactions cannot be cancelled or reversed so there is virtual finality of payment.

Another reason, mentioned briefly elsewhere in this Prefatory Note, is the risk that some virtual-currency businesses will be subject to prosecution under 18 U.S.C. § 1960 for engaging in business without being properly licensed under existing money services or money transmitter statutes. It is important to address this risk from several perspectives that include compliance with federal and state requirements for licensure and registration as a “money service business” with FinCEN for anti-money-laundering and counter-terrorism-finance purposes, and provision to the states of which businesses are entering into business relationships with residents of that state whether or not that state’s money services or money transmitter statute clearly covers the particular form of business. Thus, regulatory uncertainty is a major risk to individuals, to virtual-currency businesses, and to government agencies. This act should reduce that type of uncertainty to a considerable extent.

A final reason for acting now is that individual states are beginning to act as described below. Because virtual-currency transactions and businesses are not limited to a few states, a uniform act is desirable to avoid duplicative or undue burdens that may arrest development and cause innovative businesses to move to states with more certain or suitable regulatory environments. This act was drafted with the experience of New York State’s BitLicense regulation and its critics in mind. This act represents solid solutions to each of these problems in the current marketplace and regulatory environment across the United States.

Legal Efforts to Establish Relevant Law

Various states are examining regulatory structures, such as New York and California. The New York Department of Financial Services (DFS), has announced final regulations for BitLicenses. *See* 37 N.Y. Reg. 7 (2015). New York’s regulatory plan includes: (1) licensing rules and compliance provisions; (2) capital requirements; (3) custody and protection of consumer assets and other consumer protection provisions including a complaint procedure; (4) notices of material changes in business and of control and of mergers and acquisitions; (5) books and records; (6) examinations; and (7) the establishment and maintenance of anti-money laundering, cybersecurity, business continuity and disaster recovery programs. A release by DFS dated November 9, 2015, emphasized details for a cybersecurity program including: (1) information security, access controls and identity management, systems and network security and customer data privacy among other areas; (2) third party service provider management,

including the use of multi-factor authentication to limit access to sensitive data and systems and the use of encryption to protect such data in transit and at rest; and (3) employment of a cybersecurity officer and adequate personnel to manage the cybersecurity risks and perform core functions, providing for an annual audit, and notice of cybersecurity incidents. New York also issued a trust company license in May 2015 that allows the company to serve as a custodian for customers' assets, including bitcoins.

The Conference of State Bank Supervisors (CSBS) has put forth the model regulatory framework of principles that defines virtual currency, mentioned above, as

a digital representation of value used as a medium of exchange, a unit of account, or a store of value, but does not have legal tender status as recognized by the United States government (so called "fiat currency"). Virtual currency does not include the software or protocols governing the transfer of the digital representation of value. Virtual currency does not include stored value redeemable exclusively in goods or services limited to transactions involving a defined merchant, such as rewards programs.

The framework addressed the following activities:

1. transmission;
2. exchanging "fiat" currency (money) for virtual currency or virtual currency for fiat currency; virtual currency for virtual currency; and
3. services that facilitate the third party exchange, storage, and/or transmission of virtual currency (e.g., wallets, vaults, kiosks, merchant acquirers, or payment processors).

The CSBS regulatory framework encouraged licensing requirements with a so-called "on ramp" to facilitate startup businesses, regulating financial strength and stability and permissible investments, providing consumer protections including disclosures and notice of risks, cybersecurity and auditing, compliance with anti-money laundering and procedures for detecting and monitoring fraud and other illegal activity, and required books and records.

The act being created by the Uniform Law Commission is a uniform statute for prudential regulation of virtual currency business activity. The act, completed in 2017, requires examinations, reports and records, enforcements, has user protections, and requires policies and procedures to detect and deter money-laundering and financing of terrorist activities, and to provide for cybersecurity, business continuation and disaster recovery programs. The act defines an appropriate level of prudential regulation of virtual-currency businesses. Its requires a license for any person wherever located that engages in or holds itself out as engaging in virtual-currency business activity with a resident of the enacting state, with certain exclusions, such as a person chartered as a bank to avoid double or overlapping regulation.

Development of the Act

The essence of creating a uniform state law is to obtain a sufficient consensus as a result of striking a balance among the interests of the various constituencies that will be affected by the act when enacted into law by the state legislatures. In short, each interest must see more benefit than detriment for them in the act's provisions. If this is achieved, it is likely that universal and uniform adoption by the legislatures of all 50 states will occur. Another critical consideration is that the law's provisions must be seen to reflect good policy and be workable rules to guide aspects of the present operations of the businesses that the act will govern.

To achieve that, the practice of the Uniform Law Commission is to announce the drafting undertaking and circulate that announcement widely, usually after a meeting of all identified interested parties has disclosed in general the appropriate direction for the proposed effort, and determined that the effort is worthwhile. Those interests that wish to be involved then are invited to participate in considering the drafts as the act develops. Since all uniform acts when completed are submitted to the American Bar Association (ABA) for approval, one or more advisors from the ABA are designated by the ABA to attend drafting committee meetings and to solicit input from all parts of the ABA and its members who may have an interest in the subject.

The Uniform Law Commission and Drafting Committee solicited and received comments from a broad range of governmental, industry and non-profit organizations, as well as some individuals. Stakeholders such as these who contributed to meetings or submitted written comments, included:

The U.S Department of the Treasury

The Conference of State Bank Supervisors

CoinCenter

American College of Commercial Finance Lawyers

The Digital Chamber of Commerce

J. Dax Hansen and Dana Syracuse, Perkins Coie, Seattle and New York

The Texas Department of Banking

The California Department of Business Oversight

The Department of Banking of the State of Washington

Ripple Labs, Inc.

The Electronic Freedom Frontier

Coinbase, Inc.

The Entertainment Software Association

Carol Van Cleef, Baker Law, Washington, D.C.

Rebecca Simmons, Sullivan & Cromwell, New York City

Ryan Strauss, Dorsey & Whitney, Seattle

Texas A&M School of Law

Tom Brown, Paul Hastings, San Francisco

The Bitcoin Foundation

Théo Chino, a member of The Bitcoin Foundation

Other participants included The Clearing House, the Federal Reserve Bank of New York, and PayPal. Dozens of other stakeholders signed in as Observers and we thank all of them for their attention.

The ULC also acknowledges the work of the Reporter, the dedication and attention of the ABA Advisor Stephen T. Middlebrook, the Commissioner members of the drafting committee, and, last but not least, the Observers to the committee who gave of their time and knowledge and, while articulating the views of the interests they represented, also recognized the need in any legislation for compromise to achieve the overall public good.

Balances Achieved

A. Owners of Virtual Currency. Owners of virtual currency benefit from the act by receiving a strong regulatory structure that (1) provides clear rules, (2) guards against risks, both economic and from abusive conduct, (3) provides important information allowing evaluation of participation and prospective transactions, (4) provides effective remedies if nonetheless matters turn sour, and (5) requires the adoption and maintenance of policies and programs to reduce risk from fraud and improper activity.

B. Persons involved in virtual-currency business activity. Persons who wish to engage in the virtual-currency business (1) obtain a balanced and reasonable regulatory structure that should validate good business practice and thus enhance trust for users of virtual currency, and may lead to SEC approval of virtual-currency offerings, (2) obtain flexibility in entering the business through a testing process of registration, (3) have regulatory examinations to catch problems before matters go too far wrong, (4) are helped in keeping their businesses workable by requirements to guard against insolvency and other risks and to better ensure that changes in the business do not impair its operations, (5) when operating, particularly in several jurisdictions, have reciprocity and other protections against undue burdens, and have protection for

confidential information, (6) have protection against the potential for divergent results in private actions while still being subject to strong administrative action, (7) receive by incorporation of an existing structure for financing, the ability to overcome present difficulties to obtain adequate credit, and (8) receive by virtue of a supervised regulatory structure greater access to banking relationships for business operations.

UNIFORM REGULATION OF VIRTUAL-CURRENCY BUSINESSES ACT

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Regulation of Virtual-Currency Businesses Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) “Applicant” means a person that applies for a license under this [act].

(2) “Bank” means a federally-chartered or state-chartered depository institution or holder of a charter granted by the Office of the Comptroller of the Currency to a person engaged in the business of banking other than deposit-taking. The term does not include:

(A) an industrial loan company, state-chartered trust company, or a limited-purpose trust company unless the department has authorized the company to engage in virtual-currency business activity; or

(B) a trust company or limited-purpose trust company chartered by a state with which this state does not have a reciprocity agreement governing trust-company activities.

(3) “Control” means:

(A) when used in reference to a transaction or relationship involving virtual currency, power to execute unilaterally or prevent indefinitely a virtual-currency transaction; and

(B) when used in reference to a person, the direct or indirect power to direct the management, operations, or policies of the person through legal or beneficial ownership of voting power in the person or under a contract, arrangement, or understanding.

(4) “Department” means the [name of state agency implementing this [act]].

(5) “Exchange,” used as a verb, means to assume control of virtual currency from or on

behalf of a resident, at least momentarily, to sell, trade, or convert:

(A) virtual currency for legal tender, bank credit, or one or more forms of virtual currency; or

(B) legal tender or bank credit for one or more forms of virtual currency.

(6) “Executive officer” means an individual who is a director, officer, manager, managing member, partner, or trustee of a person that is not an individual.

(7) “Insolvent” means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law.

(8) “Legal tender” means a medium of exchange or unit of value, including the coin or paper money of the United States, issued by the United States or by another government.

(9) “Licensee” means a person licensed under this [act].

(10) “Person” means an individual, partnership, estate, business or nonprofit entity, [public corporation, government or governmental subdivision, agency, or instrumentality,] or other legal entity. [The term does not include a public corporation, government or governmental subdivision, agency, or instrumentality.]

(11) “Reciprocity agreement” means an arrangement between the department and the appropriate licensing agency of another state which permits a licensee operating under a license granted by the other state to engage in virtual-currency business activity with or on behalf of a resident.

(12) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) “Registrant” means a person that has registered with this state under Section 207 to conduct virtual-currency business activity.

(14) “Registration” means the ability under Section 207 to conduct virtual-currency business activity.

(15) “Registry” means the Nationwide Multistate Licensing System and Registry.

(16) “Resident”:

(A) means a person that

(i) is domiciled in this state;

(ii) is physically located in this state for more than 183 days of the previous 365 days; or

(iii) has a place of business in this state; and

(B) includes a legal representative of a person that satisfies subparagraph (A).

(17) “Responsible individual” means an individual who has managerial authority with respect to a licensee’s or registrant’s virtual-currency business activity with or on behalf of a resident.

(18) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(19) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(20) “Store,” except in the phrase “store of value,” means to maintain control of virtual

currency on behalf of a resident by a person other than the resident. “Storage” and “storing” have corresponding meanings.

(21) “Transfer” means to assume control of virtual currency from or on behalf of a resident and to:

(A) credit the virtual currency to the account of another person;

(B) move the virtual currency from one account of a resident to another account of the same resident; or

(C) relinquish control of virtual currency to another person.

(22) “U.S. Dollar equivalent of virtual currency” means the equivalent value of a particular virtual currency in United States dollars shown on a virtual-currency exchange based in the United States for a particular date or period specified in this [act].

(23) “Virtual currency”:

(A) means a digital representation of value that:

(i) is used as a medium of exchange, unit of account, or store of value; and

(ii) is not legal tender, whether or not denominated in legal tender; and

(B) does not include:

(i) a transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for legal tender, bank credit, or virtual currency; or

(ii) a digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

(24) “Virtual-currency administration” means issuing virtual currency with the authority

to redeem the currency for legal tender, bank credit, or other virtual currency.

(25) “Virtual-currency business activity” means:

(A) exchanging, transferring, or storing virtual currency or engaging in virtual-currency administration, whether directly or through an agreement with a virtual-currency control-services vendor;

(B) holding electronic precious metals or electronic certificates representing interests in precious metals on behalf of another person or issuing shares or electronic certificates representing interests in precious metals; or

(C) exchanging one or more digital representations of value used within one or more online games, game platforms, or family of games for:

(i) virtual currency offered by or on behalf of the same publisher from which the original digital representation of value was received; or

(ii) legal tender or bank credit outside the online game, game platform, or family of games offered by or on behalf of the same publisher from which the original digital representation of value was received.

(26) “Virtual-currency control-services vendor” means a person that has control of virtual currency solely under an agreement with a person that, on behalf of another person, assumes control of virtual currency.

Legislative Note: *If a state includes state-chartered trust companies under the definition of “bank,” that state should consider adding a sentence at the end of the definition that expresses the type of state-chartered trust company that is eligible for the exemption for “bank” in Section 103(b).*

The definition of the term “person” is drawn from the Uniform Law Commission’s Drafting Rules. The bracketed material is the optional text available as a substitute for the definition as the enacting state may deem appropriate to the scope of this act it determines to enact.

Comment

1. *“Virtual Currency.”* The term “virtual currency” covers any unit of value or exchange (whether or not the unit is denominated in U.S. dollars) that is not “legal tender” as issued by the United States or by another government. Whether a unit of virtual currency is denominated in U.S. dollars or Yen is immaterial to the question of whether the person, other than a government, who issues it or holds themselves out as providing services connected to a transfer, exchange, or storage of such virtual currency should be regulated under this act, or should remain subject to regulation under a state money services or money transmission statute or be regulated as an insured depository institution or other form of trusted intermediary. (For additional information, see Comment 7, “Legal Tender.”) So long as the virtual currency is not issued by the United States or by another government, it is virtual currency for purposes of this act – if it otherwise meets the definition of “virtual currency” in Section 102 of this act. The decision by a non-government issuer of “virtual currency” to denominate its exchange value in a particular fashion (USD, Yen, or Euros) also is not the controlling factor in determining coverage of the business entity or the transaction by this act.

The definition of “virtual currency” purposefully excludes certain merchants’ affinity or rewards programs and the equivalent sorts of value in online games and online game platforms if the same game or platform publisher is involved to the extent that the accounting units cannot be converted into cash, bank credit, or other virtual currencies. Merchants’ rewards or online game units that can be converted to cash, bank credit, or other virtual currency are within the scope of the definition of “virtual currency.” This bright line between non-cash-out and cash-out possibilities is consistent with guidance FinCEN issued in 2016 on what does not and does qualify as “money transmission.” Fin. Crimes Enf. Network, No-action Letter, April 2016 (unpublished); copy on file with the Uniform Law Commission) provided by the Entertainment Software Association with its April 2016 comment on URVCBA Draft.

The exclusion of retail rewards or affinity programs from this act also is consistent with the exclusion of loyalty card programs from the Revised Uniform Unclaimed Property Act approved at the ULC’s 2016 Annual Meeting. The exclusions in both Acts apply only to the extent that these rewards cannot be monetized into legal tender, bank credit, or other virtual currencies.

The definition of “virtual currency” also closely follows the definition used by the Conference of State Bank Supervisors (“CSBS”) in its September 15, 2015, Framework, which had the support of the bank commissioners in office when the Framework was approved. Thus, the definition of “virtual currency” is designed to promote uniform enactment and compliance ease, as well as to cover and exclude specific activities.

The definition tracks guidance offered by the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN) since March 2013 on the question of what types of virtual-currency transactions qualified as “prepaid access” and thus would constitute “money transmission.” Fin. Crimes Enf. Network, Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, FIN-2013-G001 (March 18, 2013). FinCEN’s guidance also defines when persons engaged in money transmission need to register

as “money services businesses with FinCEN to avoid potential criminal liability under 18 U.S.C. §1960 for failure to be registered with FinCEN.

FinCEN defines the distinctions between “currency” or “real currency” and “virtual currency” with the former being “... the coin and paper money of the United States or of any other country that [i] is designated as legal tender and that [ii] circulates and [iii] is customarily used and accepted as a medium of exchange in the country of issuance.” 31 C.F.R. §1010.100(m).

FinCEN defines the term “virtual currency” to be “a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency.” FIN-2013-G001, *supra*. FinCEN’s definition carved out digital representations of bank money as may be loaded onto electronic travelers’ checks or credit cards in part because providers of those services are subject to longstanding regulation. The distinction between “virtual currency” and digital representations of “legal tender” as the terms are defined in this act lies in the fact that traditional demand deposit accounts are representations of legal tender or other “hard assets” in a manner that makes the account holder a creditor of a federally insured depository institution under the Federal Deposit Insurance Act. 12 U.S.C. §1813(l) (2013).

The definition of “virtual currency” includes electronic precious metals (“e-precious metals,”) and “electronic certificates for precious metals”– commonly called “e-certificates”-- that can be transferred from one owner to another. In August 2015, FinCEN extended its March 2013 guidance concerning what types of business activity with virtual currency render the business a “money services business” for the purposes of federal AML requirements under 31 C.F.R. Part X. Fin. Crimes Enf. Network, Application of FinCEN’s Regulations Pertaining to Persons Issuing Physical or Digital Negotiable Certificates of Ownership of Precious Metals, FIN-2015-R001, August 14, 2015, https://www.fincen.gov/news_room/rp/rulings/pdf/FIN-2015-R001.pdf (hereinafter “FinCEN Precious Metals Certificate Guidance”). The 2015 guidance concluded that e-precious metals and e-certificates for precious metals were “virtual currency” and persons offering them were engaged in “money transmission” for two reasons. The first is that e-precious metals are units of value held by intermediaries on behalf of others and are not units of “legal tender.” Thus, they are representations of value that underlie the virtual currency owned by another person. E-certificates for precious metals are similar to warehouse receipts in some ways, and are “negotiable” or transferable by one person to another, by one person from an account to another account that person owns, or by one jurisdiction to another.

The definition of what is or is not “legal tender” is a complex question and is likely to grow more complex if other governments issue their own forms of digitized “legal tender.” The solution in this act is incomplete because issuance of a virtual currency by a sovereign could complicate the ability of regulators to distinguish between legal tender and virtual currency. Thus, for now, the definitions of “virtual currency” and “legal tender” in Section 102 of this act and the exemption for “dealers in foreign currency” in Section 103 of this act set the boundaries between what the United States government deems to be “legal tender” (by issuing it) and what “dealers in foreign exchange” deal in. What another sovereign government deems to be “legal tender” also falls under FinCEN’s March 2013 guidance as “foreign exchange” to which distinct FinCEN regulations apply. *See*, FIN-2013-G001, *supra* at 5.

To the extent that a state department with rule-writing authority under this act requires greater certainty over what qualifies as “virtual currency,” it could issue a clarification by rule or guidance.

2. “*Virtual-currency Business Activity.*” This term is designed to capture those activities with sufficient similarity to money transmission or other regulated money services activities as to become proper subjects for regulation under this act. The definition restricts the subject activity to that performed with or on behalf of residents of the jurisdiction that seeks to license the provision of such activities in a jurisdiction in the United States.

The term is intended to limit the scope of this act to providers of products and services that are comparable to: (1) money transmission, issuance of virtual currencies from a centralized administration or source, exchange of virtual-currency for other virtual currencies, bank credit or legal tender, and (2) custodianships similar in nature to a securities entitlement subject to Article 8 of the Uniform Commercial Code. It is not intended to cover relationships in which the provider offers a service or product that is limited and the provider cannot transact or prevent transactions unilaterally. Thus, arrangements that the virtual-currency community refers to as “multi-sig” – that is, arrangements that require more than one credential-equivalent to be used to effect transactions are not covered. “Multi-sig” services operate on the basis that more than one third-party entity may hold a key to virtual-currency that can be used to effect exchanges or transfers of virtual-currency only when used in combination with one or more other keys. The exclusion for “multi-sig” proceeds from the definition of the term “control,” which requires that the provider subject to the act have power to transact unilaterally or prevent on a permanent basis transactions in that virtual-currency. If an owner of virtual-currency stored one of several keys needed to transfer virtual-currency to a third party with a “multi-sig” firm, and two such keys were required to transact business in that virtual-currency, the “multi-sig” party would lack the power to transact unilaterally and the power to prevent use of the other keys and, so, to prevent the transaction.

The definition works with the definition of “control of virtual-currency” to cover only those providers whose products and services have (1) the power unilaterally to transact, convert or redeem, or (2) the power to prevent such transactions permanently.

Three active verbs – Exchange, Transfer, and Store – cover the core concepts animating what constitutes “virtual-currency business activity.” To qualify as a virtual-currency business activity, the activity must be between a provider and an end-user (either a consumer or a business user), and the user must provide to the virtual-currency business sufficient information to allow the provider on a unilateral basis either to transact or prevent transactions without further participation by the end-user.

For consistency with the “money services” and “end-user-facing” scope of the Uniform Money Services Act and other state-enacted “money transmitter” statutes, the term does not cover non-currency uses of the technologies underlying virtual currencies today. This definition, thus, excludes a new class of technologies at an enterprise or business-wide level that are not end-user-facing and are designed to perform functions, such as “enabling existing currencies to be exchanged more efficiently.” A specific exemption for this type of “enterprise solution” used by persons otherwise exempt from this act appears in Section 103.

This act does not adopt a “facts and circumstances” approach to determining which products and services should be included in the definition of “virtual-currency business activity.” FinCEN uses such a test in its 2013 guidance on what constitutes “money services” activities that trigger its regulations governing federal registration of “money services” businesses. A “facts and circumstances” approach is not as workable in a licensure and prudential regulatory scheme as it may be in determining liability for failure to register with FinCEN. A second reason for departing from FinCEN’s “facts and circumstances” approach is that this act established two pre-licensure stages (a full exemption in Section 103 and “registration” under Section 207) and a licensure requirement. Each of these stages needs to operate on lines as bright as possible to provide certainty and uniformity – and to protect persons in the two early stages from civil or criminal liability for not being fully licensed.

Although bitcoins are “mined” (a process yielding a “bitcoin” that is a form of payment or reward for solving a difficult puzzle), other virtual currencies are issued by a centralized authority in exchange for legal tender or other virtual currencies to a user who seeks to obtain goods or services, other virtual currency, or legal tender in exchange. Centralized issuers of virtual currency at the moment of issuance are engaged in virtual-currency business activity because they hold themselves out to others as the equivalent of issuers of prepaid cards (also known as “prepaid value”) or offer other forms of trusted and intermediated financial services that this act covers. Miners not engaged in offering services to third parties (other than the clearing and verification roles they play in the Bitcoin blockchain) are not engaged in virtual-currency business activity, and are exempt from this act under Section 103.

3. “*Bank.*” Entities meeting this definition are exempt from the provisions of this act. Others are not. For example, this act excludes trust companies from the definition of the term “bank.” Thus, trust companies seeking to engage in virtual-currency business activities would need to comply with the provisions of this act. State statutes authorizing trust companies vary as do states’ attitudes about the ability of out-of-state trust companies to engage with residents of their states if the trust company does not hold a trust company charter from their state. This issue rose in prominence when New York State issued a trust company charter to ItBit in 2015. ItBit’s ability to engage in transactions with residents of other states was challenged by other states. In April 2016, ItBit withdrew from offering its services to residents of Texas. Since then, there has been no additional information about whether the states will insist on their own charters for trust companies engaging in virtual-currency business activity.

This act also excludes industrial loan companies from the definition of the term “bank.” ILC’s are regulated for many purposes as banks, but the scope of their permissible activities are not the same as banks and many states do not charter ILCs. Exemption from this act for industrial loan companies – a result that their inclusion in the definition of the term “bank” would accomplish -- might complicate state regulation of the activities of virtual-currency businesses and the licensing reciprocity provisions in Article 2.

4. “*Control.*” The term “control” is a concept ordinarily used in the context of mergers and acquisitions, and in the implementation and enforcement of federal banking laws. The term is used for two purposes in this act. First, the act looks at the use of the word in statutes governing the provision of financial services – attributing “control” to the ability to make

decisions and direct policy and procedures over a regulated entity. The persons with “control” are normally investigated closely by state agencies that issue licenses to engage in the provision of financial services. Some persons may not be the type of person the state’s department issuing licenses normally would allow to perform trusted intermediary or money services business activities. Changes in the identity of persons exercising, or capable of exercising, “control” may affect the operation of a business adversely, and federal and state laws regulating trusted intermediaries often define terms such as “control” for this reason. This concept primarily applies to Articles 2 and 3 of this act.

This act also defines the term “control” to include the power to transact in virtual currency for customers unilaterally or to prevent transactions indefinitely without the cooperation or action of the owner of the virtual currency involved. The second, transactional definition of “control” is one of the major innovations that this act offers over other state efforts to regulate virtual-currency businesses.

5. “*Exchange.*” The definition of the term “exchange” covers cases in which the exchanger, at a specific time, has “control” of the virtual currency being exchanged. This term is not intended to cover an individual that operates equipment to perform a function or service on the individual’s own virtual currency. Thus, in order to maintain a distinction between businesses that offer “virtual-currency business” services and products to others and persons managing their own virtual-currency holdings, if the intermediary virtual-currency business lacks control of virtual currency, as the term “control” is defined in Section 102(3)(A), then that person is not engaged in the “exchange” of virtual currency for purposes of this act.

The verb “exchange” covers any sale or barter of virtual currency for other virtual currency, or “real world” goods or services other than by “miners.” “Miners” in the Bitcoin system use computing power to expand the extant number of bitcoins in a decentralized currency (such as Bitcoin) and are also exempt under FinCEN’s March 2013 guidance. Miners are not compensated directly by the persons for whom they perform ledger-registration services on the blockchain. Thus, miners do not engage as known trusted intermediaries with third parties except to maintain the blockchain’s record of transfers of virtual currencies. Miners who mine bitcoins for their own purposes or who use virtual currencies to pay for goods or services are also exempt from FinCEN’s regulations.

6. “*Executive officer.*” This definition is intended to be entity-neutral.

7. “*Legal tender.*” This act defines “legal tender” as opposed to the term “money.” The definition limits what qualifies as “legal tender” to that issued by the United States government or another government. Note that “dealers in foreign exchange” are exempt from this act under Section 103(b)(5). As a result, if another government issues or recognizes a form of virtual currency as “legal tender” for purposes of tax collection or discharge of debts inside that government’s domain, the result would be “foreign exchange” – not “legal tender” that is acceptable inside the United States.

Dealers in foreign exchange should consult FinCEN’s guidance on their obligations under the federal statutes and regulations that FinCEN enforces.

8. *“Registrant” and “Registration.”* The virtual-currency community is composed of many types of businesses at many stages of business maturity. The act identifies a space for start-up businesses to test their products and operate on a small scale without being required to become fully licensed before offering any services to residents of the state. This status is denominated “registration” and the persons or entities holding this status are “registrants.”

This act separates providers of virtual-currency business services and products into three categories. First, those businesses with aggregate activity volumes with residents of an enacting state is at \$5,000 or less are exempt from any requirements of this act in Section 103. Second, those with aggregate activity levels with residents of an enacting state is more than \$5,000 and less than \$35,000 for virtual-currency business may register as “registrants” under Section 207. Those whose volumes of activity with residents of an enacting state exceed \$35,000 in U.S. dollar equivalency should have licenses or should have applied to the enacting state for licenses.

Registrants under Section 207, although they do not need to undergo and wait for full licensure, have responsibilities for compliance with basic user protections, cybersecurity, and anti-money laundering requirements that the act imposes on fully licensed persons. Registrants under this act must register with FinCEN as “money services businesses” to comply with this act’s “registration” requirements and to avoid federal Bank Secrecy Act liability as mentioned above.

The act’s provisions on small-volume providers and “registrants” are among the most important in the act to the virtual-currency community and are among its most innovative.

9. *“Reciprocity Agreement.”* Some state banking departments and money transmitter regulators have signed on to a reciprocity framework created by the CSBS and may use the services provided by its subsidiary, the NMLS Registry. The lack of reciprocity is frequently mentioned by businesses seeking licensure as “money transmitters” as a major obstacle to the growth of their businesses.

This act sought to facilitate reciprocity in licensure among the states to enable businesses to operate in the growing spheres of internet- and mobile-enabled payments and custodial services and products. Reciprocity may be authorized on a bilateral or multi-lateral basis in any enacting state or by adoption of the Registry operating under the auspices of the CSBS in its current form or a later version of that Registry.

10. *“Transfer.”* The term “transfer” does not include movement of fiat currency (legal tender) from one user to another, or from one user to another account of the same user, or from one jurisdiction to another because such fiat currency transfers “money transmission” and are not “virtual-currency transmission.” If a transaction involved both fiat currency and virtual-currency, that transaction involves an “exchange” not a transfer.

11. *“U.S. Dollar equivalent of virtual-currency.”* The three-tier structure in this act – a full exemption for annual volumes of activity less than \$5,000, a registration option for providers with transaction volumes more than \$5,000 and less than \$35,000, and a full licensure requirement for transaction volumes above \$35,000-- made it necessary to specify how those

threshold amounts would be calculated.

In this act, the term “U.S. Dollar equivalent of virtual-currency” means the equivalent value of a particular virtual-currency in United States dollars shown on a virtual-currency exchange based in the United States for a particular date or period specified in this act. A decision to require that the virtual-currency exchange be based in the United States means that the September 2017 decision by the People’s Republic of China to close all virtual-currency exchanges or any similar decision does not keep this act from being fully operational.

12. “*Virtual-currency administration.*” The definition of “virtual-currency administration” follows definitions set forth in the Financial Crimes Enforcement Network’s March 18, 2013 guidance on virtual-currency and money transmission: “An *administrator* is a person engaged as a business in issuing (putting into circulation) a virtual-currency, and who has the authority to redeem (to withdraw from circulation) such virtual currency.” Fin. Crimes Enf. Network, Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, FIN-2013-G001, https://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2013-G001.pdf.

13. “*Virtual-currency control-services vendor.*” These service providers to persons or entities that themselves deal with end-users of virtual-currency business products and services are exempt from this act under Section 103. Only virtual-currency businesses that deal directly with the public are virtual-currency businesses under this act.

SECTION 103. SCOPE.

(a) Except as otherwise provided in subsection (b) or (c), this [act] governs the virtual-currency business activity of a person, wherever located, that engages in or holds itself out as engaging in the activity with or on behalf of a resident.

(b) This [act] does not apply to the exchange, transfer, or storage of virtual currency or to virtual-currency administration to the extent the Electronic Fund Transfer Act of 1978, 15 U.S.C. Sections 1693 through 1693r [,as amended], the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a through 78oo [,as amended], the Commodities Exchange Act of 1936, 7 U.S.C. Sections 1 through 27f [,as amended], or [insert citation to “blue sky” laws of this state] govern the activity. This [act] does not apply to activity by:

(1) the United States, a state, political subdivision of a state, agency or instrumentality of federal, state, or local government, or a foreign government or a subdivision,

department, agency or instrumentality of a foreign government;

(2) a bank;

(3) a person engaged in money transmission that:

(A) holds a license under [insert citation to money-services or money-transmission statute of this state];

(B) is authorized by the department to engage in virtual-currency business activity; and

(C) complies with [Articles] 2, 3, 5, and 6;

(4) a person whose participation in a payment system is limited to providing processing, clearing, or performing settlement services solely for transactions between or among persons that are exempt from the licensing or registration requirements of this [act];

(5) a person engaged in the business of dealing in foreign exchange to the extent the person's activity meets the definition in 31 C.F.R. Section 1010.605(f)(1)(iv) [, as amended];

(6) a person that:

(A) contributes only connectivity software or computing power to a decentralized virtual currency, or to a protocol governing transfer of the digital representation of value;

(B) provides only data storage or security services for a business engaged in virtual-currency business activity and does not otherwise engage in virtual-currency business activity on behalf of another person; or

(C) provides only to a person otherwise exempt from this [act] virtual currency as one or more enterprise solutions used solely among each other and has no agreement

or relationship with a resident that is an end-user of virtual currency;

(7) a person using virtual currency, including creating, investing, buying or selling, or obtaining virtual currency as payment for the purchase or sale of goods or services, solely:

(A) on its own behalf;

(B) for personal, family, or household purposes; or

(C) for academic purposes;

(8) a person whose virtual-currency business activity with or on behalf of residents is reasonably expected to be valued, in the aggregate, on an annual basis at \$5,000 or less, measured by the U.S. Dollar equivalent of virtual currency;

(9) an attorney to the extent of providing escrow services to a resident;

(10) a title insurance company to the extent of providing escrow services to a resident;

(11) a securities intermediary, as defined in [insert citation to U.C.C. Section 8-102 of this state], or a commodity intermediary, as defined in [insert citation to U.C.C. 9-102 of this state], that:

(A) does not engage in the ordinary course of business in virtual-currency business activity with or on behalf of a resident in addition to maintaining securities accounts or commodities accounts and is regulated as a securities intermediary or commodity intermediary under federal law, law of this state other than this [act], or law of another state; and

(B) affords a resident protections comparable to those set forth in Section 502;

(12) a secured creditor under [insert citation to U.C.C. Article 9 of any state] or

creditor with a judicial lien or lien arising by operation of law on collateral that is virtual currency, if the virtual-currency business activity of the creditor is limited to enforcement of the security interest in compliance with [insert citation to U.C.C. Article 9 of any state] or lien in compliance with the law applicable to the lien;

(13) a virtual-currency control-services vendor; or

(14) a person that:

(A) does not receive compensation from a resident for:

(i) providing virtual-currency products or services; or

(ii) conducting virtual-currency business activity; or

(B) is engaged in testing products or services with the person's own funds.

(c) The department may determine that a person or class of persons, given facts particular to the person or class, should be exempt from this [act], whether the person or class is covered by requirements imposed under federal law on a money-service business.

Legislative Note: *If a state adjusts the U.S. Dollar Equivalent for the exemption provided in this act under subsection (b)(8) to a figure higher than \$5,000, the state should consider adding to the obligations of the person compliance with Section 502.*

In states in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes are incorporated into state law, the phrase "as amended" should be deleted from subsection (b).

Comment

1. The goal of this act is not to regulate "virtual currencies" as such. Rather, it is to regulate persons that issue virtual currencies or that provide services that allow others to transfer virtual currencies, provide "virtual-currency" exchange services to the public, or offer to take custody of virtual currency for other persons. The goal is to regulate these persons in a manner that affords suitable licensure, supervision, and user protections. Accordingly, this act is intended to govern persons that hold themselves out as providing services to owners of virtual currency comparable to service that would be deemed "money transmission" under the Uniform Money Services Act or other state "money transmission" statute.

2. Section 103 also identifies exemptions from this act. The majority of the exemptions will be familiar to persons familiar with the Uniform Law Commission's Uniform "Money Services Act" and with guidance published by the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") since March 2013.

Section 103 exempts persons who use virtual currencies for personal purposes (including uses for investment purposes or in the purchase of goods or services) or businesses that receive virtual currencies from sales of goods or services in the ordinary course of business. These persons are not engaged in the equivalent of money transmission. FinCEN laid out this distinction in published guidance beginning with its March 2013 guidance, *see supra*. Other activities that are exempt include investing in virtual currencies and later sale of virtual currencies from one's own portfolio, purchasing virtual currencies in order to pay for goods or services, and engaging in research with virtual currencies and related technologies.

This act provides a permanent exemption for a person experimenting with a virtual-currency technology and whose volume of testing, etc. with residents of an enacting state runs less than \$5,000.

This act also exempts entities that do not charge for services or receive other forms of compensation.

Beyond that permanent exemptions for tiny volumes of activity and for entities that do not charge for services or receive other forms of compensation is a new status in the form of an "on-ramp" for entities between the permanent exemption and a higher figure that still controls consumer risk, a status that this act refers to as "registration." These independent exemptions craft a licensure and prudentially "lite" regulatory scheme for virtual-currency businesses that facilitates innovation by virtual-currency businesses. Businesses in this group must comply with other obligations set forth in this act, including user protections and establishment and implementation of anti-money laundering and cyber-security programs.

Registrants will be expected to have registered with both the regulators in jurisdictions offering this "on-ramp," and with FinCEN to the degree that their activities meet the tests for "money service" businesses under FinCEN guidance. Separating the application of this act into three stages does not alter the businesses' need to follow FinCEN's regulations and guidance pertaining to which types of activities are "money services" for purposes of Bank Secrecy Act and anti-money laundering compliance. (It also will not excuse any business from compliance with statutes and regulations enforced by Treasury's Office of Foreign Asset Control (OFAC).) FinCEN's regulations impose a "registration" requirement on all businesses that offer money services to the general public. The obligation to register with FinCEN as a "money services business" remains regardless of what this act provides. Thus, this act is not intended to derogate from any of these federal compliance requirements: businesses that are exempt from this act or on the "on ramp" should register with FinCEN to avoid penalties for non-registration imposed by FinCEN to the extent their business activities align with FinCEN's interpretations of the Bank Secrecy Act's requirements.

This act sets the full-licensure threshold at an annual transaction volume of \$35,000 or more in the U.S. Dollar equivalent with residents of an enacting state. This figure is intended to allow some “in the wild” testing of the products and services in the enacting state. When aggregated with the same threshold in other states that enact this act, this threshold is intended to allow room for market- and function- testing virtual-currency products or services involved on a modest basis in more than one enacting state without first needing to hold a license from each of those states.

A virtual-currency business that exceeds the \$5,000 threshold -- below which it is exempt under this Section from obligations under this act -- must register in accordance with Section 207 or cease operating in the enacting state.

A virtual-currency business whose transaction volume in U.S. Dollar equivalency is approaching the \$35,000 threshold under which it can operate under a registration must file a full license application under this act or cease operations in the enacting state. Additionally, if the department does not approve an application from a virtual-currency business, the virtual-currency business must halt and promptly unwind its virtual-currency business activity in the enacting state.

The “registrant” also must file an application for a full license under Section 202 as the second anniversary of its registration approaches, or cease doing business in the state involved.

For businesses whose U.S. Dollar equivalent in business volume exceeds \$35,000 in an enacting state, Article 2 of this act requires full licensure under Section 202 or a reciprocal license under Section 203.

The provisions of Article 2 that pertain to licensure, renewal, and periodic reporting are modeled on the Uniform Law Commission’s Uniform Money Services Act. To the extent that provisions of Article 2 differ from the Uniform Money Services Act, the two acts reflect the differences between long-established businesses handling legal tender and new-age businesses handling virtual currency that is not legal tender.

Exemptions are not readily susceptible to a “facts and circumstances” approach. Without precise parameters that businesses, state regulators, and law enforcement agencies can look to, this act will not achieve the certainty and predictability intended or the goal of uniformity in this market will be frustrated.

Besides encouraging innovators, both the limited full exemption and the “registration” on-ramp are intended to protect start-up businesses from inadvertently engaging in activity that should be licensed in order to avoid prosecution as an unlicensed money transmitter under 18 U.S.C. Section 1960. As such, the on-ramp is central to the goal of encouraging innovators in the virtual-currency business community and, as their businesses expand, of bringing them under state licensure and supervision.

3. This act exempts dealers in foreign exchange. FinCEN refined the definition of the term “currency dealer or exchanger” for purposes of 31 C.F.R. Part X in 2011 to “a dealer in

foreign exchange” to capture the exchange of money instruments as well as of funds or other instruments denominated in foreign currency. See Bank Secrecy Act Regulations: Definitions and Other Regulations Relating to Money Services Businesses, 76 Fed. Reg. 43585, 43589 & 43596 (July 21, 2011).

4. This act also exempts lawyers and title insurance companies engaged in offering to their customers escrow services involving virtual currency only to the extent of that activity, and lien creditors or foreclosing secured parties so long as their activity is limited to enforcement of their lien or security interests.

5. The term “bank” is defined in Section 102. Banks are exempt from this act to preclude duplicate and possibly conflicting regulation.

As previously noted, an issue in the exemption for banks relates to the treatment of state-chartered trust companies and limited-purpose trust companies. If the enacting state decided to exempt these categories of trust companies, it needs to adjust the definition of the term “bank” and of “trust company” in Section 102.

The Office of the Comptroller of the Currency has announced plans for issuing “special purpose national bank charters” to certain “fintech” companies, a category that might include some virtual-currency businesses. OCC-chartered special purpose national banks would be entitled to whatever preemption of state laws and licensure requirements that the final rule that the OCC may adopt provides. Thus, it is unclear to what extent the OCC’s plans overlap with operating authority that might be granted to license applicants under this act. However, it is clear that this act’s exemptions and on-ramp/registration provisions will allow innovators acting under this act to operate even though the OCC might not be willing to grant start-ups special purpose national bank charters, or the OCC might impose stiff “conditions” on their operations. In the end, the OCC’s plans generally increase the need for this act, the on-ramp for start-up providers, and other exemptions this act currently provides because of the likelihood that only the best-capitalized and managed “brand” names in the fintech industry (as yet undefined by the OCC) will qualify for the OCC’s special purpose national bank charters. In other words, the vast majority of fintech companies that do not receive OCC charters will require the uniformity and certainty that a uniform act offers. The definition of the term “bank” in Section 102 will include entities to which the OCC has granted fintech “special purpose national bank charters,” a category that as currently proposed by the OCC would not be deposit-taking entities requiring federal deposit insurance.

6. Persons holding licenses as money transmitters or money services businesses in the licensing state are exempt from this act if they meet two additional requirements. First, they must have permission from the state regulatory agency to engage in virtual-currency business activity. Second, they must comply with the provisions of this act that differ substantially from those imposed on money transmitters or money services businesses under the law of that state. The only state currently requiring both licenses for “money transmission” and “virtual-currency” business activities is New York, which has adopted comprehensive licensure and prudential regulation provisions for both types of businesses.

7. The last exemption allows the state regulatory agency to issue discretionary exemptions for particular use cases that may vary over time and place.

SECTION 104. SUPPLEMENTARY LAW. Unless displaced by the particular provisions of this [act], the principles of law and equity supplement its provisions.

[ARTICLE] 2

LICENSURE

SECTION 201. CONDITIONS PRECEDENT TO ENGAGING IN VIRTUAL-CURRENCY BUSINESS ACTIVITY. A person may not engage in virtual-currency business activity, or hold itself out as being able to engage in virtual-currency business activity, with or on behalf of a resident unless the person is:

- (1) licensed in this state by the department under Section 202;
- (2) licensed in another state to conduct virtual-currency business activity by a state with which this state has a reciprocity agreement and has qualified under Section 203;
- (3) registered with the department and operating in compliance with Section 207; or
- (4) exempt from licensure or registration under this [act] by Section 103(b) or (c).

Comment

1. Unless one of the exemptions in Section 103 applies, and only to the extent of the exemption, a person that engages in virtual-currency business activity with a resident of the enacting state is subject to this act.

2. The act's coverage is not dependent on whether the business has a physical location in the enacting state including a virtual-currency "automated-teller-machine" (ATM) kiosk, and includes all forms of purposeful engagement with residents of a state. An advertisement, solicitation, or other holding out that appears in a newspaper or on a website or by telephone, electronic mail, or other mail received by a resident regardless of whether the resident saw or received the information, suffices as contact with the enacting state to trigger the need for a license unless this state and another state have a reciprocity agreement that covers the person's activities in this state, the transaction is consummated while the resident is physically present in another state, or the person has filed a registration in this state as provided in Section 207 of this act.

3. Pursuant to Section 208, no license issued by this state or registration filed with this state may be assigned or transferred except pursuant to law, including the provisions of Article 3 of this act, and then only so long as the relevant state or federal regulator does not disapprove the assignment or transfer. Sections 306 and 307 of this act set forth the requirements for changes in control, or merger, consolidation or acquisition of substantially all of the assets of a licensee or registrant operating in this state under this act. If a person applies to assume control over a registrant or licensee under this act, and the department does not approve the change in control application, the person must not proceed with the proposed change in control or promptly must cease doing virtual-currency business activity in this state. Similarly, if a person seeks to acquire or merge or consolidate with a licensee or registrant governed by this act, and the department does not approve, the person must not proceed with the merger or acquisition or promptly must cease doing virtual-currency business activity in this state.

4. This act does not require that, as a condition of operations, a licensee or registrant be incorporated in this state, or that the licensee or registrant maintain a physical location in this state while the licensee or registrant engages in virtual-currency business activities with residents of this state.

5. A person that has applied for “reciprocal licensure” under Section 203 may engage in virtual-currency business activity under that section during the pendency of the licensure process in this state.

6. This act does not give holders of licenses from this state to operate under this state’s Money Services Act or Money Transmitter Act any preference.

7. Registration does not convey a property right to the person engaged in virtual-currency business activities in this state.

SECTION 202. LICENSE BY APPLICATION.

(a) Except as otherwise provided in Section 203, an application for a license under this [act]:

(1) must be made in a form and medium prescribed by the department or the registry;

(2) except as otherwise provided in subsection (b), must provide the following information relevant to the applicant’s proposed virtual-currency business activity:

(A) the legal name of the applicant, each current or proposed business United States Postal Service address of the applicant, and any fictitious or trade name the applicant uses or plans to use in conducting its virtual-currency business activity with or on

behalf of a resident;

(B) the legal name, any former or fictitious name, and the residential and business United States Postal Service address of each executive officer and responsible individual of the applicant, and each person that has control of the applicant;

(C) a description of the current and former business of the applicant for the five years before the application is submitted or if the business has operated for less than five years, for the time the business has operated, including its products and services, associated website addresses and social media pages, principal place of business, projected user base, and specific marketing targets;

(D) the name, United States Postal Service address, and telephone number of a person that manages each server the applicant expects to use in conducting its virtual-currency business activity with or on behalf of a resident and a copy of any agreement with that person;

(E) a list of:

(i) each money-service or money-transmitter license the applicant holds in another state;

(ii) the date the license expires; and

(iii) any license revocation, license suspension, or other disciplinary action taken against the licensee in another state and any license applications rejected by another state;

(F) a list of any criminal conviction, deferred prosecution agreement, and pending criminal proceeding in any jurisdiction against:

(i) the applicant;

- (ii) each executive officer of the applicant;
- (iii) each responsible individual of the applicant;
- (iv) each person that has control over the applicant; and
- (v) each person over which the applicant has control;

(G) a list of any litigation, arbitration, or administrative proceeding in any jurisdiction in which the applicant, or an executive officer or a responsible individual of the applicant has been a party for the five years before the application is submitted, determined to be material in accordance with generally accepted accounting principles and, to the extent the applicant would be required to disclose the litigation, arbitration, or administrative proceeding in the applicant's audited financial statements, reports to equity owners, and similar statements or reports;

(H) a list of any bankruptcy or receivership proceeding in any jurisdiction for the 10 years before the application is submitted in which any of the following was a debtor:

- (i) the applicant;
- (ii) each executive officer of the applicant;
- (iii) each responsible individual of the applicant;
- (iv) each person that has control over the applicant; and
- (v) each person over which the applicant has control;

(I) the name and United States Postal Service address of each bank in which the applicant plans to deposit funds obtained by its virtual-currency business activity;

(J) the source of funds and credit to be used by the applicant to conduct virtual-currency business activity with or on behalf of a resident and documentation demonstrating that the applicant has the net worth and reserves required by Section 204;

(K) the United States Postal Service address and electronic mail address to which communications from the department may be sent;

(L) the name, United States Postal Service address, and electronic mail address of the registered agent of the applicant in this state;

(M) a copy of the certificate, or a detailed summary acceptable to the department, of coverage for each liability, casualty, business-interruption or cyber-security insurance policy maintained by the applicant for itself, an executive officer, a responsible individual, or the applicant's users;

(N) if applicable, the date on which and the state where the applicant is formed and a copy of a current certificate of good standing issued by that state;

(O) if a person has control of the applicant and the person's equity interests are publicly traded in the United States, a copy of the audited financial statement of the person for the most recent fiscal year or most recent report of the person filed under Section 13 of the Securities Exchange Act of 1934, 15 U.S.C. Section 78m [as amended];

(P) if a person has control of the applicant and the person's equity interests are publicly traded outside the United States, a copy of the audited financial statement of the person for the most recent fiscal year of the person or a copy of the most recent documentation similar to that required in subparagraph (O) filed with the foreign regulator in the domicile of the person;

(Q) if the applicant is a partnership or a member-managed limited-liability company, the names and United States Postal Service addresses of general partners or members;

(R) if the applicant is required to register with the Financial Crimes Enforcement Network of the United States Department of the Treasury as a money-service

business, evidence of the registration;

(S) a set of fingerprints for each executive officer and responsible individual of the applicant;

(T) if available, for each executive officer and responsible individual of the applicant, for the five years before the application is submitted:

(i) employment history; and

(ii) history of any investigation of the individual or legal proceeding to which the individual was a party;

(U) the plans through which the applicant will meet its obligations under [Article] 6; and

(V) other information the department reasonably requires by rule; and

(3) must be accompanied by a nonrefundable fee in the amount [required by law of this state other than this [act] or specified by the department by rule].

(b) For good cause, the department may waive a requirement of subsection (a) or permit the applicant to submit other information instead of the required information.

(c) An application for a license under this section is not complete until the department receives all information required by this [act] and completes its investigation under subsection

(d).

(d) On receipt of a completed application:

(1) the department shall investigate:

(A) the financial condition and responsibility of the applicant;

(B) the relevant financial and business experience, character, and general fitness of the applicant; and

(C) the competence, experience, character, and general fitness of each executive officer, each responsible individual, and any person that has control of the applicant; and

(2) the department may conduct an investigation of the business premises of an applicant.

(e) Not later than 30 days after an application is complete, the department shall send the applicant notice of its decision to approve, conditionally approve, or deny the application. If the department does not send the applicant notice of its decision within 31 days of completion of the application, the application is deemed denied. If the department does not receive notice from the applicant that the applicant accepts conditions specified by the department within 31 days following the department's notice of the conditions, the application is deemed denied.

(f) A license takes effect on the later of:

(1) the date on which the department issues the license; or

(2) the date the licensee provides the security required by Section 204.

(g) An applicant shall pay the reasonable costs of the department's investigation under this section.

Legislative Note: *In a state that does not delegate the setting of fees to departmental discretion, the state should specify the amount of an initial fee for a license under this act. In a state that allows the department charged with supervising and enforcing laws similar to this act to set fees, the department should set the fees for licenses under this act. This note applies to the fee that must accompany an application under subsection (a)(3) and any fee to be paid before the issuance of a license under this act.*

In states in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes are incorporated into state law, the phrase should be deleted in subsection (a)(2)(O).

SECTION 203. LICENSE BY RECIPROCITY.

Alternative A

(a) Instead of an application required by Section 202, a person licensed by another state to conduct virtual-currency business activity in that state may file with the registry an application under this section.

(b) When an application under this section is filed with the registry, the applicant shall notify the department in a record that the applicant has submitted the application to the registry and shall submit to the department:

(1) a certification of license history from the agency responsible for issuing a license in each state in which the applicant has been licensed to conduct virtual-currency business activity;

(2) a nonrefundable reciprocal licensing application fee in the amount [required by law of this state other than this [act] or specified by the department by rule];

(3) documentation demonstrating that the applicant complies with the security and net worth reserve requirements of Section 204; and

(4) a certification signed by an executive officer of the applicant affirming that the applicant will conduct its virtual-currency business activity with or on behalf of a resident in compliance with this [act].

(c) The department may permit conduct of virtual-currency business activity by an applicant that complies with this section.

Alternative B

(a) A person licensed by another state to engage in virtual-currency business activity in that state may engage in virtual-currency business activity with or on behalf of a resident to the

same extent as a licensee if:

(1) the department determines that the state in which the person is licensed has in force laws regulating virtual-currency business activity which are substantially similar to, or more protective of rights of users than, this [act];

(2) at least 30 days before the person commences virtual-currency business activity with or on behalf of a resident, the person submits to the department:

(A) notice containing:

(i) a statement that the person will rely on reciprocal licensing;

(ii) a copy of the license to conduct virtual-currency business activity issued by the other state; and

(iii) a certification of license history from the agency responsible for issuing the license to conduct virtual-currency business activity in the other state;

(B) a nonrefundable reciprocal license fee in the amount [required by law of this state other than this [act] or specified by the department by rule];

(C) documentation demonstrating that the applicant complies with the security and net worth reserve requirements of Section 204; and

(D) a certification signed by an executive officer of the applicant affirming that the applicant will conduct its virtual-currency business activity with or on behalf of a resident in compliance with this [act];

(3) subject to subsection (b), the department does not deny the application not later than [15] days after receipt of the items submitted under paragraph (2); and

(4) subject to subsection (b), the applicant does not commence virtual-currency business activity with or on behalf of a resident until at least 31 days after complying with

paragraph (2).

(b) For good cause, the department may modify a period in this section.

End of Alternatives

***Legislative Note:** Alternative A is applicable only if the department has agreed to participate in the registry operated by a subsidiary of the Conference of State Bank Supervisors. If the state already participates in the registry, Alternative A would be enacted and Alternative B should be deleted. If the state elects not to participate in the registry, then Alternative B should be enacted.*

An enacting state should not waive any requirement that the applicant have sufficient reserves or security to cover expenses sufficient to wind up its business with a resident and to complete any transaction a resident has instructed the licensee to complete.

Comment

1. This act encourages reciprocal licensing either through the processes supervised by the Conference of State Bank Supervisors and its National Multistate Licensing System and Registry (“Registry”) or through discretionary authority granted to the department in this act.

2. Alternative A relies on use of the Registry to facilitate reciprocal licensure or recognition of licensure by states other than the first state that licensed a virtual-currency business.

3. Alternative B allows the department to ascertain the nature of the licensing scheme in another state compared with its own and to grant reciprocity on a discretionary basis without reference to the Registry.

4. The NMLS and Registry operated by a subsidiary of the Conference of State Bank Supervisors is the recommended mechanism for the submission and management of reciprocal licensure applications under this act.

5. This act does not use the reciprocity protocols of the Uniform Law Commission’s Athlete Agents Act, because State banking agencies are already familiar with the CSBS’ Registry and non-depository providers of financial services also are likely to be familiar with the CSBS’ NMLS and Registry.

SECTION 204. SECURITY, NET WORTH, AND RESERVES.

(a) Before a license is issued under this [act]:

(1) an applicant must deposit with the department funds or investment property, a letter of credit, a surety bond, or other security satisfactory to the department that:

(A) secures the applicant's faithful performance of its duties under this [act]; and

(B) is in an amount the department specifies based on the nature and extent of risks in the applicant's virtual-currency business model;

(2) the department may not require a surety bond as security under this [act] unless a surety bond is generally available in the state at a commercially reasonable cost;

(3) security deposited under this section must be payable to this state for the benefit of a claim against the licensee on account of the licensee's virtual-currency business activity with or on behalf of a resident;

(4) security deposited under this section must cover claims for the period the department specifies by rule and for an additional period the department specifies after the licensee ceases to engage in virtual-currency business activity with or on behalf of a resident;

(5) for good cause, the department may require the licensee to increase the amount of security deposited under this section, and the licensee shall deposit the additional security not later than [15] days after the licensee receives notice in a record of the required increase;

(6) for good cause, the department may permit a licensee to substitute or deposit an alternate form of security satisfactory to the department if the licensee at all times complies with this section;

(7) a claimant does not have a direct right to recover against security deposited under this section; and

(8) only the department may recover against the security, and the department may retain the recovery for no longer than [five] years and may process claims and distribute recoveries to claimants in accordance with rules adopted by the department under [insert citation

to uniform money-services act or money-transmitters act of this state].

(b) In addition to the security required under subsection (a), a licensee and a registrant, at the time of the application for a license under this act or filing of registration, shall submit to the department evidence of and maintain:

(1) a minimum net worth of \$[25,000]; and

(2) sufficient unencumbered reserves for winding down the licensee's or registrant's operations as agreed to by the department considering the nature and size of expected virtual-currency business activity with or on behalf of residents.

(c) A licensee or registrant may include in its calculation of net worth virtual currency, measured by the average value of the virtual currency in U.S. Dollar equivalent over the prior six months, other than the virtual currency over which it has control for a resident entitled to the protections under Section 502.

(d) For good cause, the department may require a licensee or registrant to increase the net worth or reserves required under this section. The licensee or registrant shall submit to the department evidence that it has the additional net worth or reserves not later than [15] days after the licensee or registrant receives notice in a record of the required increase.

***Legislative Note:** In subsection (a)(8), the state should specify the period it believes represents a reasonable period for an aggrieved party to discover the party's claim and file it with the department and for the department to determine whether the claim is valid and process the claim.*

Comment

1. Surety bonds and letters of credit are not readily available to virtual-currency business start-ups at this time. Accordingly, the security described in Section 204 does not require surety bonds or letters of credit because such a requirement effectively would prevent some start-up virtual-currency businesses from being licensed at this time. Although surety bonds or letters of credit are commonly required for other forms of non-depository financial services licensees such as money transmitters, there is no point in requiring as all or part of the security that licensees must offer any form of security that is not readily available in the marketplace.

2. The market may improve as surety bond companies and banks are more familiar with the operations of virtual-currency businesses and as states clarify their positions on licensure and regulation of virtual-currency businesses and the relationship of virtual-currency businesses to traditional money services and money transmission that states otherwise regulate.

3. This act allows the department to accept funds, investment property, surety bonds, letters of credit or other security from the licensee or registrant as evidence of the licensee's or registrant's ability to conduct operations and have sufficient funding available to wind up its operations in this state as may occur. The primary reason is that, although virtual-currency business may find it easier to obtain a letter of credit than a surety bond, banks have their own credential requirements for issuing letters of credit. The requirements of this act should not convey a sense that there is something wrong with a virtual-currency business if it cannot obtain a particular form of security, such as a letter of credit or surety bond, because the market is immature.

4. The amount of security required may be minimal depending on the scope of activities that the applicant presents as its business model in a given state. This is particularly true because of the inclusion in this act of an analogue to U.C.C. section 8-503 that specifies that the provider does not have a property interest in the virtual currency it controls or has custody over for its customers, and that the virtual currency is not subject to claims of the provider's creditors.

5. Forms of security may include virtual currency of the type in which the provider transacts business with residents (a term limited under Section 102's definition to residents of the enacting state), a guarantee or, possibly, even a letter asserting compliance. The regulators' ability to hold security after the licensee ceases to engage in virtual-currency business activity is common in non-depository financial services regulation. Because of this need for security to be available during a winding-up period, bonds – if available – would be problematic for licensees.

6. Surety bonds run with the person or entity that first acquired them. In the virtual-currency community, one expects innovators to merge or be acquired by others with more frequency than might have applied to other forms of non-depository providers of financial services. Any requirement that the security to survive a merger or acquisition necessarily requires a form of security that is not entity-dependent, which is an important consideration and likely a complication with some forms of security that are typically used in non-depository licensure schemes.

SECTION 205. ISSUANCE OF LICENSE; APPEAL.

(a) Absent good cause, the department shall issue a license to an applicant if the applicant complies with this [article] and pays the costs of the investigation under Section 202(g) and the initial licensee fee under Section 202(a)(3) in an amount required by law or specified by the department by rule.

(b) An applicant may appeal a denial of its application under Section 202 or 203, under [cite state administrative procedure act] not later than 30 days after:

1. the department notifies the applicant of the denial; or
2. the application is deemed denied.

Comment

The addition of the phrase “absent good cause” to subsection (a) grants discretion to the department to deny an application if the applicant has been allegedly engaged in violations of other laws, such as federal anti-money-laundering or other regulations.

SECTION 206. RENEWAL OF LICENSE.

(a) Subject to subsection (g), not later than 15 days before the anniversary date of issuance of its license under this [act], a licensee may apply for renewal of the license by:

- (1) paying a renewal fee [in an amount required by law of this state other than this [act] or specified by the department by rule]; and
- (2) submitting to the department a renewal report under subsection (b).

(b) A renewal report required by subsection (a)(2) must be submitted in a form and medium prescribed by the department. The report must contain:

- (1) a copy of the licensee’s most recent:
 - (A) reviewed annual financial statement if the licensee’s virtual-currency business activity in this state was \$[insert amount state uses for corporate activity auditing purposes] or less for the fiscal year ending before the anniversary date of issuance of its license under this [act]; or
 - (B) audited annual financial statement if the licensee’s virtual-currency business activity in this state amounted to more than \$[insert the figure state employs for corporate activity auditing purposes] for the fiscal year ending before the anniversary date;

(2) if a person other than an individual has control of the licensee, a copy of the person's most recent:

(A) reviewed annual financial statement if the person's gross revenue was \$[insert amount state uses for corporate activity auditing purposes] or less in the previous fiscal year, measured as of the anniversary date of issuance of its license under this [act]; or

(B) audited consolidated annual financial statement if the person's gross revenue was more than \$[insert amount state uses for corporate activity auditing purposes] in the previous fiscal year, measured as of the anniversary date of issuance of its license under this [act];

(3) a description of any:

(A) material change in the financial condition of the licensee;

(B) material litigation involving the licensee or an executive officer, or responsible individual of the licensee;

(C) license suspension or revocation proceeding commenced, or other action taken, involving a license to conduct virtual-currency business activity issued by another state on which reciprocal licensing is based;

(D) federal or state investigation involving the licensee; and

(E) data security breach involving the licensee;

(4) information or records required by Section 305 the licensee has not reported to the department;

(5) the number of virtual-currency business activity transactions with or on behalf of residents for the period since, subject to subsection (g), the later of the date the license was issued or the date the last renewal report was submitted;

(6) the:

(A) amount of U.S. Dollar equivalent of virtual currency in the control of the licensee at, subject to subsection (g), the end of the last month that ends not later than 30 days before the date of the renewal report; and

(B) total number of residents for whom the licensee had control of U.S. Dollar equivalent of virtual currency on that date;

(7) evidence that the licensee continues to satisfy Section 502;

(8) evidence that the licensee continues to satisfy Section 204;

(9) a list of each location where the licensee operates its virtual-currency business activity; and

(10) the name, United States Postal Service address, and telephone number of each person that manages a server used by the licensee in conducting its virtual-currency business activity with or on behalf of a resident.

(c) If a licensee does not timely comply with subsection (a), the department may use enforcement measures provided under [Article] 4. Notice or hearing is not required for a suspension or revocation of a license under this [act] for failure to pay a renewal fee or file a renewal report.

(d) If the department suspends or revokes a license under this [act] for noncompliance with subsection (a), the department may end the suspension or rescind the revocation and notify the licensee of the action if, subject to subsection (g), not later than 20 days after the license was suspended or revoked, the licensee:

(1) files a renewal report and pays a renewal fee; and

(2) pays any penalty assessed under Section 404.

(e) The department shall give prompt notice to a licensee of the lifting of a suspension or rescission of a revocation after the licensee complies with subsection (d).

(f) Suspension or revocation of a license under this section does not invalidate a transfer or exchange of virtual currency for or on behalf of a resident made during the suspension or revocation and does not insulate the licensee from liability under this [act].

(g) For good cause, the department may extend a period under this section.

(h) The department shall review the renewal of a license issued under Section 203 to ensure that the state that issued the original license has not suspended, revoked, or limited the license.

(i) A licensee that does not comply with this section shall cease operations with or on behalf of a resident on or before the anniversary date of issuance of its license under this [act].

(j) A licensee shall pay the reasonable and necessary costs of the department's investigation under this section.

Legislative Note: *If a state delegates the setting of fees under subsection (a)(1) to the department, this section should be revised to grant authority to set fees and to establish any minimum or maximum fee levels the department is required to observe. If the state does not permit delegation, the enacting state should set the fees required under this section.*

Comment

1. Small entities may not be required by state law to submit audited financial statements as part of their licensure renewal programs. In these cases, state law instead may require that the entity to have a "reviewed" financial statement and that the entity should provide it in lieu of a fully audited financial statement.

2. Any change in a license issued by another state or jurisdiction that was the basis for reciprocal licensure under this act should be disclosed in the renewal report, if not previously disclosed to the state regulatory authority in this state.

SECTION 207. REGISTRATION IN LIEU OF LICENSE.

(a) A person whose volume of virtual-currency business activity in U.S. Dollar equivalent of virtual currency will not exceed \$35,000 annually may engage in virtual-currency business activity with or on behalf of a resident under a registration without first obtaining a license under this [act] if the person:

(1) files with the department a notice in the form and medium prescribed by the department of its intention to engage in virtual-currency business activity with or on behalf of a resident;

(2) provides the information for an investigation under Section 202;

(3) states the anticipated virtual-currency business activity for its next fiscal quarter;

(4) pays the department a registration fee in the amount [required by law of this state other than this [act] or specified by the department by rule];

(5) if required to register with the Financial Crimes Enforcement Network of the United States Department of the Treasury as a money-service business, provides the department evidence of the registration;

(6) provides evidence that the person has policies and procedures to comply with the Bank Secrecy Act, 31 U.S.C. Section 5311 et seq. [, as amended], and other applicable laws;

(7) describes the source of funds and credit to be used by the person to conduct virtual-currency business activity with or on behalf of a resident and provides evidence of and agrees to maintain the minimum net worth and reserves required by Section 204 and sufficient unencumbered reserves for winding down operations;

(8) provides the department with evidence that the person has in place policies and

procedures to comply with [Articles] 3, 5, and 6 and other provisions of this [act] designated by the department; and

(9) provides the department with a copy of its most recent financial statement, whether reviewed or audited.

(b) Before the virtual-currency business activity of a registrant with or on behalf of residents exceeds \$35,000 annually in U.S. Dollar equivalent of virtual currency, the registrant shall file an application for a license under this [act] and may continue to operate after the activity exceeds \$35,000 annually while its application for license is pending.

(c) For good cause, the department may suspend or revoke a registration without a prior hearing or opportunity to be heard.

(d) A registrant shall cease all virtual-currency business activity with or on behalf of residents:

(1) if the department denies the registrant's application for a license under this [act], one day after the registrant receives notice in a record that the department has denied the application;

(2) if the department suspends or revokes the registration, one day after the department sends notice of the suspension or revocation to the registrant in a record by a means reasonably selected for the notice to be received by the recipient in one day, to the address provided for receiving communications from the department;

(3) if the virtual-currency business activity of the registrant with or on behalf of residents exceeds \$35,000 annually in U.S. Dollar equivalent of virtual currency and the registrant has not filed an application for a license under this [act]; or

(4) on the second anniversary date of the registration.

Legislative note: *In a state that does not delegate the setting of fees to departmental discretion, the state should specify the amount of an initial fee for a registration under this act. In a state which allows the department charged with supervising and enforcing laws similar to this act to set fees, the department should set the fees for registration. This note applies to the fee that must accompany a registration filing that the registrant must pay along with its filing.*

In states in which the constitution, or other law, does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be deleted in subsection (a)(6).

Comment

1. Section 207 is designed to allow an intermediate status between full exemption under Section 103 and full licensure under Section 202.

2. Section 207 offers some advantages both the public and to the business entity. For example, it instructs the entity wishing to take advantage of this in-between status to register with the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) to the extent that FinCEN’s regulations and guidance mandate registration. It also provides notice to the states enacting this act when a start-up company with actual or expected transaction volumes exceed the \$5,000 figure for full exemption comes into the state to start serving residents. In this fashion, it gives the states the opportunity to follow the newcomers’ activities with the residents of each enacting state.

3. For the virtual-currency business, registration provides an “on-ramp” to doing business within a new state, clear requirements for what the business must do to retain its status as a registrant and for the point in its history when it must file a full-fledged application for licensure. In this manner, this act intends to allow start-up businesses and those testing new products in states in which it does not have a full license a transition period with protection from potential violation of 18 U.S.C. 1960.

4. State money-services and money-transmitter statutes do not have thresholds: they require full licensure on the first day of operation. Thus, the thresholds in this act are a departure from the status-quo in state statutes. They are designed to implement important goals – that is, promotion of innovation and allowance for both academic research and beta testing to occur without the necessity of full licensure. They are, however, suitable to prevent significant risks to users.

Additionally, the full exemption in Section 103 for activity of \$5,000 or less and the provisions allowing for “registration” in Section 207 are designed to eliminate risks to virtual-currency businesses of being prosecuted for engaging in unlicensed money transmission or prepaid access activity under state laws or 18 U.S.C. Section 1960.

This act’s thresholds operate on a per-state basis. Thus, a virtual-currency business could have aggregate activity of much more than \$35,000 if the virtual-currency business is operating in more than one state. So long as its activity volume in each state that does not exceed \$5,000

or that exceeds \$5,000 but is less than \$35,000, the respective thresholds between the full exemption and threshold before the business must have applied for a license, the business does not need a license in states that enact this act. Virtual-currency businesses operating in more than one state could engage in a significant amount of market- and product-testing without needing a full license if they restrict their operations to states that have enacted this act.

SECTION 208. LICENSE OR REGISTRATION NOT ASSIGNABLE OR

TRANSFERABLE. A license or registration under this [act] is not transferable or assignable.

Comment

It is not customary for licenses issued to money-services businesses or money-transmitters to be assignable or transferable except on application to and approval by the state regulatory agencies that issue such licenses. Thus, in this act, neither licenses nor registrations should be assignable or transferable at will. Provisions governing changes in control and mergers and acquisitions of licensees or registrants are found in Sections 306 and 307 of this act.

SECTION 209. RULES AND GUIDANCE. The department may adopt rules to implement this [act] and issue guidance as appropriate.

[ARTICLE] 3

EXAMINATION; EXAMINATION FEES; DISCLOSURE OF INFORMATION

OBTAINED DURING EXAMINATION

SECTION 301. AUTHORITY TO CONDUCT EXAMINATION.

(a) The department may conduct an annual examination of a licensee or registrant. For good cause, the department may conduct an additional examination. The department may examine a licensee or registrant without prior notice to the licensee or registrant.

(b) A licensee or registrant shall pay the reasonable and necessary costs of an examination under this section.

(c) Information obtained during an examination under this [Article] may be disclosed only as provided in Section 304.

SECTION 302. RECORDS.

(a) A licensee or registrant shall maintain, for all virtual-currency business activity with or on behalf of a resident five years after the date of the activity, a record of:

(1) each transaction of the licensee or registrant with or on behalf of the resident or for the licensee's or registrant's account in this state, including:

(A) the identity of the resident;

(B) the form of the transaction;

(C) the amount, date, and payment instructions given by the resident; and

(D) the account number, name, and United States Postal Service address of the resident, and, to the extent feasible, other parties to the transaction;

(2) the aggregate number of transactions and aggregate value of transactions by the licensee or registrant with or on behalf of the resident and for the licensee's or registrant's account in this state, expressed in U.S. Dollar equivalent of virtual currency for the previous 12 calendar months;

(3) each transaction in which the licensee or registrant exchanges one form of virtual currency for legal tender or another form of virtual currency with or on behalf of the resident;

(4) a general ledger posted at least monthly that lists all assets, liabilities, capital, income, and expenses of the licensee or registrant;

(5) each business-call report the licensee or registrant is required to create or provide to the department or registry;

(6) bank statements and bank reconciliation records for the licensee or registrant and the name, account number, and United States Postal Service address of each bank the

licensee or registrant uses in the conduct of its virtual-currency business activity with or on behalf of the resident;

(7) a report of any dispute with the resident; and

(8) a report of any virtual-currency business activity transaction with or on behalf of a resident which the licensee or registrant was unable to complete.

(b) A licensee or registrant shall maintain records required by subsection (a) in a form that enables the department to determine whether the licensee or registrant is in compliance with this [act], any court order, and law of this state other than this [act].

(c) If a licensee or registrant maintains records outside this state that pertain to transactions with or on behalf of a resident, the licensee or registrant shall make the records available to the department not later than three days after request, or, on a determination of good cause by the department, at a later time.

(d) All records maintained by a licensee or registrant are subject to inspection by the department.

SECTION 303. RULES; COOPERATION; AND DATA-SHARING AUTHORITY.

(a) Subject to Section 304 and law of this state other than this [act] concerning privacy, consumer financial privacy, data protection, privilege, and confidentiality, the department may cooperate, coordinate, jointly examine, consult, and share records and other information with the appropriate regulatory agency of another state, a self-regulatory organization, federal or state regulator of banking or non-depository providers, or a regulator of a jurisdiction outside the United States, concerning the affairs and conduct of a licensee or registrant in this state.

(b) The department shall:

(1) establish or participate in, with another state that enacts a law substantially

similar to this [act], a central depository for filings required by law of this state other than this [act];

(2) cooperate in developing and implementing uniform forms for applications and renewal reports and the conduct of joint administrative proceedings and civil actions;

(3) formulate joint rules, forms, statements of policy, and guidance and interpretative opinions and releases; and

(4) develop common systems and procedures.

(c) The department may not establish or participate in a central commercial depository that contains nonpublic personally identifiable information which does not comply with Section 502(e)(5) or (8) of the Gramm-Leach-Bliley Act, 15 U.S.C. Section 6802(e)(5) or (8) [, as amended], or with the Federal Right to Financial Privacy Act, 18 U.S.C. Section 3401 et seq. [, as amended].

(d) In deciding whether and how to cooperate, coordinate, jointly examine, consult, or share records and other information under subsection (a), the department shall consider:

(1) maximizing effectiveness and uniformity of regulation, examination, implementation, and enforcement for the benefit of residents and licensees and registrants; and

(2) minimizing burdens on licensees and registrants without adversely affecting protection for residents.

Legislative note: *In states in which the constitution, or other law, does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase “as amended” should be deleted from subsection (c).*

Comment

Enacting states may wish to provide a list of its statutes that impose obligations such as those mentioned in the text. These may include state data or transactional privacy laws, state data security/ breach notification laws, and provisions of federal law such as Title V of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 and the Fair Credit

Reporting and Fair and Accurate Credit Transactions Act.

SECTION 304. CONFIDENTIALITY.

(a) Except as otherwise provided in subsection (b) or (c), information not contained in a report otherwise available to the public or reports obtained by the department from an applicant, licensee, or registrant, information contained in or related to an examination, investigation, or operating or condition report prepared by, on behalf of, or for the use of the department, and other financial and operating information, is not subject to disclosure under [insert citation to open records law of this state]. If the department determines the information or records are confidential under the open records law of a reciprocal-licensing state, the information or records may not be disclosed.

(b) A trade secret of an applicant, a licensee, or a registrant is confidential and is not subject to disclosure under [insert citation to open records law of this state]. If the department determines a trade secret is confidential under the open records law of a reciprocal-licensing state, the trade secret may not be disclosed.

(c) Subsection (a) does not prohibit disclosure of:

(1) general information about a licensee's or registrant's virtual-currency business activity with or on behalf of a resident;

(2) a list of persons licensed or registered under this [act]; or

(3) aggregated financial data concerning licensees or registrants in this state.

SECTION 305. INTERIM REPORT.

(a) Each licensee and registrant shall file with the department a report of:

(1) a material change in information in the application for a license under this act or a registration or the most recent renewal report of the licensee under this [act] or for the

registrant;

(2) a material change in the licensee's or registrant's business for the conduct of its virtual-currency business activity with or on behalf of a resident; and

(3) a change of an executive officer, responsible individual, or person in control of the licensee or registrant.

(b) Absent good cause, a report required by subsection (a) must be filed not later than 15 days after the change.

Comment

For a useful guide of what is "material" for the purposes described in this Section, one may refer to the provisions of the Securities Exchange Act of 1934 and regulatory guidance and judicial determinations made under it.

SECTION 306. CHANGE IN CONTROL OF LICENSEE OR REGISTRANT.

(a) In this section, "proposed person to be in control" means the person that would control a licensee or registrant after a proposed transaction that would result in a change in control of the licensee or registrant.

(b) The following rules apply in determining whether a person has control over a licensee or registrant:

(1) There is a rebuttable presumption of control if the person's voting power in the licensee or registrant constitutes or will constitute at least 25 percent of the total voting power of the licensee or registrant.

(2) There is a rebuttable presumption of control if:

(A) the person's voting power in another person constitutes or will constitute at least 10 percent of the total voting power of the other person; and

(B) the other person's voting power in the licensee or registrant constitutes

at least 25 percent of the total voting power of the licensee or registrant.

(3) There is no presumption of control solely because an individual is an executive officer of the licensee or registrant.

(c) At least 30 days before a proposed change in control of a licensee or registrant, the proposed person to be in control shall submit to the department in a record:

(1) an application in a form and medium prescribed by the department;

(2) the information and records that Section 202 would require if the proposed person to be in control already had control of the licensee;

(3) a license application under Section 202 by the proposed person to be in control;

(4) in the case of a registrant, the information that Section 207 would require if the proposed person to be in control already had control of the registrant; and

(5) in the case of a registration, a registration under Section 207 by the proposed person to be in control.

(d) The department, in accordance with Section 202, shall approve, approve with conditions, or deny an application for a change in control of a licensee or registrant. The department, in a record, shall send notice of its decision to the licensee or registrant and the person that would be in control if the department had approved the change in control. If the department denies the application, the licensee or registrant shall abandon the proposed change in control or cease virtual-currency business activity with or on behalf of residents.

(e) If the department applies a condition to approval of a change in control of a licensee or registrant and the department does not receive notice of the applicant's acceptance of the condition specified by the department not later than 31 days after the department sends notice of

the condition, the application is deemed denied. If the application is deemed denied, the licensee or registrant shall abandon the proposed change in control or cease virtual-currency business activity with or on behalf of residents.

(f) Submission in good faith of records required by subsection (c) relieves the proposed person to be in control from any obligation imposed by this section other than subsections (d), (e), and (h) until the department has acted on the application.

(g) The department may revoke or modify a determination under subsection (d), after notice and opportunity to be heard, if, in its judgment, revocation or modification is consistent with this [act].

(h) If a change in control of a licensee or registrant requires approval of an agency of this state or another state with which this state has a reciprocity agreement and the action of the other agency conflicts with that of the department, the department shall confer with the other agency. If the proposed change in control cannot be completed because the conflict cannot be resolved, the licensee or registrant shall abandon the change in control or cease virtual-currency business activity with or on behalf of residents.

Comment

Sections 306 and 307 are the logical extensions of Section 208, which provides that neither licenses nor registrations are assignable or transferable at will. In Sections 306 and 307, a licensee or registrant that wishes to allow a new party to be in control of its business or wishes to merge with, consolidate with, or acquire another business will need approval from the department before proceeding. Sections 306 and 307 also provide that, in the event the department is unable to approve the change in control, merger, consolidation, or acquisition, the licensee or registrant has a choice. It can opt not to proceed with the change, merger, consolidation, or acquisition, or it can cease doing business with residents of the state whose department will not approve the change.

A similar choice may be presented to a licensee that obtained its license in this state through a reciprocity agreement. If the department in this state and the state regulatory agency in the other state do not agree on approval of the proposed change, merger, consolidation, or acquisition, the licensee is forced to choose between abandonment of the change, etc., or

cessation of business with residents of the state that does not approve.

SECTION 307. MERGER OR CONSOLIDATION BY LICENSEE OR REGISTRANT.

(a) At least 30 days before a proposed merger or consolidation of a licensee or registrant with another person, the licensee or registrant shall submit to the department in a record:

- (1) an application in a form and medium prescribed by the department;
- (2) the plan of merger or consolidation in accordance with subsection (e);

(3) in the case of a licensee, the information required by Section 202 concerning the person that would be the surviving entity in the proposed merger or consolidation; and

(4) in the case of a registrant, the information required by Section 207 concerning the person that would be the surviving entity in the proposed merger or consolidation.

(b) If a proposed merger or consolidation would change the control of a licensee or registrant, the licensee or registrant shall comply with Section 306 and this section.

(c) The department, in accordance with Section 202, shall approve, conditionally approve, or deny an application for approval of a merger or consolidation of a licensee or registrant. The department, in a record, shall send notice of its decision to the licensee or registrant and the person that would be the surviving entity. If the department denies the application, the licensee or registrant shall abandon the merger or consolidation or cease virtual-currency business activity with or on behalf of residents.

(d) The department may revoke or modify a determination under subsection (c), after notice and opportunity to be heard, if, in its judgment, revocation or modification is consistent with this [act].

(e) A plan of merger or consolidation of a licensee or a registrant with another person

must:

(1) describe the effect of the proposed transaction on the licensee's or registrant's conduct of virtual-currency business activity with or on behalf of residents;

(2) identify each person to be merged or consolidated and the person that would be the surviving entity; and

(3) describe the terms and conditions of the merger or consolidation and the mode of carrying it into effect.

(f) If a merger or consolidation of a licensee or registrant and another person requires approval of an agency of this state or another state with which this state has a reciprocity agreement and the action of the other agency conflicts with that of the department, the department shall confer with the other agency. If the proposed merger or consolidation cannot be completed because the conflict cannot be resolved, the licensee or registrant shall abandon the merger or consolidation or cease virtual-currency business activity with or on behalf of residents.

(g) The department may condition approval of an application under subsection (a). If the department does not receive notice from the parties that the parties accept the department's condition not later than 31 days after the department sends notice in a record of the condition, the application is deemed denied. If the application is deemed denied, the licensee or registrant shall abandon the merger or consolidation or cease virtual-currency business activity with or on behalf of residents.

(h) If a licensee or registrant acquires substantially all the assets of a person, whether or not the person's license was approved by or registration was filed with the department, the transaction is subject to this section.

(i) Submission in good faith of the records required by subsection (e) relieves the

proposed surviving entity from any obligation imposed by this section, other than subsections (c), (f), and (g), until the department has acted on the application.

[ARTICLE] 4

ENFORCEMENT

SECTION 401. ENFORCEMENT MEASURE. In this [article], “enforcement measure” means an action to:

- (1) suspend or revoke a license or a registration under this [act];
- (2) order a person to cease and desist from doing virtual-currency business activity with or on behalf of a resident;
- (3) request the court to appoint a receiver for the assets of a person doing virtual-currency business activity with or on behalf of a resident;
- (4) request the court to issue temporary, preliminary, or permanent injunctive relief against a person doing virtual-currency business activity with or on behalf of a resident;
- (5) assess a penalty under Section 404;
- (6) recover on the security under Section 204 and initiate a plan to distribute the proceeds for the benefit of a resident injured by a violation of this [act] or law of this state other than this [act] which applies to virtual-currency business activity with or on behalf of a resident; or
- (7) impose necessary or appropriate conditions on the conduct of virtual-currency business activity with or on behalf of a resident.

Comment

1. This comment sets forth the enforcement measures that the department may utilize to ensure compliance with the provisions of this act. Some of these measures the department may take on its own subject to the due process requirements provisions in Section 403 or existing state law. These include suspension or revocation of a license or registration. For other enforcement measures, such as obtaining a receivership for the licensee or registrant, the department must request the aid of an appropriate court.

2. This Article does not employ the criminal law as an enforcement measure. It also does not authorize the department to remove officers or directors of licensees or registrants.

3. This Article does not provide, with the exception of Section 407, for a private right of action to enforce the act in the beliefs that (a) administrative action can be more effective than private action where the burden is on an individual or individual users of the licensee's or registrant's services, and (b) administrative action will produce more uniform enforcement efforts in and among states enacting this act (for example, under Section 303). Moreover, more even application of this act may assist licensees and registrants as well as users of their services compared with individual actions inconsistent in result and that may take years to conclude.

SECTION 402. DEPARTMENT AUTHORITY TO USE ENFORCEMENT MEASURES.

(a) The department may take an enforcement measure against a licensee, registrant, or person that is neither a licensee nor registrant but is engaging in virtual-currency business activity with or on behalf of a resident if:

(1) the licensee, registrant, or person materially violates this [act], a rule adopted or order issued under this [act], or law of this state other than this [act] which applies to virtual-currency business activity of the violator with or on behalf of a resident;

(2) the licensee, registrant, or person does not cooperate substantially with an examination or investigation by the department, fails to pay a fee, or fails to submit a report or documentation;

(3) the licensee, registrant, or person, in the conduct of its virtual-currency business activity with or on behalf of a resident, engages in:

(A) an unsafe or unsound act or practice;

(B) an unfair or deceptive act or practice;

(C) fraud or intentional misrepresentation;

(D) another dishonest act; or

(E) misappropriation of legal tender, virtual currency, or other value held

by a fiduciary;

(4) an agency of the United States or another state takes an action against the licensee, registrant, or person which would constitute an enforcement measure if the department had taken the action;

(5) the licensee, registrant, or person is convicted of a crime related to its virtual-currency business activity with or on behalf of a resident or involving fraud or felonious activity that, as determined by the department, makes the licensee, registrant, or person unsuitable to engage in virtual-currency business activity; or

(6) the licensee, registrant, or person:

(A) becomes insolvent;

(B) makes a general assignment for the benefit of its creditors;

(C) becomes the debtor, alleged debtor, respondent, or person in a similar capacity in a case or other proceeding under any bankruptcy, reorganization, arrangement, readjustment, insolvency, receivership, dissolution, liquidation, or similar law, and does not obtain from the court, within a reasonable time, confirmation of a plan or dismissal of the case or proceeding; or

(D) applies for or permits the appointment of a receiver, trustee, or other agent of a court for itself or for a substantial part of its assets; or

(7) the licensee, registrant, or person makes a material misrepresentation to the department.

(b) On application and for good cause, the department may:

(1) extend the due date for filing a document or report under subsection (a)(2); or

(2) waive to the extent warranted by circumstances, such as a bona fide error

notwithstanding reasonable procedures designed to prevent error, an enforcement measure under subsection (a) if the department determines that the waiver will not adversely affect the likelihood of compliance with this [act].

(c) In an enforcement action related to operating without a license under this [act] or registration in this state, it is a defense to the action that the person has in effect a customer-identification program reasonably designed to identify whether a customer is a resident, which failed to identify the particular customer as a resident.

(d) A proceeding under this [act] is subject to the [insert citation to state's administrative procedure act].

Comment

1. This section sets out the circumstances under which the department may take the enforcement measures authorized under Section 401 against a licensee, a registrant, or a person that should be licensed or registered but is not. Minor violations as opposed to material violations are not subject to the enforcement measures of Section 401. What is a material violation is to be determined by the department, and a pattern or practice of the same or similar minor violations may be treated as a material violation of this act. The same principles apply to Subsection 402(a)(3), with the possible exception of some types of dishonest acts, which may be considered material violations.

2. An enforcement measure may be involved for activity that does not per se constitute a violation of this act, such as a failure to cooperate with an examination, committing a crime related to the virtual-currency business activity of the person, or the person becoming insolvent.

3. Proceedings by the department are subject to the administrative procedures act of the enacting jurisdiction.

4. This section expressly provides for certain defenses for licensees and registrants. One of these is a bona fide error notwithstanding reasonable procedures designed, implemented, and maintained to prevent errors. Reliance on and compliance in good faith with a rule or guidance issued or provided by the department even though the rule or guidance is later invalidated normally will constitute a bona fide error, but reliance on opinion of counsel even in good faith will not constitute a bona fide error if the opinion turns out to be incorrect. A similar defense normally exists for a person that should be licensed or registered but is not.

5. In connection with subsection (a)(3), a list of examples of felonies involving bank fraud or other activity that would make a person unsuitable for a position of trust in virtual-

currency business activity could be inserted. An example of such a list from Texas Fin. Code 151.202(d) and (e) covers:

- Money transmission or other money services, including a reporting, recordkeeping or registration requirement of the Bank Secrecy Act, the USA Patriot Act, or comparable provisions of state law;
- Money laundering, structuring, or a related financial crime;
- Drug trafficking;
- Terrorist funding; or,
- A similar law of a foreign country unless it is demonstrated to the satisfaction of the department that the conviction was based on extenuating circumstances unrelated to the person's reputation for honesty or obedience to the law.

[SECTION 403. NOTICE AND OPPORTUNITY FOR HEARING.

(a) Except as otherwise provided in subsection (b), the department may take an enforcement measure only after notice and opportunity for a hearing appropriate in the circumstances.

(b) The department may take an enforcement measure other than the imposition of a civil penalty under Section 404:

(1) without notice if the circumstances require action before notice can be given;

(2) after notice and without a prior hearing if the circumstances require action before a hearing can be held; or

(3) after notice and without a hearing if the person conducting virtual-currency business activity with or on behalf of a resident does not timely request a hearing.

(c) If the department takes action under subsection (b)(1) or (2), the person subject to the enforcement measure has the right to an expedited post-action hearing by the department unless the person has waived the hearing.]

Legislative Note: *If the state's administrative procedure act does not set out due process rights, the enacting state should enact Section 403. If the department would not be subject to the state's administrative procedure [act], the administrative procedure act should be amended to apply to the department for purposes of this [act].*

SECTION 404. CIVIL PENALTY.

(a) If a person other than a licensee or registrant engages in virtual-currency business activity with or on behalf of a resident in violation of this [act], the department may assess a civil penalty against the person in an amount not to exceed \$[50,000] for each day of violation.

(b) If a licensee or registrant materially violates a provision of this [act], the department may assess a civil penalty in an amount not to exceed \$[10,000] for each day of violation.

(c) A civil penalty under this section continues to accrue until the earlier of:

(1) the date the violation ceases; or

(2) a date specified by the department.

***Legislative Note:** If state law or practice does not allow a state agency to both prosecute and adjudicate a civil penalty, the enacting state should amend this section to reflect its law or practice.*

Comment

1. This section allows the department to impose a civil penalty in an appropriate amount depending on the nature and duration of the violation against the violating licensee or registrant. A person who should be licensed or registered but is not is subject to the most potentially severe penalty of up to \$50,000 per day, depending on the reason for the violation.

2. Other material violations of this act incur a lesser potential penalty, which may range from a small amount for an inadvertent technical violation to the maximum amount for a serious violation committed with reckless disregard or with intent.

3. A minor violation in isolation is not subject to a civil penalty under this section. A minor violation, if repeated so as to become material, may be subject to a civil penalty under this section.

SECTION 405. EFFECTIVE PERIOD OF REVOCATION, SUSPENSION, OR CEASE AND DESIST ORDER.

(a) Revocation of a license under this [act] is effective against a licensee one day after the department sends notice in a record of the revocation to the licensee, by a means reasonably selected for the notice to be received by the recipient in one day, to the address provided for

receiving communications from the department.

(b) Suspension of a license under this [act], suspension of a registration, or an order to cease and desist is effective against a licensee, registrant, or other person one day after the department sends notice in a record of the suspension or order to the licensee, registrant, or other person, by a means reasonably selected for the notice to be received by the recipient in one day, to the address provided for receiving communications from the department or, if no address is provided, to the recipient's last known address. A suspension or order to cease and desist remains in effect until the earliest of:

(1) entry of an order by the department under the [state administrative procedure act] setting aside or limiting the suspension or order;

(2) entry of a court order setting aside or limiting the suspension or order to cease and desist; or

(3) a date specified by the department.

(c) If, without reason to know of the department's notice sent under subsection (a) or (b), a licensee, registrant, or other person does not comply in accordance with the notice until the notice is actually received at the address provided, the department may consider the delay in compliance in imposing a sanction for the failure.

SECTION 406. CONSENT ORDER. The department may enter into a consent order with a person regarding an enforcement measure. The order may provide that it does not constitute an admission of fact by a party.

SECTION 407. SCOPE OF RIGHT OF ACTION.

(a) Except as otherwise provided in this section, a person does not have a right of action for violation of this [act].

(b) The department may bring an action for restitution on behalf of a resident if the department proves economic injury due to a violation of this [act].

(c) This section does not preclude an action by a resident to enforce rights under Section 502 or law of this state other than this [act].

Comment

1. As explained in Comment 2 to Section 401, this act does not afford a private right of action for a violation. There are two exceptions to this principle. The first is for a violation of Section 502. Section 502 is derived from Uniform Commercial Code (“UCC”) Section 8-503; UCC Article 8 does provide for private rights of action if a person in the capacity of a securities intermediary violates UCC Section 8-503. It is, therefore, logical that an individual should have a similar right of action for a violation of Section 502 of this act, which is modeled on UCC Section 8-503.

2. The other exception to the rule against private rights of action for violations of this act would afford an individual a right of action for conduct that violates or is related to Section 502 of this act, such as fraudulently covering up a failure to maintain the required amount of virtual currency under control, or converting for the virtual-currency business’ own use the virtual currency under its control for other persons.

3. When a class action may be brought to enforce individual rights of action is not specifically addressed by this section. In some circumstances, such as those described in comment 2 to this section, a class action may be warranted. In others, such as where only a particular owner’s virtual currency is converted, no class action would be warranted.

4. A failure by a virtual-currency business to perform as directed by a customer, such as by use of a customer’s virtual currency directly or as collateral for an obligation of the virtual-currency business, or otherwise, could give rise to a private right of action under subsection (c) of this section. Because a customer’s directions are specific to the transaction and the virtual-currency business’s obligations to that customer, allowing a limited private right of action normally should not add, and is not intended to add, a risk of class-action claims.

5. Nothing in this Article is intended to preclude an enforcement action by the department seeking recovery for customers of the virtual-currency business and subsection (b) specifically provides the department authority to do so.

[ARTICLE] 5

DISCLOSURES AND OTHER PROTECTIONS FOR RESIDENTS

SECTION 501. REQUIRED DISCLOSURES.

(a) A licensee or registrant shall provide to a resident who uses the licensee's or registrant's products or service the disclosures required by subsection (b) and any additional disclosure the department by rule determines reasonably necessary for the protection of residents. The department shall determine by rule the time and form required for disclosure. A disclosure required by this section must be made separately from any other information provided by the licensee or registrant and in a clear and conspicuous manner in a record the resident may keep. A licensee or registrant may propose for the department's approval alternate disclosures as more appropriate for its virtual-currency business activity with or on behalf of residents.

(b) Before establishing a relationship with a resident, a licensee or registrant shall disclose, to the extent applicable to the virtual-currency business activity the licensee or registrant will undertake with the resident:

(1) a schedule of fees and charges the licensee or registrant may assess, the manner by which fees and charges will be calculated if they are not set in advance and disclosed, and the timing of the fees and charges;

(2) whether the product or service provided by the licensee or registrant is covered by:

(A) a form of insurance or is otherwise guaranteed against loss by an agency of the United States:

(i) up to the full U.S. Dollar equivalent of virtual currency placed under the control of or purchased from the licensee or registrant as of the date of the placement or

purchase, including the maximum amount provided by insurance under the Federal Deposit Insurance Corporation or otherwise available from the Securities Investor Protection Corporation;
or

(ii) if not provided at the full U.S. Dollar equivalent of virtual currency placed under the control of or purchased from the licensee or registrant, the maximum amount of coverage for each resident expressed in the U.S. Dollar equivalent of the virtual currency; or

(B) private insurance against theft or loss, including cyber theft or theft by other means;

(3) the irrevocability of a transfer or exchange and any exception to irrevocability;

(4) a description of:

(A) liability for an unauthorized, mistaken, or accidental transfer or exchange;

(B) the resident's responsibility to provide notice to the licensee or registrant of the transfer or exchange;

(C) the basis for any recovery by the resident from the licensee or registrant;

(D) general error-resolution rights applicable to the transfer or exchange;
and

(E) the method for the resident to update the resident's contact information with the licensee or registrant;

(5) that the date or time when the transfer or exchange is made and the resident's account is debited may differ from the date or time when the resident initiates the instruction to

make the transfer or exchange;

(6) whether the resident has a right to stop a pre-authorized payment or revoke authorization for a transfer and the procedure to initiate a stop-payment order or revoke authorization for a subsequent transfer;

(7) the resident's right to receive a receipt, trade ticket, or other evidence of the transfer or exchange;

(8) the resident's right to at least 30 days' prior notice of a change in the licensee's or registrant's fee schedule, other terms and conditions of operating its virtual-currency business activity with the resident and the policies applicable to the resident's account; and

(9) that virtual currency is not legal tender.

(c) Except as otherwise provided in subsection (d), at the conclusion of a virtual-currency transaction with or on behalf of a resident, a licensee or registrant shall provide the resident a confirmation in a record which contains:

(1) the name and contact information of the licensee or registrant, including information the resident may need to ask a question or file a complaint;

(2) the type, value, date, precise time, and amount of the transaction; and

(3) the fee charged for the transaction, including any charge for conversion of virtual currency to legal tender, bank credit, or other virtual currency.

(d) If a licensee or registrant discloses that it will provide a daily confirmation in the initial disclosure under subsection (c), the licensee or registrant may elect to provide a single, daily confirmation for all transactions with or on behalf of a resident on that day instead of a per-transaction confirmation.

Comment

1. Section 501 specifies the types of disclosures that a licensee and registrant should be able to make in its dealings with or on behalf of residents of this state. Subparagraph 501(b)(2) requires a licensee or registrant to disclose to its customers whether the product or service provided is covered by a form of insurance or otherwise is guaranteed against loss by an agency of the United States, and the degree of coverage – whether coverage is up to the full U.S. dollar equivalent of the virtual currency or the maximum amount of coverage that the licensee or registrant makes available.

2. Uniform acts commonly employ two approaches to “level the playing field” when “consumers” of services and products deal with “merchants.” One is to provide disclosures to provide consumers adequate knowledge that they might not otherwise have to enable them to protect their own interests. The other, to address unequal bargaining power, is to prohibit certain practices and terms or conditions in agreements. This act employs both approaches, the former in Section 501 and the latter in Section 502. It also employs a third approach in Article 6 that mandates the establishment and maintenance of specified policies and procedures to reduce or eliminate the designated problems that might otherwise arise. This approach allows policies and procedures appropriate for specific business plans, rather than regulating a “one size fits all” statutory mandate. The disclosures are required even if the person receiving them is a business. Many persons engaging in virtual-currency business activities are unsophisticated, and, even if they are knowledgeable, trying to define which persons are knowledgeable and which are not is not desirable because the disclosures do not harm and requiring the virtual-currency business to make such a determination opens the door to errors in compliance.

3. Section 501 requires a number of disclosures while allowing flexibility to design disclosures for particular types of services or products and circumstances. The specified disclosures are mandated before a resident of an enacting state establishes a relationship with the virtual-currency business and are appropriate to that context, such as the schedule of fees and charges, whether the provider offers any insurance against loss, procedures if a resident questions a transaction as unauthorized, mistaken, or accidental, other error-resolution rights, and any right to stop the transaction, among others.

4. The form for, and delivery of, the information required to be disclosed is covered, the latter to assure that the information is not lost in a complex, lengthy form. The department’s authority to issue regulations and guidance under Article 2 is available to be employed here.

SECTION 502. PROPERTY INTERESTS AND ENTITLEMENTS TO VIRTUAL CURRENCY.

(a) A licensee or registrant that has control of virtual currency for one or more persons shall maintain in its control an amount of each type of virtual currency sufficient to satisfy the aggregate entitlements of the persons to the type of virtual currency.

(b) If a licensee or registrant violates subsection (a), the property interests of the persons in the virtual currency are pro rata property interests in the type of virtual currency to which the persons are entitled, without regard to the time the persons became entitled to the virtual currency or the licensee or registrant obtained control of the virtual currency.

(c) The virtual currency referred to in this section is:

- (1) held for the persons entitled to the virtual currency;
- (2) not property of the licensee or registrant; and
- (3) not subject to the claims of creditors of the licensee or registrant.

Comment

1. This section is based on Uniform Commercial Code (“UCC”) Sections 8-503 and 8-504 and protects the owner of virtual currency that is entrusted to a licensee or registrant for a purpose governed by this act. Enforcement is by the department, but also by private rights of action under this section as mentioned in Section 407. In essence, this section takes the virtual currency under the control of a licensee or registrant off the balance sheet of the virtual-currency business and beyond the business’ right to deal with it as their own property. This formulation reduces the need for greater net worth and reserves than Section 204 requires without sacrificing user protection.

2. This section favors the interests of persons who place virtual currency under the control of a licensee or registrant over the interests of a licensee’s or registrant’s creditors. Section 502 (a) requires the virtual-currency business with “control” over virtual currency that belongs to residents of the enacting state to maintain an amount of each type of virtual currency sufficient to satisfy the aggregate entitlements of the persons to each type of virtual currency for the benefit of its resident customers, and (b) favors the interests of persons who place virtual currency under the control of a licensee or registrant over the interests of creditors of the licensee or registrant. To clarify the rights of persons that place their virtual currency under the control of virtual-currency businesses and of the virtual-currency businesses themselves, the Uniform Law Commission is developing an act that will provide, when approved and enacted, a substitute for Section 502 of this act that instead adopts UCC Article 8’s more balanced approach to this matter. This act is expected to be ready for enactment in 2018.

[ARTICLE] 6

POLICIES AND PROCEDURES

SECTION 601. MANDATED COMPLIANCE PROGRAMS AND MONITORING.

(a) An applicant, before submitting an application, and registrant, before registering, shall create and, during licensure or registration, maintain in a record policies and procedures for:

- (1) an information-security and operational-security program;
- (2) a business-continuity program;
- (3) a disaster-recovery program;
- (4) an anti-fraud program;
- (5) an anti-money-laundering program;
- (6) a program to prevent funding of terrorist activity; and
- (7) a program designed to:

(A) ensure compliance with this [act], law of this state other than this [act], and federal law, which are relevant to the virtual-currency business activity contemplated by the licensee or registrant with or on behalf of residents; and

(B) assist the licensee or registrant in achieving the purposes of law of this state other than this [act] and federal law if violation of that law has a remedy under this [act].

(b) Each policy required by subsection (a) must be in a record and designed to be adequate for a licensee's or registrant's contemplated virtual-currency business activity with or on behalf of residents, considering the circumstances of all participants and the safe operation of the activity. Each policy and implementing procedure must be compatible with other policies and the procedures implementing them and not conflict with policies or procedures applicable to the licensee or registrant under law of this state other than this [act]. A policy and

implementing procedure may be one in existence in the licensee's or registrant's virtual-currency business activity with or on behalf of residents.

(c) A licensee's or registrant's policy for detecting fraud must include:

(1) identification and assessment of the material risks of its virtual-currency business activity related to fraud;

(2) protection against any material risk related to fraud identified by the department or the licensee or registrant; and

(3) periodic evaluation and revision of the anti-fraud procedure.

(d) A licensee's or registrant's policy for preventing money laundering and financing of terrorist activity must include:

(1) identification and assessment of the material risks of its virtual-currency business activity related to money laundering and financing of terrorist activity;

(2) procedures, in accordance with federal law or guidance published by federal agencies responsible for enforcing federal law, pertaining to money laundering and financing of terrorist activity; and

(3) filing reports under the Bank Secrecy Act, 31 U.S.C. Section 5311 et seq. [,as amended], or 31 C.F.R. Part X [,as amended], and other federal or state laws pertaining to the prevention or detection of money laundering or financing of terrorist activity.

(e) A licensee's or registrant's information-security and operational-security policy must include reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of any non-public personal information or virtual currency it receives, maintains, or transmits.

(f) A licensee or registrant is not required to file with the department a copy of a report it

makes to a federal authority unless the department specifically requires filing.

(g) A licensee's or registrant's protection policy under subsection (e) for residents must include:

(1) any action or system of records required to comply with this [act] and law of this state other than this [act] applicable to the licensee or registrant with respect to virtual-currency business activity with or on behalf of a resident;

(2) a procedure for resolving disputes between the licensee or registrant and a resident;

(3) a procedure for a resident to report an unauthorized, mistaken, or accidental virtual-currency business activity transaction; and

(4) a procedure for a resident to file a complaint with the licensee or registrant and for the resolution of the complaint in a fair and timely manner with notice to the resident as soon as reasonably practical of the resolution and the reasons for the resolution.

(h) After the policies and procedures required under this section are created and approved by the department and the licensee or registrant, the licensee or registrant shall engage a responsible individual with adequate authority and experience to monitor each policy and procedure, publicize it as appropriate, recommend changes as desirable, and enforce it.

(i) A licensee or registrant may:

(1) request advice from the department as to compliance with this section; and

(2) with the department's approval, outsource functions, other than compliance, required under this section.

(j) Failure of a particular policy or procedure adopted under this section to meet its goals in a particular instance is not a ground for liability of the licensee or registrant if the policy or

procedure was created, implemented, and monitored properly. Repeated failures of a policy or procedure are evidence that the policy or procedure was not created or implemented properly.

(k) Policies and procedures adopted under this section must be disclosed separately from other disclosures made available to a resident, in a clear and conspicuous manner and in the medium through which the resident contacted the licensee or registrant.

Legislative Note: *In states in which the constitution, or other law, does not permit the phrase “as amended” when federal statutes or regulations are incorporated into state law, the phrase should be deleted in subsection (d)(3).*

Comment

1. As explained in Comment 1 to Section 501, this section and Section 602 require that a licensee and registrant establish and maintain policies and procedures covering the items listed in this section that are intended to reduce or eliminate problems that may arise in the operation of the businesses of trusted intermediaries, such as virtual-currency business licensees and registrants. The specific policies and procedures include information and operational security (often referred to colloquially as “cybersecurity”), anti-fraud protections such as the “Red Flags” requirements imposed by the Fair Credit Reporting Act and federal agency regulations implementing them, anti-money-laundering and counter-terrorist-financing statutes and regulations, and compliance with other relevant federal or state laws. This approach allows policies and procedures to be designed to fit particular business models rather than taking a statutory “one-size-fits-all” approach.

2. Subparagraph (1)(a) speaks to the need of what has been referred to colloquially as a “cyber-security” policy or program. Cyber-security includes both information security and operational security and, accordingly, this act uses the more contemporary fulsome descriptions in Section 601 to describe the obligations imposed on licensees and registrants under this act.

3. The department is authorized to assist through advice in the development of required policies and procedures, and to allow outsourcing of the operation of certain programs rather than requiring the virtual-currency business to engage a third party with adequate experience and facilities to do so. The disclosure requirement allows persons engaging the services of a licensee or registrant to be aware of the policies and procedures intended for their benefit.

4. There is no requirement in this act for the licensee or registrant to make filings with the department that would duplicate filings they must make to federal agencies and departments under the federal Bank Secrecy Act or regulations enforced by the Department of the Treasury’s FinCEN or Office of Foreign Assets Control (“OFAC”) agencies.

SECTION 602. MANDATED COMPLIANCE POLICY OR PROCEDURE.

(a) An applicant, before submitting its application, and a registrant, before registering, shall establish and maintain in a record a policy or procedure designed to ensure compliance with:

(1) this [act]; and

(2) law of this state other than this [act] if:

(A) the other law is relevant to the virtual-currency business activity contemplated by the licensee or registrant or the scope of this [act]; or

(B) this [act] could assist in the purpose of the other law because violation of the other law has a remedy under this [act].

(b) A policy or procedure under subsection (a):

(1) must be compatible, and not conflict, with requirements applicable to a licensee or registrant under law of this state other than this [act] and under federal law; and

(2) may be a policy or procedure in existence for the licensee's or registrant's virtual-currency business activity with or on behalf of a resident.

(c) After the policies and procedures required under this section are created by the licensee or registrant and approved by the department, the licensee or registrant shall engage a responsible individual with adequate authority and experience to monitor each policy or procedure, publicize it as appropriate, recommend changes as desirable, and enforce it.

(d) A licensee or registrant may:

(1) request advice from the department as to compliance with this section; and

(2) with the department's approval, outsource functions, other than compliance, required under this section.

(e) Failure of a particular policy or procedure adopted under this section to meet its goals in a particular instance is not a ground for liability of the licensee or registrant if the policy or procedure was created, implemented, and monitored properly. Repeated failures of a policy or procedure are evidence that the policy or procedure was not created or implemented properly.

[ARTICLE] 7

MISCELLANEOUS PROVISIONS

SECTION 701. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform [act], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

SECTION 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 703. SAVING AND TRANSITIONAL PROVISIONS.

(a) A license issued under [insert citation to state's Money Services Act or Money Transmitter Act] which is in effect immediately before [the effective date of this [act]] remains in effect as a license for its duration unless revoked or suspended by the licensing authority that issued it. A person licensed under [insert citation to state's Money Services Act or Money Transmitter Act] which does not intend to engage in virtual-currency business activity is not required to inform the department of its intention.

(b) If the department denies, suspends, or revokes a license under this [act] or suspends,

or revokes a registration to conduct virtual-currency business activity with or on behalf of a resident, the denial, suspension, or revocation may not be used as a ground for suspension or revocation of a license granted under [insert citation to state's Money Services Act or Money Transmitter Act] unless that [act] independently provides a basis for action against the licensee or registrant.

(c) This [act] applies to virtual-currency business activity with or on behalf of a resident on or after [the effective date of this [act]].

(d) A person is deemed to be conducting unlicensed virtual-currency business activity with or on behalf of a resident in violation of this [act] if the person engages in virtual-currency business activity on or after [the effective date of this [act]] and the person does not hold a license issued or recognized under this [act], is not exempt from this [act], and has not applied for a license or filed a registration. This subsection includes a person that:

(1) has obtained a license under [insert citation to state's Money Services Act or Money Transmitter Act], whether or not that [act] covers virtual-currency business activity, or holds a charter as a trust company from this state; and

(2) does not have permission to engage in virtual-currency business activity with or on behalf of a resident.

Legislative Note: A state that allows a state-chartered bank with trust powers or a non-bank trust company or limited-purpose trust company to engage in activities that would be governed by this [act], only if it has received a separate permit or approval, or otherwise conditions its exercise of powers governed by this [act], should add a separate savings or transitional subsection to this [article]. The new subsection should specify any limitations on the powers of the trust company or limited-purpose trust company as well as the state's preference on reciprocal licensing of a trust company or limited-purpose trust company, or of recognizing cross-border activities of a chartered trust company or limited-purpose trust company not domiciled in the state.

[SECTION 704. SEVERABILITY CLAUSE. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

Legislative Note: Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.

SECTION 705. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

Legislative Note: An enacting state should modify or repeal any other law regulating virtual-currency business activity with or behalf of a resident, if the state regulates virtual-currency business activities as money transmission.

SECTION 706. EFFECTIVE DATE. This [act] takes effect