

D R A F T

FOR APPROVAL

**UNIFORM REGULATION OF VIRTUAL CURRENCY
BUSINESSES ACT**

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SIXTH YEAR
SAN DIEGO, CALIFORNIA
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**UNIFORM REGULATION OF VIRTUAL CURRENCY
BUSINESSES ACT**

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 8, 2017

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UNIFORM REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT

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1 **UNIFORM REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT**

2 **PREFATORY NOTE**

3 **Purpose of the Act**

4 The purpose of this act is to create a statutory structure for regulating the “virtual
5 currency business activity” of person offering services or products to residents of enacting states.
6 “Virtual currency business activity” covered by this act is similar to services whose providers are
7 already subject to licensure and prudential regulation by “money transmitter” or “money
8 services” statutes in many states. In particular, the act would require licensure of and impose
9 prudential regulations and customer protection requirements on businesses whose products and
10 services include

- 11
- 12 (1) the exchange of virtual currencies for cash, bank deposits, or other virtual currencies;
13
- 14 (2) the transfer from one customer to another person of virtual currencies; or
15
- 16 (3) certain custodial or fiduciary services in which the property or assets under the
17 custodian’s control or under management include property or assets recognized as
18 “virtual currency.”
19

20 The underlying assumption motivating this act is that appropriate regulation will provide
21 assurance to persons using virtual currency products and services and to providers that they will
22 in fairness be regulated like other providers of financial services and products. Accordingly, this
23 act regulates providers of “virtual currency business services” and certain issuers of “virtual
24 currency” in a manner similar to the manner that states that enacted the Uniform Money Services
25 Act regulate money transmitters, check cashers, and similar businesses, and the manner in which
26 prudential regulators of banks and similar providers are developing regulatory regimes, such as
27 the Conference of State Bank Supervisors’(CSBS) September 2015 Framework for regulating
28 virtual currency businesses. This act also should serve to clarify which state laws – those
29 regulating “money transmission” or general “money services” or this act or this specialty virtual
30 currency business law – will govern the licensure, prudential regulation, and customer protection
31 requirements placed on those engaged in “virtual currency business activity.” Clarity about
32 which regulatory regime will govern virtual currency business activity will assist virtual currency
33 businesses in many states and the greater legitimacy that uniform acts can bring to industry
34 sectors will enhance the ability of these types of businesses to attract investment and customers.
35

36 The key factors for determining which providers of virtual currency products and services
37 are subject to this act are found in two definitions in section 102 – the definitions of the terms
38 “virtual currency” and “virtual currency business activity.” In addition, this act contains
39 numerous complete exemptions from its provisions. These exemptions are similar to those found
40 in the Uniform Money Services Act or in other state “money transmitter” statutes, as well as
41 others found in guidance published by the Department of the Treasury’s Financial Crimes
42 Enforcement Network (“FinCEN”) since March 2013. The exemptions are found in section 103
43 of this act.

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

- 5
- 6 (1) a three-tier system for determining which providers are exemption from the act
7 consisting of persons engaging in only minor activity, an intermediate provisional
8 registration status that is modeled as an “on-ramp” or “regulatory sandbox” that is
9 designed to facilitate innovations in virtual currency businesses with more modest
10 regulatory requirements, and full licensure for providers with specified business
11 volumes;
 - 12
 - 13 (2) mandatory application to virtual currency assets under the control of providers of
14 virtual currency services and products of provisions found in U.C.C. Article 8, Part
15 5’s rules protecting those assets from claims of the providers’ creditors and
16 purchasers from the provider, and providing a familiar base for commercial law rules
17 that will facilitate access to credit as well as other familiar commercial law concepts;
 - 18
 - 19 (3) a heightened focus on enabling cross-state “reciprocal licensure” for providers to
20 enable providers to provide new products to more customers at lower regulatory
21 costs. These features are described in greater detail below; and
 - 22
 - 23 (4) more flexible provisions on net worth and reserve requirements than have been found
24 in money transmitter acts that are related to the decision to apply U.C.C. Article 8,
25 Part 5 protection of customers’ assets in the provider’s hands from investment by the
26 provider or from the reach of the provider’s creditors.
 - 27

28 This act is modeled after the Uniform Money Services Act and also adheres to the
29 contours of FinCEN’s published guidance. FinCEN focuses on which types of “virtual
30 currency” are covered by its “prepaid access” regulations promulgated under the Bank Secrecy
31 Act, and which are not. FinCEN’s guidance thus clarifies which providers of services and
32 products are required to register with FinCEN as “money services businesses” in order to comply
33 with the Bank Secrecy Act and to avoid being in violation of 18 U.S.C. 1960.

34

35 This act also largely adheres to the CSBS’ September 2015 Framework mentioned
36 above. This Prefatory Note and the Official Comments to this act explain in more detail how the
37 Uniform Money Services Act, FinCEN regulations and guidance, and the CSBS Framework
38 influenced this act’ provisions.

39

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

1 This act addresses the needs of these future customers. The second reason is that virtual
2 currency businesses need banking relationships and credit opportunities as well as early-round
3 investors to succeed. This act is intended to foster clarity in the minds of banks, bank regulators
4 and investors that the businesses will be able to succeed as businesses, with banking services and
5 greater regulatory certainty behind them.
6

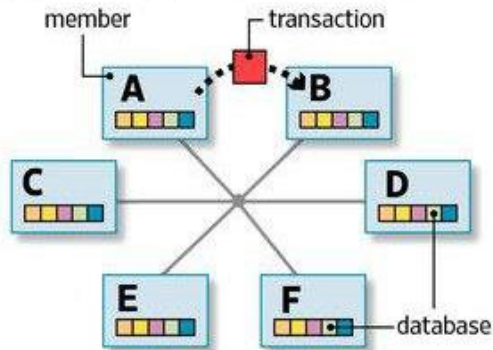
7 **What is Virtual Currency and How is it Used?**

8 *What is Virtual Currency?* 9

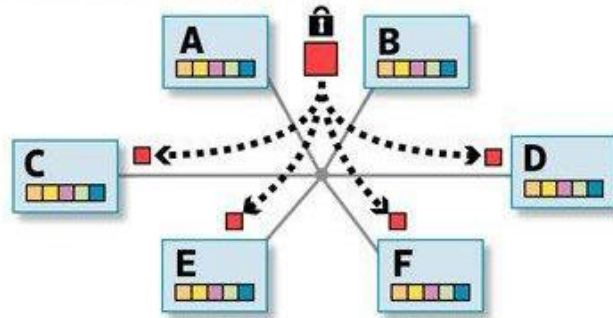
10 Virtual currency is intangible. Its “manifestation” is in the form of lengthy computer
11 addresses referred to as the private key and the public key. At this time, in order to transfer the
12 value that the addresses represent, one needs to have access to both the public and private keys.
13 A distributed ledger is an asset registry: it holds records of the value issued or earned and of
14 transfers of interests in that value. The value of virtual currency is a function of what the market
15 will bear, not a value decreed by a government or determined by an international organization.
16 Thus, virtual currency values are capable of fluctuations more like commodities than many
17 government-dictated “exchange” values even if the exchange values “float.”
18

Transfers of virtual currency operate much like sending an 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. The following diagram illustrates the process:

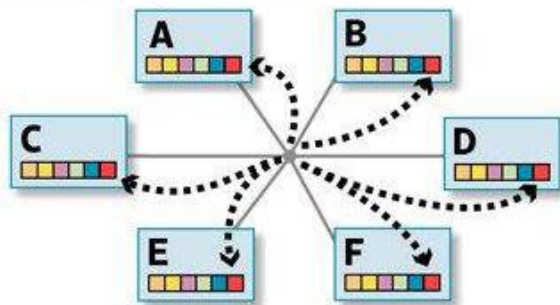
All members have a copy of the shared database/ledger. When a member wants to send money to another member (e.g., A to B), a "block," or chunk of data, is created to represent the transaction.



Cryptography is used to share the transaction with the group while also maintaining privacy if the parties desire. The network recognizes the transaction as valid because the digital signature—which only the signatory can see—is mathematically linked to a public signature that only a bona fide transaction could bear.

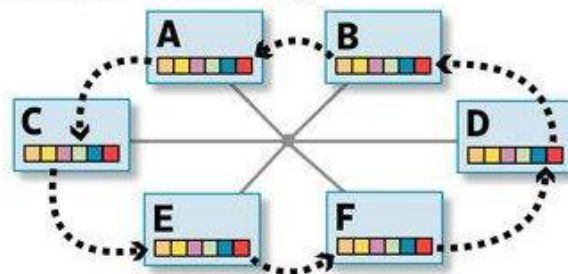


Once a block is confirmed, all members add the block to their copies of the database.



Sources: Smart Dubai; Collin Thompson, Medium.com

Complex mathematics are used to ensure that there is consensus among the database copies, which prevents tampering.



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1 Virtual currencies currently are in one of two forms – they emanate from a centralized
 2 issuer or they result from the work of a person solving a puzzle with the virtual currency being
 3 “issued” as a reward for the work expended. The former are referred to as centralized; the latter
 4 are decentralized. In a decentralized system such as Bitcoin, the puzzle-solvers who initially
 5 receive bitcoin as rewards, are referred to as “miners.” Miners also perform verification and
 6 validation functions in maintaining the integrity of the distributed ledger on which extant
 7 bitcoins are registered and onto which transfers are recorded.

8
 9 The distributed ledger (or asset registry) that records the issuance or earning of virtual
 10 currencies and the transfers of interests can be public or private. These ledgers are often called
 11 “blockchains” because of the algorithms employed and the manner in which changes are
 12 recorded, as additions to the earlier blocks of information stored by the ledger. In centralized
 13 systems, a single operator manages the issuance and transfers. In decentralized systems, a group
 14 of managers work to maintain the integrity of the registry. In Bitcoin, the form of virtual
 15 currency created by “Satoshi Nakamoto,” the group of problem-solver managers are known as
 16 “miners.” Centralized issuers of virtual currencies do not require miners to help create units or
 17 record their transfers; only Bitcoin uses “miners” at this time.

1 Virtual currencies are a subset of cryptocurrencies. As media of exchange, they offer a
2 communications technology for peer-to-peer (P2P) transactions that is the equivalent of paying
3 cash – irreversible and not dependent on a third-party (*i.e.* a bank) to carry out the transaction.
4 That does not mean, however, that users do not use third party custodians or intermediaries to
5 perform transaction execution or facilitate storage of virtual currency assets.
6

7 A key feature of some virtual currencies is that peer-to-peer transactions operate through
8 pseudonyms or the addresses mentioned above. It is possible to reconstruct a series of transfers
9 affecting one unit of value, but not necessarily to identify the person owning the unit or initiating
10 the transfer.
11

12 Virtual currencies are treated for some purposes as “property” rather than currencies.

13 This is true under the Uniform Revised Unclaimed Property Act.

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

15 Virtual currency, as defined in § 102(22),

16 (A) means a digital representation of value that:

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

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

19 (B) does not include:

20 (1) software or a protocol governing transfer of the digital representation of
21 value;

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

25 (3) a digital representation of value used within an online game, game
26 platform, or a family of games sold by the same publisher or offered on the same
27 game platform.
28

29 Although “virtual currency” is neither “legal tender” nor “money,” virtual currency is used as a
30 substitute for “money” between an obligor and obligee that have agreed to transact business as if
31 a barter transaction is occurring, that is, where the transaction is not subject to laws that specify
32 when the discharge of the “debt” occurs.
33

34 This definition depends on several active concepts, such as “control,” “exchange,”
35 “storage,” and “transfer.”
36

37 Section 102(3)(A) defines the term “control” of virtual currency itself – as opposed to
38 control of an entity – as
39

40 Control” means:

41 (A) When used in reference to a transaction or relationship involving
42 virtual currency, means power to execute unilaterally or prevent

1 indefinitely a virtual currency transaction.

2 ...

3 Section 102(6) defines the term “exchange” as

4
5 ...to assume control of virtual currency from or on behalf of a resident, at least
6 momentarily, to sell, trade or convert:

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

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

10
11 The terms “storage” and “transfer” are defined in sections 102(19) and (20) as:

12
13 (19) “Storage” means maintaining control of virtual currency on behalf of a
14 resident by any person other than the resident.

15
16 (20) “Transfer” means to assume control of virtual currency from or on behalf of a
17 resident and to

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

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

21 (C) relinquish control of virtual currency or of virtual currency credentials to
22 another person.

23
24 *What Types of Virtual Currency Business Activities Does this Act Cover?*

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

31
32 The term “virtual currency business activity” in section 102(24) means:

33 (A) exchanging, transferring, or storing virtual currency with or on behalf of
34 residents or engaging in virtual currency administration, whether directly or
35 through an agreement with a virtual currency control services vendor;

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

39 (C) exchanging otherwise non-convertible digital units for one or more forms of
40 convertible virtual currency or for legal tender or bank credit outside the online
41 game, game platform, or family of games offered by the same publisher from
42 which the original digital units were received.

1 The third factor is whether the provider is exempt from this act under section 103.
2 Section 103 contains sixteen specific types of exemptions from this act’s coverage. Many are
3 commonly found in “money services” and “money transmitter” statutes enacted by the states. A
4 few derive from guidance that FinCEN has issued to date.
5

6 Taking all three factors into consideration, a few examples illustrate how these three
7 factors work together.
8

9 “Control” is intended to signal a case in which the “owner” of virtual currency gives
10 power to another person who engages in virtual currency business activity that permits the
11 second person to unilaterally transact or permanently prevent transactions with the “owner’s”
12 virtual currency. To effectuate this, the “owner” gives both the public and private keys that
13 enable transactions in his or her virtual currency. If the “owner” gives less than the power to
14 transact without more or to prevent transactions, “control” is not present. There is a product or
15 service known in that community as “multi sig.” In “multi sig” situations, a provider may have
16 one of several private keys and two or more of these keys are needed to allow transactions to
17 take place. A “multi sig” provider that has no ability alone to transact or prevent transactions
18 does not have “control.”
19

20 “Transfer” is comparable to a transaction execution under ordinary systems involving
21 “money services” or “money transmission” or, indeed, one that “pushes” or “pulls” in a wire
22 transfer or check collection operation, respectively. The provider merely agrees to take funds or
23 value on one end of the transaction and to deliver them to the designated person on the other end.
24 The virtual currency business subject to this act would need to possess sufficient credentials to
25 be recognized in its community as having the power to act, and also verifiable virtual currency to
26 “transfer.” To illustrate, we can look to Bitcoin.
27

28 Bitcoin relies on its own, unique and novel architecture. Bitcoin is a payment system,
29 commonly a decentralized (controlled by users) network that allows for transactions with built-in
30 security, eliminating the need for a central bank. Bitcoin transactions are made on a public
31 ledger. The public ledger is exactly what it sounds like—a large bulletin board (written in a
32 cryptic computer database called the blockchain). The public ledger logs and broadcasts
33 transactions to the entire network. To illustrate, assume A wants to transfer a bitcoin with the
34 number 01000101 to B. A is identified only by a computer code known only to A and contacts
35 the server running the database ledger and directs transfer to B, who also is identified only by a
36 computer code known to A and B. The server updates the database ledger, and from then on the
37 bitcoin belongs to B. If A tries to spend this bitcoin again by sending it to C, the server will
38 detect that and refuse as A no longer owns the bitcoin.
39

40 Transactions, such as using a debit or credit card to buy a cup of coffee — are tied to a
41 bank. If you have enough money in your account, or credit on the card, the bank authorizes the
42 transaction and you get your coffee. If you bought the same cup of coffee with bitcoins, you
43 could proceed as follows: You could simply transfer ownership to the coffee house in a direct
44 person-to-business transaction via an instruction to the miners to update the blockchain, the
45 registry of bitcoins, to show the coffee house as the new owner, and you would be finished. The
46 miners would validate the transaction and, if valid, record the change of ownership on the public

1 ledger without the bank or any other financial institution (and all their transaction fees) being
2 involved. The merchant gets their money and you get your coffee.

3
4 “Virtual currency business activity” under the various definitions in this act replaces the
5 P2P transaction to the coffee house just described with a transaction that uses an intermediary
6 that holds itself out to the public as an entity worthy of trust. Thus, this act is focused on
7 intermediary providers of virtual currency products and services – not on the virtual currency
8 itself or on the “owner” of virtual currency that has the requisite tools to effect that payment for
9 coffee on its own behalf.

10
11 “Store” is analogous to deposit-taking and holding, or to safe deposit business. The
12 virtual currency provider has the capacity to receive particular forms of virtual currency or many
13 of the extant forms, and to offer safekeeping services to its clientele. Storage of virtual currency
14 is likely to involve the “owner” of the virtual currency giving some credentials to the “storage”
15 company, and it is highly likely that the credentials would enable the storage company to return
16 the virtual currency to the “owner” or its designee. Thus, storage is similar to placing a deposit of
17 funds with a bank. Storage in the world of virtual currency may be on an “electronic wallet” or
18 in another form.

19
20 If a person stores virtual currency on the person’s computer, or with another person in a
21 business that includes the storage of virtual currency, often called an “electronic wallet,” and
22 then uses the stored virtual currency by sending a message (if the virtual currency is held by
23 another person the message goes to that holder first) that goes through the public ledger (as
24 opposed to a bank) to the computer of a merchant that accepts such payment for goods or
25 services. This is a transaction comparable to one involving a bank intermediary, except perhaps
26 faster, not generally subject to countermand, and theoretically more secure.

27
28 *Does this act cover multiple forms of virtual currency?*

29
30 The baseline answer to this question is “yes.” This act is drafted to capture as many of
31 the possible types of virtual currency, whether issued on a centralized or decentralized basis, that
32 are currently in the marketplace. It also covers contemporary equivalents of “e-Gold,” a system
33 that issued against holdings of precious metals, certificates that could be transferred by
34 agreement from one owner to another.

35
36 A final point also may assist understanding.

37
38 One way to pay a seller would be by delivering cash. The point here is not that the
39 transfer of virtual currency is superior in most respects, if not in all respects to payment in cash,
40 as indeed is true for most modern payment methods, but why the merchant agrees to receiving
41 cash (ignore the legal rule there is no choice where legal tender is involved). It is not because the
42 paper money has intrinsic value, or can be exchanged for gold (which also has no intrinsic
43 value), but because people perceive value in dollar bills because of legal rules that govern them.
44 Likewise for virtual currency—people see value in its use as a payment method when the legal
45 rules for it are clear and workable, and the act will enhance that perception of value since present
46 rules that could be applied to govern virtual currency business transactions are at best not

1 designed to do so or are unclear in application. It also is critical that the rules, since the act will
2 be state law, be uniform for businesses operating across state lines, and that is what the products
3 of the Uniform Law Commission are designed to be.

4
5 *Why should the regulation of virtual currency businesses occur now?*

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

10
11 Blockchain technology is an ingenious computer code, stored entirely by computers, that
12 forms the underlying architecture for thousands of payment systems and also shows great
13 promise in extending beyond the realm of just currency, such as to the transfer of records,
14 securities, and more. The blockchain provides a permanent record of all transactions that have
15 ever happened, a history that normally within an hour is unalterable. In the case of bitcoin
16 millions of independent computers record transactions. That is the important value – the
17 mathematical verification by millions of computers reaching a consensus that they witnessed the
18 same thing at the same time.

19
20 Distributed ledgers are mutual, shared ledgers. They create a single record of
21 transactions among multiple parties, providing one immutable, “golden copy” of data that all
22 parties see at the same time and can trust as valid. Consequently, parties do not need to maintain
23 their own copies and reconcile with each other. Distributed ledgers are append-only databases
24 that maintain a perfect, immutable audit trail of who did what and when they did it. Trust is a
25 product of the blockchain, and regulation that foster that trust.

26
27 Continuing with the reasons for acting now, the value of virtual currency arises from
28 demand by people for the attributes it has, such as the absence of an expensive middleman such
29 as a bank, the blockchain serving that purpose instead (which banks do in more traditional
30 systems); the speed and certainty of transactions in virtual currency; and the security of such
31 transactions, even when balanced against a number of risks since, unlike in the case of a bank
32 account or a securities account, there is no government insurance against insolvency.

33
34 A virtue of blockchain technology is its ability to put a person’s security and online
35 identity into their own hands. Cyber-attacks for the purpose of identity theft are becoming one
36 of the defining security threats of the 21st Century. Databases filled with personal information
37 are under attack from nation-states and organized crime. Hackers who target governments, cause
38 data breaches at large department stores and even celebrity nude photo leaks, are the result of the
39 same problem; that is criminal elements breaking through cybersecurity to their prize; databases
40 filled with valuable personal information. Blockchain technology offers a secure alternative to
41 consumers who do not wish to see their personal information fall prey on the Internet. It offers
42 the ability to transact on the Internet without sharing their personal information with third parties
43 whose databases make targets for hackers. Instead, blockchain technology gives consumers the
44 power to provide their own hack-proof online security. The security offered by blockchain
45 technology on the Internet has a flip side, however. The anonymity it provides presents an

1 opportunity for criminals and terrorists to send and receive money over the internet, nearly
2 anonymously, without a third party. Thus money laundering, terrorist financing, and tax evasion
3 are risks inherent in technology and therefore a certain amount of regulation to ameliorate these
4 issues also is prudent, and is being pursued in the act. The transfer is fast as the transactions are
5 grouped in blocks every 10 minutes but many can be instantaneous; generally transactions
6 cannot be cancelled or reversed so there is virtual finality of payment.

7
8 A final reason for acting now is that individual states are beginning to act as described
9 below. Because virtual currency transactions and businesses are not limited to a few states, a
10 uniform act is desirable to avoid duplicative or undue burdens that may arrest development. This
11 act provides needed uniformity as well as avoiding amendments to money services and money
12 transmitter acts that do not otherwise suit virtual currency business regulation if only amended to
13 include virtual currency.

14 **Legal Efforts to Establish Relevant Law**

15
16 Various states are examining regulatory structures, such as New York and California.
17 The New York Department of Financial Services (DFS), has announced final regulations for
18 BitLicenses. *See* 37 N.Y. Reg. 7 (2015). New York’s regulatory plan includes: (1) licensing
19 rules and compliance provisions; (2) capital requirements; (3) custody and protection of
20 consumer assets and other consumer protection provisions including a complaint procedure; (4)
21 notices of material changes in business and of control and of mergers and acquisitions; (5) books
22 and records; (6) examinations; and (7) the establishment and maintenance of anti-money
23 laundering, cybersecurity, business continuity and disaster recovery programs. A release by DFS
24 dated November 9, 2015, emphasized details for a cybersecurity program including: (1)
25 information security, access controls and identity management, systems and network security
26 and customer data privacy among other areas; (2) third party service provider management,
27 including the use of multi-factor authentication to limit access to sensitive data and systems and
28 the use of encryption to protect such data in transit and at rest; and (3) employment of a
29 cybersecurity officer and adequate personnel to manage the cybersecurity risks and perform core
30 functions, providing for an annual audit, and notice of cybersecurity incidents. New York also
31 issued a trust company license in May 2015 that allows the company to serve as a custodian for
32 customers’ assets, including bitcoins.

33
34 The Conference of State Bank Supervisors (CSBS) has put forth a model regulatory
35 framework of principles that defines virtual currency as

36
37 a digital representation of value used as a medium of exchange, a unit of account, or a
38 store of value, but does not have legal tender status as recognized by the United States
39 government (so called “fiat currency”). Virtual currency does not include the software or
40 protocols governing the transfer of the digital representation of value. Virtual currency
41 does not include stored value redeemable exclusively in goods or services limited to
42 transactions involving a defined merchant, such as rewards programs.

1 The framework addressed the following activities:

- 2 1. transmission;
- 3 2. exchanging “fiat” currency (money) for virtual currency or virtual
4 currency for fiat currency; virtual currency for virtual currency; and
5
- 6 3. services that facilitate the third party exchange, storage, and/or
7 transmission of virtual currency (e.g., wallets, vaults, kiosks, merchant
8 acquirers, or payment processors).
9

10 The CSBS regulatory framework encouraged licensing requirements with a so-called “on
11 ramp” to facilitate startup businesses, regulating financial strength and stability and permissible
12 investments, providing consumer protections including disclosures and notice of risks,
13 cybersecurity and auditing, compliance with anti-money laundering and procedures for detecting
14 and monitoring fraud and other illegal activity, and required books and records.
15

16 The act being created by the Uniform Law Commission is a uniform statute for prudential
17 regulation of virtual currency, which includes some commercial law type rules as part of user
18 protection provisions. The act, completed in 2017, follows much of the CSBS model regulatory
19 framework and covers the same type of activity, licenses businesses conducting virtual currency
20 business activity, requires examinations, reports and records, enforcements, has user protections,
21 and requires cybersecurity, business continuation and disaster recovery programs. The defines
22 its scope as requiring a license for any person wherever located that engages in or holds itself out
23 as engaging in virtual currency business activity with a resident of the enacting state, with certain
24 exclusions, such as a person chartered as a bank to avoid double or overlapping regulation.
25

26 **Development of the Act**

27 The essence of creating a uniform state law is to obtain a sufficient consensus as a result
28 of striking a balance among the interests of the various constituencies that will be affected by the
29 act when enacted into law by the state legislatures. In short, each interest must see more benefit
30 than detriment for them in the act’s provisions. If this is achieved, it is likely that universal and
31 uniform adoption by the legislatures of all 50 states will occur. Another critical consideration is
32 that the law’s provisions must be seen to reflect good policy and be workable rules to guide
33 aspects of the present operations of the businesses that the act will govern.
34

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

1 the drafting committee as to the workable rules and their application), and who have attended
2 and spoken extensively at a number of the meetings of the drafting committee, include:

3
4 The U.S Department of the Treasury, represented by Anne Shere Wallwork

5 The Conference of State Bank Supervisors, represented by Margaret Liu, Senior
6 Vice President and Deputy General Counsel, and Matt Lambert, Associate
7 General Counsel

8
9 CoinCenter, represented by Peter Van Valkenberg, Counsel

10 American College of Commercial Finance Lawyers, represented by Pamela
11 Martinson of Sidley & Austin, Palo Alto

12
13 The Digital Chamber of Commerce, represented by its executive director,
14 Perryanne Boring, and by J. Dax Hansen, Dana Syracuse and others from Perkins
15 Coie, and formerly by Carol Van Cleef

16
17 The Texas Department of Banking, represented by Brenda McGee and formerly
18 by Daniel Wood

19
20 The California Department of Business Oversight, represented by Stephen Lao

21 Ripple Labs, Inc., represented by Ryan Zagone and Jesse Chen

22 The Electronic Freedom Frontier, represented by Jamie Williams and Lee Tien

23 Coinbase, Inc., represented by Juan Suarez, CEO, and Mike Lempres,
24 Chief Legal and Risk Officer

25 The Entertainment Software Association, represented by Michael
26 Warnecke

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

28 Rebecca Simmons, Sullivan & Cromwell, New York City

29 Ryan Strauss, Dorsey & Whitney, Seattle

30 Mark Burge, law professor at Texas A&M School of Law

31 Tom Brown, Paul Hastings, San Francisco

32 Other participants included The Clearing House, the Federal Reserve Bank of New York,
33 the Office of Business Oversight of the State of California, the Department of Banking of
34 the State of Washington, and PayPal.

1 The drafting committee has had two meetings per year over the two-year gestation period
2 for the act. The act also was considered at two annual meetings of the Uniform Law
3 Commission by the whole body of Commissioners from every state, the District of Columbia, the
4 U.S. Virgin Islands, and Puerto Rico, and approved at the 2017 annual meeting.
5

6 The consensus balance and quality achieved in this lengthy deliberative process is a result
7 of the immense knowledge and skill of the reporter for the act, Sarah Jane Hughes, a professor at
8 the Maurer School of Law, Indiana University at Bloomington, an active member of the ABA as
9 well as a prolific scholar, and a speaker at numerous programs and legislative hearings. The ULC
10 also acknowledges the superb work of the ABA advisor Steve Middlebrook, the Commissioner
11 members of the drafting committee, and last but not least the observers to the committee who
12 gave of their time and knowledge and, while articulating the views of the interests they
13 represented also recognized the need in any legislation for compromise to achieve the overall
14 public good.
15

16 **Balances Achieved**

17 **A. Owners of Virtual Currency.** Owners of virtual currency benefit from the act
18 by receiving a strong regulatory structure that (1) provides clear rules, (2) guards against risks,
19 both economic and from abusive conduct, (3) provides important information allowing
20 evaluation of participation and prospective transactions, (4) provides effective remedies if
21 nonetheless matters turn sour, and (5) require the adoption and maintenance of policies and
22 programs to reduce risk from fraud and improper activity.
23

24 **B. Persons involved in virtual currency business activity.** Persons who wish to
25 engage in the virtual currency business (1) obtain a balanced and reasonable regulatory structure
26 that should validate good business practice and thus enhance trust for users of virtual currency,
27 and may lead to SEC approval of virtual currency offerings, (2) obtain flexibility in entering the
28 business through a testing process of provisional registration, (3) have regulatory examinations
29 to catch problems before matters go too far wrong, (4) are helped in keeping their businesses
30 workable by requirements to guard against insolvency and other risks and to better ensure that
31 changes in the business do not impair its operations, (5) when operating, particularly in several
32 jurisdictions, have reciprocity and other protections against undue burdens, and have protection
33 for confidential information, (6) have protection against unmeritorious private actions while still
34 being subject to strong administrative action, (7) receive by incorporation of an existing structure
35 for financing, the ability to overcome present difficulties to obtain adequate credit, and (8)
36 receive by virtue of a supervised regulatory structure greater access to banking relationships for
37 business operations.

1 **UNIFORM REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT**

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

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

6 **SECTION 102. DEFINITIONS.** In this [act]:

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

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

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

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

16 (3) “Control” means:

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

19 (B) when used in reference to a person providing virtual currency products or
20 services to others, the direct or indirect power to direct the management, operations, or policies
21 of the person through legal or beneficial ownership of voting power in the person or under a
22 contract, arrangement, or understanding.

23 (4) “Convertible virtual currency” means virtual currency that:

1 (A) has an equivalent value in legal tender and can be exchanged for legal tender
2 or bank credit; or

3 (B) can be exchanged for an account denominated in legal tender.

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

5 (6) “Exchange” means to assume control of virtual currency from or on behalf of a
6 resident, at least momentarily, to sell, trade, or convert:

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

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

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

12 (8) “Legal tender” means a medium of exchange or unit of value, including the coin or
13 paper money of the United States, issued by the United States or otherwise recognized by the
14 United States as a lawful means for payment of taxes and discharge of debts.

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

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

19 (11) “Provisional registrant” or “registrant” means a person that has registered with this
20 state to conduct virtual currency business activity but whose volume of virtual currency business
21 activity with or on behalf of residents is less than the threshold required under [Article] 2 for
22 licensure but greater than the amount provided in Section 103(b)(8) that would exempt the
23 person from application of this [act].

1 (12) “Provisional registration” means the ability to conduct virtual currency business
2 activity under the threshold required under [Article] 2 for licensure but greater than the amount
3 provided in Section 103(b)(8) by virtue of registering with this state and complying with other
4 requirements provided in this [act].

5 (13) “Reciprocity agreement” means an arrangement between the department and the
6 appropriate licensing agency of another state that permits a licensee operating under a license
7 granted by the other state to engage in virtual currency business activity with or on behalf of
8 residents.

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

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

12 (16) “Resident” means, as to this state, a person that is domiciled in, is physically located
13 in for more than 183 days of the previous 365 days, or has a place of business in this state.

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

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

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

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

21 (19) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
22 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
23 the United States. [The term does not include a federally recognized Indian tribe or nation.]

1 (20) “Store” or “storage” means maintaining control of virtual currency on behalf of a
2 resident by a person other than the resident.

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

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

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

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

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

12 (24) “Virtual currency”:

13 (A) means a digital representation of value that:

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

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

16 (B) does not include:

17 (1) software or a protocol governing transfer of the digital representation of
18 value;

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

22 (3) a digital representation of value used within an online game, game
23 platform, or family of games sold by the same publisher or offered on the same game platform.

1 (25) “Virtual currency administration” means issuing virtual currency with the authority
2 to redeem the currency for legal tender, bank credit or other virtual currency.

3 (26) “Virtual currency business activity” means:

4 (A) exchanging, transferring, or storing virtual currency with or on behalf of
5 residents or engaging in virtual currency administration, whether directly or through an
6 agreement with a virtual currency control services vendor;

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

10 (C) exchanging otherwise nonconvertible digital units for one or more forms of
11 convertible virtual currency or for legal tender or bank credit outside the online game, game
12 platform, or family of games offered by the same publisher from which the original digital units
13 were received.

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

17 *Legislative Note: States that wish to include state-chartered trust companies under the definition*
18 *of “bank” should consider adding a sentence at the end of the definition that expresses the type of*
19 *trust companies that are eligible for the exemption for “banks” in Section 103. Entities that*
20 *obtain “FinTech” charters from the Office of the Comptroller of the Currency will be exempt*
21 *from this act if the current definition of the term “bank” is retained in the final act.*

22
23 **SECTION 103. SCOPE.**

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

1 (b) This [act] does not apply to the exchange, transfer, or storage of virtual currency or to
2 virtual currency administration to the extent that provisions of the Electronic Fund Transfer Act of
3 1978, 15 U.S.C. Sections 1693 through 1693r [as amended], the Securities Exchange Act of
4 1934, 15 U.S.C. Section 78a through 78oo [as amended], the Commodities Exchange Act of
5 1936, 7 U.S.C. Sections 1 through 27f [as amended], or [insert reference to the “blue sky” laws
6 of this state] [as amended], govern the activity, or to activity by:

7 (1) the United States, a state, political subdivision of a state, agency or
8 instrumentality of Federal, state, or local government, or a foreign government or its subdivisions,
9 departments, agencies and instrumentalities;

10 (2) a bank;

11 (3) a person that is engaged in money transmission and:

12 (A) holds a current license under [insert reference to the state’s money
13 services or money transmission statute];

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

16 (C) complies with [Articles 2, 3, 5 and 6 of this [act];

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

20 (5) a person engaged in the business of dealing in foreign exchange to the extent
21 the person’s activity meets the definition in 31 C.F.R. Section 1010.605(f)(1)(iv);

22 (6) a person that only:

23 (A) contributes connectivity software or computing power to a

1 decentralized virtual currency;

2 (B) provides data storage or security services for a virtual currency
3 business and is not otherwise engaged in virtual currency business activity on behalf of other
4 persons; or

5 (C) provides to persons otherwise exempt from this [act] virtual currencies
6 as one or more enterprise solutions used solely among each other and has no agreement or
7 relationship with a resident who is an end-user of virtual currency.

8 (7) a person that mines, manufactures, buys, sells, exchanges, or has, obtains, or
9 relinquishes control of virtual currency solely for personal, family, or household purposes,
10 including buying or selling virtual currency as an investment, researching virtual currency or
11 related technologies, and obtaining virtual currency as payment for the purchase or sale of goods
12 or services, if the person does not engage in virtual currency business activity on behalf of
13 another person;

14 (8) except as otherwise provided in Section[s] 302 [and 502], a person whose
15 virtual currency business activity with or on behalf of residents is reasonably expected to be
16 valued, in the aggregate, on an annual basis at \$5,000 or less measured by the U.S. Dollar
17 equivalent of virtual currency;

18 (9) an attorney providing escrow services to residents;

19 (10) a title insurance company providing escrow services to residents;

20 (11) a securities intermediary, as defined in [insert state reference to U.C.C.

21 Section 8-102], or a commodities intermediary as defined in [insert state reference to U.C.C. 8-
22 102], that:

23 (A) does not engage in the ordinary course of business in virtual currency

1 business activity with or on behalf of residents in addition to maintaining securities accounts to
2 which securities are credited and is regulated under federal law or under law of this state or
3 another state as a securities intermediary; and

4 (B) affords to residents protections that are comparable to those set forth
5 in [insert state reference to U.C.C. Article 8, Part 5];

6 (12) a secured creditor under Article 9 of the Uniform Commercial Code or
7 creditor with a judicial lien or lien arising by operation of law on collateral that is virtual
8 currency if the virtual currency business activity of the creditor is limited to enforcement of the
9 security interest in compliance with Article 9 of the Uniform Commercial Code or of the lien in
10 compliance with the law applicable to the lien;

11 (13) a virtual currency control services vendor;

12 (14) a person that receives no compensation from residents for providing virtual
13 currency products, services, or transactions, or that is engaged in testing products or services
14 with the person's own funds; or

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

18 **Legislative Note:** *If a state adjusts the U.S. Dollar Equivalent for the exemption provided in this*
19 *act under subsection (b)(8) to a figure higher than \$5,000, the state should consider adding to*
20 *the obligations of the person compliance with Sections 302 and 502.*

21
22 *In states in which the constitution, or other law, does not permit the phrase "as*
23 *amended" when federal statutes are incorporated into state law, the phrase "as amended"*
24 *should be deleted across subsection (b) of this section.*

25

1 [ARTICLE] 2

2 LICENSURE

3 SECTION 201. LICENSE. A person may not engage in virtual currency business
4 activity, or hold itself out as being able to engage in virtual currency business activity, with a
5 resident unless the person is:

6 (1) licensed under this [act];

7 (2) licensed to conduct virtual currency business activity by a state with which this state
8 has a reciprocity agreement;

9 (3) a provisional registrant operating in compliance with Section 210; or

10 (4) exempt from this [act] under Section 103.

11 SECTION 202. LICENSE OR PROVISIONAL REGISTRATION NOT
12 TRANSFERBLE OR ASSIGNABLE. A license or provisional registration under this act is
13 not transferable or assignable.

14 SECTION 203. APPLICATION FOR LICENSE.

15 (a) Except as otherwise provided in Section 204, an application for a license under this
16 [act] must be made in a form and medium prescribed by the department or in the form prescribed
17 by the registry.

18 (b) Except as otherwise provided in subsection (d), the application for a license must
19 provide information relevant to the applicant's proposed virtual currency business activity as
20 follows:

21 (1) the legal name of the applicant, each current or proposed business address of
22 the applicant, and any fictitious or trade name the applicant uses or plans to use in conducting its
23 virtual currency business activity with a resident;

1 (2) the legal name, any former or fictitious name, and residential and business
2 address of each executive officer of the applicant, each responsible individual of the applicant,
3 and each person that has control of the applicant;

4 (3) a description of the current and historical business of the applicant for the five
5 years before the application is submitted or so much of the period as the applicant has been in
6 operation, including its products and services, associated website addresses and social media
7 pages, principal place of business, projected user base, and specific marketing targets;

8 (4) the name, address, and telephone number of each person that manages each
9 server the applicant expects to use in conducting its virtual currency business activity with or on
10 behalf of residents and a copy of any agreement with that person;

11 (5) a listing of:

12 (A) each money service or money transmitter license the applicant holds
13 in another state;

14 (B) the date the license expires; and

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

17 (6) a listing of criminal convictions, deferred prosecution agreements, and
18 pending criminal proceedings in any jurisdiction against:

19 (A) the applicant;

20 (B) each executive officer of the applicant;

21 (C) each responsible individual of the applicant;

22 (D) each person that has control over the applicant; and

23 (E) each person over which the applicant has control;

1 (7) a listing of any litigation, arbitration, or administrative proceeding in any
2 jurisdiction in which the applicant, an executive officer of the applicant, or a responsible
3 individual of the applicant has been involved for the five years before the application is
4 submitted, determined to be material in accord with generally accepted accounting principles
5 and, to the extent the applicant would be required to disclose the litigation, arbitration, or
6 administrative proceeding in the applicant's audited financial statements, reports to equity
7 owners, or similar statements or reports;

8 (8) a listing of any bankruptcy or receivership proceeding in any jurisdiction for
9 the ten years before the application is submitted in which any of the following was a debtor:

10 (A) the applicant;

11 (B) each executive officer of the applicant;

12 (C) each responsible individual of the applicant;

13 (D) each person that has control over the applicant; and

14 (E) each person over which the applicant has control;

15 (9) the name and address of each bank in which the applicant plans to deposit
16 funds obtained by its virtual currency business activity;

17 (10) the source of funds and credit to be used by the applicant to conduct virtual
18 currency business activity with or on behalf of residents and documentation demonstrating that
19 the applicant has the minimum net worth and reserves required by Section 209;

20 (11) the United States Post Office address and email address to which
21 communications from the department may be sent;

22 (12) the name, United States Post Office address, and email address of the
23 registered agent of the applicant in this state;

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

5 (14) if applicable, the date of and state where the applicant was formed and a copy
6 of a current certificate of good standing issued by that state;

7 (15) if a person has control of the applicant and the person's equity interests are
8 publicly traded in the United States, a copy of the audited financial statement of the person for
9 the most recent fiscal year or a copy of the most recent report of the person filed under Section
10 13 of the Securities Exchange Act of 1934, 15 U.S.C. Section 78m;

11 (16) if a person has control of the applicant and the person's equity interests are
12 publicly traded outside the United States, a copy of the audited financial statement of the person
13 for the most recent fiscal year of the person or a copy of the most recent documentation similar
14 to that required in paragraph (15) filed with the foreign regulator in the domicile of the person;

15 (17) if the applicant is a partnership or a member-managed limited liability
16 company, the names and addresses of general partners or members;

17 (18) if the applicant is required to register with the Financial Crimes Enforcement
18 Network of the United States Department of the Treasury as a money service business, evidence
19 of the registration;

20 (19) a set of fingerprints for each executive officer of the applicant and each
21 responsible individual and an employment history and history of any investigation or legal
22 proceeding involving any executive officer or responsible individual for the five years before the
23 application is submitted, if available; and

1 (20) other information the department reasonably requires by regulation.

2 (c) The application must be accompanied by a nonrefundable fee in the amount required
3 by law or that the department specifies by regulation.

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

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

12
13 **SECTION 204. RECIPROCAL LICENSING.**

14 **Alternative A**

15 (a) Instead of the application required by Section 203, an applicant that is licensed to
16 conduct virtual currency business activity in another state may file with the registry an
17 application under this section.

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

21 (1) submit a certification of license history from the agency in each state
22 responsible for issuing a license to the applicant to conduct virtual currency business activity;

23 (2) pay a nonrefundable reciprocal licensing application fee in the amount
24 required by law or specified by the department by regulation;

25 (3) submit documentation demonstrating that the applicant complies with the
26 security reserve requirements of Section 206 and the net worth and reserve requirements of Section
27 209; and

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

4 (c) The department may permit provisional operation by an applicant that has complied
5 with this section.

6 **Alternative B**

7 (a) A person licensed by another state to engage in virtual currency business activity in
8 that state may engage in virtual currency business activity with or on behalf of residents to the
9 same extent as if the person held a license under this act if:

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

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

15 (A) notice that the person will rely on reciprocal licensing, a copy of the
16 virtual currency business activity license issued by the other state, and a certification by the other
17 state as to the history of the license;

18 (B) a nonrefundable reciprocal license fee in the amount required by law or
19 specified by the department by regulation;

20 (C) documentation demonstrating that the applicant complies with the
21 security reserve requirements of Section 206 and the net worth and reserve requirements of Section
22 209; and

23 (D) a certification signed by an executive officer of the applicant affirming

1 that the applicant will conduct its virtual currency business activity with or on behalf of residents
2 in compliance with this [act];

3 (3) the department does not reject the application not later than [15] days after
4 receipt of the items submitted under paragraph (2); and

5 (4) the applicant does not commence virtual currency business activity with or on
6 behalf of residents until 31 days after complying with paragraph (2).

7 (b) For good cause, the department may modify the time periods in this section.

8 **End of Alternatives**

9 *Legislative Note: A state electing to authorize reciprocal licensure should select one of the*
10 *alternatives in this section. Alternative A is applicable only if the department has agreed to*
11 *participate in the Registry operated by a subsidiary of the Conference of State Bank Supervisors.*
12 *If the state already participates in the registry, Alternative A would be enacted but not as an*
13 *alternative and Alternative B would be deleted. If the state elects not to participate in the*
14 *registry, then Alternative B should be enacted with the designation as an alternative.*

15
16 *In no event should the enacting state waive any requirement that the applicant have*
17 *sufficient reserves or security to cover expenses sufficient both to wind down its business with*
18 *residents and to complete any transaction a resident have instructed the licensee to complete.*

19
20 **SECTION 205. ACTION BY DEPARTMENT.**

21 (a) An application for a license under Section 203 is not complete until the department
22 receives all information required by this [act] and completes its investigation under Section 207.

23 (b) Not later than 30 days after an application under Section 203 is complete, the
24 department shall notify the applicant of its decision to approve or deny the application. If the
25 department does not notify the applicant of its decision by the 31st day after the application was
26 complete, the application is deemed approved; and, absent good cause, the department shall issue
27 the license

28 (c) A license takes effect on the later of:

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

1 (2) the date the licensee provides the security required by Section 206.

2 **SECTION 206. SECURITY.**

3 (a) Before a license is issued under this [Article], the applicant must deposit with the
4 department funds, a letter of credit, a surety bond, or other security satisfactory to the department
5 that:

6 (1) secures the licensee's faithful performance of its duties under this act; and

7 (2) is in an amount the department specifies based on the nature and extent of
8 risks in the applicant's virtual currency business model.

9 (b) The department may require a surety bond as security only if a surety bond is
10 generally available in the state at a commercially reasonable cost.

11 (c) Security deposited under this section must be collectible by this state for the benefit of
12 a claim against the licensee on account of the licensee's virtual currency business activity with or
13 on behalf of a resident.

14 (d) Security deposited under this section must cover claims for the period the department
15 specifies by regulation. The department may extend the period after the licensee ceases to engage
16 in virtual currency business activity with or on behalf of residents.

17 (e) For good cause, the department may increase the amount of security deposited under
18 this section. A licensee shall deposit the additional security not later than [15] days after the
19 licensee receives notice of the required increase in a record from the department.

20 (f) For good cause, the department may permit a licensee to substitute or deposit an
21 alternate form of security satisfactory to the department if the licensee at all times complies with
22 this section.

23 (g) A claimant does not have a direct right against security deposited under this section.

1 Only the department may recover on the security. The department may retain the recovery for up
2 to [five] years after the department recovers on the security and may process claims and
3 distribute recoveries to claimants in accordance with regulations promulgated by the department
4 under [insert reference to state’s uniform money services act or money transmitters act].

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

9
10 **SECTION 207. INVESTIGATION; ISSUANCE OF LICENSE.**

11 (a) If an applicant files an application under Section 203, the department shall
12 investigate:

13 (1) the financial condition and responsibility of the applicant;

14 (2) the relevant financial and business experience, character, and general fitness
15 of the applicant; and

16 (3) the competence, experience, character, and general fitness of each executive
17 officer, each responsible individual, and any person that has control of the applicant.

18 (b) The department may conduct an investigation of the business premises of an
19 applicant.

20 (c) An applicant shall pay the reasonable costs of the department’s investigation under
21 this section.

22 (d) Absent good cause, the department shall issue a license to an applicant if the applicant
23 has complied with this [Article] and has paid the costs of investigation and initial license fee in
24 the amounts required by law or specified by the department by regulation.

25 (e) An applicant may appeal a denial of its application under Section 205, under [cite
26 state administrative procedure act], not later than 30 days after the department notifies the

1 applicant of denial.

2 **SECTION 208. RENEWAL OF LICENSE.**

3 (a) Subject to subsection (g), not later than 15 days before the anniversary of license
4 issuance, a licensee may apply for renewal of the license by:

5 (1) paying a renewal fee [of \$[]] [in an amount required by law or specified by
6 the department by regulation]; and

7 (2) submitting to the department a renewal report under subsection (b).

8 (b) A renewal report required by subsection (a)(2) must be submitted in a form and
9 medium prescribed by the department and must state or contain:

10 (1) a copy of the licensee's most recent:

11 (A) reviewed annual financial statement if the licensee's virtual currency
12 business activity in this state amounted to \$[insert the figure state employs for corporate activity
13 auditing purposes] or less for the fiscal year ending before the anniversary date; or

14 (B) audited annual financial statement if the licensee's virtual currency
15 business activity in this state amounted to more than \$[insert the figure state employs for
16 corporate activity auditing purposes] for the fiscal year ending before the anniversary date;

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

19 (i) reviewed annual financial statement if the person's gross
20 revenue amounted to \$[insert the figure state employs for corporate activity auditing purposes] or
21 less in the previous fiscal year, measured as of the anniversary date of the license; or

22 (ii) audited consolidated annual financial statement if the person's
23 gross revenue amounted to more than \$[insert the figure state employs for corporate activity

1 auditing purposes] in the previous fiscal year, measured as of the anniversary date of the license;

2 (3) a description of any:

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

4 (B) material litigation involving the licensee, any executive officer, or any
5 responsible individual;

6 (C) license suspension or revocation proceeding commenced, or other
7 action taken, involving a license issued by another state on which reciprocal licensing is based;

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

9 (E) data security breach;

10 (4) any information or records required by Section 305 that the licensee has not
11 already reported to the department;

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

15 (6) the U.S. Dollar equivalent of virtual currency in the control of the licensee at,
16 subject to subsection (g), the end of the last month that ends not later than 30 days before the
17 date of the renewal report and the total number of residents for whom the licensee had control of
18 virtual currency on the same date;

19 (7) evidence that the licensee continues to satisfy Section 502 as a securities
20 intermediary with respect to virtual currency over which it has control for residents;

21 (8) evidence that the licensee continues to satisfy Section 206;

22 (9) evidence that the licensee continues to satisfy Section 209;

23 (10) a list of each location where the licensee operates its virtual currency

1 business activities; and

2 (11) the name, address, and telephone number of each person that manages a
3 server used by the licensee in conducting its virtual currency business activity with or on behalf
4 of residents.

5 (c) If a licensee does not timely comply with subsection (a), the department may use
6 enforcement measures provided in Section 401. A notice or hearing is not required for a license
7 suspension or revocation for failure to pay the renewal fee or file the renewal report.

8 (d) If the department suspends or revokes a license for non-compliance with subsection
9 (a), the department may lift the suspension or rescind the revocation and notify the licensee of
10 the action if, subject to subsection (g), not later than 20 days after the license was suspended or
11 revoked, the licensee:

12 (1) files the renewal report and pays the renewal fee; and

13 (2) pays any penalty assessed under Section 401.

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

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

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

20 (h) The department shall review the renewal of a license issued under Section 204 to
21 ensure that the state that issued the original license has not revoked, suspended, or otherwise
22 limited the license it granted.

23 (i) A licensee that has not complied with this section shall cease operations with or on

1 behalf of residents on or before the anniversary date of its license.

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

6

7 **SECTION 209. NET WORTH AND RESERVES OF LICENSEE OR**

8 **PROVISIONAL REGISTRANT.**

9 (a) In addition to the security required under Section 206, a licensee and a provisional
10 registrant, at the time of application for a license or filing of provisional registration, shall give
11 the department evidence of and maintain:

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

13 (2) sufficient unencumbered reserves for winding down the licensee's or
14 registrant's operations.

15 (b) A licensee or provisional registrant may include in its calculation of net worth virtual
16 currency other than the virtual currency over which it has control for residents entitled to the
17 protections under section 502.

18 (c) For good cause, the department may require a licensee or provisional registrant to
19 increase its net worth or reserves. The licensee or registrant shall provide the department
20 evidence that it has the additional net worth or reserves required not later than [15] days after the
21 licensee or registrant receives notice in a record of the required increase.

22 **SECTION 210. PROVISIONAL REGISTRATION.**

23 (a) A person whose volume of virtual currency business activity in U.S. Dollar equivalent
24 of virtual currency will exceed \$35,000 annually may engage in virtual currency business activity
25 with or on behalf of residents under a provisional registration without first obtaining a license
26 under this [act] if the person:

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

4 (2) provides the information for an investigation under Section 207;

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

7 (4) pays the department a registration fee in the amount required by law or
8 specified by the department by regulation;

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

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

14 (7) describes the source of funds and credit to be used by the person to conduct
15 virtual currency business activity with or on behalf of residents and demonstrates the minimum net
16 worth and reserves required by Section 209;

17 (8) provides the department with evidence that the person has in place policies and
18 procedures to comply with [Articles] 3, 5, and 6 and designated other sections of this [act];

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

21 (10) provides evidence of, and agrees to maintain sufficient:

22 (A) net worth to engage in the level of virtual currency business activity it
23 proposes to conduct with or on behalf of residents; and

1 (B) unencumbered reserves for winding down operations.

2 (b) A provisional registrant may include in its calculation of net worth virtual currency
3 other than the virtual currency governed by Section 502.

4 (c) Before the virtual currency business activity of a provisional registrant with or on behalf
5 of residents exceeds a threshold of the lesser of 75 percent of the anticipated activity measured in
6 U.S. Dollar equivalent of virtual currency specified in its notice under subsection (a)(3) or
7 \$35,000, the registrant shall file an application for license and may continue to operate past the
8 threshold while its application for license is pending.

9 (d) For good cause, the department may suspend or revoke a provisional registration or
10 refuse to license a person that made a provisional registration under this [act] without a hearing or
11 opportunity to be heard.

12 (e) A provisional registrant shall cease all virtual currency business activity with or on
13 behalf of residents on the earlier of:

14 (1) 48 hours after the registrant receives notice in a record that the department has
15 denied the registrant's application for a license or has suspended or revoked the provisional
16 registration;

17 (2) if the virtual currency business activity of the registrant with or on behalf of
18 residents reaches 75 percent of the anticipated activity declared in the provisional registration
19 under subsection (a) and the registrant has not filed an application for a license; or

20 (3) on the second anniversary date of the provisional registration.

1 [ARTICLE] 3

2 EXAMINATION; EXAMINATION FEES; DISCLOSURE OF INFORMATION

3 OBTAINED DURING EXAMINATION

4 SECTION 301. AUTHORITY TO CONDUCT EXAMINATION.

5 (a) The department may conduct an annual examination of a licensee or a provisional
6 registrant and additional examinations as the department deems appropriate. For good cause, the
7 department may examine a licensee or registrant without previous notice to the licensee or
8 resident.

9 (b) A licensee or provisional registrant shall pay the reasonable costs of an examination
10 under this section.

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

13 SECTION 302. RECORDS.

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

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

18 (A) the identity of the resident;

19 (B) the form of the transaction;

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

21 (D) the account number, name, and physical address of, and, to the extent
22 feasible, other parties to the transaction;

23 (2) the aggregate number of transactions and aggregate value of transactions by

1 the licensee or registrant with or on behalf of the resident and for the licensee's or registrant's
2 account expressed in U.S. Dollar equivalent of virtual currency for the previous 12 calendar
3 months;

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

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

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

11 (6) bank statements and bank reconciliation records for the licensee or registrant
12 and the name, account number, and physical address of each bank that the licensee or registrant
13 uses in the conduct of its virtual currency business activity with or on behalf of the resident;

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

15 (8) a report of any virtual currency business activity transaction that the licensee or
16 registrant was unable to complete.

17 (b) A person otherwise exempt under Section 103(b)(8) shall keep records in accord with
18 this section and is entitled to the protection of records under Section 304.

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

22 (d) If a licensee or provisional registrant maintains its records outside this state that
23 pertain to transactions with residents, the licensee or registrant shall make the records available to

1 the department within three days or, upon a determination of good cause by the department, at a
2 later time.

3 (e) All records maintained by a licensee or provisional registrant are subject to inspection
4 by the department.

5 **SECTION 303. COOPERATION AND DATA-SHARING AUTHORITY.**

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

13 (b) Absent good cause, the department shall:

14 (1) establish or participate in, with another state that enacts a law substantially
15 similar to this [act], a central depository for filings required by law of this state other than this
16 [act];

17 (2) cooperate in the development and implementation of uniform forms for
18 applications and renewal reports and the conduct of joint administrative proceedings and civil
19 actions; and

20 (3) formulate joint regulations, forms, statements of policy, and guidance and
21 interpretative opinions and releases and develop common systems and procedures.

22 (c) The department may not establish or participate in a central commercial depository of
23 nonpublic personally identifiable information that does not comply with Section 502(e)(5) or (8)

1 of the Gramm-Leach-Bliley Act, 15 U.S.C. Section 6802(e)(5) or (8) [as amended], or with the
2 Federal Right to Financial Privacy, 18 U.S.C. Section 3401 et seq. [as amended].

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

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

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

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

13 **SECTION 304. CONFIDENTIALITY.**

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

22 (b) Trade secrets of an applicant, a licensee, or a provisional registrant are confidential and
23 are not subject to disclosure under [insert reference to state’s open records law]. If the

1 department determines trade secrets are confidential under the open records law of a reciprocal-
2 licensing state, the trade secrets may not be disclosed.

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

4 (1) general information about a licensee’s or provisional registrant’s virtual
5 currency business activity with or on behalf of residents;

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

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

8 **SECTION 305. INTERIM REPORT.**

9 (a) A licensee and a provisional registrant shall file with the department a report of:

10 (1) a material change in information in the license application or most recent
11 renewal report of the licensee or the registration of the registrant;

12 (2) a material change in the licensee’s or registrant’s business or business model
13 for the conduct of its virtual currency business with or on behalf of residents; or

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

16 (b) Absent good cause, the reports required by subsection (a) must be filed not later than
17 15 days after the change.

18 **Reporter’s Note**

19 For a useful guide of what is “material” for the purposes described in this Section, we
20 suggest reference to the provisions of the Securities Exchange Act of 1934 and regulatory
21 guidance and judicial determinations made under it.
22

23 **SECTION 306. CHANGE IN CONTROL OF LICENSEE OR PROVISIONAL**
24 **REGISTRANT.**

25 (a) In this section, “proposed person to be in control” means the person that would control

1 a licensee or provisional registrant after a proposed transaction that would result in a change in
2 control of the licensee or registrant.

3 (b) Not less than 30 days before a proposed change in control of a licensee or provisional
4 registrant, the proposed person to be in control shall submit to the department in a record:

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

6 (2) the information and records that Section 203 would require if the proposed
7 person to be in control already had control of the licensee;

8 (3) a license application under Section 203 by the proposed person to be in
9 control;

10 (4) in the case of a registrant to whom subsection (a) applies, the information that
11 Section 210 would require if the proposed person to be in control already had control of the
12 registrant; and

13 (5) in the case of a provisional registration, a provisional registration under
14 Section 210 by the proposed person to be in control.

15 (c) The department shall approve or deny an application for a change in control of a
16 licensee or provisional registrant within the time provided in Section 205. A change may not take
17 place without the department's approval.

18 (d) The following rules apply in determining whether a person has control over a licensee
19 or provisional registrant:

20 (1) There is a rebuttable presumption of control if the person's voting power in the
21 licensee or registrant constitutes or will constitute at least 10 percent of the total voting power of
22 the licensee or registrant.

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

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

3 (B) the other person's voting power in the licensee or provisional registrant
4 constitutes at least 10 percent of the total voting power of the licensee or registrant.

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

7 (e) Submission in good faith of records required by subsection (b) relieves the proposed
8 person in control from any obligation imposed by this section until the department has acted on
9 the application.

10 (f) The department may revoke or modify a determination under subsection (c), after
11 notice and opportunity to be heard, when in its judgment revocation or modification is consistent
12 with this [article].

13 (g) If a proposed change in control requires approval of an agency of this or another state
14 and the action of the other agency conflicts with that of the department, the department shall
15 confer with the other agency. If the conflict is not resolved, the proposed change in control may
16 not take place. If the proposed change in control cannot be completed because the conflict cannot
17 be resolved, the department should communicate that fact in a record to the applicants and
18 proposed person to be in control.

19 **SECTION 307. MERGER OR CONSOLIDATION BY LICENSEE OR**
20 **PROVISIONAL REGISTRANT.**

21 (a) Not less than 30 days before a proposed merger or consolidation of a licensee or
22 provisional registrant with another person, the licensee or registrant shall submit to the
23 department in a record:

- 1 (1) an application in a form and medium prescribed by the department;
- 2 (2) the plan of merger or consolidation in accord with subsection (d);
- 3 (3) in the case of a licensee, the information required by Section 203 as to the
- 4 person that would be the surviving entity in the proposed merger or consolidation; and
- 5 (4) in the case of a registrant, the information required by Section 210 as to the
- 6 person that would be the surviving entity in the proposed merger or consolidation.

7 (b) If a proposed merger or consolidation would change the control of a licensee or

8 provisional registrant, the licensee or registrant shall comply with Section 306 and this section.

9 (c) The department shall approve or deny an application under this section by a licensee

10 or provisional registrant within the time provided in Section 205.

11 (d) A proposed merger or consolidation may not take place without the department's

12 approval communicated in a record to the licensee or provisional registrant and the person that

13 would be the surviving entity;

14 (e) A plan of merger or consolidation of a licensee or a provisional registrant with

15 another person must:

16 (1) describe the effect of the proposed transaction on the licensee's or registrant's

17 conduct of virtual currency business activity with or on behalf of residents;

18 (2) identify each person to be merged or consolidated, and the person that would

19 be the surviving entity; and

20 (3) describe the terms and conditions of the merger or consolidation and the mode

21 of carrying it into effect.

22 (f) If a merger or consolidation of a licensee or a provisional registrant and another

23 person requires approval of an agency of this or another state and the action of the other agency

1 conflicts with that of the department, the department shall confer with the other agency. If the
2 conflict is not resolved, the proposed merger or consolidation cannot take place.

3 (g) The department may condition approval of a proposed merger or consolidation of a
4 licensee or a provisional registrant and another person on acceptance by the parties of the
5 department's amendments to the plan.

6 (h) If a licensee or provisional registrant acquires substantially all of the assets of a
7 person, whether or not the person is another licensee or registrant whose license was approved by
8 or whose provisional registration was filed with this state, the transaction shall be treated in
9 accordance with the provisions of this section.

10 **[ARTICLE] 4**

11 **ENFORCEMENT**

12 **SECTION 401. DEFINITION OF "ENFORCEMENT MEASURE."** In this

13 [article], "enforcement measure" means an action to:

14 (1) suspend or revoke a license or provisional registration;

15 (2) issue an order to a person to cease and desist from doing virtual currency business
16 activity with or on behalf of residents;

17 (3) request that a court appoint a receiver for the assets of a person doing virtual currency
18 business activity with or on behalf of residents;

19 (4) request the court to issue temporary, preliminary, or permanent injunctive relief
20 against a person doing virtual currency business activity with or on behalf of residents;

21 (5) assess a penalty under Section 403;

22 (6) recover on the security under Section 206 and initiate a plan to distribute the proceeds
23 for the benefit of residents injured by a violation of this [act] or law of this state other than this

1 [act] by a licensee or a provisional registrant; or

2 (7) impose necessary or appropriate conditions on the conduct of virtual currency
3 business activity with or on behalf of residents.

4 **SECTION 402. DEPARTMENT AUTHORITY TO USE ENFORCEMENT**
5 **MEASURES.**

6 (a) Subject to subsection (b)(2), the department may take an enforcement measure against
7 a licensee, a provisional registrant, or a person that is neither a licensee or registrant but is
8 engaging in virtual currency business activity with or on behalf of residents if:

9 (1) the licensee, registrant or person materially violates this [act], a regulation
10 adopted or order issued under this [act], or a law of this state other than this [act] that applies to
11 virtual currency business activity of the person is with a resident;

12 (2) the licensee, registrant, or person does not cooperate substantially with an
13 examination or investigation by the department or fails to pay a fee, or, subject to subsection
14 (b)(1), fails to submit a report or documentation;

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

17 (A) an unsafe or unsound act or practice;

18 (B) an unfair or deceptive act or practice;

19 (C) fraud or intentional misrepresentation;

20 (D) another dishonest act; or

21 (E) any misappropriation of money, virtual currency, or other value held
22 by a fiduciary, which does not qualify under subparagraphs (A) through (D);

23 (4) an agency of the United States or another state takes an action against the

1 person that would constitute an enforcement measure if the department had taken the action;

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

6 (6) the licensee or registrant:

7 (A) becomes insolvent;

8 (B) ceases to pay its debts when they become due;

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

10 (D) becomes the debtor, alleged debtor, respondent, or a person in a

11 similar capacity in a case or other proceeding under any bankruptcy, reorganization,

12 arrangement, readjustment, insolvency, receivership, dissolution, liquidation, or similar law, and

13 does not obtain from the court within a reasonable time either confirmation of a plan or dismissal

14 of the case or proceeding; or

15 (E) applies for or permits the appointment of a receiver, trustee, or other

16 agent of a court for itself or for a substantial part of its assets.

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

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

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

20 enforcement measure under subsection (a) if the department determines that the waiver will not

21 unduly adversely affect the likelihood of compliance with this [act].

22 **Reporter's Note**

23 Under subparagraph (a)(6)(D), there is no intention to include a creditor of a virtual
24 currency business.

1 **SECTION 403. NOTICE AND OPPORTUNITY FOR HEARING.**

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

5 (b) The department may take an enforcement measure:

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

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

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

11 **SECTION 404. CIVIL PENALTY.**

12 (a) If a person engages in virtual currency business activity with a resident in violation of
13 this [act], the department may assess a civil penalty against the person in an amount not to
14 exceed \$[50,000] for each day of violation.

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

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

19 (1) the date the underlying violation ceases; or

20 (2) a date specified by the department.

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

23 (a) Revocation of a license under this [article] is effective against a licensee one day after

1 the department sends notice of the revocation to the licensee in a record, by a means reasonably
2 selected for the notice to be received by the recipient in one day, to the address provided for
3 receiving communications from the department.

4 (b) Suspension of a license, suspension of a preliminary registration, or an order to cease
5 and desist is effective against a licensee, provisional registrant, or other person one day after the
6 department sends notice of the suspension or order to the licensee, registrant, or other person in a
7 record, by a means reasonably selected for the notice to be received by the recipient in one day,
8 to the address provided for receiving communications from the department. A suspension or
9 order to cease and desist remains in effect until the earlier of:

10 (1) entry of an order by the department under the [state administrative procedure
11 act] setting aside or limiting the suspension or order to cease and desist;

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

14 (3) a date specified by the department.

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

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

22 **SECTION 407. SCOPE OF RIGHT OF ACTION.**

23 (a) A person does not have a right of action for violation of this [act].

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

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

5 **[ARTICLE] 5**

6 **DISCLOSURES AND OTHER PROTECTIONS FOR RESIDENTS**

7 **SECTION 501. REQUIRED DISCLOSURES.**

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

17 (b) Before establishing a relationship with a resident, each licensee and provisional
18 registrant shall disclose, to the extent applicable to the virtual currency business activity the
19 licensee or registrant will undertake with the resident:

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

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

1 by:

2 (A) a form of insurance or otherwise guaranteed against loss by an agency
3 of the United States up to the full U.S. Dollar equivalent of the virtual currency placed under the
4 control of or purchased from the licensee or registrant on the date of the placement, including
5 maximum amount provided by insurance under the Federal Deposit Insurance Corporation or
6 otherwise available from the Securities Investor Protection Corporation, and, if not provided at
7 the full U.S. Dollar equivalent of the currency placed under the control of or purchased from the
8 licensee or registrant, the maximum amount of coverage for each resident expressed in the U.S.
9 Dollar equivalent of the virtual currency; or

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

12 (3) the normal irrevocability of a transfer or exchange of virtual currency and any
13 exception to irrevocability;

14 (4) a description of:

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

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

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

21 (D) general error resolution rights applicable to a transfer or exchange;

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

1 make the transfer or exchange;

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

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

6 (8) the resident's right to not less than 30 days prior notice of a change in the
7 licensee's or registrant's fee schedule, other terms and conditions of operating its virtual currency
8 business activity with the resident and the policies applicable to the resident's account; and

9 (9) virtual currency is not legal tender.

10 (c) Except as otherwise provided in subsection (d), at the conclusion of a virtual currency
11 transaction with a resident, the licensee or provisional registrant shall provide to the resident a
12 confirmation in a record that contains:

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

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

16 (3) the fee charged for the transaction, including any charge for conversion of
17 virtual currency to another virtual currency or to legal tender.

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

1 **SECTION 502. INCORPORATION OF ARTICLE 8 OF THE UNIFORM**
2 **COMMERCIAL CODE.**

3 (a) In this section:

4 (1) “UCC Article 8” means Article 8 of the Uniform Commercial Code of the
5 UCC jurisdiction determined under subsection (b)(1);

6 (2) “UCC jurisdiction” means this state or another state that has adopted UCC
7 Article 8 in substantially the form promulgated by the American Law Institute and the Uniform
8 Law Commission; and

9 (3) terms defined in UCC Article 8 and not otherwise defined in this [act]
10 have the same meanings as in UCC Article 8 or as referenced in UCC Article 8 except that the
11 term “control” as used in this section has the meaning provided in section 102(3) of this [act].

12 (b) The relationship between a licensee or provisional registrant and a resident must be
13 evidenced by an agreement in a record authenticated by the licensee or registrant and by the
14 resident. The agreement must:

15 (1) provide that:

16 (A) the agreement is governed by the law of a UCC jurisdiction; or

17 (B) the securities intermediary’s jurisdiction for purposes of UCC Article
18 8 is a UCC jurisdiction and the law in force in the UCC jurisdiction is applicable to all issues
19 specified in Article 2(1) of the Convention on the Law Applicable to Certain Rights in Respect
20 of Securities Held with an Intermediary;

21 (2) state that:

22 (A) the licensee or registrant is a securities intermediary;

23 (B) the control of any virtual currency by the licensee or registrant for the

1 benefit of the resident creates a securities account of which the resident is the entitlement holder;

2 (C) the parties have agreed that the virtual currency needs to be treated as
3 a financial asset credited or held for credit to the securities account of the resident; and

4 (3) not provide a standard for the licensee or registrant to comply with its duties
5 under Part 5 of UCC Article 8 that is less protective of the resident than the standard that would
6 under Part 5 in the absence of an agreement about the standard between the licensee or registrant
7 and the resident.

8 (c) If there is no agreement complying with subsection (b), the relationship between the
9 licensee or provisional registrant and the resident is determined as if the licensee or registrant
10 and the resident had an agreement complying with subsection (b).

11 (d) A licensee or provisional registrant may not agree with a resident that the licensee or
12 registrant may grant a security interest in, or otherwise transfer or exchange, virtual currency for
13 the personal account of the licensee or registrant other than for payment of fees, charges, and
14 other amounts owing by the resident to the licensee or registrant for the virtual currency business
15 activity conducted by the licensee or registrant for the account of the resident.

16 (e) Each licensee or provisional registrant shall maintain in a state an office that complies
17 with the second sentence of Article 4(1) of the Convention on the Law Applicable to Certain
18 Rights in Respect of Securities Held with an Intermediary.

19 **Reporter's Note**

20 With respect to subsection (e), the Convention requires that one office be maintained in a
21 state of the United States. It does not require, and it should not be amended to require, that the
22 licensee or registrant maintain an office in each enacting state. Virtual currency businesses are
23 virtual. If the Commission requires that a licensee or registrant must maintain an office in each
24 enacting state, it would impose a significant barrier to entry by new industry participants that the
25 Convention on the Law Applicable to Certain Rights in Respect of Securities held with an
26 Intermediary does not require.

1 [ARTICLE] 6

2 POLICIES AND PROCEDURES

3 SECTION 601. MANDATED COMPLIANCE PROGRAMS AND POLICIES
4 AND MONITORING.

5 (a) A licensee, before submitting an application for license, and a provisional registrant,
6 before registering, shall create and, during licensure or provisional registration, maintain policies
7 and procedures for:

- 8 (1) a cybersecurity program;
- 9 (2) a business-continuity program;
- 10 (3) a disaster-recovery program;
- 11 (4) an anti-fraud program;
- 12 (5) an anti-money-laundering program;
- 13 (6) a program to fund prevention of terrorist activity; and
- 14 (7) a program designed to:

15 (A) assure compliance with this [act] and other state and federal law
16 relevant to the virtual currency business activity contemplated by the licensee or registrant in this
17 state; and

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

20 (b) Each policy required by subsection (a) must be in a record and be designed to be
21 adequate for the licensee's or provisional registrant's contemplated virtual currency business
22 activity with or on behalf of residents, considering the circumstances of all participants and the
23 safe operation of the virtual currency business activity. Each policy and implementing procedure

1 must be compatible with other policies and the procedures implementing them and not conflict
2 with policies or procedures applicable to the licensee or registrant under law of this state other
3 than this [act]. A policy and its procedure may be a policy and procedure already in existence in
4 the licensee's or registrant's virtual currency business with or on behalf of residents.

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

6 (1) identification and assessment of the material risks of its virtual currency
7 business operations related to fraud;

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

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

11 (d) A licensee's or provisional registrant's policy for countermanding money laundering
12 and terrorist financing must include:

13 (1) identification and assessment of the material risks of its virtual currency
14 business operations related to money laundering and terrorist funding;

15 (2) procedures, in accord with federal law or guidance published by federal
16 agencies responsible for enforcing federal laws, pertaining to money laundering and terrorist
17 financing; and

18 (3) filing of the reports under the Bank Secrecy Act, 31 U.S.C. Section 5311 et
19 seq., or 31 C.F.R. Part X, and any other federal or state laws pertaining to the deterrence or
20 detection of money laundering or terrorist funding.

21 (e) A licensee or provisional registrant is not required to file a copy of a report it makes to
22 a federal authority unless the department specifically requires the filing.

23 (f) A licensee's or provisional registrant's protection policy for residents must include:

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

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

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

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

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

15 (h) A licensee or provisional registrant may:

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

17 (2) with the department's approval, outsource the functions required under this
18 section.

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

23 (j) A policy and procedure required by this section must be made available to a resident

1 in a clear and conspicuous manner separately from other disclosures made to the resident and in
2 the medium through which the resident contacted the licensee or provisional registrant.

3 **SECTION 602. MANDATED COMPLIANCE POLICY.**

4 (a) A licensee, before submitting its application for license, and a provisional registrant,
5 at the time of its registration, shall establish and maintain in a record a policy designed to ensure
6 compliance with:

7 (1) this [act]; and

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

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

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

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

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

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

19 (c) A licensee or provisional registrant may:

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

21 (2) with the department's approval, outsource functions under this section.

22 (d) After the policies and procedures required under this section are created and approved
23 by the department and a licensee or provisional registrant, the licensee or registrant shall engage

1 a responsible individual with adequate authority and experience to monitor each policy and
2 procedure, publicize it as appropriate, recommend changes as desirable, and enforce it.

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

7 **[ARTICLE] 7**

8 **MISCELLANEOUS PROVISIONS**

9 **SECTION 701. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

10
11 In applying and construing this uniform [act], consideration shall be given to the need to
12 promote uniformity of the law with respect to its subject matter among the jurisdictions that
13 enact it.

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

20 **SECTION 703. SUPPLEMENTARY LAW.** Unless displaced by the particular
21 provisions of this [act], the principles of law and equity supplement its provisions.

22 **SECTION 704. SAVING AND TRANSITIONAL PROVISIONS.**

23 (a) A license issued under [name of state's existing Money Services Act or Money
24 Transmitter Act] that is in effect immediately before the effective date of this [act] remains in

1 effect as a license for its duration unless revoked or suspended by the licensing authority that
2 issued it. A person licensed under [name of state’s existing Money Services Act or Money
3 Transmitter Act] that does not intend to engage in virtual currency business activity is not
4 required to inform the department of its intention.

5 (b) If the department denies a license or suspends a provisional registration to conduct
6 virtual currency business activity with or on behalf of residents, the denial or suspension may not
7 be used as a ground for suspension or revocation of a license granted under the [Money Services
8 Act or Money Transmitter Act] unless that statute independently provides a basis for action
9 against the licensee or provisional registrant.

10 (c) This [act] applies to virtual currency business activity with or on behalf of residents on
11 or after the effective date of this [act]. A person engaged in virtual currency business activity
12 after the effective date of this [act] that does not hold a license issued or recognized under this
13 [act], that is not exempt from this [act], or has not applied for a license or filed a provisional
14 registration under this [act], including a person that has obtained a license under the [Money
15 Services Act or Money Transmitter Act] whether or not that statute covers virtual currency
16 business activity, or a person that holds a charter as a trust company from this state or that does
17 not have permission to engage in virtual currency business activity with or on behalf of residents,
18 is deemed to be conducting unlicensed virtual currency business activity with or on behalf of
19 residents in violation of this [act].

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

1 *domiciled in the state.*

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3

SECTION 705. SEVERABILITY CLAUSE. If any provision of this [act] or its

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application to any person or circumstance is held invalid, the invalidity does not affect other

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provisions or application of this [act] that can be given effect without the invalid provision or

6

application, and to this end the provisions of this [act] are severable.

7

Legislative Note: *Include this section only if this state lacks a general severability statute or a*

8

decision by the highest court of this state stating a general rule of severability.

9

10

SECTION 706. REPEALS; CONFORMING AMENDMENTS.

11

(a)....

12

(b)....

13

(c)....

14

SECTION 707. EFFECTIVE DATE. This [act] takes effect....