DRAFTING COMMITTEE ON UNIFORM REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT

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UNIFORM REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT

PREFATORY NOTE

Purpose of the Act

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

(1) the exchange of virtual currencies for cash, bank deposits, or other virtual currencies;

(2) the transfer from one customer to another person of virtual currencies; or

(3) certain custodial or fiduciary services in which the property or assets under the custodian’s control or under management include property or assets recognized as “virtual currency.”

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

The key factors for determining which providers of virtual currency products and services are subject to this act are found in two definitions in section 102 – the definitions of the terms “virtual currency” and “virtual currency business activity.” In addition, this act contains numerous complete exemptions from its provisions. These exemptions are similar to those found in the Uniform Money Services Act or in other state “money transmitter” statutes, as well as others found in guidance published by the Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) since March 2013. The exemptions are found in section 103 of this act.
This act has some novel features designed to modernize even relatively recent uniform laws to meet contemporary regulatory issues. Features of this act that distinguish it from the many state “money services” or “money transmitter” statutes adopted prior to the past two years include:

(1) a three-tier system for determining which providers are exemption from the act consisting of persons engaging in only minor activity, an intermediate provisional registration status that is modeled as an “on-ramp” or “regulatory sandbox” that is designed to facilitate innovations in virtual currency businesses with more modest regulatory requirements, and full licensure for providers with specified business volumes;

(2) mandatory application to virtual currency assets under the control of providers of virtual currency services and products of provisions found in U.C.C. Article 8, Part 5’s rules protecting those assets from claims of the providers’ creditors and purchasers from the provider, and providing a familiar base for commercial law rules that will facilitate access to credit as well as other familiar commercial law concepts;

(3) a heightened focus on enabling cross-state “reciprocal licensure” for providers to enable providers to provide new products to more customers at lower regulatory costs. These features are described in greater detail below; and

(4) more flexible provisions on net worth and reserve requirements than have been found in money transmitter acts that are related to the decision to apply U.C.C. Article 8, Part 5 protection of customers’ assets in the provider’s hands from investment by the provider or from the reach of the provider’s creditors.

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

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

It is not common for the Uniform Law Commission to sponsor drafting projects for industries as young as the virtual currency business industry is. Some of the driving factors behind this act have been mentioned above, but there are two more important reasons for regulating virtual currency businesses now. The first of these additional reasons for this project, and a reason for states to enact this act, is that for innovators to succeed they need customers. Customers want to know how new products and services work, and are likely in the financial services “space” to know whether the business has been vetted by a financial services regulator.
This act addresses the needs of these future customers. The second reason is that virtual currency businesses need banking relationships and credit opportunities as well as early-round investors to succeed. This act is intended to foster clarity in the minds of banks, bank regulators and investors that the businesses will be able to succeed as businesses, with banking services and greater regulatory certainty behind them.

What is Virtual Currency and How is it Used?

What is Virtual Currency?

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

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

The distributed ledger (or asset registry) that records the issuance or earning of virtual currencies and the transfers of interests can be public or private. These ledgers are often called "blockchains" because of the algorithms employed and the manner in which changes are recorded, as additions to the earlier blocks of information stored by the ledger. In centralized systems, a single operator manages the issuance and transfers. In decentralized systems, a group of managers work to maintain the integrity of the registry. In Bitcoin, the form of virtual currency created by “Satoshi Nakamoto,” the group of problem-solver managers are known as "miners." Centralized issuers of virtual currencies do not require miners to help create units or record their transfers; only Bitcoin uses “miners” at this time.
Virtual currencies are a subset of cryptocurrencies. As media of exchange, they offer a communications technology for peer-to-peer (P2P) transactions that is the equivalent of paying cash – irreversible and not dependent on a third-party (i.e. a bank) to carry out the transaction. That does not mean, however, that users do not use third party custodians or intermediaries to perform transaction execution or facilitate storage of virtual currency assets.

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

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

This is true under the Uniform Revised Unclaimed Property Act.

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

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

(A) means a digital representation of value that:
   (1) is used as a medium of exchange, unit of account, or store of value; and
   (2) is not legal tender, whether or not denominated in legal tender; and
(B) does not include:
   (1) software or a protocol governing transfer of the digital representation of value;
   (2) a transaction in which a merchant grants value as part of an affinity or rewards program, which value cannot be taken from or exchanged with the merchant for legal tender, bank credit, or convertible virtual currency; or
   (3) a digital representation of value used within an online game, game platform, or a family of games sold by the same publisher or offered on the same game platform.

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

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

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

Control” means:
(A)When used in reference to a transaction or relationship involving virtual currency, means power to execute unilaterally or prevent
indefinitely a virtual currency transaction.

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

to assume control of virtual currency from or on behalf of a resident, at least momentarily, to sell, trade or convert:
  (A) virtual currency for legal tender or bank credit or for one or more forms of virtual currency; or
  (B) legal tender or bank credit for one or more forms of virtual currency.

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

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

(20) “Transfer” means to assume control of virtual currency from or on behalf of a resident and to
  (A) credit the virtual currency to the account of another resident or person;
  (B) move the virtual currency from one account of a resident to another account of the same resident; or
  (C) relinquish control of virtual currency or of virtual currency credentials to another person.

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

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

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

(A) exchanging, transferring, or storing virtual currency with or on behalf of residents or engaging in virtual currency administration, whether directly or through an agreement with a virtual currency control services vendor;
(B) holding electronic precious metals or electronic certificates of previous metals on behalf of another person or issuing shares or electronic certificates representing interests in precious metals; or
(C) exchanging otherwise non-convertible digital units for one or more forms of convertible virtual currency or for legal tender or bank credit outside the online game, game platform, or family of games offered by the same publisher from which the original digital units were received.
The third factor is whether the provider is exempt from this act under section 103. Section 103 contains sixteen specific types of exemptions from this act’s coverage. Many are commonly found in “money services” and “money transmitter” statutes enacted by the states. A few derive from guidance that FinCEN has issued to date.

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

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

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

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

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

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

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

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

Does this act cover multiple forms of virtual currency?

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

A final point also may assist understanding.

One way to pay a seller would be by delivering cash. The point here is not that the transfer of virtual currency is superior in most respects, if not in all respects to payment in cash, as indeed is true for most modern payment methods, but why the merchant agrees to receiving cash (ignore the legal rule there is no choice where legal tender is involved). It is not because the paper money has intrinsic value, or can be exchanged for gold (which also has no intrinsic value), but because people perceive value in dollar bills because of legal rules that govern them. Likewise for virtual currency—people see value in its use as a payment method when the legal rules for it are clear and workable, and the act will enhance that perception of value since present rules that could be applied to govern virtual currency business transactions are at best not
designed to do so or are unclear in application. It also is critical that the rules, since the act will be state law, be uniform for businesses operating across state lines, and that is what the products of the Uniform Law Commission are designed to be.

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

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

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

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

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

A virtue of blockchain technology is its ability to put a person’s security and online identity into their own hands. Cyber-attacks for the purpose of identity theft are becoming one of the defining security threats of the 21st Century. Databases filled with personal information are under attack from nation-states and organized crime. Hackers who target governments, cause data breaches at large department stores and even celebrity nude photo leaks, are the result of the same problem; that is criminal elements breaking through cybersecurity to their prize; databases filled with valuable personal information. Blockchain technology offers a secure alternative to consumers who do not wish to see their personal information fall prey on the Internet. It offers the ability to transact on the Internet without sharing their personal information with third parties whose databases make targets for hackers. Instead, blockchain technology gives consumers the power to provide their own hack-proof online security. The security offered by blockchain technology on the Internet has a flip side, however. The anonymity it provides presents an
opportunity for criminals and terrorists to send and receive money over the internet, nearly
anonymously, without a third party. Thus money laundering, terrorist financing, and tax evasion
are risks inherent in technology and therefore a certain amount of regulation to ameliorate these
issues also is prudent, and is being pursued in the act. The transfer is fast as the transactions are
grouped in blocks every 10 minutes but many can be instantaneous; generally transactions
cannot be cancelled or reversed so there is virtual finality of payment.

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

Legal Efforts to Establish Relevant Law

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

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

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

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

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

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

**Development of the Act**

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

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

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

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

CoinCenter, represented by Peter Van Valkenberg, Counsel

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

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

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

The California Department of Business Oversight, represented by Stephen Lao

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

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

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

The Entertainment Software Association, represented by Michael Warnecke

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

Rebecca Simmons, Sullivan & Cromwell, New York City

Ryan Strauss, Dorsey & Whitney, Seattle

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

Tom Brown, Paul Hastings, San Francisco

Other participants included The Clearing House, the Federal Reserve Bank of New York, the Office of Business Oversight of the State of California, the Department of Banking of the State of Washington, and PayPal.
The drafting committee has had two meetings per year over the two-year gestation period for the act. The act also was considered at two annual meetings of the Uniform Law Commission by the whole body of Commissioners from every state, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico, and approved at the 2017 annual meeting.

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

**Balances Achieved**

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

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

[ARTICLE] 1

GENERAL PROVISIONS

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

SECTION 102. DEFINITIONS. In this [act]:

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

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

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

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

(3) “Control” means:

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

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

(4) “Convertible virtual currency” means virtual currency that:
(A) has an equivalent value in legal tender and can be exchanged for legal tender or bank credit; or

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

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

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

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

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

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

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

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

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

(11) “Provisional registrant” or “registrant” means a person that has registered with this state to conduct virtual currency business activity but whose volume of virtual currency business activity with or on behalf of residents is less than the threshold required under [Article] 2 for licensure but greater than the amount provided in Section 103(b)(8) that would exempt the person from application of this [act].
(12) “Provisional registration” means the ability to conduct virtual currency business activity under the threshold required under [Article] 2 for licensure but greater than the amount provided in Section 103(b)(8) by virtue of registering with this state and complying with other requirements provided in this [act].

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

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

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

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

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

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

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

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

(19) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. [The term does not include a federally recognized Indian tribe or nation.]
(20) “Store” or “storage” means maintaining control of virtual currency on behalf of a resident by a person other than the resident.

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

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

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

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

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

(24) “Virtual currency”:

(A) means a digital representation of value that:

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

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

(B) does not include:

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

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

(3) a digital representation of value used within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.
(25) “Virtual currency administration” means issuing virtual currency with the authority to redeem the currency for legal tender, bank credit or other virtual currency.

(26) “Virtual currency business activity” means:

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

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

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

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

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

SECTION 103. SCOPE.

(a) Except as otherwise provided in subsection (b), this [act] governs the virtual currency business activity of a person, wherever located, that engages in or holds itself out as engaging in the activity with a resident.
(b) This [act] does not apply to the exchange, transfer, or storage of virtual currency or to
virtual currency administration to the extent that provisions of the Electronic Fund Transfer Act of
1978, 15 U.S.C. Sections 1693 through 1693r [as amended], the Securities Exchange Act of
1934, 15 U.S.C. Section 78a through 78oo [as amended], the Commodities Exchange Act of
1936, 7 U.S.C. Sections 1 through 27f [as amended], or [insert reference to the “blue sky” laws
of this state] [as amended], govern the activity, or to activity by:

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

(2) a bank;

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

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

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

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

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

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

(6) a person that only:

(A) contributes connectivity software or computing power to a
decentralized virtual currency;

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

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

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

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

(9) an attorney providing escrow services to residents;

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

(11) a securities intermediary, as defined in [insert state reference to U.C.C. Section 8-102], or a commodities intermediary as defined in [insert state reference to U.C.C. 8-102], that:

(A) does not engage in the ordinary course of business in virtual currency
business activity with or on behalf of residents in addition to maintaining securities accounts to
which securities are credited and is regulated under federal law or under law of this state or
another state as a securities intermediary; and

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

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

(13) a virtual currency control services vendor;

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

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

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

In states in which the constitution, or other law, does not permit the phrase “as
amended” when federal statutes are incorporated into state law, the phrase “as amended”
should be deleted across subsection (b) of this section.
SECTION 201. LICENSE. A person may not engage in virtual currency business activity, or hold itself out as being able to engage in virtual currency business activity, with a resident unless the person is:

(1) licensed under this [act];

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

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

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

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

SECTION 203. APPLICATION FOR LICENSE.

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

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

(1) the legal name of the applicant, each current or proposed business address of the applicant, and any fictitious or trade name the applicant uses or plans to use in conducting its virtual currency business activity with a resident;
(2) the legal name, any former of fictitious name, and residential and business address of each executive officer of the applicant, each responsible individual of the applicant, and each person that has control of the applicant;

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

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

(5) a listing of:

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

(B) the date the license expires; and

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

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

(A) the applicant;

(B) each executive officer of the applicant;

(C) each responsible individual of the applicant;

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

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

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

(A) the applicant;

(B) each executive officer of the applicant;

(C) each responsible individual of the applicant;

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

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

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

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

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

(12) the name, United States Post Office address, and email address of the registered agent of the applicant in this state;
(13) a copy of the certificate, or detailed summary of coverage acceptable to the department, for each liability, casualty, business-interruption or cyber-security insurance policy maintained by the applicant for itself, an executive officer, a responsible individual, or the applicant’s users;

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

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

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

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

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

(19) a set of fingerprints for each executive officer of the applicant and each responsible individual and an employment history and history of any investigation or legal proceeding involving any executive officer or responsible individual for the five years before the application is submitted, if available; and
(20) other information the department reasonably requires by regulation.

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

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

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

SECTION 204. RECIPROCAL LICENSING.

Alternative A

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

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

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

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

(3) submit documentation demonstrating that the applicant complies with the security reserve requirements of Section 206 and the net worth and reserve requirements of Section 209; and
(4) submit a certification signed by an executive officer of the applicant affirming
that the applicant will conduct its virtual currency business with or on behalf of residents in
compliance with this [act].

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

Alternative B

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

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

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

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

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

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

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

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

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

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

End of Alternatives

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

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

SECTION 205. ACTION BY DEPARTMENT.

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

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

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

(1) the date on which the department issues the license; or
(2) the date the licensee provides the security required by Section 206.

SECTION 206. SECURITY.

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

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

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

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

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

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

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

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

(g) A claimant does not have a direct right against security deposited under this section.
Only the department may recover on the security. The department may retain the recovery for up to [five] years after the department recovers on the security and may process claims and distribute recoveries to claimants in accordance with regulations promulgated by the department under [insert reference to state’s uniform money services act or money transmitters act].

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

SECTION 207. INVESTIGATION; ISSUANCE OF LICENSE.

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

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

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

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

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

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

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

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

SECTION 208. RENEWAL OF LICENSE.

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

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

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

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

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

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

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

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

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

(ii) audited consolidated annual financial statement if the person’s gross revenue amounted to more than $[insert the figure state employs for corporate activity auditing purposes] in the previous fiscal year.
auditing purposes] in the previous fiscal year, measured as of the anniversary date of the license;

(3) a description of any:

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

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

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

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

(E) data security breach;

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

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

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

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

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

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

(10) a list of each location where the licensee operates its virtual currency
business activities; and

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

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

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

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

(2) pays any penalty assessed under Section 401.

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

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

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

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

(i) A licensee that has not complied with this section shall cease operations with or on
behalf of residents on or before the anniversary date of its license.

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

SECTION 209. NET WORTH AND RESERVES OF LICENSEE OR PROVISIONAL REGISTRANT.

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

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

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

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

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

SECTION 210. PROVISIONAL REGISTRATION.

(a) A person whose volume of virtual currency business activity in U.S. Dollar equivalent of virtual currency will exceed $35,000 annually may engage in virtual currency business activity with or on behalf of residents under a provisional registration without first obtaining a license under this [act] if the person:
(1) files with the department a notice in the form and medium prescribed by the
department of its intention to engage in virtual currency business activity with or on behalf of
residents;

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

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

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

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

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

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

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

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

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

(A) net worth to engage in the level of virtual currency business activity it
proposes to conduct with or on behalf of residents; and
(B) unencumbered reserves for winding down operations.

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

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

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

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

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

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

   (3) on the second anniversary date of the provisional registration.
[ARTICLE] 3

EXAMINATION; EXAMINATION FEES; DISCLOSURE OF INFORMATION OBTAINED DURING EXAMINATION

SECTION 301. AUTHORITY TO CONDUCT EXAMINATION.

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

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

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

SECTION 302. RECORDS.

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

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

      (A) the identity of the resident;

      (B) the form of the transaction;

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

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

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

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

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

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

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

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

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

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

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

(d) If a licensee or provisional registrant maintains its records outside this state that pertain to transactions with residents, the licensee or registrant shall make the records available to
the department within three days or, upon a determination of good cause by the department, at a later time.

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

SECTION 303. COOPERATION AND DATA-SHARING AUTHORITY.

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

(b) Absent good cause, the department shall:

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

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

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

(c) The department may not establish or participate in a central commercial depository of nonpublic personally identifiable information that does not comply with Section 502(e)(5) or (8)
of the Gramm-Leach-Bliley Act, 15 U.S.C. Section 6802(e)(5) or (8) [as amended], or with the
Federal Right to Financial Privacy, 18 U.S.C. Section 3401 et seq. [as amended].
(d) In deciding whether and how to cooperate, coordinate, jointly examine, consult, or
share records and other information under subsection (a), the department shall consider:
(1) maximizing effectiveness and uniformity of regulation, examination,
implementation, and enforcement for the benefit of residents and licensees and provisional
registrants; and
(2) minimizing burdens on licensees and provisional registrants without adversely
affecting protection for residents.

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

**SECTION 304. CONFIDENTIALITY.**
(a) Except as otherwise provided in subsection (b) or (c), information or reports obtained
by the department from an applicant, a licensee or a provisional registrant, information contained
in or related to an examination, investigation, or operating or condition report prepared by, on
behalf of, or for the use of the department, and other financial and operating information not
contained in a report otherwise available to the public are not subject to disclosure under [insert
reference to the enacting state’s open records law]. If the department determines the information
or records are confidential under the open records law of a reciprocal-licensing state, the
information or records may not be disclosed.
(b) Trade secrets of an applicant, a licensee, or a provisional registrant are confidential and
are not subject to disclosure under [insert reference to state’s open records law]. If the
department determines trade secrets are confidential under the open records law of a reciprocal-licensing state, the trade secrets may not be disclosed.

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

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

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

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

SECTION 305. INTERIM REPORT.

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

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

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

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

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

Reporter’s Note

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

SECTION 306. CHANGE IN CONTROL OF LICENSEE OR PROVISIONAL REGISTRANT.

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

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

(1) an application in a form and medium prescribed by the department;
(2) the information and records that Section 203 would require if the proposed
person to be in control already had control of the licensee;
(3) a license application under Section 203 by the proposed person to be in
control;
(4) in the case of a registrant to whom subsection (a) applies, the information that
Section 210 would require if the proposed person to be in control already had control of the
registrant; and
(5) in the case of a provisional registration, a provisional registration under
Section 210 by the proposed person to be in control.

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

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

(1) There is a rebuttable presumption of control if the person’s voting power in the
licensee or registrant constitutes or will constitute at least 10 percent of the total voting power of
the licensee or registrant.
(2) There is a rebuttable presumption of control if:
(A) the person’s voting power in another person constitutes or will constitute at least 10 percent of the total voting power of the other person; and

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

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

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

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

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

SECTION 307. MERGER OR CONSOLIDATION BY LICENSEE OR PROVISIONAL REGISTRANT.

(a) Not less than 30 days before a proposed merger or consolidation of a licensee or provisional registrant with another person, the licensee or registrant shall submit to the department in a record:
(1) an application in a form and medium prescribed by the department;

(2) the plan of merger or consolidation in accord with subsection (d);

(3) in the case of a licensee, the information required by Section 203 as to the person that would be the surviving entity in the proposed merger or consolidation; and

(4) in the case of a registrant, the information required by Section 210 as to the person that would be the surviving entity in the proposed merger or consolidation.

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

(c) The department shall approve or deny an application under this section by a licensee or provisional registrant within the time provided in Section 205.

(d) A proposed merger or consolidation may not take place without the department’s approval communicated in a record to the licensee or provisional registrant and the person that would be the surviving entity;

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

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

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

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

(f) If a merger or consolidation of a licensee or a provisional registrant and another person requires approval of an agency of this or another state and the action of the other agency
conflicts with that of the department, the department shall confer with the other agency. If the conflict is not resolved, the proposed merger or consolidation cannot take place.

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

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

[ARTICLE] 4

ENFORCEMENT

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

1. suspend or revoke a license or provisional registration;
2. issue an order to a person to cease and desist from doing virtual currency business activity with or on behalf of residents;
3. request that a court appoint a receiver for the assets of a person doing virtual currency business activity with or on behalf of residents;
4. request the court to issue temporary, preliminary, or permanent injunctive relief against a person doing virtual currency business activity with or on behalf of residents;
5. assess a penalty under Section 403;
6. recover on the security under Section 206 and initiate a plan to distribute the proceeds for the benefit of residents injured by a violation of this [act] or law of this state other than this...
[act] by a licensee or a provisional registrant; or

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

SECTION 402. DEPARTMENT AUTHORITY TO USE ENFORCEMENT MEASURES.

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

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

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

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

(A) an unsafe or unsound act or practice;

(B) an unfair or deceptive act or practice;

(C) fraud or intentional misrepresentation;

(D) another dishonest act; or

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

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

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

(6) the licensee or registrant:

(A) becomes insolvent;

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

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

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

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

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

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

(2) waive to the extent warranted by circumstances, such as a bona fide error, an enforcement measure under subsection (a) if the department determines that the waiver will not unduly adversely affect the likelihood of compliance with this [act].

Reporter’s Note

Under subparagraph (a)(6)(D), there is no intention to include a creditor of a virtual currency business.
SECTION 403. NOTICE AND OPPORTUNITY FOR HEARING.

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

(b) The department may take an enforcement measure:

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

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

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

SECTION 404. CIVIL PENALTY.

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

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

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

(1) the date the underlying violation ceases; or

(2) a date specified by the department.

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

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

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

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

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

(3) a date specified by the department.

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

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

SECTION 407. SCOPE OF RIGHT OF ACTION.

(a) A person does not have a right of action for violation of this [act].
(b) The department may bring an action for restitution on behalf of a resident if the
department proves economic injury due to a violation of this [act].

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

[ARTICLE] 5

DISCLOSURES AND OTHER PROTECTIONS FOR RESIDENTS

SECTION 501. REQUIRED DISCLOSURES.

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

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

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

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

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

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

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

(4) a description of:

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

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

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

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

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

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

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

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

(9) virtual currency is not legal tender.

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

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

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

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

(d) A licensee or provisional registrant may elect to provide a single, daily confirmation
for all transactions with a resident on that day instead of a per-transaction confirmation if the
licensee or registrant discloses that it will provide a daily confirmation in the initial disclosure
under subsection (c).
SECTION 502. INCORPORATION OF ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE.

(a) In this section:

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

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

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

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

(1) provide that:

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

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

(2) state that:

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

(B) the control of any virtual currency by the licensee or registrant for the
benefit of the resident creates a securities account of which the resident is the entitlement holder;

(C) the parties have agreed that the virtual currency needs to be treated as

a financial asset credited or held for credit to the securities account of the resident; and

(3) not provide a standard for the licensee or registrant to comply with its duties

under Part 5 of UCC Article 8 that is less protective of the resident than the standard that would

under Part 5 in the absence of an agreement about the standard between the licensee or registrant

and the resident.

(c) If there is no agreement complying with subsection (b), the relationship between the

licensee or provisional registrant and the resident is determined as if the licensee or registrant

and the resident had an agreement complying with subsection (b).

(d) A licensee or provisional registrant may not agree with a resident that the licensee or

registrant may grant a security interest in, or otherwise transfer or exchange, virtual currency for

the personal account of the licensee or registrant other than for payment of fees, charges, and

other amounts owing by the resident to the licensee or registrant for the virtual currency business

activity conducted by the licensee or registrant for the account of the resident.

(e) Each licensee or provisional registrant shall maintain in a state an office that complies

with the second sentence of Article 4(1) of the Convention on the Law Applicable to Certain

Rights in Respect of Securities Held with an Intermediary.

**Reporter’s Note**

With respect to subsection (e), the Convention requires that one office be maintained in a

state of the United States. It does not require, and it should not be amended to require, that the

licensee or registrant maintain an office in each enacting state. Virtual currency businesses are

virtual. If the Commission requires that a licensee or registrant must maintain an office in each

enacting state, it would impose a significant barrier to entry by new industry participants that the

Convention on the Law Applicable to Certain Rights in Respect of Securities held with an

Intermediary does not require.
[ARTICLE] 6

POLICIES AND PROCEDURES

SECTION 601. MANDATED COMPLIANCE PROGRAMS AND POLICIES AND MONITORING.

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

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

(A) assure compliance with this [act] and other state and federal law relevant to the virtual currency business activity contemplated by the licensee or registrant in this state; and
(B) assist the licensee or registrant in achieving the purposes of the other law if violation of that law has a remedy under this [act].

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

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

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

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

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

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

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

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

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

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

(f) A licensee’s or provisional registrant’s protection policy for residents must include:
(1) any action or system of records required to comply with the provisions of this [act] and law of this state other than this [act] applicable to the licensee or registrant with respect to virtual currency business activity with or on behalf of residents;

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

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

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

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

(h) A licensee or provisional registrant may:

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

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

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

(j) A policy and procedure required by this section must be made available to a resident
in a clear and conspicuous manner separately from other disclosures made to the resident and in
the medium through which the resident contacted the licensee or provisional registrant.

SECTION 602. MANDATED COMPLIANCE POLICY.

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

(1) this [act]; and

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

(A) the other law is relevant to the virtual currency business activity

contemplated by the licensee or registrant or to the scope of this [act]; or

(B) this [act] could assist in the purpose of the other law because violation

of the other law has a remedy under this [act].

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

(1) must be compatible, and not conflict, with requirements applicable to the

licensee or provisional registrant under law of this state other than this [act] or under federal

law; and

(2) may be a policy or procedure in existence for the licensee’s or registrant’s

virtual currency business activity with or on behalf of residents.

(c) A licensee or provisional registrant may:

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

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

(d) After the policies and procedures required under this section are created and approved

by the department and a licensee or provisional registrant, the licensee or registrant shall engage
a responsible individual with adequate authority and experience to monitor each policy and
procedure, publicize it as appropriate, recommend changes as desirable, and enforce it.

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

[ARTICLE] 7

MISCELLANEOUS PROVISIONS

SECTION 701. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

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

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

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

SECTION 704. SAVING AND TRANSITIONAL PROVISIONS.

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

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

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

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

SECTION 705. SEVERABILITY CLAUSE. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this [act] that can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.

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

SECTION 706. REPEALS; CONFORMING AMENDMENTS.

(a)....

(b)....

(c)....

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