



WHY STATES SHOULD REGULATE VIRTUAL-CURRENCY BUSINESSES WITH THE URVCBA RATHER THAN MONEY TRANSMISSION STATUTES

The Uniform Regulation of Virtual-Currency Businesses Act (“URVCBA”) is a superior method for states to regulate virtual currency businesses (“VCB”) when compared to state money transmission licensing (“MTL”) regulations.

URVCBA provides for certainty with regard to what entities and activities are covered.

The URVCBA is tailor made for VCB. It includes specific definitions that make it easy to determine what activity requires a license. MTL definitions are difficult to apply to VCB, which will cause uncertainty within the industry, stifle innovation and business development, and may result in costly legal challenges. For example, MTL regulations generally cover intermediaries that take possession or custody of customer funds. Given that virtual currency has no physical presence, it is difficult to know when an entity actually has possession or custody. The URVCBA, however, provides explicit rules for determining when an entity has sufficient control over virtual currency to trigger licensing requirements.

URVCBA provides superior consumer protection because it is tailored to virtual currency.

MTL regulations require an entity to maintain sufficient dollars to cover its obligations to consumers. When applied to virtual currency, that means consumers may receive dollars rather than the virtual currency in return from an intermediary. In contrast, the URVCBA requires licensees to hold virtual currency of sufficient type and amount to ensure that consumers get back exactly the amount and type of virtual currency entrusted to the licensee. The URVCBA also requires disclosures and other protections similar those required by MTL regulations, but again tailored to virtual currency users.

URVCBA avoids over inclusive regulation.

Application of MTL rules will result in over inclusive regulation, potentially covering individuals merely using virtual currency to make purchases, academics researching virtual currency and encryption technology and security, on-line games with a currency for internal game purposes, and merchant who issue points to repeat customers. The URVCBA provides for exemptions for personal, family and academic uses, certain online games and certain merchant rewards programs. The URVCBA prevents these uses of virtual currency, which pose no risk of potential loss or harm to consumers, from being swept into the regulatory scheme. Regulation under MTL statutes rather than URVCBA may open states to legal challenges on due process and other grounds.

URVCBA fosters innovation and business development.

The URVCBA recognizes that virtual currency is an emerging industry that states want to foster and support, not regulate out of existence. For this reason, the URVCBA provides for a *de minimis* exception for entities that engage in very small amounts of virtual currency activity. The Act also supports innovation and business creation by providing a registration option in lieu of full licensure for start-up companies that are in a development and testing phase. The URVCBA also makes state licensure competitive with federal regulation by creating a fast-track reciprocal licensing process with other states. The Conference of State Banking Supervisors has committed to supporting this reciprocal license framework in their Vision 2020 initiative.