

UNIFORM REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SIXTH YEAR
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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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

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

(5) “Exchange” means to assume control of virtual currency from or on behalf of a

resident, at least momentarily, to sell, trade, or convert:

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

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

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

(7) “Insolvent” means:

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

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

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

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

(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) “Registrant” means a person that has registered with this state in accordance with the requirements of Section 210 of this [act] to conduct virtual currency business activity.

(12) “Registration” means the ability to conduct virtual currency business activity under Section 210 of 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. The term includes a legal representative of an individual who qualifies as a resident.

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

(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 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].

(23) “Virtual currency” means

(A) a digital representation of value that:

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

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

(B) does not include:

(1) a transaction in which a merchant grants 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 virtual currency; or

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

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

(25) “Virtual currency business activity” means:

(A) exchanging, transferring, or storing virtual currency 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 one or more digital representations of value used within one or more online games, game platforms, or family of games for virtual currency or for legal tender or bank credit outside the online game, game platform, or family of games offered by or on behalf of the same publisher from which the original digital representations of value were received.

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

***Legislative Note:** 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 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, or to a protocol governing transfer of the digital representation of value;

(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 using virtual currency solely

(A) on its own behalf,

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

(C) for academic purposes,

including creating, investing, buying or selling, or obtaining virtual currency as payment for the purchase or sale of goods or services;

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

(9) an attorney 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. 9-102], 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 or commodities accounts and is regulated under federal law or under law of this state or another state as a securities intermediary or commodities 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; or

(14) a person that receives no compensation from residents for providing virtual currency products or services, or from conducting virtual currency business activity, or that is engaged in testing products or services with the person's own funds.

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

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

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

[ARTICLE] 2

LICENSURE

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 registrant operating in compliance with Section 210; or
- (4) exempt from this [act] under Section 103.

SECTION 202. LICENSE OR REGISTRATION NOT TRANSFERABLE OR ASSIGNABLE. A license or 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 or 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 [as amended];

(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;

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

(21) 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 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 has 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 send the applicant notice of its decision to approve, approve with conditions, or deny the application. If the department does not send the applicant notice of its decision by the 31st day, the application is deemed denied. If the department does not receive notice from the applicant that the applicant accepts conditions specified by the department within 31 days following the department's notice of the conditions, the application is deemed denied.

(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;

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

(A) reviewed annual financial statement if the person's gross revenue 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

(B) 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, 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;

(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. No notice or hearing is 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.

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

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 REGISTRANT.

(a) In addition to the security required under Section 206, a licensee and a registrant, at the time of application for a license or filing of 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 as agreed to by the department considering the nature and size of expected virtual currency business activity with or on behalf of residents.

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

(c) For good cause, the department may require a licensee or 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. REGISTRATION.

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

(1) files with the department a notice in the form and medium prescribed by the

department of its intention to engage in virtual currency business activity with or on behalf of 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. [as amended], and other applicable laws;

(7) describes the source of funds and credit to be used by the person to conduct virtual currency business activity with or on behalf of residents and provides evidence of and agrees to maintain the minimum net worth and reserves required by Section 209 and sufficient unencumbered reserves for winding down operations.

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

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

(b) Before the virtual currency business activity of a registrant with or on behalf of residents exceeds \$35,000 annually measured in U.S. Dollar equivalent of virtual currency, the registrant shall file an application for a license and may continue to operate past the threshold while its

application for license is pending.

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

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

(1) if the department has denied the registrant's application for a license, 48 hours after the registrant receives notice in a record that the department has denied the application;

(2) if the department has suspended or revoked the registration, 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;

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

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

SECTION 211. REGULATIONS AND GUIDANCE.

The Department has authority to promulgate regulations to implement the provisions of this [act] and to issue guidance as may be appropriate.

[ARTICLE] 3

EXAMINATION; EXAMINATION FEES; DISCLOSURE OF INFORMATION

OBTAINED DURING EXAMINATION

SECTION 301. AUTHORITY TO CONDUCT EXAMINATION.

(a) The department may conduct an annual examination of a licensee or a registrant. For

good cause, the department may conduct additional examinations. The department may examine a licensee or registrant without prior notice to the licensee or registrant.

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

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

SECTION 302. RECORDS.

(a) A licensee or registrant, shall maintain, for all virtual currency business activity with 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 the resident, and, to

the extent feasible, other parties to the transaction;

(2) the aggregate number of transactions and aggregate value of transactions by the licensee or registrant with or on behalf of the resident and for the licensee's or registrant's account 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 licensee or registrant shall maintain records required by subsection (a) in a form that enables the department to determine whether the licensee or registrant is in compliance with this [act], any court order, and law of this state other than this [act].

(c) If a licensee or registrant maintains 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.

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

SECTION 303. RECORDS, REGULATIONS, 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 registrant in this state.

(b) The department shall:

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

(2) cooperate in 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 registrants; and

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

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

SECTION 304. CONFIDENTIALITY.

(a) Except as otherwise provided in subsection (b) or (c), information not contained in a report otherwise available to the public or reports obtained by the department from an applicant, a licensee or a 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 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 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 registrant’s virtual currency business activity with or on behalf of residents;
- (2) a list of persons licensed or registered under this [act]; or
- (3) aggregated financial data concerning licensees or registrants in this state.

SECTION 305. INTERIM REPORT.

(a) A licensee and a 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 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.

SECTION 306. CHANGE IN CONTROL OF LICENSEE OR REGISTRANT.

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

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

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

(2) the information and records that Section 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 registration, a registration under Section 210 by the proposed person to be in control.

(c) The department shall approve, approve with conditions, or deny an application for a change in control of a licensee or registrant in accordance with 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 registrant:

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

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

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

(B) the other person's voting power in the licensee or registrant constitutes at least 25 percent of the total voting power of the licensee or registrant.

(3) There is no presumption of control solely because the individual is an executive officer of the licensee or 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 change in control of a licensee or a registrant requires approval of an agency of this state or of another state with which this state has a reciprocity agreement and the action of

the other agency conflicts with that of the department, the department shall confer with the other agency. If the proposed change in control cannot be completed because the conflict cannot be resolved, the change in control may not proceed or the licensee or registrant must cease operations with residents or be in violation of this [act].

SECTION 307. MERGER OR CONSOLIDATION BY LICENSEE OR REGISTRANT.

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

- (1) an application in a form and medium prescribed by the department;
- (2) the plan of merger or consolidation in accord with subsection (e);
- (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 registrant, the licensee or registrant shall comply with Section 306 and this section.

(c) The department shall approve, approve with conditions, or deny an application for approval of a merger or consolidation of a licensee or registrant in accordance with Section 205. If the department does not approve the application, the licensee or registrant must abandon the merger or consolidation or cease operations with residents or be in violation of this [act].

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

surviving entity;

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

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

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

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

(f) If a merger or consolidation of a licensee or a registrant and another person requires approval of an agency of this state or of another state with which this state has a reciprocity agreement and the action of the other agency conflicts with that of the department, the department shall confer with the other agency. If the proposed merger or consolidation cannot be completed because the conflict cannot be resolved, the licensee or registrant must abandon the merger or consolidation or cease operations with residents or be in violation of this [act].

(g) The department may condition approval of a proposed merger or consolidation of a licensee or a registrant and another person on acceptance by the parties of the department's amendments to the plan. If the department does not receive notice from the applicant that the applicant accepts the conditions specified by the department within 31 days following the department's communication of the conditions, the application is deemed denied. If the application is deemed denied, the licensee or registrant must abandon the merger or consolidation or cease operations with or on behalf of residents or be in violation of this [act].

(h) If a licensee or 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 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 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 404;
- (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 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 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 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 fraud or 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) makes a general assignment for the benefit of its creditors;

(C) 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

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

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

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

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

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

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

(d) All proceedings under this [act] are subject to the [insert reference to the state administrative procedures act].

Legislative Note: *If the state's administrative procedures act does not set out due process rights, then enact section 403. If the department would not be subject to the state's administrative*

procedure act then the administrative procedure act should be amended to apply to the department.

SECTION 403. NOTICE AND OPPORTUNITY FOR HEARING.

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

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

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

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

(3) after notice and an opportunity for a hearing if the person conducting virtual currency business activity with or on behalf of residents does not timely request a hearing.

(c) If the department takes action under subsection (b)(1) or (b)(2), the person is entitled to an expedited post-action hearing by the department unless the person has waived the hearing.

SECTION 404. CIVIL PENALTY.

(a) If a person other than a licensee or registrant 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 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.

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

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 registration, or an order to cease and desist is effective against a licensee, 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, if any, 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, 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) Except as provided in subsections (b) and (c), 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 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 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;

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

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

(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 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 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. DUTY OF LICENSEE OR REGISTRANT TO MAINTAIN VIRTUAL CURRENCY; PROPERTY INTERESTS OF RESIDENTS AND OTHER PERSONS.

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

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

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

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

[ARTICLE] 6

POLICIES AND PROCEDURES

**SECTION 601. MANDATED COMPLIANCE PROGRAMS AND POLICIES
AND MONITORING.**

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

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

(A) 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 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 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 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 funding;

(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. [as amended], or 31 C.F.R. Part X [as amended], and any other federal or state laws pertaining to the deterrence or detection of money laundering or terrorist funding.

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

currency it receives, maintains or transmits.

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

(g) A licensee's or 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.

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

(i) A licensee or registrant may:

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

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

(j) Failure of a particular policy or procedure adopted under this section in a particular

instance to meet its goals is not a ground for liability of a licensee or 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.

(k) 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 registrant.

SECTION 602. MANDATED COMPLIANCE POLICY.

(a) A licensee, before submitting its application for license, and a 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 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 registrant may:

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

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

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

(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 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 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b)).

SECTION 703. 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 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 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 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)....

Legislative Note: *In connection with enacting this [act] the state should modify or repeal any other law regulating virtual currency business activity with or behalf of residents of this state, e.g., if the state regulates virtual currency business activities as money transmission.*

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