**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 Office of the Comptroller of the Currency to a person engaged in the business of banking other than deposit-taking. The term does not include:

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

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

(3) “Control” means:

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

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

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

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

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

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

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

(7) “Insolvent” means:

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

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

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

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

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

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

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

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

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

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

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

(16) “Resident”:

(A) means a person that

(i) is domiciled in this state;

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

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

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

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

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

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

(B) to attach to or logically associate with the record an electronic

symbol, sound, or process.

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

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

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

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

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

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

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

(23) “Virtual currency”:

(A) means a digital representation of value that:

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

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

(B) does not include:

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

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

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

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

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

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

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

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

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

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

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

*The definition of the term “person” is drawn from the Uniform Law Commission’s Drafting Rules. The bracketed material is the optional text available as a substitute for the*

*definition as the enacting state may deem appropriate to the scope of this act it determines to enact.*

SECTION 103. SCOPE.

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

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

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

(2) a bank;

(3) a person engaged in money transmission that:

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

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

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

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

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

(6) a person that:

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

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

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

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

(A) on its own behalf;

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

(C) for academic purposes;

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

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

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

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

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

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

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

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

(14) a person that:

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

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

(ii) conducting virtual-currency business activity; or

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

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

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

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

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

# [ARTICLE] 2

# LICENSURE

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

(1) licensed in this state by the department under Section 202;

(2) licensed in another state to conduct virtual-currency business activity by a state with which this state has a reciprocity agreement and has qualified under Section 203;

(3) registered with the department and operating in compliance with Section 207; or

(4) exempt from licensure or registration under this [act] by Section 103(b) or (c).

SECTION 202. LICENSE BY APPLICATION.

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

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

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

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

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

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

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

(E) a list of:

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

(ii) the date the license expires; and

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

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

(i) the applicant;

(ii) each executive officer of the applicant;

(iii) each responsible individual of the applicant;

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

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

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

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

(i) the applicant;

(ii) each executive officer of the applicant;

(iii) each responsible individual of the applicant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) employment history; and

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

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

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

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

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

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

(d) On receipt of a completed application:

(1) the department shall investigate:

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

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

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

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

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

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

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

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

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

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

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

## **SECTION 203.** **LICENSE BY** RECIPROCITY.

**Alternative A**

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

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

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

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

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

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

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

**Alternative B**

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

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

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

(A) notice containing:

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

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

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

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

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

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

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

(4) subject to subsection (b), the applicant does not commence virtual-currency business activity with or on behalf of a resident until at least 31 days after complying with paragraph (2).

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

**End of Alternatives**

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

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

## SECTION 204. SECURITY, NET WORTH, AND RESERVES.

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

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

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

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

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

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

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

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

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

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

(8) only the department may recover against the security, and the department may retain the recovery for no longer than [five] years and may process claims and distribute recoveries to claimants in accordance with rules adopted by the department under [insert citation to uniform money-services act or money-transmitters act of this state].

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

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

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

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

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

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

## SECTION 205. ISSUANCE OF LICENSE; APPEAL.

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

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

1. the department notifies the applicant of the denial; or

2. the application is deemed denied.

## SECTION 206. RENEWAL OF LICENSE.

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

(1) paying a renewal fee [in an amount required by law of this state other than this [act] or specified by the department by rule]; and

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

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

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

(A) reviewed annual financial statement if the licensee’s virtual-currency business activity in this state was $[insert amount state uses for corporate activity auditing purposes] or less for the fiscal year ending before the anniversary date of issuance of its license under this [act]; or

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

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

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

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

(3) a description of any:

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

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

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

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

(E) data security breach involving the licensee;

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

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

(6) the:

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

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

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

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

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

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

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

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

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

(2) pays any penalty assessed under Section 404.

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

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

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

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

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

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

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

## SECTION 207. REGISTRATION IN LIEU OF LICENSE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 208. LICENSE OR REGISTRATION NOT ASSIGNABLE OR TRANSFERABLE. A license or registration under this [act] is not transferable or assignable.

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

# [ARTICLE] 3

# EXAMINATION; EXAMINATION FEES; DISCLOSURE OF INFORMATION OBTAINED DURING EXAMINATION

## SECTION 301. AUTHORITY TO CONDUCT EXAMINATION.

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

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

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

## SECTION 302. RECORDS.

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

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

(A) the identity of the resident;

(B) the form of the transaction;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The department shall:

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

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

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

(4) develop common systems and procedures.

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

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

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

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

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

## SECTION 304. CONFIDENTIALITY.

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

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

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

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

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

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

## SECTION 305. INTERIM REPORT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) If the department applies a condition to approval of a change in control of a licensee or registrant and the department does not receive notice of the applicant’s acceptance of the condition specified by the department not later than 31 days after the department sends notice of the condition, the application is deemed denied. If the application is deemed denied, the licensee or registrant shall abandon the proposed change in control or cease virtual-currency business activity with or on behalf of residents.

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

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

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

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

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

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

(2) the plan of merger or consolidation in accordance with subsection (e);

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

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

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

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

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

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

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

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

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

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

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

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

(i) Submission in good faith of the records required by subsection (e) relieves the proposed surviving entity from any obligation imposed by this section, other than subsections (c), (f), and (g), until the department has acted on the application.

# [ARTICLE] 4

# ENFORCEMENT

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

(1) suspend or revoke a license or a registration under this [act];

(2) order a person to cease and desist from doing virtual-currency business activity with or on behalf of a resident;

(3) request the court to appoint a receiver for the assets of a person doing virtual-currency business activity with or on behalf of a resident;

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

(5) assess a penalty under Section 404;

(6) recover on the security under Section 204 and initiate a plan to distribute the proceeds for the benefit of a resident injured by a violation of this [act] or law of this state other than this [act] which applies to virtual-currency business activity with or on behalf of a resident; or

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

## SECTION 402. DEPARTMENT AUTHORITY TO USE ENFORCEMENT MEASURES.

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

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

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

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

(A) an unsafe or unsound act or practice;

(B) an unfair or deceptive act or practice;

(C) fraud or intentional misrepresentation;

(D) another dishonest act; or

(E) misappropriation of legal tender, virtual currency, or other value held by a fiduciary;

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

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

(6) the licensee, registrant, or person:

(A) becomes insolvent;

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

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

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

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

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

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

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

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

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

## [SECTION 403. NOTICE AND OPPORTUNITY FOR HEARING.

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

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

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

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

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

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

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

## SECTION 404. CIVIL PENALTY.

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

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

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

(1) the date the violation ceases; or

(2) a date specified by the department.

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

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

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

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

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

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

(3) a date specified by the department.

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

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

## SECTION 407. SCOPE OF RIGHT OF ACTION.

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

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

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

# [ARTICLE] 5

# DISCLOSURES AND OTHER PROTECTIONS FOR RESIDENTS

## SECTION 501. REQUIRED DISCLOSURES.

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

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

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

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

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

(i) up to the full U.S. Dollar equivalent of virtual currency placed under the control of or purchased from the licensee or registrant as of the date of the placement or purchase, including the maximum amount provided by insurance under the Federal Deposit Insurance Corporation or otherwise available from the Securities Investor Protection Corporation; or

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

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

other means;

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

(4) a description of:

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

exchange;

(B) the resident’s responsibility to provide notice to the

licensee or registrant of the transfer or exchange;

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

registrant;

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

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

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

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

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

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

(9) that virtual currency is not legal tender.

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

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

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

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

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

## SECTION 502. PROPERTY INTERESTS AND ENTITLEMENTS TO VIRTUAL CURRENCY.

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

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

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

(1) held for the persons entitled to the virtual currency;

(2) not property of the licensee or registrant; and

(3) not subject to the claims of creditors of the licensee or registrant.

# [ARTICLE] 6

# POLICIES AND PROCEDURES

## SECTION 601. MANDATED COMPLIANCE PROGRAMS AND MONITORING.

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

(1) an information-security and operational-security program;

(2) a business-continuity program;

(3) a disaster-recovery program;

(4) an anti-fraud program;

(5) an anti-money-laundering program;

(6) a program to prevent funding of terrorist activity; and

(7) a program designed to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A licensee or registrant may:

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

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

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

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

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

## SECTION 602. MANDATED COMPLIANCE POLICY OR PROCEDURE.

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

(1) this [act]; and

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

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

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

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

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

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

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

virtual-currency business activity with or on behalf of a resident.

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

(d) A licensee or registrant may:

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

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

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

# [ARTICLE] 7

# MISCELLANEOUS PROVISIONS

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

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

## **SECTION 703.** SAVING AND TRANSITIONAL PROVISIONS.

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

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

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

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

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

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

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

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

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

SECTION 705. REPEALS; CONFORMING AMENDMENTS.

(a) . . . .

(b) . . . .

(c) . . . .

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

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