

State Regulations on Virtual Currency and Blockchain Technologies

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Introduction:

There exists no uniformity with respect to how businesses that deal in virtual currencies (also known as "cryptocurrencies") such as Bitcoin are treated among the states. For these proprietors, often the first question asked when deciding whether to operate within a state is whether existing state money transmitter rules apply to the sale or exchange of virtual currencies. As you will see from the discussion below, most states have not yet enacted regulations that provides virtual currency operators with any guidance on this question.

Some states have issued guidance, opinion letters, or other information from their financial regulatory agencies regarding whether virtual currencies are "money" under existing state rules, while others have enacted piecemeal legislation amending existing definitions to either specifically include or exclude digital currencies from the definition. To use a pun those in the blockchain space should understand, there is a complete lack of consensus as to whether they do or not. This uncertainty is made all the more complicated by potentially contradictory guidance from the Federal government. For example, in March 2018 the Financial Crimes Enforcement Network (FinCEN) published a letter stating that token issuers were money transmitters required to follow federal money transmitter requirements. The letter came just two days after a U.S. District Court in New York accepted the understanding of the Commodity Futures Trading Commission (CFTC) that cryptocurrencies were commodities, a ruling that on its face appears to take the exchange of cryptocurrencies for fiat currency outside of the definition of money transmission under previous FinCEN and now questionable past guidance. See, e.g., *Application of the Definition of Money Transmitter to Brokers and Dealers in Currency and other Commodities*, FIN-2008-G008, Sept. 10, 2008.

The few states that have attempted to enact comprehensive regulations, including New York's much maligned "BitLicense" scheme, has resulted in an exodus of blockchain and virtual currency businesses from states attempting to treat all virtual currency operators identically with traditional money transmitters that are better equipped to deal with an overly restrictive regulatory framework. There is a proposal pending within the NY State Assembly to replace the BitLicense with a more innovation-friendly framework, and indeed, many states are attempting to enact crypto-friendly regulations in an attempt to entice entrepreneurs to move to their state. Accordingly, in what is perhaps the most important state regulatory development in this Update, Wyoming enacted a series of regulations that, among other things, exempts "Utility Tokens" from state securities regulation and virtual currencies from state money transmission laws. Wyoming's law, at least with regard to its take on the application of state securities regulation, likely offers only theoretical comfort to those wishing to issue "Utility Tokens" through an Initial Coin Offering since Federal Securities Law (and the SEC's recent informal announcement that all tokens may, in fact, be securities), takes precedent over state law.

The authors of this article are hopeful that over the next several years states will begin to craft regulation that balances the dual needs of protecting consumers from businesses operating in the fledgling industry while also promoting continued innovation by not saddling virtual currency businesses with regulatory burdens that make it financially impractical to operate. One attempt to craft such legislation has been proposed by the Uniform Law Commission, which in July 2017 introduced a model Regulation of Virtual Currency Businesses Act. The model legislation has had provisions adopted by a few states, including Hawaii and has been supported by the American Bar Association, but has not been fully implemented by any state. The model legislation is subject to criticism, but is instructive of the types of considerations legislatures need to address when attempting to regulate the industry and provides a suggestive common sense definitions of "virtual currency" and the types of activities or economic thresholds that could be implemented for "virtual currency business activity" so as to not drive away innovation from the state or punish personal or low-stakes use of the technology.

This article attempts to outline the range of regulations or guidance provided by the states with regard to virtual currency regulations or blockchain specific technologies. Because the law is rapidly developing we will try to update it quarterly to address new regulations or case law impacting the industry.

Alabama

The Alabama Monetary Transmission Act, effective August 2017, defines "monetary value" as "[a] medium of exchange, including virtual or fiat currencies, whether or not redeemable in money." H.B. 215, 2017 Leg., Reg. Sess. (Ala. 2017) § 8-7A-2(8). The act requires that every person engaging in the business of monetary transmissions obtain a license from the state. Money transmission includes receiving monetary value

(including virtual currency) for transmission. H.B. 215, 2017 Leg., Reg. Sess. (Ala. 2017) § 8-7A-2(10). The act exempts banks, bank holding companies, securities-clearing firms, payment and settlement processors, broker-dealers, and government entities.

Under Alabama Statute § 40-23-199.2, the state affirmatively includes the "providing [of] a virtual currency that purchasers are allowed or required to use to purchase products from the marketplace seller" into the definition of a "marketplace facilitator." H.B. 470, 2018 Leg., Reg. Sess. (Ala. 2018) § 40-23-199.2. Per the Alabama Department of Revenue, "marketplace facilitators with Alabama marketplace sales in excess of \$250,000 [are required] to collect tax on sales made by or on behalf of its third-party sellers or to comply with reporting and customer notification requirements." <https://revenue.alabama.gov/2018/07/03/ador-announces-sales-and-use-tax-guidance-for-online-sellers/>.

Notably, Alabama's Securities Commission has emerged as one of the most active agencies to address fraud in the cryptocurrency industry. <https://www.coindesk.com/alabama-the-unlikely-frontline-for-americas-crypto-fraud-crackdown>.

Alaska

There are no blockchain or virtual currency specific regulations enacted under Alaskan law. The State's Division of Banking and Services has issued guidance that it is not authorized under State law to regulate virtual currencies and only transactions involving fiat currencies are subject to the state's Money Transmitter law.

House Bill 180 was introduced in March 2017 but appears to be stalled in the state legislature. If enacted, HB180 would regulate money transmission and currency exchange businesses, as well as transmitting value that substitutes for money. H.B. 180, 30th Leg., 1st Sess. (Alaska 2017). The bill's definition of virtual currency covers "digital units of exchange that have a centralized repository" as well as "decentralized, distributive, open-source, math-based, peer-to-peer virtual currency with no central administrating authority and no central monitoring or oversight." If passed, it would also amend the Alaska Uniform Money Services Act to expressly include dealing in virtual currency within its definition of money transmission. H.B. 180, 30th Leg., 1st Sess. (Alaska 2017). The bill's latest update in the legislature was its referral to Alaska's Judiciary Committee in January 2018.

Arizona

In 2017, Arizona adopted two statutes related specifically to the storage of information on the blockchain. Arizona Statute § 44-7061 makes signatures, records, and contracts secured through blockchain technology legally valid. "A contract relating to a transaction may not be denied legal effect, validity or enforceability solely because that contract contains a smart contract term." H.B. 2417, 53d Leg., 1st Reg. Sess. (Ariz. 2017).

Arizona Statute § 11-269.22 prohibits any county from prohibiting individuals from "running a node on blockchain technology" in a residence, as defined as "providing computing power to validate or encrypt transactions in blockchain technology." Arizona Statute § 13-3122 makes it unlawful to require people to use or be subject to electronic firearm tracking technology (including distributed ledger or blockchain technology). H.B. 2216, 53d Leg., 1st Reg. Sess. (Ariz. 2017).

The Arizona House passed HB 2601 and 2602, both of which await approval by the State's Senate. HB 2601 attempts to create a framework under the State's securities laws for crowdfunding sales involving virtual currencies. S.B. 2601, 53d Leg., 2nd Reg Sess. (Ariz. 2018). HB 2602 would prohibit localities from restricting cryptocurrency mining in residences. Another proposed regulation would add income "derived from the exchange of virtual currency for other currency" to the computation of Arizona adjusted gross income for the purposes of the income tax. S.B. 1145, 53d Leg., 2nd Reg. Sess. (Ariz. 2018).

In February 2019, H.B. 2702 was proposed to bring the providing of "a virtual currency that buyers are allowed or required to use to purchase products from the seller" into the definition of "marketplace facilitator." This amended definition relates to "Transaction Privilege and Affiliated Excise Taxes" within the state's taxation regime. 2019 AZ H.B. 2702 (NS).

On May 31, 2019, the Arizona legislature adopted its "general appropriations act; 2019-2020," which allocates "\$1,250,000 for distribution to applied research centers that specialize in blockchain technology." 2019 AZ H.B. 2747 (NS).

Arkansas

On April 16, 2019, the Arkansas legislature adopted "An Act Concerning Blockchain Technology; And For Other Purposes." 2019 Arkansas Laws Act 1061 (H.B. 1944). The state adds to the state's "Uniform Electronic Transactions Act," and addresses signatures and records secured through blockchain technology. 2019 CA S.B. 373 (NS).

California

California's Money Transmitter Act does not address virtual currencies and the state has not provided official guidance on the applicability of its MTL statute to cryptocurrencies. In September 2018, the Governor approved a legislature backed initiative to create a "blockchain working group" that will be tasked with researching blockchain's benefits, risks, and legal implications.

In September 2018, the State's legislature passed Assembly Bill 2658 which, once enacted, would introduce legal definitions of "blockchain technology" and "smart contract." The effect of these definitions would be to legalize and facilitate record keeping using distributed ledgers.

In June 2016, the California legislature enacted Cal. Stat. § 320.6, which makes it unlawful to sell or exchange a raffle ticket for any kind of cryptocurrency.

In February 2019, Assembly Bill 1489 was introduced to the California legislature to enact the "Uniform Regulation of Virtual Currency Business Act" which, "would prohibit a person from engaging in virtual currency business activity, or holding itself out as such, unless licensed or

registered with the Department of Business Oversight, subject to a variety of exemptions." Penalties for violating this proposed bill could be as high as \$50,000 for each day of violation. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB_1489.

During this same month, California also introduced Assembly Bill 147, in which the "providing [of] a virtual currency that buyers are allowed or required to use to purchase products from the seller" can qualify a person as a "marketplace facilitator." 2019 CA A.B. 147 (NS).

To highlight an application of blockchain technology beyond cryptocurrency, California has proposed an amendment whereby "a county recorder may issue a certified copy of a marriage record ... by means of blockchain technology." 2019 CA S.B. 373 (NS).

Colorado

The State's legislature attempted to enact a handful of conflicting bills that would provide guidance as to the applicability of Colorado's Money Transmitter Act to virtual currency users and issuers. HB 1220 was passed by the House but subsequently indefinitely postponed. It would have required those who buy, sell or exchange cryptocurrency, or offer cryptocurrency "wallets" to obtain a "Money Transmitter license. H.B. 1220, 71st Gen. Ass., 2nd Reg. Sess. (Co. 2018). The conflicting HB 1426 and SB277, would have exempted virtual currencies from the Money Transmitter Act but was rejected by the State Senate.

The Office of the Colorado Secretary of State has proposed a rule in favor of allowing political campaign contributions in cryptocurrency. Working Draft of Proposed Rules, 8 CCR 1505-6 (proposed May 16, 2018).

On September 20, 2018, Colorado's Division of Banking released Interim Regulatory Guidance entitled, "Cryptocurrency and the Colorado Money Transmitters Act." The purpose of this guidance is to explain "when a person or organization engaged in the business of buying, selling and/or facilitating the transfer of cryptocurrency within the state is required to be licensed as a money transmitter under Colorado law." https://drive.google.com/file/d/1MmpksD8aAPkmvdRdW0PztGe_eOceq4Ik/view.

In February 2019, the Colorado Senate proposed a bill concerning the subtraction from federal taxable income for gains from certain transactions using virtual currency. 2019 CO S.B. 140 (NS).

On March 6, 2019, Colorado enacted the "Colorado Digital Token Act." Per the state, "[t]he bill provides limited exemptions from the securities registration and securities broker-dealer and salesperson licensing requirements for persons dealing in digital tokens. "Digital token" is defined as a digital unit with specified characteristics, secured through a decentralized ledger or database, exchangeable for goods or services, and capable of being traded or transferred between persons without an intermediary or custodian of value." <https://leg.colorado.gov/bills/sb19-023>.

With respect to other blockchain applications, Colorado has proposed bills to study the technology in agricultural operations and, the state adopted a grant of authority to the Colorado Water Institute to study potential applications. See 2019 CO S.B. 184 (NS) March 5, 2019; 2019 CO H.B. 1247 (NS) May 30, 2019.

As of May 23, 2019, "in the administration of any new major information technology project, the office [of Information Technology], in conjunction with the state agency with which it is working, shall evaluate the potential use of blockchain and distributed ledger technologies as part of the project." CO ST § 24-37.5-105.

Connecticut

House Bill 7141 became law on October 1, 2017 and requires that anybody engaged in a financial services industry be licensed by the state. "Each licensee that engages in the business of money transmission in this state by receiving, transmitting, storing or maintaining custody or control of virtual currency on behalf of another person shall at all times hold virtual currency of the same type and amount owed or obligated to such other person." The bill defines virtual currency as "any type of digital unit that is used as a medium of exchange or a form of digitally stored value or that is incorporated into payment system technology." H.B. 7141, 2017 Leg., 2017 Jan. Reg. Sess. Gen. Ass. (Conn. 2017).

House Bill 5490 was signed into law on June 14, 2018. It adds a definition for "virtual currency" and purports to bring virtual currencies under the purview of Connecticut money transmission laws. H.B. 5490, 2018 Leg., 2018 Feb. Sess. Gen. Ass. (Conn. 2018), available at <https://www.cga.ct.gov/2018/FC/pdf/2018HB-05490-R000303-FC.pdf>.

The state legislature signed SB 443 into law, which is entitled, "An Act Establishing The Connecticut Working Group." The goal of this bill is to " (1) identify the economic growth and development opportunities presented by blockchain technology; (2) assess the existing blockchain industry in the state; (3) review workforce needs and academic programs required to build blockchain expertise across all relevant industries; and (4) make legislative recommendations that will help promote innovation and economic growth by reducing barriers to and expediting the expansion of the state's blockchain industry."

The Connecticut House introduced a bill to "(1) make shared appreciation agreements subject to the same licensing and regulatory compliance requirements as residential mortgage loans, and (2) permit a start-up company engaged in the activity of a money transmission to provide a statement of condition as part of licensure application in lieu of certain financial statements." Such statement must describe "the type of money transmission business that will be conducted by the applicant in this state and whether such money transmission will include the transmission of monetary value in the form of virtual currency." 2019 CT H.B. 6995 (NS).

Other notable blockchain-focused proposals from Connecticut's legislature include:

- An act prohibiting the use of noncompete agreements in the blockchain technology industry. 2019 CT S.B. 1033 (NS) March 7, 2019.
- An act stating that, "on or before October 1, 2019, the Department of Administrative Services shall develop and issue a request for proposals to incorporate blockchain technology to make the administration of a department function more efficient." 2019 CT S.B. 1032 (NS) March 7, 2019.

- An act "to study the use of blockchain technology in managing elector information." 2019 CT H.B. 5417 (NS) January 16, 2019.
- An act "to authorize the use of smart contracts in commerce in the state." 2019 CT H.B. 7310 (NS) March 7, 2019.
- An act "requiring the secretary of the office of policy and management to develop a plan to incorporate blockchain technology in the administration of a state function." 2019 CT S.B. 1032 (NS).

Delaware

In July 2017 Delaware enacted Senate Bill 69, a groundbreaking piece of legislation that provides statutory authority for Delaware corporations to use networks of electronic databases (including blockchain) to create and maintain corporate records. The law expressly permits corporations to trade corporate stock on the blockchain so long as the stock ledgers serves three functions: (1) to enable the corporation to prepare the list of stockholders, (2) to record information, and (3) to record transfers of stock. Section 224 of the Delaware Corporate Code states, "Any records administered by or on behalf of the corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, method, or 1 or more electronic networks or databases (*including 1 or more distributed electronic networks or databases*) ..." (emphasis added). Other bills related to the use of blockchain technology related to trusts, domestic LLCs, and limited partnerships were signed by the governor in July 2018. S.B. 194, S.B. 183.

Florida

Florida's Money Transmitter Act does not expressly include the concepts of "virtual currencies" or "monetary value" and the State's Office of Financial Regulation has not given direct guidance as to the applicability of the Act on virtual currency users and issuers, but have suggested that persons who offer cryptocurrency "wallets", buy or sell cryptocurrencies, or exchange cryptocurrency for fiat are not necessarily outside the scope of the activity subject to the State's Money Transmitter Act.

In June 2018, it was announced that the State would appoint a Crypto Czar that would be tasked with enforcing applicable state regulations in order to protect investors from malicious actors.

Governor Rick Scott signed House Bill 1379 in June 2017. The bill was enacted in response to a decision by the Eleventh Judicial Circuit's, *Florida v. Espinoza*, F14-2023, dismissing a criminal information against Michell Espinoza for money laundering under the rationale that virtual currencies such as Bitcoin are not "money" as defined by the state's Money Laundering Act. The bill, which took effect on July 1, 2017, expands the Florida Money Laundering Act, Fla. Stat. § 896.101 to expressly prohibit the laundering of virtual currency, which the bill defines as "a medium of exchange in electronic or digital format that is not a coin or currency of the United States or any other country." H.B. 1379, 119th Reg. Sess. (Fla. 2017). The bill took effect July 1, 2017.

However, in February 2019, the Third District Court of Appeal's reversed the trial court's decision in *Florida v. Espinoza*, and "decided that selling bitcoin requires a Florida money service business license, overruling the trial court's order that dismissed criminal charges against Mitchell Espinoza who was alleged to be operating an unlicensed money service business by selling bitcoin." The appellate court held that bitcoin is a "payment instrument," thereby bringing sale of bitcoin within the ambit of Florida's money transmission laws.

<https://www.coindesk.com/bitcoin-has-a-florida-problem>.

With respect to proposed legislation, the providing of a virtual currency that buyers are allowed or required to use to purchase products from the seller can qualify as person as a "marketplace facilitator" under a state statute governing "taxation of marketplace sales. 2019 FL S.B. 1112 (NS) February 15, 2019.

Additionally, Senate Bill 1024 and House Bill 735 both seek to establish Florida Blockchain Working Groups for the Agency for State Technology and Department of Management Services, respectively. Both of these proposals have a master plan that seeks to:

1. Identify the economic growth and development opportunities presented by blockchain technology.
2. Assess the existing blockchain industry in the state.
3. Identify innovative and successful blockchain applications currently used by industry and other governments to determine viability for state applications.
4. Review workforce needs and academic programs required to build blockchain technology expertise across all relevant industries.
5. Make recommendations to the Governor and the Legislature that will promote innovation and economic growth by reducing barriers to and expedite the expansion of the state's blockchain industry."

2019 FL S.B. 1024 (NS) February 13, 2019; 2019 FL H.B. 735 (NS) March 5, 2019.

On June 25, 2019, the Florida Legislature also adopted H.B. 1393, which establishes the Florida Blockchain Task Force within the Department of Financial Services. 2019 FL H.B. 1393 (NS). The bill notes the Legislature has found, among other observations, that "[b]lockchain technology and distributed ledger technology allow the secure recording of transactions through cryptographic algorithms and distributed record sharing, and such technology has reached a point where the opportunities for efficiency, cost savings, and cybersecurity deserve study."

Georgia

In spring 2016, Gov. Nathan Deal signed a bill into law amending Title 7 of the Official Code of Georgia Annotated. The bill authorizes the state's Department of Banking and Finance "to enact rules and regulations that apply solely to persons engaged in money transmission or the sale of payment instruments involving virtual currency," including rules to "[f]oster the growth of businesses engaged in money transmission or

the sale of payment instruments involving virtual currency in Georgia and spur state economic development." Ga. Code Ann. § 7-1-690(b)(1). In addition, the code's banking and finance section now includes "virtual currency" as a defined term. Ga. Code Ann. § 7-1-680(26) ("Virtual currency" means a digital representation of monetary value that does not have legal tender status as recognized by the United States government."). Georgia also requires that all money transmitters obtain a license to conduct any activity involving virtual currency.

The Georgia Senate proposed a bill revising Ga. Code Ann. § 48-2-32 to allow people to pay taxes and license fees with "any cryptocurrency, including but not limited to Bitcoin, that uses an electronic peer-to-peer system." S.B. 464, 154th Gen. Ass. Reg. Sess. (Ga. 2017). This bill never got a committee hearing before the Georgia Senate adjourned for its recess, but could be reintroduced during the next legislative session.

With respect to a proposed sports betting act, virtual currency is deemed a cash equivalent. 2019 GA H.B. 570 (NS) March 7, 2019.

Hawaii

The Hawaiian legislature has tried to pass legislation that both includes (SB 949) and excludes (SB 2853 and 3082) virtual currencies from its Money Transmitter Act. While these proposed regulations have been enacted, the State's Division of Financial Institutions has issued public guidance on the applicability of State MTL to cryptocurrency transactions, stating generally that "cryptocurrency transactions" require a money transmission license.

The States' Money Transmitter Act is uniquely burdensome in that it requires licensees to hold "in trust permissible investments having an aggregate market value of not less than the aggregate amount of its outstanding transmission obligations." In other words, if a virtual currency business were to hold a cryptocurrency on behalf of a Hawaiian customer they would be required by the State to maintain an equivalent cash value in trust. This requirement has proven financially untenable for virtual currency operators, including Coinbase, who have suspended service to Hawaii. <https://blog.coinbase.com/how-bad-policy-harms-coinbase-customers-in-hawaii-ac9970d49b34>; <https://coincenter.org/link/hawaii-s-issue-with-bitcoin-businesses-has-an-obvious-and-easy-solution>.

With respect to money transmission laws, in January 2019, the Hawaiian Senate introduced a bill to extend "the money transmitters act to expressly apply to persons engaged in the transmission of virtual currency" and require "licensees dealing with virtual currency to provide a warning to customers prior to entering into an agreement with the customers." 2019 HI S.B. 1364 (NS) January 24, 2019.

The Hawaiian Senate introduced SB 3082 which would adopt a version of the Uniform Law Commission's Regulation of Virtual Currency Businesses Act that excludes the State's capital funds requirement, but the proposed law appears to have stalled within the State's legislature. Another separate proposal titled H.B. 2257, also seeking to adopt a version of the Virtual Currency Business Act was introduced in 2018 but has not yet passed the House. 29th Leg. Reg. Sess. (Haw. 2018). 29th Leg. Reg. Sess. (Haw. 2018). In January 2019, Hawaii introduced a bill to adopt "the Uniform Regulation of Virtual-Currencies Businesses Act and the Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act." 2019 HI S.B. 250 (NS) January 18, 2019.

With respect to telecommunications and technology development, the Hawaiian House introduced a bill "to enter into a public-private partnership to plan, build, and manage key strategic broadband infrastructure that benefits the State, including a cable landing station in Kakaako, on the island of Oahu, and to encourage cloud-based companies to take advantage of this infrastructure." The bill continues, "This hub would integrate a robust global communications network with connectivity to data centers, content repositories, and hedge computing for the development of next-generation applications such as artificial intelligence, machine learning, augmented reality, big data analytics, smart communities, blockchain, and real-time predictive systems." 2019 HI H.B. 821 (NS) March 1, 2019.

Idaho

The state's Department of Finance issued several "Money Transmitter No-Action and Opinion Letters" addressing problems related to virtual currency and the state's money transmission laws. The latest letter was posted July 26, 2016. In it, the Department wrote "[a]n exchanger that *sells its own inventory* of virtual currency is generally not considered a virtual currency transmitter under the Idaho Money Transmitters Act." However, "an exchanger that holds customer funds while arranging a satisfactory buy/sell order with a third party, and transmits virtual currency...between buyer and seller, will typically be considered a virtual currency transmitter." See Idaho Department of Finance, Letter Re: Money Transmissions (Dated July 26, 2016), *available at* <http://www.finance.idaho.gov/MoneyTransmitter/Documents/NAOP/Digital%20Currency/2016-07-26.pdf> (last visited 10/02/2017).

In January 2018, the Idaho Senate introduced a bill that would amend the Idaho Unclaimed Property Act to explicitly include virtual currency as property. According to the bill, "virtual currency" means "a digital representation of value used as a medium of exchange, unit of account or store of value that does not have legal tender status recognized by the United States."

With respect to state sales tax rules, Idaho House Bill 239 proposes that the "providing [of] a virtual currency that buyers are allowed or required to use to purchase products from the seller" can qualify a person as a "marketplace facilitator."

Illinois

Though no laws are currently in place in Illinois, the state's Department of Financial and Professional Regulation issued guidance regarding application of the state's Transmitters of Money Act to those dealing in virtual currencies. Under the Department's guidance, virtual currencies are *not* "money" under the Transmitters of Money Act and therefore "[a] person or entity engaged in the transmission of solely digital currencies, as defined, would not be required to obtain a TOMA license." See Illinois Department of Financial and Professional Regulation, Digital Currency Regulatory Guidance, (July 13, 2017), *available at* <http://www.idfpr.com/Forms/DFI/CCD/IDFPR%20-%20Digital%20Currency%20Regulatory%20Guidance.pdf> (last visited 10/02/2017).

This guidance suggests a willingness by the state to embrace the use of virtual currencies and blockchain technologies, as made further evident by the Illinois legislature having empaneled a Blockchain Task Force in February 2017 to study how the state could benefit from a transition to a blockchain based system of record keeping any service delivery. Illinois launched the Illinois Blockchain Initiative to determine the applicability of blockchain technology. Utilities and regulators appear willing to work with blockchain companies.

In February 2018, the Illinois House introduced the Blockchain Technology Act. H.B. 5553, 100th Gen. Ass. 2nd Reg. Sess. (Ill. 2018). The Act prohibits local governments from imposing taxes on the use of blockchain, from requiring any person or entity to obtain a permit to use blockchain technology, or from imposing any other requirement relating to the use of blockchain. H.B. 5553, 100th Gen. Ass. 2nd Reg. Sess. (Ill. 2018). On January 8, 2019, the House adjourned "session sine die" with respect to this bill. <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=5553&GAID=14&DocTypeID=HB&SessionID=91&GA=100> .

The Illinois House also introduced HB 2540 to create the Blockchain Business Development Act. Notable goals include provisions for:

- the creation and regulation of personal information protection companies.
- the creation and regulation of blockchain-based limited liability companies as businesses that utilize blockchain technology for a material portion of their business activities.
- a public record blockchain study and report.
- a blockchain insurance and banking study and report. Requires the Department of Commerce and Economic Opportunity to incorporate into one or more of its economic development marketing and business support programs, events, and activities topics concerning blockchain technology and financial technology.

2019 IL H.B. 2540 (NS) February 13, 2019.

Illinois has also proposed the Blockchain Technology Act, which:

- Provides for the permitted uses of blockchain technology in transactions and proceedings,
- Provides limitations to the use of blockchain technology, and,
- Prohibits units of local government from implementing specified restrictions on the use of blockchain technology.

2019 IL H.B. 3575 (NS) February 15, 2019.

Similar to bills in other states, Illinois proposed an amendment that would incorporate "virtual currency" into its version of the Revised Uniform Unclaimed Property Act. 2019 IL S.B. 1464 (NS).

Indiana

The State's Money Transmitter Act does not expressly include the concepts of "virtual currencies" or "monetary value" and no guidance on the matter has been provided by the State.

With respect to sales tax administration, a bill was introduced that states "a marketplace facilitator is required to collect and remit state sales and use taxes as a retail merchant when it facilitates a retail sale for a marketplace seller on the marketplace facilitator's marketplace." Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller qualifies a person as a "marketplace facilitator." H.B. 1352, 121st Gen. Assemb., 1st Reg. Sess. (Ind. 2019). Another introduced bill allows a person to pay taxes using an approved virtual currency. H.B. 1683, 121st Gen. Assemb., 1st Reg. Sess. (Ind. 2019).

Additionally, the Senate adopted a resolution, "urging the Legislative Council to assign to an appropriate study committee the task of considering the enactment of the Uniform Regulation of Virtual Currency Businesses Act or other virtual currency regulation in the State of Indiana." S.R. 9, 121st Gen. Assemb., 1st Reg. Sess. (Ind. 2019).

Iowa

Currently, the State's Money Services Act requires a license for the transmission of "monetary value," however the State's Division of Banking has not published guidelines on whether virtual currencies transmissions are subject to the Act. With that said, the House introduced a bill "providing for exemptions for virtual currency from certain security and money transmission regulations." H.F. 240, 88th Gen. Assemb., 2019 Sess. (Iowa 2019).

Regarding Iowa tax law, the House introduced a bill that "exempts virtual currencies from individual, corporate, franchise, sales and use, and inheritance taxes. The bill [also] strikes a reference to "virtual currency" ... relating to the responsibility of a "marketplace facilitator" to collect sales tax when purchasers of tangible personal property, services, or digital products use virtual currency." H.F. 240, 88th Gen. Assemb., 2019 Sess. (Iowa 2019).

A bill introduced by the senate defines distributed ledger technology as "an electronic record of transactions or other data" which is uniformly ordered, "redundantly maintained or processed by one or more computers or machines to guarantee the consistency or nonrepudiation of the recorded transactions or other data[.]" and "the electronic record is validated by the use of cryptography." The terms "electronic record" and "electronic signature" include a record or signature secured through distributed ledger technology. Additionally the bill states that a contract "shall not be denied legal effect or enforceability solely because an electronic record was used in its formation or because the contract is a smart contract or contains a smart contract provision." S.F. 137, 88th Gen. Assemb., 2019 Sess. (Iowa 2019).

Kansas

Although there are no blockchain or virtual currency specific regulations enacted in Kansas at the time of publication the Office of the State Bank

Commissioner issued guidance clarifying the applicability of the Kansas Money Transmitter Act to people or businesses using or transmitting virtual currency. The guidance lays out the Office's policy "regarding the regulatory treatment of virtual currencies pursuant to the statutory definitions of the KMTA." See Kansas Office of the State Bank Commissioner, Guidance Document MT 2014-01, Regulatory Treatment of Virtual Currencies Under the Kansas Money Transmitter Act, (June 6, 2014), available at http://www.osbckansas.org/mt/guidance/mt2014_01_virtual_currency.pdf (last visited 7/16/2019).

The Office states that, because "no cryptocurrency is currently authorized or adopted by any governmental entity as part of its currency, it is clear that cryptocurrency is not considered 'money' for the purposes of the KMTA." See Kansas Office of the State Bank Commissioner, Guidance Document MT 2014-01, Regulatory Treatment of Virtual Currencies Under the Kansas Money Transmitter Act, (June 6, 2014), available at http://www.osbckansas.org/mt/guidance/mt2014_01_virtual_currency.pdf (last visited 7/16/2019). A person or business engaged solely in transmitting virtual currency, therefore, would not have to obtain a license to do so.

Kansas H.B. 2352 proposes "changes to nexus for the sales and use tax law; requiring tax collection by marketplace facilitators; imposing sales tax on digital products. If a person provides "a virtual currency that buyers are allowed or required to use to purchase products from the internet retailer," then that person can be deemed a "marketplace facilitator" under Kansas state tax law. H.B. 2352, 88th Leg., Reg. Sess. (Kan. 2019).

Kentucky

The State's Money Transmitter Act does not explicitly include the concept of "virtual currencies" but does require a license for the transmission of "monetary value." The State's has not published guidelines on whether virtual currencies transmissions are subject to the Act.

The Kentucky House of Representatives enacted a bill that amends Kentucky's Unclaimed Property Act to explicitly include virtual currency as property. According to the bill, "virtual currency" means "a digital representation of value used as a medium of exchange, unit of account or store of value that does not have legal tender status recognized by the United States." H.B. 394, Gen. Assemb., Reg. Sess. (Ky. 2018). With respect to abandoned or unclaimed property, Kentucky law includes provisions for virtual currency which is to be liquidated and bars claims for gains/losses after liquidation. Ky. Rev. Stat. Ann. § 339A.330(9) (West 2019).

On March 26, 2019, Kentucky adopted a bill that a person who "[p]rovides a virtual currency that purchasers are allowed or required to use to purchase tangible personal property, digital property, or services" can qualify as a "marketplace facilitator" for state tax law purposes. H.B. 354, Gen. Assemb., Reg. Sess. (Ky. 2019).

With respect to blockchain, Kentucky adopted a resolution to "[u]rge the Kentucky Cabinet for Economic Development to work with state and federal officials and study the issue of blockchain technology. H. Res. 171, Reg. Sess. (Ky. 2019).

Louisiana

The State has issued public guidance on the applicability of the State's Money Transmitter Act to cryptocurrency transactions, stating that a person identified as an "exchanger" under FinCEN's interpretation is the only party who may be subject to licensure as a money transmitter in the State. FinCEN has characterized sellers of decentralized virtual currencies in exchange for another virtual currency or fiat currency, among others, as "exchangers." See La. Office of Fin. Inst., Consumer and Investor Advisory on Virtual Currency (2014), available at <http://www.ofi.state.la.us/SOCGuidanceVirtualCurrency.pdf> (last visited 7/16/2019).

Louisiana adopted a resolution that requests the Office of Financial Institutions to "study the regulation and licensing of virtual currency businesses by other states in order to determine which provisions may be beneficial to the citizens of Louisiana, with the goal of recommending best practices for a Louisiana licensure statute." H. Res. 146, Reg. Sess. (La. 2019).

A pending bill by the House uses a broad definition of virtual currency instead of the federal definition. It defines virtual currency as "any type of digital unit that is used as a medium of exchange or a form of digitally stored value." The bill would require businesses to obtain licenses with exceptions. H.B. 532, Gen. Assemb., Reg. Sess. (La. 2019).

Maine

The senate introduced a bill that would amend the state Money Transmitter Act to include digital currencies in the definition of money transmission. This would allow the bureau of Consumer Credit Protection the ability to regulate transmission of digital currencies. S.P. 599, 129 Leg., 1st Reg. Sess (Me. 2019). The State Office of Consumer Credit Protection has not published any guidance.

In February 2019, the Maine House introduced as resolution, H.P. 673, which "directs the Commissioner of Economic and Community Development to establish a working group to develop a master plan for fostering the expansion of the blockchain technology industry in the State and recommend policies and investments to make the State a leader in blockchain technology." H.P. 673, 129th Leg., 1st Reg. Sess. (Me. 2019). However, the resolution did not pass.

Maryland

Two bills, House Bill 1634 and Senate Bill 1068, before the Maryland legislature were passed and took effect October 1, 2018 and mandate the state's Financial Consumer Protection Commission to study cryptocurrencies, initial coin offerings, cryptocurrency exchanges, and blockchain technologies. These bills—together called the Financial Consumer Protection Act of 2018—require the Commission to make recommendations for State actions to regulate cryptocurrencies in its 2018 report to the Governor and the General Assembly. The bill also requires the "a study to assess whether the commissioner has enough statutory authority to regulate "Fintech" firms or technology-driven nonbank companies who compete with traditional methods in the delivery of financial services. OCFR [Office of the Commissioner of Financial Regulation] must identify any gaps in the regulation of Fintech firms, including any specific types of companies that are not subject to regulation under State law." The

OCFR must report these findings to the General Assembly by December 31, 2019. <http://mgaleg.maryland.gov/webmga/frmMain.aspx?stab=01&pid=billpage&tab=subject3&ys=2018rs&id=HB1634>.

The State's Financial Consumer Protection Commission has issued a report noting the State does not require a license or registration for companies dealing with virtual currencies. The Report recommends the legislature update the State's Money Transmission Act to include virtual currency transmitters. Md. Fin. Consumer Prot. Comm'n, 2017 Interim Report (Jan. 2018), *available at* <http://dls.maryland.gov/pubs/prod/NoPbITabMtg/MdFinProtCmsn/2017-Interim-Report.pdf> (last visited 7/16/2019).

Maryland's Department of Labor, Licensing and Regulation has issued a warning to consumers about the potential dangers of virtual currency that suggests that, because Maryland does not regulate virtual currencies, "[a]n administrator or exchanger that accepts and transmits a convertible virtual currency or buys or sells convertible virtual currency for any reason is a money transmitter under federal regulations and therefore should be registered as a money services business." See Office of the Commissioner of Financial Regulation, Virtual Currencies: Risks for Buying, Selling, Transacting, and Investing - Advisory Notice 14-01, (April 24, 2014), *available at* <http://www.dllr.state.md.us/finance/advisories/advisoryvirtual.pdf> (last visited 10/02/2017).

On February 4, 2019, Senate Bill 786 was introduced as the "Financial Consumer Protection Act of 2019." With respect to virtual currency, the Act proposes language defining "Control of Virtual Currency" and would also require money transmitters to maintain certain amounts of virtual currency under certain circumstances.

With respect to Maryland state tax law, the Maryland house introduced H.B. 1301 which requires certain virtual currency person or businesses who qualify as "marketplace facilitators" to collect "the sales and use tax on certain sales by a marketplace seller to a buyer in the state under certain circumstances." If a person provides "a virtual currency that buyers are allowed or required to use to purchase products from the marketplace seller," then that person can be deemed a "marketplace facilitator." H.B. 1301, Gen. Assemb., 439th Sess. (Md. 2019) (introduced). Ultimately, the state adopted a version of H.B. 1301 that did not include these provisions related to virtual currency. H.B. 1301, Gen. Assemb., 439th Sess. (Md. 2019) (introduced).

In regards to blockchain technology, on April 30, 2019, the state adopted a senate bill, which authorizes corporations to maintain certain records on a "distributed electronic network or database." S.B. 136, Gen. Assemb., 439th Sess. (Md. 2019).

Massachusetts

Massachusetts' regulations on money servicers do not mention virtual currencies and the State's Division of Banks has not published guidance on whether money servicers require a license under. <https://www.mass.gov/regulations/209-CMR-4500-licensing-and-regulation-of-money-services-b>The state's Money Transmitter act. However, in replies to inquiries by virtual currency businesses, the Division noted that "Massachusetts does not presently have a domestic money transmission statute" and noted only "foreign transmittal agencies" require a license from the State. Letter from Merrily S. Gerrish, Deputy Comm'r of Banks, to Oleksandr Lutskevych, CEO, CEX.IO Ltd. (June 14, 2018), *available at* <https://www.mass.gov/decision/selected-opinion-18-003> (last visited 7/16/2019); Letter from Merrily S. Gerrish, Deputy Comm'r of Banks, to Andrew E. Bigart, Esq., Venable LLP (Mar. 9, 2018), *available at* <https://www.mass.gov/opinion/selected-opinion-18-002> (last visited 7/16/2019).

Massachusetts recently enacted a statute defining those the dissemination virtual currencies on the internet as "marketplace facilitators" subject to sales or use tax collection when engaged in business in commonwealth. 830 Mass. Code Regs. 64H.1.7 (2019). Previously, the Office of Consumer Affairs and Business Regulation opined in a 2014 Opinion Letter that Bitcoin ATMs are not "Financial Institutions" as defined by Chapter 167B of the Massachusetts General Laws. The office found under the facts presented that the Bitcoins provided to the Bitcoin ATM's customers not to constitute a foreign currency so as to require a foreign transmittal agency license. The office notes at the end of their opinion that they will continue to monitor the development of virtual payment systems like Bitcoin and may regulate such digital currencies in the future, but have not provided any additional guidance since issuing the letter. Letter from Merrily S. Gerrish, Deputy Comm'r of Banks, to Adam Atlas, Att'y (May 12, 2014), *available at* <https://www.mass.gov/files/documents/2017/11/07/SO%2017-007.pdf> (last visited 7/16/2019).

In January 2019, the Massachusetts Senate introduced S.B. 1762, which is "An Act related to the marketplace collection of sales tax." Accordingly, if a person or business provides "a virtual currency that buyers are allowed or required to use to purchase products from the vendor," then they can qualify as a "marketplace facilitator" for sales tax purposes. S.B. 1762, 191st Gen Ct. (Mass. 2019). An act making appropriations for the fiscal year 2020 includes a remote nexus sales and use tax provision, including marketplace facilitators who permit sales via virtual currency that buyers are allowed or required to use to purchase products from the seller. See, e.g., H.B. 1, 191st Gen. Ct. (Mass. 2019).

The Massachusetts Senate has also proposed a bill to "a special commission is hereby established for the purposes of making an investigation and study relative to the emerging technologies of blockchain and cryptocurrencies. Specifically, the special commission shall examine the following:

- (a) The feasibility of using blockchain technology for government records or delivery of services;
- (b) The validity and admissibility of blockchain records in court proceedings;
- (c) The advisability of allowing corporate records to be kept using blockchain technology, including any security requirements necessary to ensure the accuracy of such records;
- (d) The advisability of using blockchain technology to protect voter records and election results;

- (e) The feasibility of creating statewide registries using blockchain for such topics as firearms, marijuana or opiates;
- (f) The advisability of government agencies accepting payment in cryptocurrencies;
- (g) The advisability of taxing cryptocurrency transactions as part of the sales tax;
- (h) The advisability of allowing cryptocurrencies as a form of payment for cannabis retail stores;
- (i) The feasibility of regulating the intense energy consumption associated with cryptocurrencies; and
- (j) Any other related topic which the commission may choose to examine in relation to blockchain or cryptocurrencies.

S.B. 200, 191st Gen. Ct (Mass. 2019).

Michigan

The State's Money Transmitter act does not explicitly include the concept of "virtual currencies," however it does include the undefined concept of "monetary value." The State has not issued further guidance on the matter.

A trio of proposed bills has been introduced by the State's House (HB 6253, 6254, 6258) that if passed would amend the State's penal code to include cryptocurrency within its definition of "embezzlement", "money laundering", and as related to criminal acts involving credit cards. These bills were referred to the committee on judiciary in December 2018.

The Michigan Department of Treasury issued guidance defining virtual currency and explaining how sales tax applies when virtual currency is used.

See Tax Policy Division of the Michigan Dept. of Treasury, Treasury Update, Vol. 1, Issue 1 (November 2015), *available at* http://www.michigan.gov/documents/treasury/Tax-Policy-November2015-Newsletter_504036_7.pdf (last visited 10/02/2017).

On January 29, 2019, Michigan's House introduced a line of bills which propose amending the Michigan Penal Code for crimes involving credit cards and crimes involving forgery and counterfeiting, respectively. The proposed amendment builds in definitions for cryptocurrency and include altering a record by use of distributed ledger technology. H.B. 4103, 100 Leg., Reg. Sess. (Mich. 2019); H.B. 4105, 100 Leg., Reg. Sess. (Mich. 2019); H.B. 4106, 100 Leg., Reg. Sess. (Mich. 2019); H.B. 4107, 100 Leg., Reg. Sess. (Mich. 2019).

Minnesota

The State's Money Transmitter laws do not explicitly include "virtual currencies" or "monetary value" and the Minnesota Commerce Department has not published guidance on virtual currency regulations.

In February 2017, the Minnesota House of Representatives introduced a bill that would amend the Minnesota Unclaimed Property Act to explicitly include virtual currency as property. According to the bill, "virtual currency" means "a digital representation of value used as a medium of exchange, unit of account or store of value that does not have legal tender status recognized by the United States." H.B. 1608, 1st Reg. Sess., 90th Leg. Sess. (Minn. 2017). However, this bill died in committee.

In March 2019, the Minnesota legislature introduced H.F. 2208, which builds "virtual currency" into the definitions of the state's "unclaimed property" laws. H.F. 2208, 91st Leg. Sess., 1st Reg. Sess. (Minn. 2019). While the most recent version of the bill no longer includes this provision, another House File includes virtual currency in the definition of property. H.F. 2538, 91st Leg., 1st Reg. Sess. (Minn. 2019).

The Minnesota Commerce Department is joining an international crackdown on fraudulent initial coin offerings ("ICOs") and cryptocurrency scams. The effort is being coordinated by the North American Securities Administrators Association ("NASAA"), which represents state and local securities regulators. "Operation Cryptosweep" has resulted in nearly 70 investigations and 34 pending or completed enforcement actions as of early June 2018. <https://www.hometownfocus.us/articles/state-of-minnesota-joins-other-states-in-cryptocurrency-investment-crackdown/>. The department also offers educational resources that caution consumers of the "Crypto Investment Craze."

<https://mn.gov/commerce/consumers/your-money/investor-education/cryptocurrency.jsp>.

The House introduced legislation that prohibits an individual, political committee, political fund, principal campaign committee, or party unit from soliciting or accepting a "contribution or donation of any digital unit of exchange." H.F. 2884, 91st Leg., 1st Reg. Sess. (Minn. 2019).

Mississippi

The State's Money Transmitter laws do not explicitly include "virtual currencies," but does include the concept of "monetary value" as a medium of exchange. The State requires a license for the transmission of monetary value, but the Mississippi Department of Banking and Consumer Finance has not published guidance as to its applicability on virtual currencies.

Missouri

The State's consumer credit laws do not explicitly include "virtual currencies" or "monetary value" and the State's Division of Finance has not published guidance on virtual currency regulations.

A bill filed in the Missouri House of Representatives would make it illegal to use blockchain to store firearm owner data in the state. See H.R. 1256, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2017). However, the bill died in March 2018.

In a letter ruling, the Missouri Department of Revenue determined that an ATM provider "is not required to collect and remit sales or use tax upon transfer of Bitcoins through [their] ATM," because sales and use taxes are imposed solely on items of tangible personal property. See Missouri Department of Revenue, LR 7411, Collection of Sales Tax on Bitcoin Transfers Through an Automated Teller Machine (ATM), (September 12,

2014), *available at* <http://dor.mo.gov/rulings/show/7411> (last visited 10/02/2017). Further, in a cease and desist order issued by the Office of the Secretary of State in June 2014, the Commissioner of Securities determined that offering and/or selling shares of stock in Bitcoin constituted "transacting business as an agent" in the state of Missouri. See State of Missouri, Office of Secretary of State, In the Matter of Virtual Mining, Corp., Case No. AP-14-09, ORDER TO CEASE AND DESIST AND SHOW CAUSE WHY RESTITUTION, CIVIL PENALTIES, AND COSTS SHOULD NOT BE IMPOSED, (June 2, 2014), *available at* <https://www.sos.mo.gov/cmsimages/securities/orders/AP-14-09.pdf> (last visited 10/02/2017).

In February 2019, the Missouri House introduced H.B. 1159, which "establishes regulations for financial institutions providing services for digital assets." The proposed statutory amendments includes the addition of definitions for "automated transaction," "digital asset," "digital consumer asset," "digital security," and "open Blockchain token." H.B. 1159, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019). During this same month, the House also introduced a bill that "changes the law regarding the issuance of stock by corporations." The proposed statutory changes include ownership representation via use of a blockchain, certificate tokens, and network signatures. H.B. 1109, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019).

In March 2019, the Missouri House introduced H.B. 1247, which "requires the state and political subdivisions thereof to accept virtual currency as legal tender." H.B. 1247, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019).

A variety of tax bills are also proposing that the "providing a virtual currency that purchasers are allowed or required to use to purchase products from the marketplace seller" qualifies a person or business as a "marketplace facilitator" for state tax collection and remittance purposes. See, e.g., H.B. 1207, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019); H.B. 548, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019); H.B. 479, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019).

Montana

Montana is notable as being the only state to not have enacted a money transmission statute. The state has amended its Electronic Contributions Act to expressly require the reporting of political contributions made "through a payment gateway," including Bitcoin. See Mont. Admin. R. § 44.11.408.

Despite a lack of regulatory guidance related to blockchain or virtual currencies, Montana is the first government to take a financial stake in a Bitcoin mining operation when it granted Project Spokane, LLC, a data center that provides blockchain security services for the Bitcoin network, a grant of \$416,000. See *US State of Montana Invests Directly in a Bitcoin Mining Operation*, Trustnodes, (Jun. 13, 2017), *available at* <http://www.trustnodes.com/2017/06/13/us-state-montana-invests-directly-bitcoin-mining-operation>.

Montana's House introduced two separate bills, H.B. 584 and H.B. 630, seeking to exempt virtual currencies from securities laws and property taxation, respectively. The former addresses the definition of a "utility token" and its "consumptive purpose," which means to, "provide or receive goods, services, or content including access to goods, services, or content." H.B. 630, 66th Leg. (Mont. 2019); H.B. 584, 66th Leg. (Mont. 2019).

Nebraska

The State's Money Transmitter laws do not explicitly include "virtual currencies," but does include the concept of "monetary value" as a medium of exchange. The State requires a license for the transmission of monetary value, but the Nebraska Department of Banking and Finance has not published guidance as to its applicability on virtual currencies.

The Nebraska Legislature introduced three bills—L.B. 695, L.B. 691, and L.B. 694—focusing on blockchain and cryptocurrency in January 2018. L.B. 691 would amend the state's money-laundering statutes to account for cryptocurrencies. L.B. 691, 105th Leg., 2nd Reg. Sess. (Neb. 2018). L.B. 694 would prohibit local governments from taxing or otherwise regulating the use of distributive ledger technology. L.B. 694, 105th Leg., 2nd Reg. Sess. (Neb. 2018). L.B. 695 would allow the technology to be used for notarization. L.B. 695, 105th Leg., 2nd Reg. Sess. (Neb. 2018). All three bills have been indefinitely postponed since April 18, 2018.

In an administrative release, the Nebraska Department of Revenue found that the term "currency" does not include Bitcoin or other virtual currency. See Jennifer Jensen, et al, *Sales and Use Taxes in a Digital Economy*, The Tax Adviser, (Jun. 1, 2015) http://www.thetaxadviser.com/issues/2015/jun/salt-jun2015.html#fnref_13. The guidance did not explain whether sales of virtual currencies are taxable.

With respect to state tax laws, Nebraska introduced L.B. 284, which qualifies persons who provide "a virtual currency that buyers are allowed or required to use to purchase products from the seller" as a "marketplace facilitator. This proposal would affect the collection and remittance of sales tax. It was approved by the governor in March 2019. L.B. 284, 106th Leg., 1st Reg. Sess. (Neb. 2019). L.B. 9 would prohibit cities, counties, and villages from taxing or regulating distributed ledger technology. L.B. 9, 106th Leg., 1st Reg. Sess. (Neb. 2019). It also provides a definition of distributed ledger technology.

A resolution introduced in May 2019 would create an interim study to examine the need to update the insurance laws in response to technology advancement and innovation and the study would review the interaction of insurance regulation and blockchain.

L.R. 164, 106th Leg., 1st Reg. Sess. (Neb. 2019).

Nevada

Nevada's Money Transmitter Act does not explicitly include "virtual currencies" or "monetary value" and the State's Department of Business and Industry has not published guidance on virtual currency regulations. However, on February 18, 2019, the Nevada Senate proposed S.B. 195,

which would enact the Uniform Regulation of Virtual-Currency Businesses Act and the Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act. With respect to money transmission laws, "[g]enerally, the Uniform Regulation of Virtual-Currency Businesses Act requires persons engaged in certain business activity involving virtual currency to obtain a license from or register with the Department of Business and Industry." S.B. 195, 2019 Leg., 80th Reg. Sess. (Nev. 2019).

Nevada became the first state to ban local governments from taxing blockchain use when it enacted Senate Bill No. 398 in June 2017. The bill adds the definition of blockchain as an electronic record, transaction, or other data which is (1) uniformly ordered; (2) redundantly maintained or processed by one or more computers or machines to guarantee the consistency or nonrepudiation of the recorded transactions or other data; and (3) validated by the use of cryptography. Under the bill, local governments are prevented from taxing blockchain use. Additionally, the bill states that, "if a law requires a record to be in writing, submission of a blockchain which electronically contains the record satisfies the law"—meaning that data from a blockchain can be introduced in legal proceedings in Nevada courts.

On June 7, 2019, Nevada adopted bills S.B. 162, 163, and 164. These three bills, respectively, seek to:

- revise "the definition of "electronic transmission" as it relates to certain communications of certain business entities to include the use of a blockchain or public Blockchain,"
- revise "provisions relating to electronic transactions ... including a public blockchain as a type of electronic record for the purposes of the Uniform Electronic Transactions Act," and,
- recognize, "certain virtual currencies as a form of intangible personal property for purposes of taxation."

S.B. 162, 2019 Leg., 80th Reg. Sess. (Nev. 2019); S.B. 163, 2019 Leg., 80th Reg. Sess. (Nev. 2019); S.B. 164, 2019 Leg., 80th Reg. Sess. (Nev. 2019).

Introduced in March 2019, S.B. 488 revises provisions relating to businesses engaged in the development of emerging technologies. Specifically, it creates the Emerging Technologies Task Force, which is tasked with developing strategies, making recommendations on the development of blockchain technology in the State and how best to "remain a leader in technological innovation" by attracting businesses engaged in blockchain development. S.B. 488, 2019 Leg., 80th Reg. Sess. (Nev. 2019).

Two bills adopted in June 2019 seek to define "virtual currency" in different existing laws. A.B. 15 adds provisions governing crimes related to certain financial transactions to include "virtual currency" in the definition of a monetary instrument, which would make it unlawful for a person to conduct a financial transaction using virtual currency if it is derived from any unlawful activity. A.B. 15, 2019 Leg., 80th Reg. Sess. (Nev. 2019). The state also adopted a bill, which includes "virtual currency" in the definition of property under its Uniform Unclaimed Property Act. S.B. 44, 2019 Leg., 80th Reg. Sess. (Nev. 2019).

With respect to the collection of sales and use tax, a bill adopted in June 2019 states that a person is a "marketplace facilitator" if that person provides, "a virtual currency that buyers are allowed or required to use to purchase tangible personal property." A.B. 445, 2019 Leg., 80th Reg. Sess. (Nev. 2019).

Nevada has also adopted a bill that creates the Cannabis Advisory Commission. One of the responsibilities of the Commission is to "study the feasibility of the use of emerging technologies, including, without limitation, blockchain and systems that use a single source of truth, as a means of collecting data or efficiently and effectively handling transactions electronically to reduce or eliminate the handling of cash." A.B. 533, 2019 Leg., 80th Reg. Sess. (Nev. 2019).

New Hampshire

New Hampshire has amended its Money Transmitter statute (NH St. § 399-G:3) to exempt "persons who engage in the business of selling or issuing payment instruments or stored value solely in the form of convertible virtual currency or receive convertible virtual currency for transactions to another location" from the state's money transmission regulation. See H.B. 436, 2017 Leg., 165th Sess. (N.H. 2017). The law took effect August 1, 2017.

A bill introduced in January 2019 would require the state treasurer to "develop an implementation plan for the state to accept cryptocurrencies as payment for taxes and fees beginning July 1, 2020." H.B. 470, Gen. Court, 166th Sess. (N.H. 2019).

New Jersey

New Jersey's Money Transmitter Act does not explicitly include "virtual currencies" or "monetary value" and the State's Department of Banking and Insurance.

In 2017 the state enacted the Uniform Fiduciary Access to Digital Assets Act that expressly authorizes an estate's executor under certain circumstances to manage digital assets, including virtual currencies, of a decedent. N.J.S.A. 3B: 14-61.1. The State's tax code § 54:32B-3.6 was also amended to virtual currency issuers as "marketplace facilitators."

In January 2018, the New Jersey Assembly introduced the Digital Currency Jobs Creation Act. If enacted the law would create a regulatory framework for virtual currency businesses and offer incentives for virtual currencies economic development. A.B. 1906, 218th Leg., 1st Ann. Sess. (N.J. 2018).

S.B. 2297 would establish "the New Jersey Blockchain Initiative Task Force to study whether State, county, and municipal governments can benefit from a transition to a blockchain-based system for record keeping and service delivery." It has passed the General Assembly and Senate. S.B. 2297, 218th Leg., 1st Ann. Sess. (N.J. 2018). Another pair of bills (A.B. 3768 and S.B. 2462) pending in each house would permit corporations to use blockchain technology for certain recordkeeping requirements. Both of these bills continue to progress through the legislative

process. A.B. 5240, introduced in May 2019, would require the state to "review and approve a viable blockchain-based, digital payment platform to provide payment services to legal and licensed businesses in this State that do not have access to traditional financial services and are forced to operate in cash-only or cash-heavy environments The payment platform shall provide the ability to manage and process all business expenditures and allow all transactions to be recorded on an immutable blockchain ledger." A.B. 5240, 218th Leg., 2nd Ann. Sess. (N.J. 2019).

Adopted in 2018, but not yet effective, A.B. 4496 includes v New Jersey has also issued guidance that it would conform to the federal tax treatment of virtual currency, meaning that virtual currency would be treated as intangible property and subject to sales tax. See Technical Advisory Memorandum, N.J. Division of Taxation, Convertible Virtual Currency (TAM-2015-1(R)) (July 28, 2015).

New Mexico

The State's Money Transmitter Act does not explicitly include the concept of "virtual currencies" but the State's Regulation and Licensing Department has issued guidance that those that exchange "virtual currency or money or any other form of monetary value or stored value" must be licensed by the FID as a money transmitter. <http://www.rld.state.nm.us/financialinstitutions/faq-s.aspx>.

However, in February 2019, the New Mexico House introduced H.B. 649 entitled "Internet Business Development & Innovations." Part of the proposal states:

1. A person shall not engage in business as a cryptovalve creator and distributor or as a cryptovalve exchange without first having obtained a license to do so from the division.
2. Licensees shall pay to the division an annual licensing fee of one hundred dollars (\$100).
3. A licensee shall be an active corporation organized pursuant to the laws of New Mexico.
4. A cryptovalve creator and distributor and a cryptovalve exchange is not a money service as defined in Subsection P of Section 58-32-102 NMSA.

H.B. 649, 54th Leg. Sess., 1st Sess (N.M. 2019).

This bill has been postponed indefinitely, so it is still unclear whether a money transmission license is required for cryptocurrency businesses.

New York

The New York State Department of Financial Services established a comprehensive regulatory framework for virtual currency businesses called "BitLicense" that requires operations related to transactions involving any form of virtual currency to obtain a license from the state. 23 NYCRR 200. Before being granted a license, the state requires applicants to have strict compliance and supervisory policies and procedures in place, including, among other things, anti-money laundering/know-your-customer and cybersecurity programs in place. 23 NYCRR 200.

Since its enactment in 2015, the regulatory scheme has been the subject of much criticism and has resulted in an exodus of businesses fleeing the state because of the costs and regulatory hurdles associated with the BitLicense. In late 2016, Theo Chino, a well-known Bitcoin entrepreneur filed a petition to the Supreme Court of New York challenging the authority of the state's Department of Financial Services to use the Bitcoin community as guinea pigs to test new banking regulations, arguing that under Article 78 of the State of New York regulations must be preceded by a law enacted by the Legislature. Information about the pending case, including briefings by the parties, can be found at <https://www.article78againstnydfs.com/raw.php>.

AB8783 was adopted in 2018, which creates a digital currency task force to determine the impact of cryptocurrencies on New York financial markets. A.B. 8783, 240th Leg., Reg. Sess. (N.Y. 2018). In January, 2019, the Senate introduced a bill that would increase the members of the task force from 9 to 13. S.B. 1194, 242nd Leg., Reg. Sess. (N.Y. 2019). Another bill regarding task force creation was introduced in January 2019, which would require the task force to study the following: (1) the steps New York "must take to produce and release a state-issued cryptocurrency and how such will affect" the SEC and CFTC's jurisdiction over economic transactions; (2) "the implications of issuing such cryptocurrency on monetary policy and financial stability; (3) how local, state, and federal taxation would be affected by such; and "the measures other jurisdictions, central banks, international governing bodies, states, or countries, have taken to potentially issue cryptocurrency." S.B. 4562, 242nd Leg., Reg. Sess. (N.Y. 2019). Relevant to the financial market, another bill was introduced to establish a financial technology regulatory sandbox program to test financial technology products, including "cryptocurrency business activity." A.B. 2213, 242nd Leg., Reg. Sess. (N.Y. 2019). A.B. 1351, if adopted, will direct the study of the use of blockchain technology to protect voter records and election results. A.B. 1351, 242nd Leg. (N.Y. 2019).

A bill was introduced in January 2019, which would allow "New York state agencies to accept cryptocurrencies as a form of payment." A.B. 1500, 242th Leg., 2019 Reg. Sess. (N.Y. 2019). Another bill introduced in June, 2019 would recognize electronic contact by an owner as written contact and include unclaimed virtual currency within the definition of abandoned property. A.B. 8314, 242nd Leg. (N.Y. 2019).

With respect to blockchain technology and applications, several bills were introduced in the first quarter of 2019 and include:

- "[A]llowing signatures, records and contracts secured through blockchain technology to be considered in an electronic form and to be an electronic record and signature" and "allow[ing] smart contracts to exist in commerce." S.B. 4142, 242nd Leg. (N.Y. 2019).
- The creation of an "office of financial resilience" of which one responsibility would be "to advocate on behalf of blockchain startups and companies focused on building and supporting local economies." A.B. 2239, 242nd Leg., Reg. Sess. (N.Y. 2019).
- The establishment of a task force "to study and report on the potential implementation of blockchain technology in state record keeping, information storage, and service delivery." A.B. 1371, 242nd Leg., Reg. Sess. (N.Y. 2019).
- The creation of a task force "to study the potential designation of economic empowerment zones for the mining of cryptocurrencies in the state of New York." A.B. 1502, 242nd Leg., Reg. Sess. (N.Y. 2019).

North Carolina

North Carolina has expanded its Money Transmitters Act to cover activities related to Bitcoin and other virtual currencies. The law defines virtual currency traders as money transmitters and requires they obtain a license. N.C. Gen. Stat. Ann. § 53-208.42 (West 2019). The law provides several exemptions, however, including for virtual currency miners as well as for software companies implementing blockchain services such as smart contract platforms, smart property, multi-signature software and non-custodial and non-hosted wallets. 2017 North Carolina Laws S.L. 2017-102 (H.B. 229). North Carolina law also imposes additional insurance requirements on virtual currency transmitters to address "cybersecurity risks." N.C. Gen. Stat. Ann. § 53-208.47 (West 2019).

In 2018, the State enacted legislation clarifying that the State's Money Transmitters Act does not require virtual currency exchanges to maintain a reserve fund equal to their customer's aggregate investment.

North Carolina's Board of Elections and Ethics Enforcement office issued guidance on using cryptocurrencies for political campaign contributions. The Board stated that it does not view a contribution of cryptocurrency as an in-kind contribution appropriate under state law. 2018 NC REG TEXT 501196 (NS).

North Dakota

The State's Money Transmitter laws do not explicitly include "virtual currencies," but does include the concept of "monetary value" as a medium of exchange. The State's Department of Financial Institutions has issued guidance that they "do not consider the control or transmission of virtual currency to fall under the scope of [the State's Money Transmission Act.]. NDCC 13-09; <https://www.nd.gov/dfi/about-dfi/non-depository/frequently-asked-questions-non-depository>.

The State introduced SB 2100 which enables the legislature to study the "feasibility and desirability of regulating virtual currency." However, the bill died in chamber. <https://legiscan.com/ND/bill/2100/2017>.

Nevertheless, the House introduced a new bill in January 2019, "requesting the Legislative Management to study the potential benefits of distributed ledger technology and blockchain for state government." H.C.R. 3002, 66th Leg. Assemb., Reg. Sess. (2019). This resolution failed to pass, however another resolution by the house has passed both the House and Senate, which requests the Legislative Management "to study the potential benefit value of Blockchain technology implementation and utilization in state government administration and affairs." H.C.R. 3004, 66th Leg. Assemb., Reg. Sess. (N.D. 2019).

On January 3, 2019, the North Dakota House introduced H.B. 1043 which sought to exempt "an open blockchain token from specified securities transactions and dealings." This bill failed to pass. H.B. 1043, 66th Leg. Assemb., Reg. Sess. (N.D. 2019).

North Dakota adopted a bill, which creates a pilot program for a state agency to "research and develop the use of distributed ledger-enabled platform technologies, such as blockchains, for computer-controlled programs, data transfer and storage, and program regulation to protect against falsification, improve internal data security, and identify external hacking threats. Research must include efforts to protect the privacy of personal identifying information maintained within distributed ledger programs." H.B. 1048, 66th Leg. Assemb., Reg. Sess. (N.D. 2019).

With respect to the collection of sales and use tax, a person is a "marketplace facilitator" if that person provides, "a virtual currency that buyers are allowed or required to use to purchase products from the seller." H.B. 2238, 66th Leg. Assemb., Reg. Sess. (N.D. 2019). This bill failed to pass.

Finally, in April 2019, a bill was signed by the Governor, which amends North Dakota state code related to the inclusion of electronic signatures, smart contracts, and blockchain technology. H.B. 1045, 66th Leg. Assemb., Reg. Sess. (N.D. 2019).

Ohio

Ohio's Money Transmitter Act does not explicitly include "virtual currencies" or "monetary value" and the State's Department of Commerce has not published guidance on virtual currency regulations.

In November 2018, Ohio became the first state to allow companies to pay a variety of tax burdens with cryptocurrency. <https://www.wsj.com/articles/pay-taxes-with-bitcoin-ohio-says-sure-1543161720>.

The State amended its Liquor Control Law to impose an unusual ban on the use of virtual currencies for the purchase of alcohol. See Janet H. Cho, *Cleveland Heights Merchants Banking on Bitcoin to Draw Global Spotlight; Skeptics Warn of Risks* (April 24, 2014), available at http://www.cleveland.com/business/index.ssf/2014/04/cleveland_heights_merchants_banking_on_bitcoin_boulevard_to_draw_global_spotlight.htm (last visited 10/03/2017).

S.B. 300 was pending before the State's legislature and would amend Ohio's Uniform Electronic Transactions Act to include blockchain records and smart contracts and recognize smart contracts as legally enforceable. However, that bill died in committee.

In April 2019, the House introduced a bill that would permit a governmental entity to use "distributed ledger technology, including blockchain technology, in the exercise of its authority." H.B. 220, 133rd Gen. Assemb., 2019 Sess. (Ohio 2019).

Ohio provides definitions for electronic records and signatures to be valid if secured via blockchain technology. Ohio Rev. Code Ann. § 1306.01 (West 2019).

Oklahoma

Oklahoma's Money Transmitter Act does not explicitly include "virtual currencies" or "monetary value" and the State's Financial Regulation has

not published guidance on virtual currency regulations.

Bitcoin transferees are not afforded the same protections as those afforded to the transferees of money. Okla. Stat. Ann. § 1-9-332. The Oklahoma legislature determined that a seller who accepts bitcoin does not take the cryptocurrency free of an existing security interest. Okla. Stat. Ann. § 1-9-332.

Multiple bills have set to amend or add definitions with respect to digital currencies and blockchain. In April 2019, a Senate Bill was adopted, which amends the definitions for electronic records and signatures to be valid if secured via blockchain technology. S.B. 700, 57th Leg., 1st Reg. Sess. (Okla. 2019). Additionally, "virtual currency" is being proposed to be included within the definition of "contribution" for purposes of campaign finance. S.B. 809 57th Leg., 1st Reg. Sess. (Okla. 2019). Also introduced in February 2019, SB 822 defines "virtual currency" as a medium of exchange, unit of account or store of value and "is not recognized as legal tender by the United States." S.B. 822, 57th Leg., 1st Reg. Sess. (Okla. 2019).

The Senate also introduced a bill "clarifying status of open blockchain tokens under certain conditions." The proposal delineates when a person is not considered a broker-dealer and posits ways to comply with exemptions. S.B. 843, 57th Leg., 1st Reg. Sess. (Okla. 2019).

The House also proposed a bill to create "the Uniform Regulation of Virtual-Currency Businesses Act and the Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act." H.B. 1954, 57th Leg., 1st Reg. Sess. (Okla. 2019).

Oregon

Oregon's Money Transmitter Act does not explicitly include "virtual currencies" or "monetary value," but the State has said publicly that the Act's definition of money includes virtual currencies, including Bitcoin. <https://apps.oregon.gov/SOS/LicenseDirectory/LicenseDetail/21>.

The Oregon Department of Human Services has adopted a regulation to set Department policy on how virtual currency or cryptocurrency will be treated for purposes of determining eligibility in APD medical and self-sufficiency programs. 2018 OR REG TEXT 491365 (NS).

In January 2019, the Oregon House introduced H.B. 2487, proposing that, "[t]he Oregon Department of Administrative Services shall study and make recommendations regarding the use of blockchain technology by state agencies to administer public services." H.B. 2487, 80th Leg. Assemb., Reg. Sess. (Or. 2019). On the same day, the House also introduced H.B. 2179 to establish a task force on blockchain applications and legislation. Per the proposal, "[t]he task force shall study and evaluate the status and development of blockchain technology, investigate potential uses for the technology for economic development and business transactions and make recommendations for any changes necessary in state statutes that can promote adopting, using and developing blockchain technologies." H.B. 2179, 80th Leg. Assemb., Gen. Sess. (Or. 2019). A similar Senate bill that was engrossed on April 19, 2019, establishes "The Task Force on Protecting Health Information" and allows the Governor to appoint "two individuals representing the technology industry, one with expertise in data security and one with expertise in blockchain technology." S.B. 703, 80th Leg. Assemb., Reg. Sess. (Or. 2019).

With respect to cryptocurrency, Oregon adopted a bill that, unless authorized by the state treasurer that prohibits:

- (a) the state government, as defined in ORS 174.111, from accepting payments using cryptocurrency.
- (b) a candidate running for public office from accepting campaign contributions made using cryptocurrency.

H.B. 2488, 80th Leg. Assemb., Reg. Sess. (Or. 2019).

Pennsylvania

Pennsylvania's Money Transmission Business Law does not explicitly include "virtual currencies" or "monetary value." In 2014, the State's Department of Banking and Securities ("DoBS") provided informal guidance that "virtual currencies like Bitcoin" are not "money" and therefore transmission of them does not require a license. See <https://www.dobs.pa.gov/Documents/Newsletter/Newsletter%20Volume%206/Quarter21vol6FINAL.pdf>.

In January 2019, the DoBS published guidance clarifying that, generally, virtual currency trading platforms are not money transmitters under state law. Similarly, entities operating virtual currency kiosks, ATMs, and vending machines are not considered money transmitters because "there is no transfer of money to any third party."

<https://www.dobs.pa.gov/Documents/Securities%20Resources/MTA%20Guidance%20for%20Virtual%20Currency%20Businesses.pdf> .

Although Pennsylvania doesn't have laws regulating blockchain or digital currency, there has been a step toward the right direction. Pennsylvania designated April 30, 2019, as "Pennsylvania Health Care Information Technology Awareness Day" and recognized that blockchain technology is a driver of spending growth. H.R. 224, 203rd Gen. Assemb., Reg. Sess. (Pa. 2019).

Rhode Island

In February 2019, the Rhode Island House proposed a bill entitled, "AN ACT RELATING TO STATE AFFAIRS AND GOVERNMENT—DEPARTMENT OF BUSINESS REGULATION—VIRTUAL CURRENCY (Establishes "Digital Asset Business Act". Regulates virtual-currency. Exempts virtual-currency from securities requirements and taxation.)" The proposal is quite comprehensive and intersects with money transmission, securities, and tax law, amongst others. 2019 RI H.B. 5776 (NS) February 28, 2019.

With respect to blockchain technology, the House introduced a bill that "exempt[s] a developer or seller of an open blockchain token from the provisions of the Rhode Island Uniform Securities Act." H.B. 5595, 2019 Gen. Assemb., Leg. Sess. (R.I 2019).

There is also pending legislation that exempts virtual currency from property taxation. H.B. 5596, 2019 Gen. Assemb., Leg. Sess. (R.I 2019).

However, with respect to the collection of sales and use tax, a bill adopted in March 2019 states that a person is a "marketplace facilitator" if that person provides, "a virtual currency that buyers are allowed or required to use to purchase products from the seller." H.B. 5278, 2019 Gen. Assemb., Leg. Sess. (R.I 2019).

A bill adopted on July 15, 2019 adds virtual currency to the existing electronic money transmission and sale of check licenses and would add additionally regulatory provisions to simplify and clarify related licensing H.B. 5847, 2019 Gen. Assemb., Leg. Sess. (R.I 2019).

South Carolina

The State's money transmitter laws do not explicitly include "virtual currencies," but does include the concept of "monetary value" as a medium of exchange. The State has not provided any guidance as to the applicability of its regulations on virtual currencies.

South Carolina has proposed to add "virtual currency" to its unclaimed property act. The bill has been referred to the Committee on Judiciary. H.B. 4200, 123rd Gen. Assemb., 1st Reg. Sess. (S.C. 2019).

South Carolina also introduced legislation establishing the "South Carolina Blockchain Industry Empowerment Act," which would allow a corporation to specify in its articles that shares of the corporation be represented by share certificates in the form of certificate tokens. It also exempts "Open Blockchain Tokens" from security and money transmission laws. The bill adopts a Financial Technology Sandbox Act. The bill also provides for definitions and regulation of digital assets. H.B. 4351, 2019 Gen. Assemb., Leg. Sess. (R.I 2019).

South Dakota

South Dakota's money transmitter laws do not explicitly include "virtual currencies," but do include the concept of "monetary value" as a medium of exchange. The State's Department of Labor and Regulation has not issued guidance as to their applicability on virtual currencies.

The state defines blockchain technology as "technology that uses a distributed, shared, and replicated ledger, either public or private, with or without permission, or driven with or without tokenized crypto economics where the data on the ledger is protected with cryptography and is immutable and auditable." The terms "electronic record" and "electronic signature" include a record or signature secured through blockchain technology. S.D. Codified Laws § 53-12-1 (2019).

Tennessee

The state has issued guidance clarifying that it does not consider virtual currency to be money under its Money Transmitter Act and therefore, no license is required. Memo, Tenn. Dep't of Fin. Inst., Regulatory Treatment of Virtual Currencies under the Tennessee Money Transmitter Act (Dec. 16, 2015).

According to Tennessee's Uniform Unclaimed Property Act, "property" includes virtual currency. Tenn. Code Ann. § 66-29-102.

On March 22, 2018, Governor Bill Haslam signed Tennessee S.B. 1662 which recognizes the legal authority to use blockchain technology and smart contracts in conducting electronic transactions. S.B. 1662, 110th Gen. Assemb., 2nd Reg. Sess. (Tenn. 2018). The bill also recognizes smart contracts as having legal power.

On April 9, 2018, Governor Haslam signed Tennessee Senate Bill S.B. 2508, which prohibits trustees of any defined contribution plan or related investment vehicle established as a health benefit by the state insurance company from investing in any cryptocurrency. S.B. 2508, 110th Gen. Assemb., 2nd Reg. Sess. (Tenn. 2018).

Tennessee introduced various revised provisions of the Revised Tennessee Captive Insurance Act, allowing captive insurance companies to receive payments of premium in cryptocurrency, authorize the payment of claims in cryptocurrency and hold cryptocurrency as surplus for the payment of future claims. The bill also includes "blockchain" in the cryptocurrency definition related to the Revised Tennessee Captive Insurance Act. S.B. 1157, 111th Gen. Assemb., 1st Reg. Sess. (Tenn. 2019).

Texas

Texas was the first state to release an official position on bitcoin with Memorandum 1037 clarifying that no money transmitter's license is required to sell Bitcoin. Memo, Tx. Dep't of Banking, Regulatory Treatment of Virtual Currencies Under the Texas Money Services Act (April 3, 2014).

The memo, developed by the Texas Department of Banking, states that Bitcoin and other virtual currencies will not be treated as legal money in Texas. Memo, Tx. Dep't of Banking, Regulatory Treatment of Virtual Currencies Under the Texas Money Services Act (April 3, 2014).

There was an effort among some of the state's lawmakers to codify the state's hands-off approach to virtual currency through a proposed constitutional amendment that would protect the right to own and use digital currencies. H.J.R 89, 85th Leg., Reg. Sess. (Tx. 2017). However, the proposed constitutional amendment died in committee.

In March 2019, the Texas House introduced a bill to establish a Texas blockchain working group. The proposal states, "blockchain technology is a critically important development in commerce and finance, and in recognition of the importance of Texas as a center of technology and commerce, the Legislature deems it important to the future of this State to develop and recommend policies for the blockchain industry and to create appropriate legal infrastructure for transactions based upon blockchain, including digital assets and virtual currencies." H.B. 4517, 86th Leg., Reg. Sess. (Tex. 2019).

Texas adopted a bill that included statutory language for blockchain technology in the state's Business Organizations Code in the context of "electronic data system[s]." S.B. 1859, 86th Leg., Reg. Sess. (Tex. 2019).

A bill relating to cybersecurity for information resources was recently adopted, which encourages state agencies and local government to

consider using "next generation technologies, including cryptocurrency, blockchain technology, and artificial intelligence." S.B. 64, 86th Leg., Reg. Sess. (Tex. 2019).

A pending bill by the Texas House would require identity verification before sending digital currency payments H.B. 4371, 86th Leg., Reg. Sess. (Tex. 2019).

Effective September 1, 2019, "digital currency" is added to the definition of funds for purposes of money laundering. Law enforcement will be able to pursue digital currencies in an effort to combat money laundering. S.B. 207, 86th Leg., Reg. Sess. (Tex. 2019).

Utah

Utah adopted the "Blockchain Technology Act," which exempts a person who facilitates the creation, exchange, or sale of certain blockchain technology-related products from Title 7, Chapter 25, Money Transmitter Act [and] creates a legislative task force to study the potential applications of blockchain technology to government services." S.B. 213, 63rd Leg., Gen. Sess. (Utah 2019). The State's Department of Financial Institutions has not published guidance on virtual currency regulations.

Virtual currency is explicitly included in the definition of "property" in Utah's Revised Uniform Unclaimed Property Act. Utah Code Ann. § 67-4a-102.

Adopted in April 2019, a person or business will be a "marketplace facilitator" for purposes of state sales tax law if that person "provides a virtual currency for a purchaser to use to purchase tangible personal property, a product transferred electronically, or service offered for sale." S.B. 168, 63rd Leg., Gen. Sess. (Utah 2019).

With respect to blockchain technology, the state adopted a "Joint Resolution Directing a Study of Blockchain Technology."

H.J.R. 19, 63rd Leg., Gen. Sess. (Utah 2019).

Utah is one of the few states who has created a regulatory sandbox program to allow participants to "temporarily test innovative financial products or services on a limited basis without otherwise being licensed or authorized to act under the laws of the state." It uses a different definition of blockchain than used in Utah's Money Transmission law and includes blockchain in a statutory definition of "innovation." H.B. 378, 63rd Leg., Gen. Sess. (Utah 2019).

Vermont

Vermont applies its money transmission laws to virtual currency. On May 1, 2017 Vermont amended its money transmitter law to allow companies to hold virtual currency as a permissible investment. H.B. 182, 2017 Gen. Assemb., Reg. Sess. (Vt. 2017). Digital currency businesses with money transmitter licenses are required to hold a certain amount of permissible investments and this law makes it clear that virtual currency counts as a permissible investment.

The state also enacted a bill that recognizes blockchain data in the court system. H.B. 868, 2016 Gen. Assemb., Reg. Sess. (Vt. 2016). This law makes a fact or record verified through blockchain technology "authentic" for use in court proceedings. H.B. 868, 2016 Gen. Assemb., Reg. Sess. (Vt. 2016). The state has also enacted a bill that mandates a study on how blockchain technology will affect the state's job market and ability to generate revenue. S.B. 135, 2017 Leg., Reg. Sess. (Vt. 2017). The results of the study are due November 30, 2017. S.B. 135, 2017 Leg., Reg. Sess. (Vt. 2017).

On May 3, 2018, the Vermont General Assembly proposed legislation that enables blockchain technology records to be governed under the authentication, admissibility, and presumptions requirements of the Vermont Rules of Evidence. Vt. Stat. Ann. tit. 12, § 1913.

On May 30, 2018, Governor Phil Scott signed S.B. 269, which allowed for the creation of so-called "blockchain-based limited liability companies." S.B. 269, 2017–18 Leg., Reg. Sess. (Vt. 2017). The bill describes these businesses as "limited liability compan[ies] organized ... for the purpose of operating a business that utilizes blockchain technology for a material portion of its business activities." S.B. 269, 2017–18 Leg., Reg. Sess. (Vt. 2017). In order to set up a blockchain-based company, applicants must "specify whether the decentralized consensus ledger or database utilized or enabled by the BLLC will be fully decentralized or partially decentralized and whether such ledger or database will be fully or partially public or private." S.B. 269, 2017–18 Leg., Reg. Sess. (Vt. 2017). The bill also calls for a study—due before January 15, 2019—into the technology's use in insurance and banking and how state officials can clear the way for such applications within the state's economy. S.B. 269, 2017–18 Leg., Reg. Sess. (Vt. 2017). The Vermont Department of Financial Regulation will conduct the study. S.B. 269, 2017–18 Leg., Reg. Sess. (Vt. 2017).

The governor signed a bill in June, 2019, relating to education finance, which defines a "marketplace facilitator" as a person or business who provides "a virtual currency that purchasers are allowed or required to use to purchase products from sellers." H.B. 536, 2019-20 Leg., Reg. Sess. (Vt. 2019). The same provision has been introduced in a bill related to Vermont's sales and use tax and a bill related to raising revenue to improve access to affordable, high quality child care and early learning. H.B. 117, 2019-20 Leg., Reg. Sess. (Vt. 2019); H.B. 349, 2019-20 Leg., Reg. Sess. (Vt. 2019).

In the context of a bill proposing miscellaneous amendments to statutes governing banking, lenders, and financial institutions, virtual currency has been amended to mean "prepaid access." S.B. 154, 2019-20 Leg., Reg. Sess. (Vt. 2019).

Virtual currency is explicitly included in the definition of "property" in Vermont's Revised Uniform Unclaimed Property Act. H.B. 550 2019-20 Leg. Reg. Sess. (Vt. 2019).

Virginia

The Virginia Bureau of Financial Institutions requires companies that deal in virtual currencies to obtain a money transmission license. Va. Code Ann. § 6.2-1900.

A Joint House Resolution was introduced that, if enacted, would establish a one-year joint subcommittee consisting of seven legislative and five nonlegislative members to study the potential implementation of blockchain in state recordkeeping. H.J.R. 153, 2018 Reg. Sess. (Va. 2018). However, that bill died in committee. Another Joint House Resolution would establish a "joint subcommittee to study the emergence and integration of blockchain technology in the economy of the Commonwealth." H.J.R. 677, 2019 Leg., Reg. Sess. (Va. 2019). This bill also failed to pass.

Nevertheless, the other proposals related to blockchain technology include:

- a bill establishing the significance of business records electronically registered on a blockchain self-authenticating. H.B. 2415, 2019 Leg., Reg. Sess. (Va. 2019),
- the establishment of "the Health Care Provider Credentials Data Solution Fund for the purpose of soliciting proofs of concept to establish or improve a system for the storage and accessing of health care provider credentials data, utilizing blockchain or a similar technology, to be maintained by the Department of Health Professions." H.B. 1900, 2019 Leg., Reg. Sess. (Va. 2019),
- a directive to "the Commissioner of Elections to establish and supervise a pilot program by which an active duty member of a uniformed service who has been deployed overseas and is a registered voter of a county or city participating in such pilot program may return his voted military-overseas ballot by electronic means ... To the fullest extent practicable, these standards and procedures are required to incorporate the use of blockchain technology, defined in the bill as technology using distributed databases and ledgers protected against revision by publicly verifiable open source cryptographic algorithms and protected from data loss by distributed records sharing." H.B. 2588, 2019 Leg., Reg. Sess. (Va. 2019).

Similar to many other states, for purposes of sales tax collection, the "[p]roviding a virtual currency that buyers are allowed or required to use to purchase products from the seller" qualifies one as a "marketplace facilitator." See, e.g., S.B. 1601, 2019 Leg., Reg. Sess. (Va. 2019).

Washington

Along with New York, Washington has emerged as one of the most heavily regulated states for the virtual currency industry. The state includes virtual currency within its definition of money transmission in its Uniform Money Services Act. H.B. 1327, 63rd Leg., Reg. Sess. (Wash. 2013). In July 2017, the state adopted more stringent regulations of virtual currency, passing Senate Bill 5031. S.B. 5031, 65th Leg., Reg. Sess. (Wash. 2017). The bill places virtual currency exchange operators under the state's money transmitter rules and requires them to comply with the same licensing requirements as traditional money transmitters. Companies who wish to transmit money for Washington residents in a digital currency form should contact Washington's Department of Financial Institution for a determination of whether licensure is required under the Uniform Money Services Act. See State of Was. Dep't of Fin. Inst., *Virtual Currency Regulation*, available at <https://dfi.wa.gov/documents/money-transmitters/virtual-currency-regulation.pdf> (last visited Jul. 15, 2019). The state's regulatory scheme has been the subject of much criticism from within the virtual currency industry and has caused a number of popular exchanges, including Poloniex, Bitstamp, Kraken, and Bitfinex to leave the state over the costs associated with complying with the Washington's licensing requirements.

In January 2019, the Washington House introduced a bill that would amend the Washington Unclaimed Property Act to explicitly include virtual currency as property. According to the bill, "virtual currency" means "a digital representation of value used as a medium of exchange, unit of account or store of value that does not have legal tender status recognized by the United States." See also, H.B. 1179, 66th Leg., Reg. Sess. (Wash. 2019).

On May 2, 2018, the Washington Department of Financial Institutions proposed rules and amendments to the Uniform Money Services Act, which further incorporates virtual currency into the money transmission regulations. 2018 WA REG TEXT 463297 (NS).

On July 28, 2019, the Washington Senate passed a bill that recognizes "the validity of distributed ledger technology." In particular, this relates to the state's business regulations, and even federal rules, related to electronic signatures. S.B. 5638, 66th Leg., Reg. Sess. (Wash. 2019).

For purposes of sales tax collection, "[p]roviding a virtual currency that buyers are allowed or required to use to purchase products from the seller" qualifies one as a "marketplace facilitator." H.B. 2163, 65th Leg., 3d. Spec. Sess. (Wash 2017).

West Virginia

West Virginia's money transmitter act does not explicitly include "virtual currencies" and the State's Department of Financial Institutions has not published guidance on virtual currency regulations.

The State explicitly prohibits the laundering of value through cryptocurrencies. W. Va. Code § 61-15-1, et seq. A bill was introduced that, if enacted, would require the Joint Committee on Government and Finance to study Bitcoin. H.B. 29, 83rd Leg., Reg. Sess. (W. Va. 2018). A bill was recently introduced that, if enacted, would require the Joint Committee on Government and Finance to study Bitcoin. H.B. 29, 83rd Leg. Reg. Sess. (W. Va. 2018). Another bill introduced would create a financial technology sandbox program for the testing of financial products and services in West Virginia, including blockchain technology. S.B. 583, 84th Leg., Reg. Sess. (W. Va. 2019).

With respect to the collection of use tax, a person is a "marketplace facilitator" if that person provides, "a virtual currency that buyers are allowed or required to use to purchase products from the seller." H.B. 2813, 2019 Leg., Reg. Sess. (W. Va. 2019).

Wisconsin

Despite the lack of guidance, the state has refused to issue money transmitter licenses to virtual currency businesses and requires an agreement if a company deals in virtual currency stating that the company will not use virtual currency to transmit money. See State of Wis. Dep't of Fin.

Inst., *Sellers of Checks*, available at <https://www.wdfi.org/fi/lfs/soc/> (last visited 10/02/2017). The state has also made it clear that the purchases of taxable goods or services made with virtual currencies are subject to state sales tax, just like any other purchase, but that the virtual currency itself is not subject to sales tax because they are not tangible personal property. See 1-14 Wisconsin Department of Revenue, *Sales and Use Tax Report*, at 5 (2014). However, the senate introduced a bill on April 30, 2019, which would exempt cryptocurrency sales from the general sales and use tax. S.B. 192, 104th Leg., Reg. Sess. (Wis. 2019). Relatedly, a bill adopted in July, 2019, states that the "providing [of] a virtual currency used to purchase products from the marketplace seller" deems a person a "marketplace provider" who might need to collect sales tax. S.B. 59, 104th Leg., 2019-20 Reg. Sess. (Wis. 2019).

Wyoming

Wyoming has emerged as one of the most crypto-friendly jurisdictions in the United States. In March 2018, H.B. 70, known as the "Utility Token Bill" was signed into law. The Bill exempts "Utility Tokens" from the state's securities laws provided the issued token and its issuer meet the following requirements:

- (i) The developer or seller of the token, or the registered agent of the developer or seller, files a notice of intent with the secretary of state[;]
- (ii) The purpose of the token is for a consumptive purpose, which shall only be exchangeable for, or provided for the receipt of, goods, services or content, including rights of access to goods, services or content; and
- (iii) The developer or seller of the token did not sell the token to the initial buyer as a financial investment.

Under the statute, the part (iii) requirement is only met if:

(A) The developer or seller did not market the token as a financial investment; and

(B) At least one (1) of the following is true:

- (I) The developer or seller of the token reasonably believed that it sold the token to the initial buyer for a consumptive purpose;
- (II) The token has a consumptive purpose that is available at the time of sale and can be used at or near the time of sale for use for a consumptive purpose;
- (III) If the token does not have a consumptive purpose available at the time of sale, the initial buyer of the token is prevented from reselling the token until the token is available for use for a consumptive purpose; or
- (IV) The developer or seller takes other reasonable precautions to prevent buyers from purchasing the token as a financial investment.

H.B. 70's liberal approach is facially at-odds with recent statements from the Federal Securities and Exchange Commission which, at least informally, has stated a belief that all tokens are likely securities. See, e.g., <https://www.coindesk.com/sec-chief-clayton-every-ico-ive-seen-security/>. Accordingly, because of federal supremacy, Wyoming's statute does not give complete safe harbor to issuers of "Utility Tokens."

In attempting to build the Nation's most crypto-friendly state, Wyoming also:

- passed legislation authorizing corporations to create Blockchains to store records. H.B. 101, 64th Leg., Budget Sess. (Wyo. 2018).
- amended its Wyoming Money Transmitter Act to provide an exemption for virtual currency. H.B. 19, 64th Leg., Budget Sess. (Wyo. 2018).
- exempted virtual currencies from state property taxes. S.F. 111, 64th Leg., Budget Sess. (Wyo. 2018).

The Wyoming House, in its latest appropriations bill, created a blockchain task force meant to identify governance issues related to blockchain technology. H.B. 1, 65th Leg., Gen. Sess. (Wyo. 2019).

The Wyoming House, in its latest appropriations bill, created a blockchain task force meant to identify governance issues related to blockchain technology. H.B. 1, 65th Leg., Gen. Sess. (Wyo. 2019).

In February, a bill focused on digital assets was approved,

- classifying digital assets within existing laws;
- specifying that digital assets are property within the Uniform Commercial Code;
- authorizing security interests in digital assets;
- establishing an opt-in framework for banks to provide custodial services for digital asset property as custodians;
- specifying standards and procedures for custodial services under this act;
- clarifying the jurisdiction of Wyoming courts relating to digital assets

S.F. 125, 65th Leg., Gen. Sess. (Wyo. 2019).

Another bill was approved on February 28, 2019 focused on open blockchain tokens:

- establishing that open blockchain tokens with specified consumptive characteristics are intangible personal property and not subject to a securities exemption;
- requiring developers and sellers of open blockchain tokens to file notices of intent and fees with the secretary of state;
- authorizing specified enforcement actions;
- making specified violations unlawful trade practices;
- repealing provisions granting open blockchain tokens a securities exemption

H.B. 62, 65th Leg., Gen. Sess. (Wyo. 2019).

Finally, other bills that were approved include:

- the authorization of "the secretary of state to develop and implement a blockchain filing system." H.B. 70, 65th Leg., Gen. Sess. (Wyo. 2019).
- the authorization of "corporations to issue certificate tokens in lieu of stock certificates as specified." H.B. 185, 65th Leg., Gen. Sess. (Wyo. 2019).
- the idea to create a "new type of Wyoming financial institution that has expertise with customer identification, anti- money laundering and beneficial ownership requirements could seamlessly integrate these requirements into its operating model ... [a]uthorizing special purpose depository institutions to be chartered in Wyoming [that] will provide a necessary and valuable service to blockchain innovators, emphasize[ing] Wyoming's partnership with the technology and financial industry and [to] safely grow this state's developing financial sector." H.B. 74, 65th Leg., Gen. Sess. (Wyo. 2019).
- the creation of the "Financial Technology Sandbox Act," whereas the adopted bill states that "Wyoming currently offers one of the best business environments in the United States for blockchain and financial technology innovators, and should offer a regulatory sandbox for these innovators to develop the next generation of financial technology products and services in Wyoming." H.B. 57, 65th Leg., Gen. Sess. (Wyo. 2019).

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