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on Technology and Science

Innovative Disruption: A Report on State-Specific Considerations for Cryptocurrencies and Blockchain Technology

January 2025

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The purpose of this report is to analyze the use of blockchain technology, digital asset mining, and cryptocurrency in the Commonwealth, in response to SB 339.

Be it enacted by the General Assembly of Virginia:
1. § 1. That the Joint Commission on Technology and Science (JCOTS) shall, in consultation with the State Corporation Commission and other relevant stakeholders, conduct an analysis of and make recommendations related to the use of blockchain technology, digital asset mining, and cryptocurrency in the Commonwealth and fostering the appropriate expansion of blockchain technology, digital asset mining, and cryptocurrency in the Commonwealth. JCOTS shall submit a report of its findings and recommendations to the Chairmen of the House Committees on Appropriations and Communications, Technology and Innovation and the Senate Committees on Finance and Appropriations and General Laws and Technology no later than December 1, 2024.

Innovative Disruption: A Report on State-Specific Considerations for Cryptocurrencies and Blockchain Technology

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> SECTION 1

Introduction

The contemporary use of cryptocurrencies developed out of, and is predicated on the foundational efforts by, technical pioneers focused on decentralized paradigms. Cryptocurrencies, initially, were niche novelties used and traded among a select group of technically-capable enthusiasts. Notwithstanding their limited early use, now, they have proliferated across the financial industry with growing global influence — they are embraced by major corporations, financial institutions, and even incorporated into the monetary strategies of national governments. Today, the global market cap of the thousands of cryptocurrencies introduced since Bitcoin's debut are at an all-time high at a value in excess of $3.74 trillion, wherein their market cap now exceeds the value of money of many major economies.[1]

However, both in the United States and abroad, financial regulators have remained divided as to how to incorporate cryptocurrencies into traditional legal structures and regulatory policies. Since Bitcoin's launch in January 2009, sweeping advancements in blockchain technological are uprooting today's regulatory environment by revolutionizing, and permeating throughout, the financial industry. The sheer speed of innovation has outpaced the ability of policymakers and regulators to adapt to the sudden disruption, particularly around nuanced systems touting their trustless and anonymous nature. This has, often, culminated in novel media and sophisticated systems that do not fit well into existing laws and regulations, resulting in an *ad hoc*, piecemeal legal structure predicated on individual court decisions and trends in enforcement actions, public statements and published guidance. The "pacing problem"[2] faced by regulators has never been more acute and pervasive. We have seen agencies playing catch-up and regulating by enforcement — which, thus far, has not proved to be an efficacious strategy. The legal structure, therefore, is in desperate need for principled application and an overarching *a priori*, agile regulatory framework.

As such, from the outset, it is worth first placing our study within the context of recent federal assessments and legislative reform efforts. President Biden released an Executive Order (EO14067) on March 9th, 2022, commissioning reports from the Treasury Department, the Justice Department, the Commerce Department, and the White House Office of Science and Technology Policy (OSTP). These reports focused on cryptocurrencies, consumer and investor protections, the viability of Central Bank Digital Currencies (CBDCs), technological and legislative requirements for CBDC deployment, and anti-money laundering policy recommendations for reform.

The Treasury Department released three reports in September 2022: The Future of Money and Payments, Implications for Consumers, Investors, and Businesses, and Action Plan to Address Illicit Financing Risks of Digital Assets. The Future of Money and Payments recommends researching the benefits of a U.S. CBDC, promoting the Fed's instant payment network, increasing regulation of nonbank payment providers, and improving cross-border payment efficiency and security. Implications for Consumers, Investors, and Businesses recommends aggressive regulatory enforcement, increased disclosure from cryptocurrency exchanges, and increased funding for the Financial Literacy and Education Commission. The Action Plan to Address Illicit Financing Risks of Digital Assets recommended increased AML and CFT reporting, international collaboration to identify cross-border fraud, and improved transparency in cryptocurrency transactions.

[1] Canada, for instance, has an M1 money supply — which includes currency outside banks and chequable deposits — of about 1.566 trillion CAD as of September 2024. At the current exchange rate of 1 USD to 1.37 CAD, this equates to approximately $1.14 trillion USD. Similarly, the United Kingdom's M1 money supply was approximately £2.211 trillion. With the British pound trading at about 1 GBP to 1.27 USD, this converts to roughly $2.81 trillion USD. Therefore, the global cryptocurrency market capitalization of approximately $3.74 trillion USD exceeds the Canadian and British M1 money supply, respectively.

[2] The pacing problem refers to the ability of a regulator to remain relevant in the face of technological advances. In other words, while 'technology changes exponentially', 'social, economic, and legal systems change incrementally'.

The Justice Department released a report in September 2022 concluding that cryptocurrencies "have been exploited by criminals as a means of payment for criminal activity, concealing illicit financial activity, and crimes involving or undermining the cryptocurrency ecosystem". The report recommended anti-tip-off provisions which prevent notifying exchanges that they are being investigated, amending 18 U.S.C § 1960 to include decentralized exchanges as money transmitters. They are, therefore, required to file suspicious activity reports (SARs) with FinCEN, applying the BSA to cryptocurrency platforms, add know-your-customer (KYC) requirements to decentralized exchanges, and providing more funding to the National Cryptocurrency Enforcement Team to improve enforcement capabilities.

The Department of Commerce's report in September 2022 recommended the inclusion of American cryptocurrency firms in international trade, increased public-private partnerships, and governmental support to technological research and development. The OSTP's September 2022 report focused on climate-related impacts of cryptocurrency adoption — specifically, with reference to section two of the report, proof-of-work mechanisms' energy requirements and the greenhouse gas emissions thereof. The OSTP recommended transitioning to proof of stake to reduce energy requirements, which had been adopted by the Ethereum network eight days later. OSTP also recommended mandatory data reporting on energy usage and energy efficiency standards for cryptocurrency mining operations.

EO14067 had the largest impact by greenlighting the Department of Justice's effort to prioritize enforcement in the cryptocurrency space, coordinated among the various agencies by the National Cryptocurrency Enforcement Team (NCET). This initiative focused on combating illicit uses of cryptocurrencies — including money laundering, ransomware payments, and sanctions evasion — by targeting decentralized exchanges, mixers, and other enablers of criminal activity. Instead of pursuing a comprehensive regulatory framework, the DOJ emphasized the need to enhance legal tools, increase cross-border cooperation, and aggressively prosecute cryptocurrency-related crimes to safeguard national security and market integrity. EO14067 focused the Treasury Department's efforts on global collaboration and stricter standards for exchanges, stablecoins, and decentralized platforms. The order further increased research into CBDCs, which many states subsequently endeavored to proscribe in law and the incoming federal administration has made clear that it does not intend to continue explorations into CBDCs.

Federal and state agencies are tasked with overseeing and, in turn, regulating an extensive and complex range of financial and economic activity.[3] There is a growing need for regulators to maintain an intricate balance in fostering innovation, protecting consumers, and addressing the unintended consequences of innovative disruption. Notwithstanding the notable uncertainty lingering in the regulation of these novel technologies, while numerous Congressional legislative drafts are under study in the United States (the scope of which is outside our report), the United States Congress has thus far not, and remains very unlikely to, decisively resolved open issues through legislation or rulemaking.

As a result, it predominantly falls to the states to regulate the private law treatment of cryptocurrencies. Individual states have taken different approaches to regulating cryptocurrencies and blockchain technology under their own authority. Virginia currently lacks a comprehensive framework for regulating cryptocurrencies and blockchain technology. However, there have been recent nation-wide developments indicating a move towards more structured regulation, including in Virginia. In early 2024, Virginia's Senate Bill 339 (SB 339) was introduced to direct the Joint Commission on Technology and Science (JCOTS) to analyze blockchain technology, cryptocurrency mining, and cryptocurrencies within the Commonwealth. The bill mandates that JCOTS, in consultation with the State Corporation Commission and other relevant stakeholders, conduct a comprehensive study and provide recommendations to align the legal treatment of cryptocurrencies with a set of enumerated objectives. As will be demonstrated below, it could scarcely be overstated that the law is in desperate need for a delineation of asset-specific rules and benefits for cryptocurrencies on the state level and across various fields (albeit, it need not necessarily be comprehensive) — the current rules and regimes,

[3] The SEC, for instance, is tasked with overseeing the equity, municipal securities, and corporate bond markets (cumulatively, an approximate 64 trillion dollars in market capitalization). Similarly, the CFTC is tasked with overseeing the derivatives and futures markets (cumulatively, an approximate 600 trillion dollars in market capitalization). *See*, The Federal Reserve, The Federal Reserve Bank of New York, US Agencies, and SIFMA estimates.

undoubtedly, not being fit for purpose, not least of which since they never contemplated cross-functional assets when they were enacted. While our analysis will unavoidably touch on the federal regulatory framework, our report is centered around the state efforts to tackle innovative disruption to best inform your legislative deliberations. Specifically, this report aims to provide the Virginia State Legislature with a comprehensive understanding on the different strategies employed by other states in navigating the complex and rapidly evolving landscape of cryptocurrencies and blockchain regulation. By examining a range of approaches across states — from permissive frameworks fostering innovation to more stringent policies emphasizing consumer protection and financial stability — we endeavor to complement our detailed legal analysis with highlighting best practices and identifying potential pitfalls. We have, therefore, endeavored to tailor our report to Virginia's unique position as a growing hub for science and technology, with a particular focus on state-level regulatory strategies that can align economic opportunities with the need for prudent oversight. Additionally, the report delves into key challenges, including property, anti-money laundering (AML) compliance, regulatory taxonomy, consumer protections, and the potential integration of blockchain technology into public infrastructure and services. We hope this report will serve as a valuable resource for drafting informed, forward-looking policies that not only address current regulatory gaps but also position Virginia as a leader in fostering responsible innovation in the cryptocurrency and blockchain sectors.

> SECTION 2

Technological primer

Prior to delving into the private and regulatory law regime governing cryptocurrencies, it is necessary to highlight the key characteristics shared by and among the various cryptocurrencies to inform our analysis and accurately account for the technical distinctions within the first principles. Cryptocurrencies have been, widely, described as 'digital gold', particularly in an effort to reflect their artificial scarcity and role as a store of value. There are, now, differing forms of cryptocurrencies. They are neither technologically, nor functionally, identical. However, they do all share key characteristics (especially decentralization and distributed consensus) and, in one form or another, are foundationally based on blockchain technology. The exposition below, therefore, will predominantly focus on the functional underpinnings of cryptocurrencies. Bitcoin will be used as the principal cryptocurrency to bring to light the pertinent legal implications. Nevertheless, when necessary, a comparative approach with other forms of cryptocurrencies is also employed to contrast certain functional elements.

Cryptocurrencies, in their most abridged form in the abstract, are simply digital assets that are stored on blockchains that use cryptography to enable peer-to-peer exchanges without the need for any financial intermediation. Therefore, as with monetary systems more broadly, there are two main functional elements that are required of any cryptocurrency. Firstly, it would need to feature a control of supply (even if only artificial). Bitcoin's supply is artificially limited to 21 million bitcoins[4] — while this feature is a hallmark of most cryptocurrencies, others have opted for more nuanced supply controls that do not impose a strict limit, including inflationary supply models or dynamic supply adjustments based on network demands.[5] Secondly, it would need to maintain the security protocols that guarantee the integrity of its attribution and transfer mechanisms. Each user of cryptocurrencies possesses a unique alphanumeric wallet address and, in turn, the blockchain records all attribution to a user's respective wallet by validating authentic transfers. A wallet is composed of, both, a public and private key (known as 'asymmetric cryptography'). The public key is linked to the private key and can be shared openly. Analogous to bank account numbers, it acts as a digital identity for receiving transactions. The private key, which is only accessible to the owner, is used to digitally sign transactions, proving ownership of assets linked to the corresponding public key without revealing the private key itself. When a user signs a transaction with their private key, others can use the corresponding public key to verify that the signature is valid. This mechanism is central for enforcing non-repudiation, wherein the signer cannot deny the authenticity of their signature, thus ensuring the integrity and authenticity of digital communications and transactions within blockchain networks. This asymmetric encryption allows for secure, verifiable transactions that maintain user privacy. The transfers themselves on the network,

[4] *See*, Satoshi Nakamoto, '*Bitcoin v0.1 released'*, (accessible at <http://www.metzdowd.com/pipermail/cryptography/2009-January/014994.html>). "[T]otal circulation will be 21,000,000 coins. It'll be distributed to network nodes when they make blocks, with the amount cut in half every 4 years".

[5] The supply of Ethereum in circulation, for instance, is influenced by an intricate balance of adjustable issuance to renumerate mining, a burn rate contingent on gas usage, and the removal of staked Ethereum from circulation. Additionally, after an update in 2021, mining Ethereum became less profitable due to an increase in the block size needed to create new coins, coupled with the removal of transaction fees. This has precipitated in a fluctuating, but stable, supply base of Ethereum (albeit, Ethereum's monetary policy is left in the hands of the Ethereum community).

however, are principally recorded through the use of blockchains. Blockchains are digital networks that function as decentralized ledgers. Blockchains are maintained by a global network of participating computers (known as nodes), often open to public participation, with no one entity controlling the ledger. Cryptocurrencies record transfers by processing a set of transactions or data in a 'block' through hash pointers. A hash pointer is a cryptographic hash that points to a data block and includes the original value of the data. Each block in a blockchain contains a hash pointer that not only points to its predecessor but also includes the hash of the predecessor's data — in effect, it allows what would otherwise be loose blocks to serve as a chain. The blocks, through the use of hash pointers, are then cryptographically linked to form a temporally sequential chain that is, both, uninterrupted and immutable. This chaining process secures the ledger against tampering. If an attacker attempts to alter any block, the hash values stored in subsequent blocks would no longer match, and the inconsistency would be instantaneously detected.

Traditionally, these two monetary functions were entrusted to financial intermediaries, be it central banks or private institutions.[6] In decentralized networks, however, there is no central authority to ensure that transactions are legitimate. The challenge for, and indeed breakthrough of, cryptocurrencies had been in establishing a mechanism for consensus without resorting to a trusted central authority. Cryptocurrencies maintain their security and integrity by having "total validation replace central control".[7] The blockchain is distributed by virtue of each node maintaining a copy of the ledger. As such, in a manner akin to democratization, participants must collectively agree on the state of the ledger. Indeed, by virtue of embedding the distributed consensus mechanism within a decentralized system, cryptocurrencies tout their 'trustless' nature. Many cryptocurrencies prior to Bitcoin failed to effectively resolve this problem. Given their distributed consensus mechanism, this problem becomes particularly acute considering that participants may, and without disincentives would be expected to, act maliciously or fail to communicate effectively. Today, however, this issue is addressed via Proof of Work or Proof of Stake. Let us consider each, in turn. Proof of Work is a cryptographic method that ensures the authenticity of transactions by requiring nodes working on verification in exchange for renumeration (known as miners) to compete in solving computationally intensive mathematical puzzles to find a special number ('number used once' or, more commonly known by its portmanteau, 'nonce'). In effect, this mechanism aligns incentives by making it too costly for bad actors to manipulate the system and are, therefore, energy intensive systems. As a juxtaposition, Proof of Stake is a cryptographic method that chooses validators based on the amount of cryptocurrency they "stake" as collateral, wherein validating fraudulent transactions results in the forfeiture of the staked funds. As such, 'proof of stake' systems tend to be relatively more energy efficient by disincentivizing malicious actions, not through computational difficulty but by attempting to align economic incentives. Irrespective of which consensus mechanism is employed, each ensure that it is not possible for a malicious party to produce a counterfeit, fraudulently double-spend, or void transactions after they have been verified. Beyond these common characteristics, cryptocurrency can differ significantly amongst themselves based on functionality and coveted features — however, foundationally, they are all predicated on blockchain technology.

[6] In modern monetary history, society often utilizes a combination of both.
[7] Diedrich, H. Ethereum (Wildfire Publishing, 2016) at 113.

> SECTION 3

Proprietary Interest in Cryptocurrencies

In the first instance, if cryptocurrencies are to be utilized, it would be inconceivable that a proprietary regime would not apply to them. It would undermine their function as an asset class altogether. Nevertheless, the novelty of cryptocurrencies challenges traditional notions of property. This is since they are essentially a record of transfers on a blockchain and the coins themselves are constituted of digital signatures, which could conceivably make it difficult to recognize them as property. This has resulted in a lack of consistency and uniformity in the treatment of cryptocurrencies across the United States, despite property being an all-pervasive concept that encompasses "every intangible benefit and prerogative susceptible of possession or disposition".[8] As a corollary, the secured transactions regime of the Uniform Commercial Code's Article 9 applies only to personal property, therefore cryptocurrencies must first qualify as personal property for them to be pledged as collateral for a debt.

Courts, generally, apply a three-part test to determine whether a proprietary interest exists: "First, there must be an interest capable of precise definition; second, it must be capable of exclusive possession or control; and third, the putative owner must have established a legitimate claim to exclusivity".[9] Each cryptocurrency is sufficiently definable. While it is fungible, it is distinguishable from all the other bitcoins, wherein it is composed of a unique "chain of electronic signatures".[10] As such, the first prong is satisfied. Similarly, each cryptocurrency is attributable to a public key. This could be achieved, either, by original acquisition of title (mining, until limit is reached) or derivative acquisition of title (transfer cryptocurrencies through the established transfer mechanism within the protocol, either through the use of a private key or symmetric key that is only possessed by the two parties to the transaction through the creation of a tag system, or off chain by relinquishing control of the wallet itself). As such, the second and third prongs are, also, satisfied.

Since proprietary rights in cryptocurrencies are recognized in law, albeit in general form and in a piecemeal fashion under the relevant caselaw. We, then, progress to undertake the taxonomical exercise of categorizing its proprietary interest according to the conventional binary dichotomy in property law. In the United States, as derived from Roman law, the classification is a dichotomy between real[11] or personal[12], wherein either can then be further bifurcated into tangible[13] and intangible[14]. Cryptocurrencies are, therefore, invariably classified as personal intangible property in the exhaustive dichotomy. It is, however, distinct from traditional forms of intangible personal property previously recognized (principally, intellectual property rights

[8] *Downing v. Municipal Court of City and County of San Francisco*, 88 Cal. App. 2d 345, 350, 198 P.2d 923 (1st Dist. 1948)
[9] *G.S. Rasmussen & Assocs., Inc. v. Kalitta Flying Serv., Inc.*, 958 F.2d 896, 903 (9th Cir. 1992) There may be some minor deviations across states, but this test is derived from the common law, more broadly. As such, we even see a similar test employed across the United States and United Kingdom.
[10] Satoshi Nakamoto, '*Bitcoin: A Peer-to-Peer Electronic Cash system'*, p.2
[11] Often, 'real' estate and rights associated with land.
[12] Everything not 'real'.
[13] *See*, Bankton Institute I.III.20 ("such as fall under the senses, may be seen or felt, as the ipsa corpora")
[14] *Ibid* ("not subject to the senses, but which have their existence in law, as rights of all kinds")

and bank money). Cryptocurrencies clearly do not fall under intellectual property, they are not patents, copyrights, trademarks, or trade secrets. Additionally, bank money is considered to be a 'chose in action' — in that what is actually owned is a right to enforce a claim, in the case of bank money, "to recover, in a judicial manner, from [the bank]…what is due to us".[15] This is not the case with cryptocurrencies. Cryptocurrencies operate as a protocol in which ownership is vested in the respective coins themselves, analogous to traditional fiat or metallist money, except intangible.[16]

After having established the proprietary interest in cryptocurrencies, it is now necessary to turn to examining the intricacies of the proprietary interest in cryptocurrencies within the broader tenets of private law. While many states are still grappling with the regulatory taxonomy of cryptocurrencies[17], some have begun to treat cryptocurrencies as simply another form of property under state law. Some states have explicit laws that define or categorize cryptocurrencies as intangible personal property, for instance The Digital Assets Act in Idaho and the enactment of a similar statutory regime in Wyoming. This approach further reinforces the conclusion, as discussed above, that the ability to control and possess a definable thing (even if not physically) is central to determining if a property right exists in the first place. Other states enacted laws and regulations that implicitly suggest, or simply assume, the proprietary rights in cryptocurrencies without any delineation. New York, for instance, established the BitLicense to regulate cryptocurrency businesses. New York is the only state that has created regulations specifically designed for cryptocurrencies. The BitLicense suggests that cryptocurrencies are considered property since it prohibits licensees from encumbering cryptocurrencies stored for others and requires them to keep records of cryptocurrency accounts in case the assets are deemed abandoned property.

Unclaimed Cryptocurrencies

As a corollary, many states enacted regimes specifically for unclaimed cryptocurrencies, particularly by incorporating cryptocurrencies within their existing Unclaimed Property Acts. These acts typically govern the handling of abandoned assets, but the decentralized and anonymous nature of cryptocurrencies presents unique challenges in this context. Several states include cryptocurrencies as property under their Unclaimed Property Acts, suggesting a growing recognition of this issue, to include Kentucky[18], Tennessee[19], Utah[20], Vermont[21], West Virginia[22], and Washington[23]. Many states are considering amendments to their existing Unclaimed Property regimes. New York, while not explicitly listed in the sources as including cryptocurrencies under its Unclaimed Property Act, is currently considering legislation (AB 7742) to classify unclaimed cryptocurrencies as abandoned property.

The inclusion of cryptocurrencies in these states' Unclaimed Property Acts suggests that states are recognizing the unique challenges posed by unclaimed cryptocurrencies. When traditional financial assets are unclaimed, there are established

[15] *Ibid.*
[16] Satoshi Nakamoto, '*Bitcoin: A Peer-to-Peer Electronic Cash system'*, p.2
[17] For a discussion on regulatory taxonomy, see section 4 of this report below.

[18] KY Rev Stat § 393A.010 includes cryptocurrency in the definition of property, therefore subject to the state's Unclaimed Property Act.
[19] TN Code § 66-29-102 directly includes cryptocurrency as property under Tennessee's Uniform Unclaimed Property Act.
[20] UT Code § 67-4a-102 defines cryptocurrency as property subject to Utah's Revised Uniform Unclaimed Property Act.
[21] In 2019, HB 550 included cryptocurrency in the definition of property covered by Vermont's Revised Uniform Unclaimed Property Act.
[22] In 2022, HB 4511 amended the West Virginia Unclaimed Property Act to address and tailor certain provision to cryptocurrencies.
[23] SB 5531, signed into law in 2022, includes cryptocurrencies in the Uniform Unclaimed Property Act's definition of property in Washington.

procedures for how those assets are handled. However, with cryptocurrencies, the decentralized and anonymous nature of the technology makes it difficult to locate and return unclaimed assets after they are identified.

Scholarly Considerations

Scholars specializing in property law who have examined bitcoin ownership within broader theoretical discussions generally align with the conclusion presented earlier in the report — that interests in cryptocurrencies must, and do, fall under the protection of property law. These scholars also emphasize significant gaps in existing property law that could impede the growth of the market for cryptocurrencies.

For instance, Professor Joshua Fairfield contends that property law's traditional emphasis on the tangibility of assets leads to problematic outcomes when applied to cryptocurrencies, especially bitcoin. He suggests that property law must be reimagined as a framework for the "transmission, security, and verification of information".[24] Central to Professor Fairfield's argument, however, is the assumption that bitcoin can and must be treated as "ownable" under property law.[25] His recommendations stem from the fundamental observation that current property law requires reform to better safeguard and encourage ownership of cryptocurrencies more broadly.

Professor Shawn Bayern contends that bitcoin does not fit neatly into traditional property law categories and represents a fundamentally new type of asset. He advocates for evaluating bitcoin-related property rights from a "functional" perspective to avoid arbitrary or unjust outcomes that may arise from rigid classification under conventional property frameworks.[26] Bayern highlights that bitcoin holds significant economic value for participants in the network, making it "clearly proper to criminalize its theft".[27] He further asserts that treating bitcoin as intangible, movable personal property aligns with the expectations of the parties involved.

While this report focuses narrowly on the concept of bitcoin's "ownability" under existing U.S. law, further exploration of broader reforms proposed by Professors Fairfield and Bayern is recommended. Reforms of this nature could help ensure that property law is applied fairly and effectively to bitcoin and other emerging cryptocurrencies, avoiding arbitrary and piecemeal legal treatment (as is the case at the moment) due to their novel nature. Notably, Fairfield's work presumes the legitimacy of ownership rights in bitcoin and other cryptocurrencies, while Bayern's analysis supports classifying bitcoin as intangible, personal property.

Ancillary Consequences

Furthermore, treating cryptocurrencies as property has far-reaching implications beyond property law, reverberating across practically all legal domains, including civil forfeiture, taxation law, bankruptcy law, trust and estates law, among many others.

Civil forfeiture in the United States is a legal process where the government initiates an *in rem* proceeding — meaning the action is directed against the property itself rather than an individual. This allows authorities to seize assets suspected of being connected to criminal activity without necessarily charging the owner with a crime. The property is directly treated as the subject of an action in these cases. Each state also has its own set of forfeiture laws and procedures,

[24] Joshua Fairfield*, BitProperty,* 88 S. Cal. L. Rev. 805 (2015)
[25] *Ibid*.
[26] Shawn Bayern, *Dynamic Common Law and Technological Change: The Classification of Bitcoin,*71 Wash. & Lee L. Rev. Online 22 (2014).
[27] *Ibid*.

which dictate how assets, including potentially cryptocurrencies, are handled under civil forfeiture. For example, Virginia's forfeiture laws, under Title 19.2, Chapter 22.1 of the Code of Virginia, define property broadly and allow for the seizure of assets connected to criminal acts. At the federal level, forfeiture laws have been applied to cryptocurrencies, treating them as property subject to seizure and forfeiture. In April 2022, federal prosecutors, in collaboration with local Florida law enforcement, obtained the forfeiture of $34 million worth of cryptocurrencies linked to illegal dark web activities. Additionally, the U.S. Department of Justice's Asset Forfeiture Policy Manual outlines procedures for the seizure and forfeiture of various assets, including cryptocurrencies, under federal law. While specific state civil forfeiture laws may not explicitly mention cryptocurrencies, many states have treated cryptocurrencies as property under other legal regimes, such as unclaimed property laws. This suggests that cryptocurrencies could be subject to similar treatment under civil forfeiture statutes.

Similarly, under U.S. bankruptcy law, cryptocurrencies are generally considered property for the purposes of fraudulent transfer actions under Section 550(a) of the U.S. Bankruptcy Code. This section allows a bankruptcy trustee to recover property that has been fraudulently transferred by the debtor. The classification of cryptocurrencies as property, rather than currency, means that trustees can seek to recover the actual cryptocurrencies transferred or their value at the time of recovery, which may be higher than its value at the time of the transfer. This approach aligns with the treatment of other assets considered property under bankruptcy law. Under U.S. bankruptcy law, cryptocurrencies are generally considered property for the purposes of fraudulent transfer actions under Section 550(a) of the U.S. Bankruptcy Code. This section allows a bankruptcy trustee to recover property that has been fraudulently transferred by the debtor. The classification of cryptocurrencies as property, rather than currency, means that trustees can seek to recover the actual cryptocurrencies transferred or (failing which) its value at the time of recovery, which may be higher than its value at the time of the transfer. This approach aligns with the treatment of commodities, more broadly, under bankruptcy law.

Trust and estates law is affected by the Uniform Law Commission approving a revised Uniform Fiduciary Access to Digital Assets Act ("UFADAA") for enactment by states. Recognizing the rapidly expanding scope of digital property in everyday life, the UFADAA makes clear that the power of fiduciaries, including trustees, estate executors, conservators, and agents with powers of attorney, extends to the management of cryptocurrencies, in addition to tangible property. The UFADAA frames "digital assets" in terms of property rights, defining it specifically as an "electronic record in which an individual has a right or interest". In its summary of the UFADAA, the ULC stated that "an executor that is distributing funds from the decedent's bank account will also have access to the decedent's cryptocurrency account", thus making explicit that "virtual currencies" are intended to come within the scope of "digital assets" under the UFADAA. Since its release, many states (including Virginia) have enacted UFADAA into state law. In Virginia, RUFADAA has been codified in the Code of Virginia, Title 64.2, Chapter 1, Article 3.1.

Custodial Considerations

When cryptocurrency holders utilize third-party custodians — such as wallets or centralized exchanges — to store their assets, determining whether the depositor retains or transfers title to the deposited cryptocurrencies is crucial. This distinction defines the rights and obligations of both the depositor and the custodian, particularly concerning the custodian's ability to use the deposits and the

protection of these assets from third-party claims. The importance of this issue is particularly prevalent in scenarios when a custodian faces bankruptcy, as evidenced recently by the FTX collapse, where the depositor's ability to claim assets depends on whether they retained title to the deposit, as opposed to a claim against the institution for a chose in action. Unlike traditional bank deposits, cryptocurrency holdings are not typically protected by FDIC insurance, necessitating a clarification of custodial arrangements as a first order priority.

Notwithstanding the aforementioned, under U.S. law, the relationship between a custodian and its client is primarily governed by state law, but it may also be subjected to further federal and state legal and regulatory requirements if such custodians are registered and regulated institutions. However, a custodial relationship can take many different forms, including custodial relationship under the Uniform Commercial Code's Article 8, bailment or trust under state law, as well as contractual relationships more broadly under state law. Each form of custodial relationship has different legal implications. A custodial relationship may fall within the Uniform Commercial Code's Article 8 if the asset being maintained is a "financial asset". A property will be considered as "financial asset" if held by a securities intermediary for another person in a "securities account" and the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under UCC § 8-102(a)(9). If so, cryptocurrencies held by a securities intermediary are not property of the securities intermediary, and that each entitlement holder's property interest is a pro rata property interest in all interests of the securities intermediary in the specific type of financial asset that is being held for the entitlement holder by the securities intermediary, U.C.C. §§ 8-503 (Am. L. Inst. & Unif. L. Comm'n 2023). Meanwhile, the custodian will be subject to certain duties, including a duty to maintain a sufficient quantity of custodial assets to satisfy the client's securities entitlements, a duty to comply with the client's instructions and a prohibition on granting security interests in the client's assets without consent, among others. U.C.C. §§ 8-504 to 8-508 (Am. L. Inst. & Unif. L. Comm'n 2023).

When a custodial agreement is in place, which is commonly the case, a bailment or trust relationship is unlikely to be established without explicit provisions demonstrating the intent to create such a relationship. On April 11, 2022, Virginia governor Glenn Youngkin signed into law HB 263, which allows Virginia banks to "provide [their] customers with virtual currency custody services so long as the bank has adequate protocols in place to effectively manage risks and comply with applicable laws" and "provide virtual currency custody services in either a nonfiduciary or fiduciary capacity". Under Virginia law, the existence of a bailment requires a clear transfer of possession and acceptance of a duty to safeguard the property.[28] Similarly, for a trust to be recognized, Virginia law mandates evidence of intent to create a trust, identification of trust property, and designation of beneficiaries, as outlined in the Virginia Uniform Trust Code (§ 64.2-701 et seq.). In the absence of specific terms in a custodial agreement indicating that the custodian wallet provider is acting as a bailee or trustee, courts are unlikely to impose the duties associated with these relationships, such as the duty to exercise ordinary care (for bailments) or fiduciary duties of loyalty and prudence (for trusts). Therefore, because custodial agreements typically lack such explicit provisions or intent, a bailment or trust relationship is rarely established.

Alternatively, the custodial relationship may be structured as a debtor-creditor contractual relationship, in which the custodian has no fiduciary or special duties to safeguard the client's assets. In

[28] Morris v. Hamilton 225 Va. 372 (1983).

such a case, the client would hold only an unsecured monetary claim against the custodian, rather than a direct claim to the actual custodial assets. This type of relationship was highlighted during the bankruptcy of FTX, where the user agreement "included conclusory language stating that customers "owned… their cryptocurrencies, yet it did not include the other provisions necessary to create a conventional custody or trust relationship under applicable law".

Possible Challenges to Treating Cryptocurrencies as Property

Given its unique characteristics, treating cryptocurrencies as property presents several challenges in reference to multisignature (multisig) arrangements and traceability issues. Cryptocurrencies often use multisig setups, where multiple keys are required to authorize transactions. This creates complexity in determining ownership, especially when no single entity has unilateral control. Such cases may result in co-ownership, similar to joint ownership in traditional property law. However, the lack of specific legal guidance means that parties must rely on contractual agreements to clarify rights and responsibilities, highlighting the need for tailored frameworks to address this unique feature.

For traceability issues, the fungibility of cryptocurrencies makes individual units indistinguishable, complicating ownership tracing across transactions. This is particularly problematic in cases of theft or fraud. Analogous challenges exist in physical assets like commingled oil, yet ownership rights are still enforceable in those contexts. For cryptocurrencies, advancing legal frameworks and leveraging blockchain technology, such as metadata tagging, are essential to overcome traceability issues and ensure robust enforcement of property rights.

Regulatory Paradox

As such, after having established the proprietary interest in cryptocurrencies and highlighting the friction in placing them within the broader tenets of private law, it is now necessary to account for their regulatory taxonomy and treatment.

Entities, contingent on their activities within financial markets, are typically required to comply with an array of regulatory rules and requirements. Nevertheless, as with the common law more broadly, statutory frameworks have struggled to incorporate cryptocurrencies into existing structures. The regulatory treatment of cryptocurrencies, as will be illustrated below, has centered around their often-contradictory classification under non-exhaustive statutory regimes as money, commodities, securities, or as mere property. The three major regulatory agencies that oversee cryptocurrencies — each deriving their regulatory ambit from, and operating within, a distinct statutory framework — are: the United States Treasury's Financial Crimes Enforcement Network (FinCEN), the Commodity Futures Trading Commission (CFTC), the United States Securities and Exchange Commission (SEC), and the Internal Revenue Service (IRS). The use of cryptocurrencies can, at once, draw the scrutiny of various regulators with fundamentally different objectives, rules, and frameworks. Given the nature of cryptocurrencies, each agency claims authority over certain transactions, movements, and or dealings with cryptocurrencies, stemming out of the respective body's mission. Congressional leaders have also attempted to further regulate cryptocurrencies through legislation. Below the federal level, however, state governments and agencies are increasingly contributing to the evolving regulatory landscape of cryptocurrencies, often at the forefront of new statutes for its oversight. In a joint statement by FinCEN, the SEC, and the CFTC, the agencies described how the "facts and circumstances of a cryptocurrency's use determines its regulatory status". In the case that the "facts and circumstances" may induce jurisdictional overlap, as is often the case, actors in cryptocurrency markets must adhere to a tentative regulatory framework and, at times, conflicting regulatory framework. As a corollary, regulatory law in the United States is fragmented on two levels: both vertically in terms of jurisdiction between federal and state, as well as horizontally among the piecemeal regimes in place. Each, other than being the product of piecemeal legislation across time, is vast and nuanced in its own right. The governance, prudence, and fiduciary responsibilities traditionally associated with financial systems are difficult to apply to participants in cryptocurrency systems, especially considering anonymity protocols or the informal, voluntary nature of a user's involvement. As a corollary, regulations face difficulties in clearly defining the conflicting roles often exhibited by certain centralized entities within these systems.[29] As such, let us consider each, in turn:

Anti-Money Laundering Regime

The current anti-money laundering (AML) regime in the United States was founded in 1970 and is expansive, complex, and multi-faceted.[30] FinCEN is a bureau within the United States Department of the Treasury that is charged with enforcing the Bank Secrecy Act (BSA), the central anti-money laundry and counter-terrorism financing regime. FinCEN has the powers to "implement, administer and enforce

[29] Consider, for instance, crypto exchanges. They often act simultaneously as custodians, brokers, and market makers.

[30] AML refers to a comprehensive set of laws, regulations, and procedures intended to prevent individuals and entities from engaging in practices that would conceal the source of illegally obtained money. Ironically, the tax code still requires the disclosure and taxation of income from illegal activities, albeit without requiring the disclosure of the source of income itself. 26 U.S.C. § 61 (2022). *See, James v. United States* 366 U.S. 213 (1961).

compliance" among "financial institutions".[31] The initial purpose of which, back then, was simply "to require the maintenance of appropriate types of records and the making of appropriate reports by such businesses in the United States where such records or reports have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings".[32] It has, certainly, expanded well beyond those confines since then. The BSA includes more onerous record keeping requirements and the filing of reports that could be helpful in detecting and tracing financial crimes, such as the Currency Transaction Reports (CTRs) for "each deposit, withdrawal, exchange of currency or other payment or transfer" via the institution of over $10,000[33] and Suspicious Activity Report (SAR).[34]

The definition of 'money' under the BSA has been defined more broadly, to include "an object used to buy things"[35], "a medium of exchange [convertible] into a currency which can pay for things"[36], and "a measure of value, or a means of payment"[37]. As such, in the AML context, 'money' is more akin to liquid wealth than the medium of money itself.[38] FinCEN was the first agency to tackle cryptocurrencies directly by issuing interpretative guidance of the BSA to incorporate cryptocurrencies. In 2013, FinCEN released its first guidance, the first of any regulatory agency relating to cryptocurrencies. The guidance explained that exchangers and administrators of cryptocurrencies must register with FinCEN as a Money Service Business (MSB) as well as comply with anti-money laundering regulations. Since this directive, FinCEN has expanded its regulatory function over cryptocurrencies as they relate to financial institutions and businesses that facilitate the movement of cryptocurrencies, specifically, a money transmitter per FinCEN definition. Many of these regulations relating to MSBs were consolidated in a guidance in 2019 in conjunction with a separate advisory where FinCEN warned of the increasing use of cryptocurrencies in financial crime. The guidance highlights business models that qualify as money transmitters and provides insight into the anti-money laundering compliance programs and requirements necessary for operation as a money transmitter under FinCEN rulings. By the function of a market player's designation as a MSB, the FinCEN Transfer Rule, Recordkeeping Rule, and Customer Due Diligence Rule apply to crypto assets.

Similarly, on the state level, money transmission centers on whether states view cryptocurrency transactions as falling under existing money transmission laws, which typically govern businesses that receive money for transfer to another person or location. This often hinges on whether a cryptocurrency is considered "money" or "monetary value" under state law. As of 2024, the Virginia Bureau of Financial Institutions ("Bureau") does not currently regulate virtual currencies; however, to the extent virtual currency transactions also involve the transfer of fiat currency (such as U.S. Dollars, Euros, and Japanese Yen), they may be regulated under Chapter 19 of Title 6.2 of the Code of Virginia (Money Order Sellers and Money Transmitters), § 6.2-1900, et seq. Residents considering the use of virtual currencies should research any company offering services related to virtual currencies, including exchanges, platforms, administrators, sellers, or ATMs. Similarly, many states

[31] "Financial institutions", under the BSA, is defined expansively. Notably, while it includes banks and other traditional financial institutions, it also explicitly includes non-financial institutions (such as jewellery dealers, pawnbrokers, travel agencies, among many others). 31 U.S.C § 5312(2). It, also, includes a catch-all provision by vesting in the Secretary of the Treasury to designate entities that engages in an "activity which is similar to, related to, or a substitute for any activity" to all those enumerated or, more broadly, those "whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters". 31 U.S.C §§ 5312(2)(Y), (2)(Z)

[32] 12 U.S.C. 1951(b)

[33] 31 CFR § 1010.311. The threshold on individuals to report foreign account and cross-border transportation of currency or monetary instruments is, also, $10,000. 31 U.S.C § 5316. Interestingly, despite inflation and changes in the value of money over decades, the $10,000 threshold has not been changed since it was set in 1970. Considering that the average yearly inflation has been around 4 percent over the last 54 years, the $10,000 is less than an eighth of the purchasing power it was back then, thereby, capturing considerably more transactions today.

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[35] United States v. Ulbricht, 31 F. Supp. 3d 540, 570 (S.D.N.Y. 2014).

[36] United States v. Ulbricht, 31 F. Supp. 3d 540, 570 (S.D.N.Y. 2014).

[37] United States v. Faiella, 39 F. Supp. 3d 544, 545 (S.D.N.Y. 2014)

[38] Rightly so. After all, if the concept of money under the BSA is too restrictive, then it would be easy for criminals to circumvent it.

explicitly include cryptocurrencies in money transmission laws, requiring licenses for businesses engaging in cryptocurrency transactions.[39] Other states approach this issue with more nuance, potentially requiring licenses but also offering exemptions.[40] Nebraska, under the Financial Innovation Act, has provided for the chartering, operation, supervision, and regulation of digital asset depositories. Digital asset depositories are allowed to offer various cryptocurrency services such as custody and the issuance of stablecoins. Nebraska is unique in that it allows its banks to offer cryptocurrency services that are unavailable in almost every other state. Exemptions for businesses operating within regulatory sandboxes include Florida, Nevada, and Wyoming. The application of money transmission laws to cryptocurrencies remains unclear in several states: California, Florida, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, Pennsylvania, Rhode Island, and South Carolina. Finally, some states explicitly exclude cryptocurrencies from money transmission laws: Utah and Wyoming.

Commodities Regime

The Commodity Exchange Act (CEA) regulates the trading of commodity futures in the United States, wherein it vests in the CFTC exclusive authority to regulate commodities when there is a "commodity interest". [41] The CFTC acts to protect against fraud and abusive practices related to derivatives and other products subject to the CEA. The CFTC's Regulatory Authority includes registration requirements, day-to-day oversight and principle-based regulation. Under the CEA, the CFTC enjoys an exclusive and broad regulatory ambit.[42] As such, in order to establish a "commodity interest", the CFTC's jurisdiction directly stems from the definition of a "commodity" under the CEA. The courts construe the definition of "commodity" "not technically and restrictively, but flexibly to effectuate [their] remedial purpose". [43] As such, the CEA only requires the existence of futures trading within an item of a certain class in order for all items within that class to be considered commodities. [44]

Depending on their structure and use, cryptocurrencies may be deemed to be a commodity, swap, or other derivative. The CFTC's determination that Bitcoin and other virtual currencies are properly defined as commodities in 2015 was first posited within an enforcement action, In the Matter of Coinflip, Inc., wherein the CFTC held that "[t]he definition of a "Commodity" is broad [under the CEA]" and that "Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities".[45] The CFTC, then, defined "virtual currencies" as a "digital representation of value that functions as a medium of exchange, a unit of account, and/or store of value", but with the added caveat that they "do not have legal tender status in any jurisdiction".[46] Since In the Matter of Coinflip, Inc., the CFTC and the courts have reaffirmed this view in subsequent enforcement actions. Similarly, the CFTC has made it clear that it regulates derivatives on cryptocurrencies (just as it regulates other derivatives); that includes the regulation of trading, clearing and

[39] States requiring licenses for businesses engaging in cryptocurrency transactions are: Alabama, Alaska, Arkansas, Connecticut, Georgia, Iowa, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, North Carolina, Ohio, Oregon, South Dakota, Vermont, Washington, and West Virginia.

[40] States offering exemption regimes to business dealing solely in cryptocurrency, alongside a broader licensing regime: Kansas, Nebraska, New Hampshire, North Dakota, Tennessee, Texas, and Wisconsin.

[41] 17 C.F.R. § 1.3. (Commodity interest is defined as **"(1)** Any contract for the purchase or sale of a commodity for future delivery; **(2)** Any contract, agreement or transaction subject to a Commission regulation under section 4c or 19 of the Act; **(3)** Any contract, agreement or transaction subject to Commission jurisdiction under section 2(c)(2) of the Act; and **(4)** Any swap as defined in the Act, by the Commission, or jointly by the Commission and the Securities and Exchange Commission.").

[42] 7 U.S.C. § 2(a)(1)(A) (2012). *See*, also, Leist v. Simplot, 638 F.2d 283, 314 (2d Cir. 1980) ("As passed by the House, the exclusive jurisdiction provision read as follows: *Provided,* that the Commission shall have exclusive jurisdiction of transactions dealing in, resulting in, or relating to future delivery")

[43] *Commodity Futures Trading Commission v. My Big Coin Pay, Inc. et al.*, No. 18-10077-RWZ (D. Mass. Sept. 26, 2018); *SEC v. Capital Gains Research Bureau, Inc.* 375 U.S. 180, 195 (1963).

[44] *Commodity Futures Trading Commission v. My Big Coin Pay, Inc. et al.*, No. 18-10077-RWZ (D. Mass. Sept. 26, 2018)

[45] In the Matter of: Coinflip, Inc., d/b/a Derivabit, and Francisco Riordan, CFTC Docket No. 15-29. 2015 WL 5535736

[46] *Ibid.*

other functions of future contracts and swaps on cryptocurrencies. The CEA generally requires intermediaries in the derivatives industry to register with the CFTC. An "intermediary" is a person or firm who acts on behalf of another person in connection with trading futures, swaps, or options. Depending on the nature of their activities, they may also be subject to various financial, disclosure, reporting, and recordkeeping requirements. As a corollary to the above, the Enforcement Authority under the CEA vests in the CFTC an ability to bring civil enforcement actions for violation of the CEA and CFTC rules.

Similarly, on the state level, some states have laws that address the treatment of cryptocurrencies as a commodity. Wyoming has enacted numerous laws relating to cryptocurrencies. Wyoming is considered the most cryptocurrency-friendly state in the country. Notably, Wyoming exempts businesses that buy, sell, issue, or take custody of cryptocurrencies from the money transmitter licensing requirements. Wyoming has also established a Financial Technology Sandbox that cryptocurrency businesses can participate in, granting them exemptions from certain legal requirements. Additionally, the Special Purpose Depository Institutions Act allows special purpose depository institutions (SPDIs) to conduct numerous activities related to cryptocurrencies. Finally, the Utility Token Act exempts utility tokens from Wyoming securities laws under certain conditions.

Securities Regime

The SEC seeks to regulate cryptocurrencies under the guise that cryptocurrencies are securities. There is debate on whether cryptocurrencies are securities under the Howey test. The SEC believes that certain "cryptocurrency - such as those with clear ownership and control structures and where investor profit-taking depends on the efforts of others - may be considered securities". Nevertheless, despite this uncertainty, the SEC's cryptocurrency-related enforcement efforts have increased 53% from 2022 to 2023 and are expected to continue to be a priority for the agency. Along with FinCen and the CFTC, the SEC has BSA regulatory obligations. Entities defined by the BSA that are to be registered with the SEC are broker-dealers and mutual funds, which must comply with anti-money laundering and counter-terrorism financing laws including the implementation of anti-money laundering programs and the reporting of suspicious activity. In addition to its regulatory nature outlined by the BSA, the SEC is most often cited of the three agencies to bring enforcement actions over cryptocurrency fraud and abuses.

The Securities Act of 1933 and Securities Exchange Act of 1934 (together, the Securities Acts) regulate the issue and sale of securities in the United States, wherein it vests in the SEC authority to regulate securities that fall within the purview of section 5. A ''security'', as defined under §2(a)(1) of the Securities Act of 1933 Act, includes 'investment contracts'.[47] The SEC's civil suits follow the breach of existing securities laws enshrined in civil law, rather than basing such cases on new regulatory cryptocurrency measures. Other relevant regulations are the Investment Company Act of 1940, Investment Advisers Act of 1940, Sarbanes-Oxley Act of 2002, and the Dodd-Frank Wall Street Reform and Consumer Protection Act. Exemplified by these cases, the SEC relies on judicial precedent and legal interpretations for its civil proceedings. Most cases brought by the SEC are in connection with fraud and unregistered securities offerings.

Unregistered security offerings may involve initial coin offerings (ICOs) which are often overseen by the SEC when they are determined to be securities. The SEC has taken the position that the unregistered sale of blockchain tokens can be an illegal public offering of

[47] Securities Act of 1933, 15 U.S.C. §2(a)(1) (1934): "The term ''security'' means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a ''security'', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing."

securities. While the SEC may have the privilege of labeling cryptocurrencies, such as ICOs, as securities, the SEC must prove in a court of law that such cryptocurrencies may be labeled as securities. The SEC has taken such ICO tokens to court, such as Ripple Labs, Inc in SEC v. Ripple Labs, Inc. over Ripple's crypto asset, XRP. Cases over whether a cryptocurrency is a security face strong contention in the courts.

Similarly, on the state level, these regulations are known as Blue Sky Laws. Blue Sky Laws, in the context of blockchain and cryptocurrencies, provide critical state-level oversight for securities transactions that may not fall within federal jurisdiction. These laws impose registration, disclosure, and anti-fraud requirements on issuers and intermediaries, ensuring compliance with state standards. Blue Sky Laws, by addressing gaps in federal oversight, particularly for decentralized cryptocurrency offerings, serve as a safeguard against fraudulent or speculative schemes. Their applicability to tokenized assets and Initial Coin Offerings (ICOs) highlights their relevance in regulating emerging technologies within a complex and evolving financial landscape. On January 21, 2021, Virginia's State Corporation Commission (SCC) confirmed that cryptocurrency companies are subject to the Virginia Securities Act (VSA). The SCC is a state agency granted regulatory authority over utilities, insurance, retail franchising, railroads, securities, and state-chartered financial institutions.

Blue Sky Laws regulate securities transactions through key mechanisms, in particular:

- Registration of Securities: Issuers must file detailed documentation with state regulators, including financial statements, business plans, and risk disclosures. This process ensures that investors receive accurate and sufficient information to make informed decisions about the offering.
- Anti-Fraud Provisions: These provisions prohibit deceptive practices, such as false statements or omissions of material facts, and empower state regulators to investigate complaints, issue subpoenas, and impose penalties against violators, safeguarding market integrity.
- Licensing Requirements: Brokers, dealers, and investment advisors must pass rigorous examinations, register with state authorities, and comply with ongoing ethical and professional standards. This oversight ensures accountability and protects investors from unqualified or unscrupulous intermediaries.

Collectively, these tools create a robust framework for regulating traditional and emerging financial markets. Nevertheless, the classification of cryptocurrencies and, more broadly, tokenized assets under Blue Sky Laws is pivotal in determining their regulatory treatment. The Howey Test is a widely applied framework used to determine whether a transaction constitutes an "investment contract" and therefore qualifies as a security, even under Blue Sky Laws. In *Howey*, the Court set out a four-prong test to determine whether an agreement or transaction constitutes an 'investment contract', all of which must be satisfied. An agreement or transaction is an 'investment contract' when it is: (i) an investment of money; (ii) in a common enterprise; (iii) with the expectation of profit; (iv) to be derived from the efforts of others.[48] This standard is particularly relevant in classifying blockchain-based assets and tokenized offerings. Characteristics that are considers in determing whether purchasers have a reasonable expectation of profits include but are not limited to: profit-sharing arrangements, the asset being tradeable now or in the future in a secondary market, purchasers reasonably expecting that an active participant's efforts will result in capital appreciation of the digital asset, the digital asset being offered broadly to potential purchasers rather than targeted to expected users of goods or services or those who have a need for the network's functionality, or the digital asset is being marketed as an investment. Securities agencies, whether federal or state, focuse on "economic reality" rather than nominal marketing claims in determining whether both of these latter Howey prongs are satisfied.

While assets like Bitcoin are generally not considered

[48] SEC v. W.J. Howey Co., 328 U.S. 293, 301 (1946).

securities due to their decentralized nature, tokenized assets used in fundraising or Initial Coin Offerings (ICOs) often meet these criteria. As a result, such assets must comply with state registration, disclosure, and anti-fraud rules (unless exempt). The speculative and often unregulated nature of many blockchain projects has created fertile ground for fraudulent practices that undermine market integrity and investor trust. Fraudulent Initial Coin Offerings (ICOs) are a notable example, where issuers misrepresent project goals, operate Ponzi-like schemes, or launch non-existent "phantom" projects, luring investors with false promises. Similarly, market manipulation tactics such as pump-and-dump schemes artificially inflate cryptocurrency prices, enabling insiders to profit at the expense of retail investors. The involvement of unlicensed brokers or exchanges in facilitating transactions further exacerbates these risks, exposing participants to heightened vulnerabilities while violating securities regulations.

Blockchain technology's decentralized and borderless nature introduces significant complexities to regulatory enforcement. Without a central authority or identifiable intermediaries, many blockchain projects lack accountability, making it challenging to assign regulatory responsibility or enforce compliance effectively. Compounding this issue is the inherently global reach of cryptocurrency transactions, which often extend across multiple states and international borders. This cross-border activity triggers overlapping jurisdictional requirements, increasing compliance costs for issuers while creating legal uncertainty.

Despite these complexities, Blue Sky Laws create a baseline of investor protection and market oversight, ensuring accountability in decentralized systems. However, the evolving nature of blockchain technology presents opportunities for legislators to refine the framework to address jurisdictional inconsistencies and enhance clarity for both issuers and regulators. By fostering cooperation among states and aligning regulatory priorities with the unique characteristics of blockchain systems, lawmakers can strengthen the effectiveness of Blue Sky Laws in safeguarding investors while supporting innovation.

Blue Sky Laws play a critical role in protecting investors and maintaining market integrity, even as financial innovation evolves. The rise of blockchains and cryptocurrencies highlights the importance of these laws in addressing fraud and ensuring transparency and balancing investor protection with fostering innovation will be key to crafting effective regulatory responses in this dynamic landscape.

Taxation of Cryptocurrencies

As for the taxation of cryptocurrencies, although not the subject of this report, it is worth noting that the IRS guidance on the classification and tax treatment of cryptocurrencies has been very limited in scope and material.[49] In 2014, the IRS classified virtual currencies as mere 'property' for federal tax purposes, as juxtaposed to benefiting from the rules governing the taxation of 'currency'.[50] In particular, the guidance refers to cryptocurrencies that have an equivalent value in real currency, or that acts as a substitute for real currency, as "convertible" cryptocurrency. Thereby, bearing down on them with the traditional rules that apply to capital assets, wherein gains or losses from cryptocurrency transactions are taxed like traditional property upon realization. In 2019, the IRS released additional guidance, including Revenue Ruling 2019-24 and updated Frequently Asked Questions (FAQs), to address specific issues such as the tax implications of hard forks and airdrops. In 2023, the IRS updated the terminology on tax forms, replacing "virtual currencies" with "cryptocurrencies" to encompass a broader range of digital financial instruments. Generally, state tax agencies, in line with the IRS, treated cryptocurrencies as property rather than as cash or currency. However, states may use different methods to determine the value of cryptocurrency compared to the IRS. For income tax purposes, most states align with federal treatment, which classifies convertible cryptocurrency as property. Some states, such as

[49] I.R.S. Notice 2014-21, 2014-16 I.R.B. 938 (Apr. 14, 2014).
[50] I.R.S. Notice 2014-21 at 2. Despite being over ten years old, this notice continues to be the governing guidance.

Wisconsin and Illinois, have issued specific guidance stating that general tax principles applicable to intangible property transactions also apply to transactions involving cryptocurrencies. For sales and use tax purposes, states typically recognize barter transactions involving cryptocurrencies for goods or services as taxable retail transactions. However, only a limited number of revenue agencies have issued detailed guidance on the sales and use tax treatment of cryptocurrency. Several states, including California, Michigan, and Missouri, have clarified that the purchase of cryptocurrency is not subject to sales and use tax. These states treat cryptocurrencies as intangible property, which is exempt from taxation under their sales and use tax laws.

Path Forward?

Many believe that, given the laissez faire tendency of President-Elect Trump's first term and the growing importance of cryptocurrencies to his platform, we may see a break from the policies that have shaped the regulatory treatment of cryptocurrencies since 2014. SEC Chair Garry Gensler announced his resignation from the commission on November 21st, effective at noon on January 20, 2025. Prior to being elected, then-candidate Trump promised to remove Gensler on his first day in office, appoint a "Bitcoin and crypto presidential advisory council", halt the development of a US central bank digital currency (CBDC), and to defend self-custody of cryptocurrencies at the 2024 Bitcoin Conference. At the same conference, Trump promised to establish a "Strategic Bitcoin Reserve" using $18bn of US Government seized Bitcoin to start, which was pioneered by Senator Lummis (R-WY) in S. 4912. The Bitcoin Act would allow states to voluntarily store Bitcoin in segregated accounts within the Strategic Bitcoin Reserve and authorizes the purchase of up to one million Bitcoins over five years.

Trump wrote in his policy platform that "we will defend the right to mine Bitcoin".

Trump's cabinet nominees thus far have signaled agreement with this agenda and are likely to decrease enforcement actions. Treasury Secretary nominee Scott Bessent made encouraging statements about cryptocurrencies and Commerce Secretary nominee Howard Lutnick is an investor in cryptocurrency firm Tether and said that he would do "everything in his power" to make Bitcoin "free to trade everywhere in the world". Trump's nominee for Attorney General Pam Bondi has not made any statements on cryptocurrencies. It is unclear whether the administration will make a comprehensive regulatory framework a priority, beyond reeling back departmental pressure on the industry.

Uniform Commercial Code

The treatment of virtual currencies under the framework of the Uniform Commercial Code (UCC), as with the law more broadly, had struggled to incorporate virtual currencies into existing structures. Historically, cryptocurrencies were categorized as “general intangibles” under Article 9 of the Uniform Commercial Code (UCC), wherein this characterization precipitated in legal ambiguities that undermined their negotiability and caused uncertainty in their use in secured transactions. They were subject to temporal priority rules. The first party to file or perfect a security interest over a cryptocurrency would enjoy a priority over others. Nevertheless, this regime presented significant challenges since Article 9 was never meant for currencies since general intangibles lacked a “take-free” rule. As a result, purchasers of cryptocurrencies risked inheriting prior security interests, unless they had been properly released. This, in turn, undermined their negotiability and discouraged the use of cryptocurrencies as collateral in secured transactions. Further complications arose when certain jurisdictions, like El Salvador, declared Bitcoin legal tender, triggering its classification as "money" under Article 1. However, the Article 9 requirement of perfection by physical possession for “money” was inherently incompatible with the intangible and decentralized nature of cryptocurrencies, further deterring their practical use in financial transactions.

The UCC underwent significant updates in 2022 to address and adapt to the rise of cryptocurrencies and blockchain technology. Specifically, the UCC introduced the concept of "controllable electronic records" (CERs) under Article 12, establishing a new collateral category specifically designed for digital assets, including cryptocurrencies. This framework modernized the legal approach to perfection and priority of security interests. Perfection can now occur either through filing a financing statement or by control. Control is

defined as the ability to exclusively use, transfer, and prevent others from accessing the asset, reflecting the technological realities of blockchain-based assets. This definition adapts traditional notions of possession to the digital realm, ensuring that secured parties can assert their rights effectively without reliance on outdated physical possession standards. By accommodating the decentralized and anonymous nature of cryptocurrencies, the UCC revisions provide a clearer and more functional mechanism for securing interests.

It is, therefore, clear that the 2022 revisions align the code with, and even extend upon, the bona fide purchase for value without notice defense under the common law.[51] A critical approach introduced by Article 12 is the enhancement of negotiability for cryptocurrencies. Non-temporal priority rules now allow a "qualified purchaser" — defined as someone who acquires control of the cryptocurrency in good faith, for value, and without notice of prior claims — to take the asset free of existing security interests, even those previously perfected by filing. This provision is modeled after the holder-in-due-course doctrine for negotiable instruments, which protects good-faith purchasers from earlier claims. Additionally, the "shelter principle" extends the qualified purchaser’s priority status to subsequent transferees, further enhancing the reliability and liquidity of cryptocurrencies in commerce. These changes ensure that legitimate transactions remain protected from hidden encumbrances, promoting market confidence and encouraging wider adoption.

The revisions also address the legal classification of cryptocurrencies in relation to "money." Article 1 now

[51] *Miller v. Race* (1758) 1 Burr 452

clarifies that cryptocurrencies are not "money" unless they are explicitly authorized by a government as an official medium of exchange. This adjustment removes cryptocurrencies from the impractical perfection-by-possession rules associated with money and places them squarely within the framework of controllable electronic records. This distinction reflects a nuanced understanding of cryptocurrencies' decentralized nature and aligns their legal treatment with their technological and economic functions. By resolving ambiguities surrounding their classification, the UCC revisions foster greater predictability and usability for cryptocurrencies as both commercial assets and security devices.

UCC Amendments and Cryptocurrencies

The intent behind the amendment was to provide legal clarity and harmonize laws across states to enable the integration of blockchain technologies into secured transactions; however, states have diverged in their responses, reflecting varying priorities and policy stances regarding crypto innovation and regulation. While some states, including Virginia, have chosen to adopt the UCC amendments, other states have instead passed alternative legislation meant to address the same issue. For instance, Wyoming, a leader in blockchain regulation, enacted legislation that addresses cryptocurrencies, incorporating concepts similar to those in the proposed Uniform Commercial Code (UCC) Article 12. However, Wyoming's statutes were enacted prior to the finalization of the UCC amendments and may differ in terminology and specific provisions. Therefore, while Wyoming has adopted measures addressing cryptocurrencies, it has not formally adopted the finalized UCC Article 12 as proposed by the Uniform Law Commission. Nevertheless, the state explicitly classifies cryptocurrencies under the UCC, granting businesses legal certainty in secured transactions and promoting Wyoming as a blockchain hub.

In contrast, South Dakota rejected the amendments in 2023. Governor Kristi Noem vetoed them, citing concerns over economic freedom and potential federal overreach, particularly regarding CBDCs. Instead, South Dakota passed HB 1163 and HB 1161 in 2024, which limit the acceptance and use of CBDCs to protect the economic freedom of South Dakotans and prevent federal influence through a potential CBDC.

Challenges, Resistance, and Alternatives

Resistance to the amendments highlights ongoing concerns about centralized oversight. South Dakota's veto exemplifies the tension between harmonizing regulations and safeguarding economic independence. Meanwhile, other states, like Tennessee, have incorporated cryptocurrencies into other existing laws, such as the Uniform Unclaimed Property Act — meaning it must be treated like other unclaimed assets — while avoiding full adoption of the UCC revisions. Under the UUPA in Tennessee, cryptocurrencies are classified as property. Specifically, the Act defines cryptocurrencies as “a digital representation of value used as a medium of exchange, a unit of account, or a store of value that the United States does not recognize as legal tender”.

Washington and Utah have taken similar routes, integrating cryptocurrencies into its licensing and money services frameworks but not the UCC, maintaining regulatory flexibility. Utah’s UUPA classifies cryptocurrencies as property, ensuring that lost or abandoned cryptocurrencies fall under the state’s custody framework. Similarly, Washington signed SB 5531 into law in 2022, which includes cryptocurrencies in the definition of property under the UUPA.

Outlook and Implications

The fragmented adoption of the 2022 UCC amendments poses challenges for businesses operating across states, leading to regulatory uncertainty. Wyoming demonstrates the benefits of a harmonized approach, while South Dakota underscores the risks and resistance to out-of-state regulation.

As blockchain technology continues to evolve, the UCC amendments will remain critical in shaping the legal landscape for cryptocurrencies. Resolving

tensions between state autonomy and the need for uniformity will be key to supporting innovation while maintaining regulatory clarity. However, this requires that the UCC provisions addressing cryptocurrencies and blockchain are written correctly — in a manner that recognizes their unique nature and value.

APPENDIX: A COMPREHENSIVE OVERVIEW OF STATE EFFORTS

To conclude our efforts, we have prepared a detailed appendix as a reference to juxtapose the efforts of every other state to offer practical insight and draw on some much-needed comparative context for our report. Let us, therefore, consider each state in turn:

ALABAMA

The Alabama Monetary Transmission Act (Ala. Code §§ 8-7A-1 to 8-7A-27), enacted in 2017, includes "monetary value" within its scope, explicitly covering digital and virtual currencies. This law prescribes that any business involved in the transmission of virtual currency must obtain a license from the Alabama Securities Commission (ASC). This licensing requirement ensures that cryptocurrency transactions in the state are subject to regulatory oversight, enhancing consumer protection. Ala. Code § 8-7A-2(8) defines "monetary value" to include virtual currencies. The act also imposes rigorous record-keeping standards on licensed entities and empowers the ASC to enforce compliance through inspections, fines, and cease-and-desist orders for non-compliant entities. Additionally, the Alabama Securities Act, found in Ala. Code §§ 8-6-1 to 8-6-41, governs securities transactions within Alabama and applies to digital assets that may be classified as securities under Alabama law. This statute reinforces Alabama's commitment to overseeing cryptocurrencies that are classified as securities, promoting regulatory transparency and protecting consumers in the fast-evolving financial technology space.

ALASKA

In Alaska, the Money Services Regulations (Alaska Admin. Code tit. 3, § 13.005), which took effect on January 1, 2023, require that businesses engaged in the transmission of virtual currency must be licensed as money services businesses (MSBs). This regulation includes virtual currency within the established regulatory framework for traditional money services businesses, thereby enhancing its regulatory oversight. Alaska Admin. Code tit. 3, § 13.990 specifically defines a 'virtual currency' as a "digital representation of value that is used as a medium of exchange, unit of account, or store of value" but does not have legal tender status, in line with the federal definition. This regulation not only establishes licensing requirements for virtual currency transmitters but also sets forth operational standards aimed at consumer protection. The Alaska Securities Act (AS 45.55.010 et seq.) further regulates securities transactions, including those involving digital assets that may qualify as securities. Under this statute, any offerings of digital assets deemed securities must comply with Alaska's securities registration requirements, unless an exemption is applicable. This provision furthers Alaska's aim to provide consumer protection within the securities market, while recognizing the unique characteristics of blockchain-based digital assets more broadly.

ARIZONA

Arizona has implemented a comprehensive regulatory framework for virtual currencies, starting with the definition of "virtual coin" and "virtual coin offerings" under A.R.S. § 44-1801(31) and (32). This statute classifies virtual coins as any digital representation of value used as a medium of exchange, and virtual coin offerings are defined as the offering for sale of virtual

coins. Arizona further specifies exemptions from state securities registration for certain transactions involving virtual coins, provided specific conditions are met (A.R.S. § 44-1844(A)(22), (D), (G)). This regulatory structure helps streamline compliance for businesses, while safeguarding consumers in Arizona's blockchain market.

Additionally, Arizona provides specific tax treatments for non-fungible tokens (NFTs) and cryptocurrency airdrops. Under A.R.S. § 43-1022(29), individuals who receive cryptocurrency through airdrops are exempt from state income tax on the airdropped value. A.R.S. § 43-1028 allows deductions for fees paid to virtual network operators for the purchase, sale, or exchange of virtual currencies or NFTs, allowing businesses and consumers to benefit from a clearer tax structure related to cryptocurrencies.

ARKANSAS

The Arkansas Uniform Money Services Act, found in Ark. Code Ann. § 23-55-102(22) and (13), defines virtual currency and includes it within the scope of "money transmission" activities requiring a license. Effective August 1, 2023, any business conducting virtual currency transmission in Arkansas must first obtain a license, bringing virtual currency under the same regulatory requirements as traditional money services. This act provides a clear framework for businesses involved in virtual currency transmission, prioritizing transparency and compliance within the state's financial system.

Further supporting blockchain innovation, the Arkansas Data Centers Act, codified as Ark. Code Ann. § 14-1-601 and enacted in April 2023, offers protections to cryptocurrency miners. This law prevents local governments from adopting adverse policies or zoning changes that could negatively impact cryptocurrency mining businesses. By doing so, Arkansas promotes a favorable environment for cryptocurrencies mining, focused on balancing growth within the blockchain sector with protecting operational stability for mining enterprises.

CALIFORNIA

The California Money Transmission Act (Cal. Fin. Code § 2000 et seq.) regulates the transmission of money, including crypto and virtual currencies, by requiring businesses engaging in money transmission to obtain a license from the Department of Financial Protection and Innovation (DFPI). This act provides a foundational legal framework for virtual currency businesses, ensuring that they operate within a regulated and consumer-protective environment. The Digital Financial Assets Law, effective July 1, 2025, under Cal. Fin. Code § 25000 et seq., establishes a licensing requirement for businesses involved in digital financial assets, encompassing various blockchain applications and virtual currency-related operations. This regulatory framework is designed to support the responsible growth of blockchain technology within the state, mandating that cryptocurrency businesses obtain DFPI approval.

The Digital Financial Asset Transaction Kiosks Law, effective January 1, 2025, under Cal. Fin. Code § 20100 et seq., specifically regulates kiosks that facilitate digital asset transactions. This law limits daily transaction amounts for these kiosks to prevent fraud and money laundering, while also requiring kiosk operators to adhere to California's consumer protection standards.

Together, these laws constitute a comprehensive regulatory approach for blockchain businesses and virtual currency in California, placing it within broader regulatory efforts within financial technology and artificial intelligence.

COLORADO

The Colorado Money Transmitters Act (Colo. Rev. Stat. Ann. §§ 11-110-101 to 11-110-206) regulates the transmission of funds, including cryptocurrency, and sets forth licensing requirements for money transmitters. Colorado provides that licenses are not required for direct peer-to-peer cryptocurrency transmissions without the involvement of fiat currency. However, licensing is mandatory for businesses that

engage in buying and selling cryptocurrencies for fiat currency, thereby regulating digital currency businesses and offering protection to consumers involved in cryptocurrency transactions.

The Colorado Digital Token Act (Colo. Rev. Stat. Ann. § 11-51-308.7) defines "digital token" and provides specific exemptions for offers and sales of digital tokens that are intended primarily for consumptive purposes. Under this statute, qualifying digital tokens do not need to register as securities, provided they meet certain transactional conditions, thus furthering innovation within the cryptocurrency ecosystem.

Additionally, as discussed earlier in the report, The Colorado Revised Uniform Unclaimed Property Act (Colo. Rev. Stat. Ann. § 38-13-102(24)(b)(1), (32)) includes virtual currency within the definition of "property" subject to unclaimed property laws. This statute requires businesses holding unclaimed virtual currency to report it as unclaimed property, ensuring consumers retain the right to reclaim lost or forgotten digital assets.

CONNECTICUT

The Connecticut Banking Law defines virtual currency under Conn. Gen. Stat. Ann. § 36a-596(21), describing it as "any type of digital unit that is used as a medium of exchange or a form of digitally stored value". The statute mandates that businesses involved in transmitting virtual currency must comply with state money transmission laws (Conn. Gen. Stat. Ann. §§ 36a-595 to 36a-612), requiring these businesses to obtain a license to legally operate within Connecticut. This legal framework aims to protect consumers engaging in virtual currency transactions. Further regulations include the Virtual Currency Kiosk Money Transmission Law, effective October 1, 2023, codified in Conn. Gen. Stat. Ann. § 36a-596(11). This law expands the definition of money transmission to include transactions conducted through virtual currency kiosks, mandating that operators of such kiosks acquire a money transmission license, ensuring regulatory compliance and consumer protection.

DELAWARE

In Delaware, the Delaware Uniform Commercial Code explicitly addresses digital assets through Del. Code Ann. tit. 6, § 12B-102, classifying them as personal property. This provision establishes the rights of ownership and transferability for digital assets, providing clarity for businesses and individuals using blockchain for asset transactions.

The Delaware Digital Asset and Blockchain Technology Act, outlined in Del. Code Ann. tit. 6, §§ 12B-101 to 12B-111, offers a legal framework supporting blockchain technology in commercial transactions. This act includes provisions for digital asset rights, blockchain-based entity formation, and the enforceability of records stored on the blockchain, thereby harnessing a business-friendly environment for blockchain applications specifically.

DISTRICT OF COLUMBIA

Washington, D.C. currently lacks specific legislation regulating cryptocurrency or blockchain technology.

FLORIDA

The Florida Money Laundering Act, codified in § 896.101, Fla. Stat., was amended in 2017 to address virtual currency by prohibiting its use in money laundering activities. This law provides a regulatory mechanism to combat illegal activities associated with digital assets, ensuring that blockchain technology does not enable money laundering in Florida.
In addition, § 560.103(36), Fla. Stat., places virtual currency within Florida's Money Services Business (MSB) framework. Florida's MSB licensing requirements, outlined in § 560.204, Fla. Stat., mandate that entities transmitting virtual currency obtain a license. This regulation aims to ensure that businesses operating with digital currencies are compliant with state financial laws more broadly, while safeguarding consumer protection.

GEORGIA

The Official Code of Georgia Annotated (O.C.G.A. § 7-1-680(14) and (30)) provides a legal definition of virtual currency as "a digital representation of monetary value that does not have legal tender status as recognized by the United States government". Georgia, under these amendments in 2016 and O.C.G.A. § 7-1-681, clarifies the state's regulatory approach to virtual currency by mandating that businesses engaging in virtual currency transactions must first obtain a money transmitter license and that virtual currency transactions only require a license if they involve money transmission activities. This regulation serves to protect consumers and ensure that entities conducting digital currency transactions operate in compliance with the state's financial laws.

HAWAII

The Digital Assets Act became law on July 1, 2022. This law categorizes digital assets as intangible personal property and applies existing property laws to such assets. From June 30, 2020, until June 30, 2024, businesses were required to receive permission from Hawaii's Digital Currency Innovation Lab (DCIL) to engage in cryptocurrency transactions. This program was established for regulators to iteratively "explore the landscape of digital currency activity within the state, while assessing the regulatory framework required for companies specializing in digital currency". Prior to the establishment of the DCIL, digital currency businesses were required to obtain money transmitter licenses from the State Government, under Chapter 489D of the Hawai'i Revised Statutes. Specifically, the DCIL studied whether money transmitter licenses were appropriate for digital currencies, whether the industry should be regulated, and what regulations could be implemented to protect consumers. The DCIL concluded that digital currency businesses would no longer be required to obtain money transmitter licenses from the State Government and would be regulated only by federal agencies.

IDAHO

The Idaho Department of Finance requires cryptocurrency exchanges to have an Idaho Money Transmitter license if you "accept legal tender… in association with the purchase of a virtual currency". House Bill 585 was voted down on March 19th, 2024, which would have otherwise provided state-wide protection for digital asset mining activities, exemption from taxes on transactions, and miner exemption from the Money Transmitter license requirement. The bill, also, would have required local regulations to treat digital asset miners in industrial-zoned land equivalently to data center businesses and to not regulate mining in private residences, provided it "meets all applicable noise ordinances".

Notwithstanding House Bill 585, the Department issued numerous no-action letters for businesses selling their own inventory of digital currency, often through digital currency ATMs, which exempted these businesses from licensing requirements. The Department has, also, exempted businesses where "all exchange margin trading and/or lending is strictly limited to digital assets" and that do "not permit trading in, or allow deposits of, fiat currency". The Department has rolling applications for no-action requests and requires references to the Idaho Uniform Securities Act of 2004. Furthermore, the Department announced the creation of the Financial Innovation Lab and Emerging Technology Advisory Committee on September 11, 2023. The mandate of these organizations is to "develop framework recommendations and solutions for issues surrounding emerging technology and innovation in the financial sector".

ILLINOIS

05 ILCS 657, Illinois' Transmitters of Money Act, does not mention digital currencies. Illinois' Department of Financial and Professional Regulation released guidance in 2017 stating that "[a] person or entity engaged in the transmission of solely digital currencies…would not be required to obtain a [Transmitters of Money Act] license". However, if digital currency transactions involve money as defined

by the Transmitters of Money Act, the firm operating the medium of exchange must "request a determination from the Department on whether or not such activity will require a TOMA license". The Transmitters of Money Act defines money as a "medium of exchange that is authorized or adopted by a domestic or foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance".

Illinois has blocked digital currency as a "Permissible Investment" for money transmitters in a 2023 amendment to the Transmitter of Money Act's definition of such investments.

Illinois passed the Blockchain Technology Act in 2020 which accorded blockchain contracts the same legal weight as traditional contracts and bars municipalities from instituting regulatory barriers, fees, or taxes on blockchain use. In 2016, the Illinois Blockchain Initiative was created through collaboration by multiple state agencies with the objective to:

- "ensure a welcoming regulatory environment for innovative digital currency…";
- provide improved guidance on the Transmitters of Money Act; and
- create a "public/private collaborative platform for developing specific Blockchain and distributed ledger applications and prototypes for use in Illinois government".

This initiative has worked on identity-related projects and supports Illinois consumers with blockchain-related information.

Illinois, also, passed the Blockchain Business Development Act in 2020, which supports workforce training in blockchain technology and facilitates improved blockchain-related private sector and state agency opportunities.

INDIANA

The definition of money transmission in Ind. Code § 28-8-4-13 does not expressly mention virtual assets. In May 2023, Indiana preemptively banned a federal central bank digital currency (CBDC). The bill modifies the state's definition of money to include the following exemption: "The term does not include a central bank digital currency that is currently adopted, or that may be adopted, by the United States government, a foreign government, a foreign reserve, or a foreign sanctioned central bank". Opponents of preemptive banning argue that under the supremacy clause, any national establishment of a CBDC would supersede state laws. However, there are instances today where this clause is not enforced, although landmark federal laws displacing state laws may be more likely to draw supremacy clause enforcement than vice versa.

According to the Indiana money transmitter licensing FAQ on NMLS, a virtual currency exchange does not require a money transmitter license to facilitate purchases or sales of currency. The exchange will have to apply for a license if the consumer has "the ability to send fiat currency to another consumer". A license will, also, be required for "any business engaging in cryptocurrency services while also engaging in money transmission involving customer fiat funds".

IOWA

In Iowa, there is no exclusion for digital currency businesses from Iowa's Uniform Money Services Act in Iowa Code § 533C.103. Digital currency dealers such as Coinbase have obtained money services licenses from the Iowa Department of Banking. Iowa attempted passing more comprehensive frameworks on digital currency taxation in HF255 but failed in 2019. Similarly, on May 20, 2022, Iowa's governor signed SB 541, which "permit[s] the use of distributed ledger technology and smart contracts".

KANSAS

KS Stat § 9-508 broadly defines money transmission as "to engage in the business of the sale or issuance of payment instruments or of receiving money or monetary value for transmission to a location within or

outside the United States", which could include digital currency. In 2021, the Kansas Office of the State Bank Commissioner (OSBC) issued guidance clarifying that "an entity engaged solely in the transmission of such currency would not be required to obtain a license in the State of Kansas". The guidance clarified that the OSBC does not consider cryptocurrency to be money, but if an entity "expects to regularly handle cryptocurrencies seeks a money transmitter license, the OSBC requires the applicant to submit a third-party security audit of its information systems due to the increased risk to consumers posed by a cryptocurrency exchange". There may be increased regulatory action in the near future due to recent consumer protection issues. On April 18, 2019, HB 2039 was signed into law, which allows "distributed electronic networks or databases" to be utilized in keeping various business records.

KENTUCKY

The Kentucky Money Transmitters Act (KMTA) of 2006 broadly defines money transmission as "engaging in the business of receiving money or monetary value to transmit, deliver, or instruct to be transmitted or delivered, money or monetary value", which could include digital currency. The Kentucky Department of Financial Institutions (KDFI), in an effort to clarify cryptocurrency rules, released guidance in September 2022 applying KMTA to transactions "involving virtual currencies if monetary value was transmitted, delivered, or instructed to be transmitted or delivered to another location by any means". The KDFI considers whether activities involving virtual currencies are covered by the act by deciding if the currency meets the definition of monetary value, whether the third-party transmitting money is doing so to a wallet that they do not host, and whether the third party is receiving monetary value in the business of transmitting that value to another location. If transactions do meet the above criteria, cryptocurrency businesses would be governed by KY Rev Stat § 286.11-005, which states that "no person shall engage in the business of money transmission in this state without a license". Major cryptocurrency exchanges Coinbase, Binance, and Gemini have all registered as money transmitters in Kentucky. On March 25, 2021, both SB 255 and HB 230 were enacted. The two statutes lay out provisions for commercial mining of cryptocurrency and its respective taxation, including favorable provisions for certain mining operations with a minimum investment of $1mm. The statutes, also, provide sales tax exemptions on electricity for facilities that consume more than 200,000 KWh. In April 2020, Kentucky adopted SB 55, which "established a Blockchain Technology Working Group" as a subsidiary organization to the Commonwealth Office of Technology to "evaluate the feasibility and efficacy of using blockchain technology to enhance the security of and increase protection for the state's critical infrastructure".

LOUISIANA

LA Rev Stat § 6:1381, known as the Virtual Currency Business Act, lays out a series of specific regulations for virtual currency businesses. Most notably, LA Rev Stat § 6:1384 states that a "person shall not engage in virtual currency business activity…unless the person is one of the following:

- "[l]icensed in this state";
- "[r]egistered with the department and operating pursuant to R.S. 6:1390"; and
- "[e]xempt from licensure or registration".

LA Rev Stat § 6:1383 provides exemptions for businesses governed by:

- The Electronic Fund Transfer Act of 1978;
- The Securities Exchange Act of 1934;
- The Commodities Exchange Act of 1936; and
- The Louisiana Securities Law.

This section, also, exempts regulated financial institutions, foreign exchange businesses, attorneys to the extent of providing escrow services, those using cryptocurrencies for personal or academic purposes, and many others. LA Rev Stat § 6:1389 further incorporates a *de minimis* exemption for any "person whose volume of virtual currency business activity in United States dollar equivalent of virtual currency will not exceed

thirty-five thousand dollars annually" under certain other conditions. The Office of Financial Institutions has the right to "take an enforcement measure against a licensee, registrant, or person that is neither a licensee nor registrant but is engaging in virtual currency business activity" under LA Rev Stat § 6:1393.

The Louisiana Blockchain Basics Act was signed in early 2024 which prohibits Central Bank Digital Currencies (CBDCs) and enables individuals to "operate a node for the purpose of connecting to a blockchain protocol… or to participate in staking on a blockchain protocol". The Act, also, prohibits foreign-party controlled businesses from mining digital assets.

MAINE

32 ME Rev Stat § 6102 explicitly includes virtual currencies in its definition of money transmission and requires virtual currency businesses to maintain transaction history for five years, including a record of:

- "[t]he identity of the person";
- "[t]he form of the transaction";
- "[t]he amount, date and payment instructions given by the person"; and
- "[t]he account number, name and United States Postal Service address of the person and, to the extent feasible, other parties to the transaction".

Maine established a blockchain technology working group in 2019 to identify "the economic growth and development opportunities presented by blockchain technology" and to recommend "policies and investments that will help promote innovation and economic growth by reducing barriers to and expediting the expansion of the State's blockchain technology industry".

MARYLAND

As of October 1, 2021, the definition of "money transmission" in Md. Code, Fin. Inst. § 12-401(n)(1) includes "receiving…other value that substitutes for currency" ("currency" having the definition under 31 C.F.R. § 1010.100(m) as fiat currency) and transmitting it. According to guidance on the Maryland Office of the Commissioner of Financial Regulation website, "an 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". Maryland does not have any comprehensive cryptocurrency regulation, rather it relies on federal guidelines. However, the state has taken enforcement actions against cryptocurrency firms in Maryland alleging that they constitute securities, taking fees in recompense, and alleging that Coinbase sold unregistered securities under the auspices of its staking platform.

MASSACHUSETTS

The Commonwealth of Massachusetts's Division of Banks posts selected opinions related to consumer virtual currencies on their webpage. Opinion 18-003 requires only foreign countries to obtain a license. Opinion 020-002 confirms that kiosks allowing customers to purchase and sell virtual currencies or allowing customers to purchase currency via the company's website do not need to be licensed. Opinion 21-004 confirms that Massachusetts does not have a domestic money transmission law and requests for opinions are analyzed under the foreign transmittal agency statute, which requires virtual currency transmission to be made "for the purpose of transmitting the [money or its equivalents] to foreign countries". Under 209 CMR 45.00 MA Code of Regs 45.02, Massachusetts only regulates money transmission to foreign countries. The Massachusetts Department of Banking issued Opinion 19-008 in 2020 which found that a company that processed fiat to virtual currency exchanges and allowed for cross-border virtual currency transactions did not consist of license-requiring international money transmission. Opinion 020-003, also in 2020, found that a company providing a digital wallet service and peer-to-peer transactions did not require a license either. The Massachusetts legislature is currently considering bill HB 126 which establishes "a special commission on blockchain and cryptocurrency".

MICHIGAN

The Michigan penal code was amended in March 2020 to include definitions of cryptocurrency and DLT (MCL 750.157m(c), (f)). Both terms were also included in the amended definition of "financial transaction devices" (MCL 750.157m(h)) for purposes of defining crimes such as theft, fraud, forgery, and counterfeiting relating to such devices (MCL 750.157m to MCL 750.157w). MI Comp L § 487.1003 defines money transmission services as "selling or issuing payment instruments or stored value devices or receiving money or monetary value for transmission". MI Comp L § 487.1011 states that "a person shall not provide money transmission services… without a license". According to Michigan's Department of Insurance and Financial Services, money transmission services include "holding funds in an e-wallet" and such services providers "would need to obtain the appropriate license". In 2015, the Michigan Department of Treasury published guidance on how state sales tax applies to virtual currency. In December 2019, Michigan enacted HB 4107, HB 4103, HB 4105, and HB 4106, which amended the Michigan penal code to include definitions for cryptocurrency and distributed ledger technology. The Michigan legislature is currently considering bill SB 888 which establishes a "blockchain and cryptocurrency commission".

MINNESOTA

While Minnesota has no cryptocurrency-specific laws, cryptocurrencies may be encompassed in existing money transmission statutes. The Minnesota Department of Commerce, in 2021, issued guidance on when a virtual currency business engages in money transmission. MN Stat § 53B.03 defines money transmission as "selling or issuing payment instruments or engaging in the business of receiving money for transmission or transmitting money". MN Stat § 53B.02 states that "no person…shall engage in the business of money transmission without a license". Major cryptocurrency exchanges Coinbase, Binance, and Gemini have all registered as money transmitters in Minnesota.

The Money Transmission Modernization Act (MTMA) was signed into law in 2023 (Minn. Stat. Ann. §§ 53B.28 to 53B.74). Any new or conflicting provisions to the former Money Transmitters Act are not effective until January 1, 2024. The MTMA requires any person engaged in virtual currency business activities to be licensed (Minn. Stat. Ann. § 53B.71). A virtual currency business activity means exchanging, transferring, or storing of virtual currencies, or engaging in virtual currency administration. Virtual currency is defined as a digital representation that is used as a medium of exchange, unit of account, or store of value that is not money. (Minn. Stat. Ann. § 53B.69.)

Intrastate securities offerings relating to investments in virtual, digital, or cryptocurrencies do not qualify for exemption from registration under MNvest, a 2015 amendment to the Minnesota Securities Act (Minnesota Statutes, section 80A.461), which permits investment crowdfunding.[52]

On June 26, 2024, the Conference of State Bank Supervisors (CSBS) announced a multistate settlement involving 25 state financial regulators that took collective action against crypto platform Abra, operated by Plutus Financial, Inc. and certain affiliates, over allegations of operating without receiving required state money services business (MSB) licensing. Under the terms of the settlement, up to $82.1 million will be paid back to customers. The states participating in the settlement are Alabama, Alaska, Arizona, Arkansas, Connecticut, District of Columbia, Georgia, Idaho, Iowa, Maine, Minnesota, Mississippi, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Washington, and West Virginia.

MISSISSIPPI

While Mississippi has no cryptocurrency-specific laws, cryptocurrencies may be encompassed in existing money transmission statutes. MS Code § 75-15-3

[52] *See*, Minn.Stat.Ann. § 80A.461 and Minn. R. 2876.3056.

defines monetary value as “a medium of exchange, whether or not redeemable in money” and money transmission as “to engage in the business of the sale or issuance of checks or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means”. MS Code § 75-15-5 states that “No person…shall engage in the business of money transmission…without having first obtained a license”. Major cryptocurrency exchanges Coinbase, Binance, and Gemini have all registered as money transmitters in Mississippi. The definition of monetary value under the Mississippi Money Transmitters Act (MMTA) includes "a medium of exchange, whether or not redeemable in money" (Miss. Code. Ann. § 75-15-3(f)). A bill in 2022 exempting virtual currency from the MMTA did not pass (SB 2631).

On June 26, 2024, the Conference of State Bank Supervisors (CSBS) announced a multistate settlement involving 25 state financial regulators that took collective action against crypto platform Abra, operated by Plutus Financial, Inc. and certain affiliates, over allegations of operating without receiving required state money services business (MSB) licensing. Under the terms of the settlement, up to $82.1 million will be paid back to customers. The states participating in the settlement are Alabama, Alaska, Arizona, Arkansas, Connecticut, District of Columbia, Georgia, Idaho, Iowa, Maine, Minnesota, Mississippi, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Washington, and West Virginia.[53]

MISSOURI

On June 16, 2022, the governor of Missouri signed into law House Bill 1472, modifying Missouri's money laundering statute (§ 574.105 RSMo.) to:

- replace the term “currency” with “monetary instruments”, incorporating cryptocurrencies;
- add definitions for “financial transaction” and “transaction”, more broadly; and
- replace the term “currency transaction” with “financial transaction” in factors establishing money laundering offenses.

Missouri has no cryptocurrency-specific laws, but cryptocurrency may be encompassed in the existing sale of checks law. MO Rev Stat § 361.700 defines a check as “any instrument for the transmission or payment of money and shall also include any electronic means of transmitting or paying money”. MO Rev Stat § 361.705 states that “No person shall issue checks…without first obtaining a license from the director”. Major cryptocurrency exchanges Coinbase, Binance, and Gemini have all registered as money transmitters in Missouri, but Binance is the only one to register under “Sale of Checks”.

MONTANA

While Mississippi has no cryptocurrency-specific laws, cryptocurrencies may be encompassed in existing money transmission statutes. MS Code § 75-15-3 defines monetary value as “a medium of exchange, whether or not redeemable in money” and money transmission as “to engage in the business of the sale or issuance of checks or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means”. MS Code § 75-15-5 states that “No person…shall engage in the business of money transmission…without having first obtained a license”. Major cryptocurrency exchanges Coinbase, Binance, and Gemini have all registered as money transmitters in Mississippi. The Montana Banking & Financial Institution confirms that domestic or foreign money transmitters are not required to register in the state of Montana.

On May 8, 2019, Montana passed the MCA, which took effect on July 1, 2019 (Mont. Code Ann. § 30-10-105(23)). However, the Montana Cryptocurrency Act (MCA) terminated on September 30, 2023. The MCA provided a definition of “utility token” for state law purposes and exempted utility tokens from state securities laws (former Mont. Code Ann. § 30-10-105(23)(a)), so long as:

[53] *See*, Legal Update, Crypto Platform Abra Reaches Settlement with 25 State Financial Regulators

• the utility tokens had a purpose that was primarily consumptive;
• the issuer marketed the utility tokens for a consumptive purpose and did not market them to be used for a speculative or investment purpose;
• the issuer filed a notice of intent to sell the utility tokens with the securities commissioner in a form prescribed by the commissioner, filing amendments as necessary; and one of the two of the below
• the utility tokens were available at the time of sale; or
• the consumptive purpose of the utility tokens was available within 180 days after the time of sale or the utility token's transfer, the initial buyer was prohibited from reselling or transferring the utility tokens until the utility token's consumptive purpose was available, and the initial buyer provided a knowing and clear acknowledgment that it is purchased the utility tokens with the primary intent to use them for a consumptive purpose and not for a speculative or investment purpose.

Furthermore, Montana regulations permit political candidates and committees to accept contributions "made through a payment gateway, such as Bitcoin or other electronic peer-to-peer systems", but require that the contributions be converted to U.S. dollars at the prevailing rate within 24 hours after receipt (Mont. Admin R. 44.11.408). When cryptocurrencies are used as a method of payment, it cannot be subject to any additional tax, withholding, assessment or charge by state or local government (Mont. Code Ann. § 15-1-150).

NEBRASKA

Nebraska has employed a comprehensive approach to the regulation of cryptocurrencies. On May 25, 2021, the Nebraska Financial Innovation Act was enacted, which establishes digital asset depository institutions as a new kind of state financial institution and allows digital asset banks to receive state bank charters (Neb. Rev. St. § 8-3001 to 8-3031). This Act became effective on October 1, 2021. The Nebraska Financial Innovation Act (NE Code § 8-3001 to 3031) lays out a series of guidelines for how digital asset depositories are chartered, operated, supervised, and regulated in Nebraska. The express intent of the Act is to "provide a necessary and valuable service to blockchain innovators and customers, emphasize Nebraska's partnership with the technology and financial industry, safely grow this state's ever-evolving financial sector, and afford more opportunities for Nebraska residents". NE Code § 8-3003 defines a digital asset depository as "a financial institution that securely holds liquid assets…in the form of controllable electronic records". The same section defines blockchain, controllable electronic record, decentralized finance, fork, and stablecoin". NE Code § 8-3015 states that "[n]o corporation shall act as a digital asset depository without first obtaining authority or a charter to operate" from the Director of Banking and Finance. Existing financial institutions need authorization to open a digital asset depository department while strictly digital asset depository institutions need a new charter. NE Code § 8-3005 permits digital asset depositories to "[c]arry on a nonlending digital asset banking business" and "[p]rovide payment services". The same section states that digital asset depositories "shall not accept demand deposits of United States currency" or "make any consumer loans". NE Code § 8-3024 allows digital asset depositories to "[p]rovide digital asset and cryptocurrency custody services…[i]ssue stablecoins and…[u]se independent node verification networks and stablecoins for payment activities". LB 707, signed into law on April 18, amends this section to restrict digital asset and cryptocurrency custody services to those that were either "[i]nitially offered for public trade more than six months prior to the date of the custody services" or "[c]reated or issued by any bank, savings bank, savings and loan association, or building and loan association" authorized to do business in Nebraska. NE Code § 8-3008 requires digital asset depositories to give customers "full and complete" disclosure of account terms and conditions with "no material misrepresentations" and "in readily understandable language". NE Code § 8-3009 requires that digital asset depositories "maintain unencumbered liquid assets

denominated in United States dollars valued at not less than one hundred percent of the digital assets in custody". The Act overall allows Nebraska banks to offer cryptocurrency services that are not available in the vast majority of other states.

Nebraska has other laws relating to cryptocurrency beyond the Financial Innovation Act. The Nebraska Money Transmitters Act defines monetary value as a "medium of exchange, whether or not redeemable in money" (Neb. Rev. St. § 8-2715). NE Code § 8-2716 defines money transmission as "the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission to a location". NE Code § 8-2725 states that "a person shall not engage in money transmission without a license". NE Code § 8-2724 states that "The requirement for a [money transmission] license…does not apply to…[chartered] digital asset depository institutions". 316 NE Admin Rules and Regs ch 316-54-102 includes cryptocurrency under "unacceptable forms of payment" for "Mechanical Amusement Devices" (such as slot machines).

NEVADA

The Nevada Financial Institutions Division states that "[a]ny entity that facilitates the transmission of or holds fiat or digital currency… should contact the NFID to request a licensure determination". Whether a license is required is decided on a case-by-case basis. However, the Division advises that "an entity engaged in the business of selling or issuing checks or of receiving for transmission or transmitting money or credits is required to have a license under [NV Rev Stat § 671]. However, if an entity proposes to serve as a digital custodian for any form of digital currency, then the business may be regulated as a trust company under [NV Rev Stat § 669]". NV Rev Stat § 657a creates a Regulatory Experimentation Program (sandbox) for Product Innovation. Under this program, companies that use "a new or emerging technology, or any novel use of an existing technology, to address a problem, provide a benefit or otherwise offer or provide a financial product or service that is determined by the Director not to be widely available in this State" (NV Rev Stat § 657A.150) can if accepted, "obtain limited access to markets" without "[a]pplying for or obtaining any license or other authorization otherwise required" (NV Rev Stat § 657A.200). The statute lays out a series of specific requirements for disclosure, operation, and oversight during the two-year testing period. In 2019, Nevada adopted three bills that include virtual currency in existing laws. SB 164 "clarif[ies] that certain virtual currencies are intangible personal property for the purposes of taxation". AB 15 includes virtual currency in the definition of a monetary instrument for the purpose of crimes related to certain financial transactions. SB 44 includes virtual currency in the definition of property under the Revised Uniform Unclaimed Property Act.

In 2017, Nevada enacted SB 398, which made it the first state to ban local governments from taxing blockchain use. The law also "recogniz[es] blockchain technology as a type of electronic record for the purposes of the Uniform Electronic Transactions Act". Nevada enacted two other blockchain-related laws in 2019 that have similar provisions. SB 162 adds "that a person who uses a public blockchain to secure information does not relinquish any right of ownership related to that information". SB 163 additionally "revis[es] the definition of 'electronic transmission'… to include the use of a blockchain" and "authoriz[es] certain business entities to store certain records on a blockchain" and "revis[es] provisions authorizing the Secretary of State to adopt regulations to define certain terms to allow certain business entities to carry out their powers and duties using…blockchains". In the same year, Nevada created the Cannabis Advisory Commission under AB 533. The commission is tasked with, among other things, studying "the feasibility of the use of emerging technologies, including…blockchain…as a means of collecting data or efficiently and effectively handling transactions electronically to reduce or eliminate the handling of cash".

Effective July 1, 2019, Nevada defines virtual currencies as intangible personal property, and it is

therefore exempt from personal property taxation (NRS 361.228). Property definition includes virtual currencies. Under the Nevada Uniform Unclaimed Property Act, the definition of property includes virtual currencies (NRS 120A.113(2)(b)(1)). The Act defines virtual currencies as a medium of exchange, a unit of account, or store of value that does not have legal tender status (NRS 120A.122).

The Nevada Department of Business and Industry issued a statement on the regulation of cryptocurrency in the state (undated). Additionally, the state was part of a multistate action against crypto platform Abra for state MSB failures. On June 26, 2024, the Conference of State Bank Supervisors (CSBS) announced a multistate settlement involving 25 state financial regulators that took collective action against crypto platform Abra, operated by Plutus Financial, Inc. and certain affiliates, over allegations of operating without receiving required state money services business (MSB) licensing. Under the terms of the settlement, up to $82.1 million will be paid back to customers. The states participating in the settlement are Alabama, Alaska, Arizona, Arkansas, Connecticut, District of Columbia, Georgia, Idaho, Iowa, Maine, Minnesota, Mississippi, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Washington, and West Virginia.

NEW HAMPSHIRE

NH Rev Stat § 399-G:1 defines convertible virtual currency as “a digital representation of value that: (a) can be a medium of exchange, a unit of account, and/or a store of value, (b) [h]as an equivalent value in real currency or acts as a substitute for real currency, (c) [m]ay be centralized or decentralized, and (d) [c]an be exchanged for currency or other convertible virtual currency”. NH Rev Stat § 399-G:3 states that “[p]ersons who engage in the business of selling or issuing payment instruments or stored value solely in the form of convertible virtual currency” are exempt from licensing as a money transmitter, but “shall be subject to the provisions of” NH Rev Stat § 358-A (Regulation of Business Practices for Consumer Protection). Businesses that transact with additional forms of monetary value, defined as “a medium of exchange, whether or not redeemable in currency, and includes convertible virtual currency” (NH Rev Stat § 399-G:1), “shall obtain a license” (NH Rev Stat § 399-G:2). The New Hampshire Banking Department has confirmed this interpretation in a written statement.

New Hampshire’s legislature is currently considering two bills relating to cryptocurrencies. HB 1502 “specifies that digital assets are property within the Uniform Commercial Code; authorizes security interests in digital assets, allows banks to provide custodial services for digital asset property and provides procedures for the provision of custodial services”. HB 1503 “exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws”. On February 9, 2022, Governor Christopher Sununu signed Executive Order 2022-1, establishing “the Governor’s Commission on Cryptocurrencies and Other Digital Assets” to research and report on “the role and effectiveness of current state laws and regulations governing cryptocurrencies and other digital assets and the reasons why modifications and improvements to such laws and regulations are necessary”. Among other things, the commission will review and investigate status of the cryptocurrency and digital asset industry and related laws and make recommendations for modifications and improvements to state laws and regulations.

However, in 2017, New Hampshire amended Chapter 399-G of its Revised Statutes, Licensing of Money Transmitters, 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 transmission to another location" from New Hampshire money transmission regulations (N.H. RSA §§ 399-G:1 and 399-G:3). Similarly, on January 5, 2022, House Bill 1503 was passed exempting the developer, seller, or facilitator of an exchange of an open blockchain token from certain securities law (N.H. RSA § 421-B:2-202(25)).

NEW JERSEY

On February 3, 2022, the NJ State Senate introduced Senate Bill 1267, Virtual Currency and Blockchain Regulation Act, which would establish a regulatory framework for NJ virtual currency businesses, including exemption from the New Jersey Money Transmitter Act. The bill would also allow the formation of DAOs as LLCs under the state's Limited Liability Company Act. NJ Rev Stat § 17:15C-2 broadly defines a payment instrument as an "instrument or written order for the transmission or payment of money", which could include cryptocurrency. The same statute defines a money transmitter as "a person who engages…in the business of: (1) the sale or issuance of payment instruments for a fee, commission or other benefit; (2) the receipt of money for transmission or transmitting money…; or (3) the receipt of money for obligors for the purpose of paying obligors' bills, invoices or accounts for a fee, commission or other benefit paid by the obligor". NJ Rev Stat § 17:15C-4 states that "[n]o person…shall engage in the business of money transmission without a license". NJ Rev Stat § 3B:14-61.1, New Jersey's Uniform Fiduciary Access to Digital Assets Act, allows estates to manage digital assets under certain circumstances. In 2019, New Jersey enacted SB 2297, which "create[s] the New Jersey Blockchain Initiative Task Force to study whether State, county, and municipal governments can benefit from a transition to a Block Blockchain-based system for recordkeeping and service delivery".

New Jersey's legislature is currently considering several relevant bills. AB 385 "Requires Department of Treasury to review and approve digital payment platform". AB 1975/SB 1267 would add the "Virtual Currency and Blockchain Regulation Act" to New Jersey's statutes. On February 28, 2022, the NJ State Senate introduced Senate Bill 1756, Digital Asset and Blockchain Technology Act, which would establish a licensing structure for operators and consumers engaged in virtual currencies. AB 2371/SB 1756 would add the "Digital Asset and Blockchain Technology Act" to New Jersey's Statutes. AB 3287 "Prohibits public officials from accepting virtual currency and non-fungible tokens as gifts".

In July 2015, the New Jersey Division of Taxation issued guidance stating that New Jersey conforms to federal tax treatment of convertible virtual currencies. Under federal law, convertible virtual currencies are treated as intangible property for sales tax purposes. On March 21, 2022, the NJ Division of Taxation updated the guidance to state that the state conforms to the federal treatment of convertible virtual currencies for corporation income tax and gross income tax purposes.

New Jersey has been very active on the enforcement front. On May 3, 2023, the New Jersey Bureau of Securities (NJ Bureau) issued a cease-and-desist order against Horatiu Charlie Caragaceanu and his organizations, the Shark of Wall Street (TSWS) and Hedge4.ai, in connection with the offering of TruthGPT Coin, a cryptocurrency that purportedly uses an AI model called "Elon Musk AI", in violation of New Jersey state securities laws. The NJ Bureau issued the order against respondents in coordination with issued the order against respondents in coordination with similar actions against respondents in Texas, Alabama, and Kentucky.[54] Similarly, on October 20, 2022, state regulators from Alabama, Kentucky, New Jersey and Texas filed coordinated enforcement actions against Slotie NFT d/b/a slotie.com requiring the company cease and desist from selling various Slotie NFTs until it receives approval to sell securities. On July 19, 2021, the New Jersey Bureau of Securities (NJ BOS) issued a cease-and-desist order to prevent BlockFi, a financial services company based in NJ, from selling unregistered digital asset securities.[55] On February 14, 2022, BlockFi settled this action with the North American Securities Administrators Association (NASAA).[56] On September 17, 2021, the NJ BOS issued a cease-and-desist order against crypto financial

[54] *See*, Legal Update, New Jersey Joins Effort to Stop Unregistered AI-Crypto Offering
[55] *See*, Legal Update, Five States Take Regulatory Action to Prevent BlockFi From Offering Unregistered Digital Asset Securities
[56] *See*, Legal Update, BlockFi Settles With SEC and State Regulators Regarding Unregistered Crypto Lending Product

services company Celsius Network, LLC, for selling unregistered securities in the form of cryptocurrency interest-earning accounts. On June 6, 2023, following investigation by multistate task force with assistance from the SEC, New Jersey and nine other states filed enforcement actions against crypto exchange Coinbase and its parent corporation alleging Coinbase's staking rewards program constituted unregistered securities sales in violation of New Jersey state securities laws. In a July 14, 2023, blog post, Coinbase indicated it will defend its staking services in the Alabama state proceeding but will comply with requirements in California, New Jersey, South Carolina, and Wisconsin to limit retail customers from staking additional assets, pending proceedings in these states.

NEW MEXICO

Virtual currency exchanges must be licensed as money service businesses. The New Mexico Financial Institutions Division has clarified its position that any entity engaged in the exchange of virtual currencies for monetary value are required to be licensed as a money service business under the New Mexico Money Services Act (NMSA 1978, §§ 58-32-102 and 58-32-201).[57]

NEW YORK

Under New York law (23 NYCRR 200.2(p)), virtual currencies include digital units of exchange that:

- have a centralized repository or administrator;
- are decentralized and have no centralized repository or administrator; or
- may be created or obtained by computing or manufacturing effort.

Virtual currencies, however, do not include items such as:

- digital units solely related to gaming platforms; or
- digital units that cannot be converted into, or redeemed for, fiat currency or virtual currencies.

In June of 2015, NYDFS (Department of Financial Services of New York State) issued virtual currency regulation 23 NYCRR Part 200 under the New York Financial Services Law (the BitLicense Regulation). Under the BitLicense Regulation, no person may conduct virtual currency business activities without a license under the BitLicense Regulation or a charter under the limited purpose trust company provisions of the New York Banking Law, except for merchants and consumers that utilize Virtual Currency solely for the purchase or sale of goods or services or for investment purposes. (23 NYCRR 200.3, Virtual Currency Businesses - Licensing and Resources). Additionally, no agent of a virtual currency business may engage in virtual currency business unless the agent itself is also licensed as a virtual currency business. (23 NYCRR 200.3(b)). Virtual currency business is defined as conduct of any one of the following types of activities involving New York or a New York Resident (23 NY ADC 200.2):

- receiving virtual currencies for transmission or transmitting virtual currencies, except where the transaction is undertaken for non-financial purposes and does not involve the transfer of more than a nominal amount of virtual currencies;
- storing, holding, or maintaining custody or control of Virtual Currency on behalf of others;
- buying and selling Virtual Currency as a customer business;
- storing, holding, or maintaining custody or control of Virtual Currency on behalf of others;
- performing Exchange Services as a customer business; or
- controlling, administering, or issuing a virtual currency. (The development and dissemination of software in and of itself does not constitute Virtual Currency Business Activity.)

On June 24, 2020, NYDFS released a Proposed Framework for a Conditional BitLicense. Under the proposed framework, a firm seeking to engage in virtual currency business activity in New York under a

[57] *See*, NM Financial Institutions Division: Money Service Business (MSBs): FAQ's

Conditional License would collaborate and engage with an authorized Virtual Currency Entity for various services and support, such as those relating to structure, capital, systems, personnel, or any other support needed. (Industry Letter - June 24, 2020: Virtual Currency Guidance - Request for Comments on a Proposed Framework for a Conditional BitLicense) The Bitlicense regulation set broad operational and compliance requirements, including but not limited to:

- capital and custodial requirements (23 NYCRR § 200.8.);
- custody and protection of customer assets (23 NYCRR 200.9);
- change in business plan or control (Custody and protection of customer assets (23 NYCRR 200.9));
- recordkeeping requirements (23 NYCRR § 200.12);
- reports and financial disclosures (23 NYCRR 200.14);
- reporting Requirements for breach of laws etc. (23 NYCRR § 200.14);
- anti-money laundering program (23 NYCRR 200.15);
- customer identification program (23 NYCRR § 200.15(h));
- OFAC Compliance (23 NYCRR § 200.15(i));
- cyber security program (23 NYCRR 200.16);
- business continuity and disaster recovery (23 NYCRR § 200.17);
- advertising and marketing (23 NYCRR 200.18);
- consumer protection (23 NYCRR 200.19);
- disclosure of material risks (Custody and protection of customer assets (23 NYCRR 200.9));
- fraud prevention and anti-fraud policy (23 NYCRR § 200.19(g)); and
- handling customer complaints (Custody and protection of customer assets (23 NYCRR 200.9));

Industry Guidance for BitLicensees and New York-chartered limited purpose trust companies engaged in virtual currency business activity. Beyond that, NYDFS issued industry guidance to all Virtual Currency Entities to further regulate their activities:

- Guidance on listing and delisting of virtual currencies. On November 15, 2023, NYDFS issued final guidance on policies related to the listing and delisting of virtual currencies. Requirements on coin-listing policy involve attributes for the governance of virtual currency entities and risk assessment, including technical design and technology risk, operational risk, cybersecurity risk, market and liquidity risk, among others. (Industry Letter - November 15, 2023: Guidance Regarding Listing of Virtual Currencies | Department of Financial Services); and
- Guidance on the use of Blockchain Analytics by Crypto Firms. On April 28, 2022, NYDFS issued guidance to all virtual currency entities emphasizing the importance of blockchain analytics to ensure compliance with applicable state regulations, as well as federal BSA/AML and economic sanctions requirements;
- Guidance on protection of customer funds. (Industry Letter - January 23, 2023: Guidance on Custodial Structures for Customer Protection in the Event of Insolvency | Department of Financial Services);
- Guidance on USD-Backed Stablecoins. The guidance focuses on the he redeemability of USD-backed stablecoins, the asset reserves that back such stablecoins, and attestation regarding the reserves backing the stablecoin. (Industry Letter - June 8, 2022: Guidance on the Issuance of U.S. Dollar-Backed Stablecoins | Department of Financial Services); and
- Guidance on handling of customer complaints. On May 30, 2024, NYDFS issued guidance window regarding the resolution of customer service requests and complaints (Industry Letter - May 30, 2024: Guidance Regarding Customer Service Requests and Complaints | Department of Financial Services).

Furthermore, on November 22, 2022, Assembly Bill 7389 was signed into law establishing a two-year

moratorium on new cryptocurrency mining operations permits that use proof-of-work authentication methods to validate blockchain transactions in the state of New York (N.Y. Envtl. Conserv. Law § 19-0331). The bill requires the Department of Environmental Conservation to prepare a comprehensive generic environmental impact review on mining operations using proof-of-work authentication methods.

In July 2015, the New York State Taxpayer Guidance Division issued guidance on convertible virtual currencies (TSB-M-14(5)C, (7)I, (17)S), which stated that New York conforms to the federal tax treatment of convertible virtual currencies under which convertible virtual currencies are treated as intangible property and the purchase and use of convertible virtual currencies is not subject to state sales tax. However, transactions involving convertible virtual currencies in exchange for taxable goods or services is subject to state sales tax. A seller that accepts convertible virtual currencies in exchange for taxable goods or services must:

- register for sales tax purposes;
- collect and record the value of the convertible virtual currencies at the time of the transaction in US dollars;
- record the amount of sales tax collected.; and
- report such sale and remit any sales tax due in its periodic sales tax returns.

NORTH CAROLINA

In 2016, North Carolina adopted the Money Transmitters Act, which:

- requires a license to engage in the business of money transmission. Money transmission is defined as receiving or holding money or monetary value incidental to its transmission and specifically includes "maintaining control of virtual currencies on behalf of others"; and
- identifies virtual currencies owned by the licensee to be a permissible investment "to the extent of outstanding transmission obligations received by the licensee in like-kind virtual currency". (N.C.G.S. §§ 53-208.42 and 53-208.43.)

Additionally, effective on October 15, 2021, "The Innovation Council may explore, receive input, analyze, and make recommendations, with respect to blockchain initiatives and the application of blockchain technology, that would additionally provide benefit to the State, its consumers, and its industry". (NC ST § 169-2).

NORTH DAKOTA

Virtual currencies are property under North Dakota's Revised Uniform Unclaimed Property Act (N.D.C.C. § 47-30.2-01). However, virtual currencies are defined as a digital representation of value that is used as a medium of exchange, unit of account, or store of value that is not money (N.D.C.C. § 13-09.1-44). Effective July 1, 2023, under the Money Transmitters Chapter of Title 13 on Debtor and Creditor Relationship, a person must be licensed to engage in virtual currency business activity. For current licensees, the effective date is upon license renewal but no later than December 31, 2023. (N.D.C.C. §§ 13-09.1-43 and 13-09.1-46).

North Carolina's approach goes well beyond money transmitter regulation. Defined a person engaging in "providing a virtual currency that buyers are allowed or required to use to purchase products from the seller" as a "marketplace facilitator", which is subjected to obligations including collecting and remitting for each sale any tax imposed under chapters 57-39.2 and 57-40.2 (ND ST 57-39.2-02.3). Effective August 1, 2019, specific rules were enacted for the use of blockchain and smart contracts in contract formations (ND ST 9-16-19), to include:

- a signature secured through blockchain technology is considered to be in an electronic form and to be an electronic signature;
- a contract relating to a transaction may not be denied legal effect, validity, or enforceability solely because the contract contains a smart contract term; and
- Smart contracts may exist in commerce. A contract relating to a transaction may not be denied legal effect, validity, or enforceability

solely because the contract contains a smart contract term.

Furthermore, the Information Technology Department shall 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". (ND ST 54-59-02.2)

OHIO

The Ohio Money Transmitter Act does not include definitions of the terms "money" or "monetary value", and it does not expressly include virtual currency business into its license regime. (Ohio R.C. § 1315.01) However, The Ohio Division of Financial Institutions Divisions consider virtual currencies, like bitcoin, to be money or its equivalent. Therefore, if a person is holding or controlling virtual currency on behalf of another person, is acting as a third-party intermediary or exchange, or is otherwise engaging in activity that would fall within the above definition, then the Division considers the activity to be money transmission. Effective August 31, 2022, the Division issued updated interpretative guidance regarding the Licensing of Cryptocurrency Businesses pursuant to the Ohio Money Transmitters Act. Companies that operate BTMs or Cryptocurrency ATMs in Ohio must be able to verify, conclusively and in all instances, the ownership of any wallet to which they send funds, ensuring the sender and recipient of the funds are the same. Otherwise, such companies must obtain an Ohio money transmitter license. (OH Money Transmitter License New Application Checklist (Company)).

The Application for a Money Transmitter License issued by the Ohio Department of Commerce requires applicants to provide a security audit of all relevant computer and information systems if the applicant engages in the transaction of virtual currencies (OH Money Transmitter License New Application Checklist (Company)).

On March 2, 2022, House Bill 177.05 was adopted, permitting Ohio government entities to leverage distributed ledger technology, including blockchain technology, in the use of a government entity's authority (Ohio R.C. § 9.16). The bill was built on a failed endeavor by the state to authorize the collection of taxes in bitcoin through OhioCrypto.com.

OKLAHOMA

The Oklahoma Financial Transaction Reporting Act, which requires licensure of money transmitters, defines money transmitter as any person who accepts currency or funds and transmits the currency or funds or the value of the currency or funds by "an electronic funds transfer network" (Okla. Stat. tit. 6, § 1512). Neither the Act, nor any official guidance, expressly provides whether virtual currency businesses fall under money transmitter rules. However, anyone engaged in home cryptocurrency mining, or cryptocurrency mining business, staking, or staking as a service shall not be required to obtain a money transmitter license under Section 1513 of Title 6 of the Oklahoma Statutes. Additionally, anyone engaged in cryptocurrency mining, operating a node or series of nodes on a blockchain network, or providing cryptocurrency mining or staking as a service for individuals or other businesses shall not face liability related to a specific transaction merely by validating that transaction. (OK ST T. 75A § 103)

Beginning on November 1, 2024, and ending on December 31, 2029, sales of machinery and equipment, including but not limited to, servers and computers, racks, power distribution units, cabling, switchgear, transformers, substations, software, and network equipment, and electricity used for commercial mining of cryptocurrency purposes in a colocation facility are specifically exempted from the tax levied by Oklahoma Sales Tax Code. (OK ST T. 68 § 1359)

OREGON

The Oregon Money Transmitter Act does not

specifically include virtual currencies, but the definition of money is defined as representing "value that substitutes for currency but that does not benefit from government regulation requiring acceptance of the medium of exchange as legal tender" (Or. Rev. Stat. § 717.200(10)). The Oregon Division of Financial Regulation has issued guidance stating that virtual currency businesses are required to obtain a money transmitter license. Virtual currencies are not accepted as payment by state government. Or. Rev. Stat. § 291.730 does not permit the state government to accept payments using cryptocurrency unless authorized by the state treasurer. Similarly, virtual currencies are not accepted as political contribution. A person may not make a contribution to a political candidate, political committee, or a petition committee using cryptocurrencies (Or. Rev. Stat. § 260.011).

PENNSYLVANIA

Effective October 15, 2024, a statement of policy issued by Pennsylvania Department of Banking and Securities included virtual currency under its interpretation of "money" under the Money Transmitter Act and in Chapter 19 Money Transmitters. Accordingly, all persons engaged in the business of transmitting virtual currency by means of a transmittal instrument for a fee or other consideration will obtain a license from the Department. (Virtual Currency—Statement of Policy)

RHODE ISLAND

Effective January 1, 2020, Chapter 14 on Licensed Activities under Title 19, Rhode Island updated its financial regulations to:

- include "maintaining control of virtual currency or transactions in virtual currency on behalf of others". in "Currency transmission" (R.I. Gen. Laws § 19-14-1);
- add currency transmission to the list of activities requiring a license under state law (R.I. Gen. Laws § 19-14-2);
- lay out applicable requirements for those engaging in currency transmissions (formerly referred to as sale of checks and electronic money transfers) (R.I. Gen. Laws § 19-14.3-1 to R.I. Gen. Laws § 19-14.3-5).

Also effective as of January 1, 2020, Rhode Island adopted the Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act (R.I. Gen. Laws §§ 6-56-1 to 6-56-11), which applies to persons or transactions governed by the Uniform Regulation of Virtual-Currency Businesses Act as well as nonresident users or transactions if the user or transaction would be governed by the Uniform Regulation of Virtual-Currency Businesses Act if the user were a resident. Similarly, effective December 6, 2018, Insurance Division issued a bulletin to allow distributed ledger or blockchain technology to be used by insurers doing business in Rhode Island. (RI Bulletin 2018-17)

SOUTH CAROLINA

On December 5, 2018, the South Carolina Attorney General issued a letter finding that virtual currencies do not qualify as monetary value and are not subject to South Carolina Anti-Money Laundering Act (S.C. Code Ann. §§ 35-11-100 to 35-11-900). If virtual currency transactions also involve the transfer of fiat currency, a transaction may be subject to money transmission regulations. On September 6, 2019, the South Carolina Attorney General issued Order Number MSD-19003 stating that an ATM that acts as a third-party exchanger facilitating an exchange of virtual currencies for fiat currency is a money transmitter and requires a license. An ATM that does not act as a third party, but only facilitates a sale or purchase of virtual currencies by the ATM operator, is not a money transmitter and would not require a license.

SOUTH DAKOTA

South Dakota treats cryptocurrency as "monetary value" under SD Codified L § 51A-17-1, requiring businesses involved in cryptocurrency transactions to obtain a money transmitter license under § 51A-17-4. Legislation enacted in 2022 (SB 47) requires virtual currency transmitters to maintain like-kind cryptocurrency reserves matching their consumer

obligations, which aims to protect consumers by ensuring the availability of funds. In 2023, Governor Kristi Noem became the first U.S. governor to veto amendments to the UCC, expressing concerns that these amendments might limit cryptocurrency use and introduce government overreach. Furthering this stance, South Dakota passed HB 1163 and HB 1161 in 2024, which limit the acceptance and use of CBDCs to protect the economic freedom of South Dakotans and prevent federal influence through a potential CBDC.

SD Codified L § 51A-17-1 broadly defines monetary value as "any medium of exchange, whether or not redeemable in money", and money transmission as "engagement in the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission". The South Dakota Division of Banking stated in 2019 that "virtual currencies, including cryptocurrencies like Bitcoin, are 'monetary value.'" Therefore, cryptocurrency businesses fall under SD Codified L § 51A-17-4, which states that "No person…may engage in the business of money transmission…without obtaining a license". On February 8, 2022, Governor Kristi Noem signed SB 47, which "revise[s] certain provisions regarding money transmission" including adding a requirement that"licensee[s] transmitting virtual currencies shall hold like-kind virtual currencies of the same volume as that held by the licensee but that is obligated to consumers".

In 2023, Governor Kristi Noem was the first governor in the United States to veto the UCC, citing concerns that the UCC would have created government regulations for the use of cryptocurrency in the state. Proponents had argued the bill would have centralized different cryptocurrency systems through one government oversight commission, boosting transparency. But opponents saw the proposed regulations as a tool for potential government surveillance and overreach, saying they wanted more time to see how such legislation fares in other states.

In 2024, Governor Kristi Noem signed two bills that block a CBDC from being utilized in South Dakota. When vetoing the UCC, Governor Noem cited two reasons: needlessly limiting the economic freedom and use of cryptocurrency and opening the door to the risk that the federal government could adopt a CBDC. In response, South Dakota's legislature passed two bills: HB 1163 amends provisions of the UCC, into law. HB 1161 regulates the acceptance of a central bank digital currency to further strengthen the laws protecting South Dakotans from CBDCs.

SD Codified L § 53-12-1 defines blockchain technology. It, also, "includes a record that is secured through blockchain technology" under the definition of electronic record, and "includes a signature that is secured through blockchain technology" under the definition of electronic signature.

TENNESSEE

Tennessee's cryptocurrency regulations clarify that under the Tennessee Money Transmitter Act (TMTA), cryptocurrency alone is not considered "money" and therefore does not qualify as money transmission unless it involves a sovereign currency, which may require a license depending on the nature of the transaction. Businesses involved in crypto-to-fiat exchanges through third-party exchangers or ATMs are generally subject to licensing requirements. Tennessee also includes virtual currency as property under its Uniform Unclaimed Property Act (UUPA), meaning it must be treated like other unclaimed assets. Additionally, SB 535 prohibits Tennessee governmental entities from paying or converting funds to cryptocurrency or related assets without state treasurer approval. Cryptocurrency service providers must adhere to licensing under § 45-7-205, although cryptocurrency cannot be used to meet net worth calculations for licensed money transmitters.

The Tennessee Department of Financial Institutions (TDFI) issued a memo in 2015 entitled Regulatory Treatment of Virtual Currencies under the Tennessee Money Transmitter Act. It stated that "cryptocurrency is not money under the TMTA and "receiving it in exchange for a promise to make it available at a later time or different location is not money transmission…However, when a cryptocurrency

transaction does include sovereign currency, it may be money transmission depending on how the sovereign currency is handled". The guidance went on to say that "[t]he exchange of cryptocurrency for sovereign currency between two parties is not money transmission…[e]xchange of one cryptocurrency for another cryptocurrency is not money transmission…Transfer of cryptocurrency by itself is not money transmission…Exchange of cryptocurrency for sovereign currency through a third party exchanger is generally money transmission…Exchange of cryptocurrency for sovereign currency through an automated machine is usually but not always money transmission".

Cryptocurrency businesses whose activity is deemed money transmission would be required to hold a license under TN Code § 45-7-102. TN Code § 66-29-102 includes virtual currency as property under Tennessee's Uniform Unclaimed Property Act. SB 535 was signed into law on April 14, 2022, and states that "a governmental entity shall not pay, compensate, award, or remit funds in the form of, or facilitate directly or indirectly the conversion of compensation or funds to, blockchain, cryptocurrency, non-fungible tokens, or virtual currency to an individual person, corporation, or other entity without the prior written approval of the state treasurer". Local governments are also forbidden from "procur[ing] services for the performance of the" above-stated actions.

The TDFI requires firms offering cryptocurrency services to comply with all licensing requirements under § 45-7-205 of the Tennessee Money Transmitter Act. In other words, cryptocurrency firms must be licensed and authorized by appropriate state authorities to legally provide cryptocurrency services under Tennessee law. Additionally, companies that function as money transmitters are prohibited from including cryptocurrency assets in determining the firm's net worth under Tenn. Code Ann. § 45-7-205.

Additionally, in TCA cryptocurrencies are classified under the state's UUPA § 66-29-102. Under the UUPA, virtual currencies are classified as property. Specifically, the Act defines virtual currency as "a digital representation of value used as a medium of exchange, a unit of account, or a store of value that the United States does not recognize as legal tender". According to the Act, virtual currency does not include any of the following: (1) software or protocols governing the transfer of digital representations of value; (2) game-related digital content; or (3) loyalty cards or gift cards.

In 2018, Tennessee enacted SB 1662, which states that "Smart contracts may exist in commerce. No contract relating to a transaction shall be denied legal effect, validity, or enforceability solely because that contract is executed through a smart contract". It further states that records, contracts, and signatures secured through distributed ledger technology are legally valid. It also confirms that "a person that…uses distributed ledger technology to secure information that the person owns or has the right to use retains the same rights of ownership or use with respect to that information as before the person secured the information using distributed ledger technology".

On April 20, 2022, Tennessee Governor Bill Lee signed into law a bill to allow decentralized autonomous organizations (DAOs), to register as a type of limited liability company.

Currently, SB 2370 in the General Subcommittee of Senate Commerce and Labor Committee. This bill authorizes a cryptocurrency mining business to engage in cryptocurrency mining in any area that is zoned for industrial use.

TEXAS

Texas cryptocurrency regulations primarily address cryptocurrencies under existing financial and securities statutes. According to the Texas Department of Banking, cryptocurrencies do not constitute "money" but are instead treated as a form of "value". This classification affects money transmission laws, meaning some cryptocurrency transactions may not require a money transmitter license unless they involve

traditional fiat currency.

Under Texas securities laws, digital assets are regulated as securities if they meet certain investment contract criteria under the Texas Securities Act. This approach allows the Texas State Securities Board to apply disclosure and registration requirements to specific cryptocurrency offerings that resemble traditional securities, such as initial coin offerings or certain token sales.

The Texas Department of Banking issued Supervisory Memorandum 1037 in 2019. It stated that "Exchanging virtual currency for sovereign currency is not currency exchange under the Texas Finance Code" and "no currency exchange license is required in Texas to conduct any type of transaction exchanging virtual with sovereign currencies". The memo further states that "cryptocurrency is not money under the Money Services Act" and "receiving it in exchange for a promise to make it available at a later time or different location is not money transmission". More specifically, the memo advises that "Exchange of cryptocurrency for sovereign currency between two parties is not money transmission…Exchange of one cryptocurrency for another cryptocurrency is not money transmission…Transfer of cryptocurrency by itself is not money transmission…Exchange of cryptocurrency for sovereign currency through a third-party exchanger is generally money transmission…Exchange of cryptocurrency for sovereign currency through an automated machine is usually but not always money transmission". The memo distinguishes stablecoins as possibly being "considered money or monetary value under the Money Services Act" and thus "receiving it in exchange for a promise to make it available at a later time or different location may be money transmission".

Cryptocurrency businesses that are deemed money transmitters must be licensed under TX Fin Code § 151.302. In 2019, Texas enacted SB 207, which includes digital currency under the definition of funds for money laundering offenses.

Texas has enacted several key pieces of legislation in recent years to clarify blockchain regulation and encourage the industry's growth. SB 1859, passed in 2023, establishes a blockchain working group within the Texas Department of Information Resources. This group is responsible for studying potential uses of blockchain in government, including record-keeping and transparency applications. The legislation aims to foster a pro-blockchain environment by exploring how Texas can benefit from blockchain's capabilities, particularly in increasing efficiency and trust in government processes.

Additionally, HB 4214 and its counterpart SB 64 address cybersecurity in the context of emerging technologies like blockchain. These bills require state agencies to implement security frameworks and conduct vulnerability assessments for any digital systems using technologies such as blockchain, artificial intelligence, and cryptocurrency. This focus on cybersecurity reflects Texas's intention to support technological advancements while mitigating associated risks. By requiring robust cybersecurity plans, Texas is positioning itself as a leader in adopting blockchain for public-sector uses while ensuring safeguards against digital threats.

Overall, Texas's blockchain regulations are designed to both support innovation and address regulatory concerns, making the state an increasingly attractive environment for blockchain companies. This legislative approach highlights Texas's commitment to becoming a hub for blockchain technology by balancing promotion of the industry with necessary regulatory oversight.

UTAH

Utah's approach to cryptocurrency regulation is distinctive and generally favorable toward innovation within the cryptocurrency space. In 2019, Utah's legislature passed cryptocurrency-specific amendments to the state's Money Transmitter Act (MTA). Under UT Code § 7-25-102, cryptocurrency transactions are explicitly excluded from the definition of money transmission, meaning many crypto-focused businesses

are not subject to traditional licensing requirements. This carve-out is designed to encourage the use of blockchain tokens without imposing the usual regulatory burden associated with money transmission businesses.

In recent years, Utah has passed several bills that clarify the regulatory landscape for cryptocurrencies. Notably, SB 182 (2022) establishes a legal framework for the ownership of cryptocurrencies, allowing holders of virtual currencies to claim ownership similarly to other types of property. This bill also enables certain financial institutions to provide custodial services for cryptocurrencies, enhancing investor options and security. Additionally, HB 456 authorizes government agencies to accept cryptocurrency for payments, allowing more flexibility in public transactions. Together, these laws reflect Utah's commitment to promoting blockchain innovation while setting standards for ownership and custodianship of cryptocurrencies.

Utah's regulation of cryptocurrency and Bitcoin aligns with the state's broader commitment to fostering innovation in financial technology, often by refining legislative frameworks and regulatory definitions. HB 335, adopted on March 24, 2022, "creates the Blockchain and Digital Innovation Task Force" to "develop knowledge and expertise about blockchain and related technologies" and "make policy recommendations related to blockchain and related technologies".

Subsequently, Utah enacted the Blockchain Technology Act in 2019, laying foundational definitions for blockchain-related terms and exempting blockchain-based products from the state's Money Transmitter Act. The same year, a regulatory sandbox was established to allow blockchain and financial technology firms to test new products in a regulated but flexible environment.

The Utah legislature has also clarified how certain transactions involving cryptocurrencies are treated. For instance, Utah's Uniform Unclaimed Property Act classifies virtual currency as property, ensuring that lost or abandoned cryptocurrencies fall under the state's custody framework. SB 182 defines ownership rights in cryptocurrencies, giving legal clarity to blockchain-based ownership.

In 2024, Utah enacted HB 357, establishing guidelines for Decentralized Autonomous Organizations (DAOs), formalizing them as legal entities akin to limited liability companies. This recent legislation aims to protect DAO members and establish tax guidelines, showing the state's progressive stance on supporting the cryptocurrency industry as it evolves.

VERMONT

Vermont has structured its cryptocurrency regulation primarily through its money transmission laws, defining virtual currency as "monetary value" under 8 V.S.A. § 2500. As a result, cryptocurrency companies must obtain a money transmitter license (8 V.S.A. § 2502) and maintain a reserve of virtual currency equal to consumer obligations, ensuring that customer assets are adequately backed (8 V.S.A. § 2541). In 2024, Vermont implemented a temporary moratorium on new cryptocurrency ATMs, requiring operators to register and provide clear consumer disclosures about transaction fees and limits. This pause allows the state to assess security risks while ensuring consumer protection for those who interact with these machines.

Additionally, Vermont adopted the Money Transmission Modernization Act (MTMA) in 2024, broadening its regulatory scope by defining virtual currency business activities like exchange and custodial services as money transmission. This means any company involved in controlling or transmitting cryptocurrencies must be licensed under Vermont's updated framework, which now includes criteria around private key management and custodial control of cryptocurrency.

Vermont has developed unique regulatory frameworks for blockchain-focused companies, making it one of the few states with specific laws addressing blockchain

technology. Per SB 269, Vermont permits the formation of Blockchain-Based Limited Liability Companies (BBLLCs), a business structure tailored to the decentralized nature of blockchain. Under Vermont's BBLLC statute, blockchain companies can register as limited liability entities with governance structures that recognize and accommodate blockchain-specific mechanisms, such as smart contract voting and automated management. These companies are required to include blockchain operational details in their agreements, providing them with limited liability protections akin to traditional LLCs.

12 V.S.A. § 1913 states that "A digital record electronically registered in a blockchain…shall be considered a record of regularly conducted business activity pursuant to Vermont Rule of Evidence 803(6) unless the source of information or the method or circumstance of preparation indicate lack of trustworthiness". It also states that "A digital record electronically registered in a blockchain shall be self-authenticating pursuant to Vermont Rule of Evidence 902, if it is accompanied by a written declaration of a qualified person, made under oath". In 2017, Vermont adopted two bills related to blockchain technology. SB 135 states that "The existing Vermont legislation on blockchain technology and other aspects of e-finance have given Vermont the potential for leadership in this new era of innovation as well, with the possibility of expanded economic activity in the financial technology sector that would provide opportunities for employment, tax revenues, and other benefits".

WASHINGTON

WA Rev Code § 19.230.010 defines money transmission as "receiving money or its equivalent value (equivalent value includes virtual currency) to transmit, deliver, or instruct to be delivered to another location". WA Admin Code 208-690-015 states that "Storage of virtual currency by a person when the virtual currency is owned by others and the person storing the virtual currency does not have the unilateral ability to transmit the value being stored" is "excluded from the [Uniform Money Services] Act". Therefore, only businesses that transmit cryptocurrency are required to be licensed under WA Rev Code § 19.230.030. WA Rev Code § 19.230.040 states that, "For business models that store virtual currency on behalf of others, the applicant must provide a third-party security audit of all electronic information and data systems acceptable to the director". WA Admin Code 208-690-030 has a similar provision. WA Rev Code § 19.230.200 states that "A licensee transmitting virtual currencies must hold like-kind virtual currencies of the same volume as that held by the licensee but which is obligated to consumers". WA Admin Code 208-690-085 has a similar provision. WA Rev Code § 19.230.370 and WA Admin Code 208-690-205 layout disclosure requirements specific to virtual currency businesses. WA Admin Code 208-690-060 states that "The minimum tangible net worth if the company provides virtual currency storage is one hundred thousand dollars", which is different from the net worth requirement for other money transmitters.

Washington's Department of Financial Institutions has further guidance on their page entitled FinTech Licensing and Regulation Guidance. On March 30, 2022, Governor Jay Inslee sign into law SB 5531, which includes virtual currency in the definition of property under the Uniform Unclaimed Property Act. The Washington Department of Revenue stated in 2019 that "Taxpayers must convert bitcoin [and other cryptocurrency] to US dollars, prior to remitting payment to the Department of Revenue". The Department also gave tax guidance for accepting virtual currency in a sales transaction. In the same 2019 guidance statement, the Department announced a tax on Bitcoin mining "determined by the value of the bitcoin at the time it is obtained by the miner". In 2020, the State of Washington Securities Division stated in a consent order that "The offer and/or sale of [ERC-20 tokens named RHOCs]…constitute the offer and/or sale of a security as defined in [WA Rev Code § 21.20.005]". This means that the unregistered offering violated WA Rev Code § 21.20.040.

In 2019, Washington enacted SB 5638, which "intends to encourage the development of distributed ledger

technology". The bill defines blockchain, distributed ledger technology, and electronic record. It states that "An electronic record may not be denied legal effect, validity, or enforceability solely because it is generated, communicated, received, or stored using distributed ledger technology".

Additionally, Washington has been proactive in creating a framework to explore blockchain technology. Washington SB 5544, signed into law in 2022, established a blockchain workgroup to assess potential applications and regulatory frameworks for blockchain across sectors such as healthcare, finance, and supply chain management.

WEST VIRGINIA

WV Code § 32A-2-1 broadly defines both currency transmission and money transmission as "engaging in the business of…receiving currency, the payment of money, or other value that substitutes for money by any means for the purpose of transmitting", which seems to include cryptocurrency. WV Code § 32A-2-2 states that "a person may not engage in the business of currency exchange, transportation or transmission in this state without a license". WV Code § 31A-8G-1 creates the West Virginia Fintech Regulatory Sandbox Program. According to WV Code § 31A-8G-4, a licensee of this Sandbox "is not subject to state laws that regulate financial products or services". WV Code § 61-15-1 explicitly includes cryptocurrency under the definition of monetary instruments which are banned from being used to launder value. On March 26, 2022, Governor Jim Justice signed HB 4511, which amends the Unclaimed Property Act to include provisions for the treatment of virtual currency.

WISCONSIN

The Wisconsin Department of Financial Institutions states that "[WI Stat § 217.01] does not currently give the Department the authority to regulate virtual currency. The division is therefore unable to license or supervise companies whose business activities are limited to those involving virtual currency. However, should the transmission of virtual currency include the involvement of sovereign currency, it may be subject to licensure depending on how the transaction is structured".

WYOMING

WY Stat § 40-22-104 states that "Buying, selling, issuing, or taking custody of payment instruments in the form of virtual currency or receiving virtual currency for transmission" is exempt from the Wyoming Money Transmitters Act and its licensing requirements.

WY Stat § 40-29 establishes the Financial Technology Sandbox, which cryptocurrency businesses may join. WY Stat § 40-29-103 states that Sandbox participants "may be granted a waiver of specified requirements imposed by statute or rule". WY Stat § 40-29-106 and WY Stat § 40-29-104 offer specifics on applying to and operating under the Sandbox. WY Stat § 13-12-101 establishes the Special Purpose Depository Institutions Act. The Wyoming Division of Banking has stated that this act allows special purpose depository institutions (SPDIs) "to receive deposits and conduct other activity incidental to the business of banking, including custody, asset servicing, fiduciary asset management, and related activities". The Division further states that "SPDIs will likely focus on digital assets, such as virtual currencies, digital securities and digital consumer assets. For example, SPDIs may elect to provide custodial services for digital assets and, in accordance with customer instructions, undertake authorized transactions on behalf of customers. SPDIs may also conduct activity under Wyoming regulations tailored to digital assets, which address issues such as technology controls, transaction handling, and custody operations for digital assets". WY Stat § 34-29-101 is a statute entirely dedicated to digital assets, which defines key terms, classifies digital assets as property, and gives guidance for custodial services along with other aspects of digital asset businesses.

WY Stat § 34-29-106, the Utility Token Act, exempts utility tokens from Wyoming's securities laws if certain conditions are satisfied. In 2019, HB 62 was enacted to

“establi[sh] that open blockchain tokens with specified consumptive characteristics are intangible personal property and not subject to a securities exemption”. The same bill lays out notification requirements and enforcement authorities of the state regulator. That same year, HB 185 was adopted to allow “corporations to issue certificate tokens in lieu of stock certificates as specified”. This collection of laws makes Wyoming arguably the most cryptocurrency-friendly state in the country.

In 2018, Wyoming enacted HB 101, which “authoriz[ed] corporations to use electronic networks or databases for the creation or maintenance of corporate records”. In 2019, Wyoming adopted two bills relating to blockchain technology. HB 1 “created the blockchain task force”. HB 70 “authoriz[es] the secretary of state to develop and implement a blockchain filing system”. In 2020, Wyoming enacted two more bills relating to blockchain technology. HB 27 “creat[es] the select committee on blockchain, financial technology and digital innovation technology”. SB 72 appoints “executive branch liaisons” to “Develop and introduce legislation as necessary to promote blockchain, financial technology and digital innovation in Wyoming”. On March 9, 2022, Governor Mark Gordon signed into law SF 68, which “amend[s] statutory provisions regulating decentralized autonomous organizations”, “amend[s] definitions”, “amend[s] the obligations of members and dissociated members”, and “amend[s] factors for dissolution of a decentralized autonomous organization”.

In 2022, the state added further clarity around its treatment of cryptocurrency as property in state law, ensuring that virtual assets are recognized under the state's Uniform Commercial Code.

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