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Client Alert: Blockchain & Cryptocurrency: State Law Roundup 2019

The pace at which states are legislating blockchain technology and cryptocurrencies appears to be accelerating. However, there is no standardization or uniformity in how states are choosing to treat these emerging technologies.

Over the past year, several states have adopted or proposed new legislation that relates to the use of blockchain in business usually exempting digital currencies from money transmitter and securities laws or recognizing that records secured through blockchain technology have the same legal status as written records. Moreover, a small number of states are encouraging the development of blockchain technology by authorizing financial technology (“fintech”) sandboxes. This allows creators to test their innovative technology in the “sandbox,” free from state regulation.

While many states are putting out the welcome sign for the blockchain industry, others have trended toward restriction. These states have made it clear that cryptocurrencies will receive no securities exemptions and will be subject to various taxes and licensing requirements. Though these states certainly do not represent the majority of states, it is safe to say there is no “norm” when it comes to blockchain legislation on the state level.

Here is a sampling of state legislative activity relating to blockchain technology and cryptocurrencies:

<u>State</u>	<u>Legal or Administrative Action</u>
Arizona	Arizona introduced HB 2702 in February 2019, which, if enacted, would define “marketplace facilitator” to include providing virtual currencies.
Arkansas	Currently awaiting the Governor of Arkansas’ signature, Act 1061 (previously HB 1944) contains general blockchain definitions and recognizes signatures and records obtained via blockchain as valid electronic forms.

	<p>Act 1061 also permits the use of smart contracts in the state.</p>
California	<p>California introduced both SB 373 and AB 1489 in February 2019. SB 373 would, if enacted, allow county recorders to issue marriage certificates via blockchain. AB 1489 would, if enacted, prohibit persons from engaging in business activities related to virtual currency unless they are registered with the Department of Business Oversight.</p>
Colorado	<p>In March 2019, Colorado adopted the Colorado Digital Token Act which provides limited exemptions from state securities law for qualifying cryptocurrencies.</p>
Connecticut	<p>On March 7, 2019, Connecticut legislators introduced SB 1032, SB 1033, and HB 7310. SB 1032, if enacted, would require the Connecticut Secretary of Policy and Management to develop a plan to incorporate blockchain technology in the administration of state functions by fall 2020. SB 1033, if enacted, would prohibit employee contracts for those working in the blockchain industry from containing non-compete clauses. HB 7310, if enacted, would authorize the use of smart contracts within Connecticut.</p>
Delaware	<p>On July 23, 2018, Delaware adopted SB 183 and SB 194 relating to the use of blockchain regarding trusts and LLCs, respectively.</p>
Georgia	<p>On March 9, 2019, Georgia introduced amendments to the Georgia Sports Betting Act, that would subject bets made with cryptocurrencies to regulations.</p>
Hawaii	<p>SB 1364, if enacted, would extend Hawaiian money transmitter laws to include any person engaged in “the transmission of virtual currency.”</p>
Idaho	<p>HB 239, if enacted, would extend the definition of “marketplace facilitator” to any persons providing virtual currency.</p>
Illinois	<p>Enrolled in June 2019, The Blockchain Business Development Act allows for the creation and regulation of blockchain-based LLCs. Enrolled in May 2019, the Blockchain Technology Act establishes permitted uses/limitations on the use of blockchain and prohibits local governments from imposing certain restrictions on the use of blockchain.</p>
Indiana	<p>HF 240, if enacted, would provide certain exemptions for virtual currency from securities and money transmitter laws.</p>
Kansas	<p>HB 2352, if enacted, would extend the definition of “marketplace facilitator” to any person providing virtual currency.</p>

Maryland	SB 783, if enacted, would require money transmitters and licensees to maintain certain amounts of virtual currency under certain circumstances. Adopted on May 25, 2019, HB 1301 amends existing tax law to exclude those providing virtual currency from the definition of “marketplace facilitator”.
Massachusetts	SB 1762, if enacted, would extend the definition of “marketplace facilitator” to include those who provide virtual currencies.
Michigan	Currently awaiting senate approval, HB 4106 would, if enacted, amend the Michigan Penal Code, criminalizing the alteration/forgery/counterfeiting of records via blockchain technology.
Missouri	HB 1159, if enacted, would establish regulations for financial institutions providing services for digital assets.
Montana	Adopted May 8, 2019, HB 584 amends Montana securities law to allow certain cryptocurrency transactions. HB 630, if enacted, would exempt virtual currencies from property taxes.
Nevada	Nevada adopted SB 162, SB 163 and SB 164 on June 7, 2019. SB 162 recognizes blockchain as an “electronic record” for purposes of the Uniform Electronic Transaction Act. Moreover, SB 162 also states that a person who uses a public blockchain does not automatically relinquish ownership of any information stored in the blockchain. SB 163 authorizes certain businesses to store certain records on a blockchain. SB 164 recognizes certain virtual currencies as a form of intangible property for tax purposes.
New Jersey	AB 5240, if enacted, would require the state to approve a viable blockchain-based payment platform to “provide a safe and secure system” for New Jersey businesses without access to traditional financial services.
New Mexico	HB 649, if enacted, would require “cryptovalued creators or distributors” to obtain a license from the state to engage in such business.
New York	AB 1683, if enacted, would amend state technology laws to define “blockchain technology” and “smart contract”. AB 1683 would also acknowledge signatures, records, and contracts secured via blockchain as valid electronic forms. Introduced shortly after AB 1683, SB 4142, if enacted, would accomplish the same goals as AB 1683.
North Dakota	Adopted on April 24, 2019, HB 1045 recognizes signatures, contracts and records secured through blockchain technology to be valid, electronic forms. HB 1043, if enacted, would exempt open blockchain tokens from certain portions of state securities law.

Ohio	HB 220, if enacted, would allow Ohio government entities to utilize blockchain technology.
Oklahoma	Adopted on April 25, 2019, SB 700 recognizes records, contracts, and signatures secured through blockchain technology to be a valid, electronic form. SB 809, if enacted, would extend the definition of “political contribution” as it relates to campaign finance laws to include donations of virtual currency. SB 843, if enacted, would clarify when an open blockchain token would be subject to securities exemptions.
Oregon	Adopted on May 3, 2019, HB 2488 prohibits the state government from accepting payments made using virtual currency.
Rhode Island	SB 753, if enacted, would amend current money transmitter laws to include cryptocurrencies and would require businesses engaging in the transmission of virtual currency to obtain a license from the state. Introduced on February 28, 2019, HB 5776 is a comprehensive proposal for the regulation of virtual currency that would, if enacted, exempt virtual currency from state securities law.
South Carolina	SB 738, if enacted, would exempt blockchain tokens from securities and money transmission laws. SB 738 would also establish a state sanctioned fintech sandbox.
South Dakota	Adopted on March 7, 2019, HB 1196 defines “blockchain technology” for purposes of state law regulating electronic transactions and contracts.
Utah	Adopted on March 26, 2019, SB 213 exempts blockchain tokens from state money transmitter laws.
Vermont	HB 117, if enacted, would extend the definition of “marketplace facilitator” to include those who provide virtual currency.
Virginia	HB 2415, if enacted, would create a rebuttable presumption that a business record registered on a blockchain is self-authenticating for certain facts.
Washington	Adopted on April 26, 2019, SB 5638 states that an electronic record may not be denied legal effect because it was generated, communicated, received, or stored using blockchain technology.
West Virginia	SB 583, if enacted, would establish a state sanctioned fintech sandbox.
Wyoming	Adopted on February 19, 2019, HB 57 creates a state sanctioned fintech sandbox. HB 62, HB 70, HB 74, HB 185, and DF 125 were all adopted on February 26, 2019. HB 62 establishes open blockchain tokens with certain characteristics are not subject to securities exemptions. HB 70 authorizes the Secretary of State to develop and

implement a blockchain filing system. HB 74 authorizes a state-chartered special purpose depository as a new form of financial institution. HB 185 authorizes corporations to issue certificate tokens via blockchain in lieu of stock certificates. SF 125 recognizes various categories of digital assets (including virtual currency) and identifies the personal property rights for those owning such assets. SF 125 also allows banks to act as “qualified custodians” for digital assets.

In addition, the following states proposed to study blockchain technology in various contexts: Arizona, Colorado, Connecticut, Florida, Kentucky, Maine, Massachusetts, Nevada, New York, North Dakota, Oregon, Texas, and Virginia.

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