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Blockchain and Cryptocurrency: State Law Roundup

In the absence of new federal legislation governing blockchain technology and cryptocurrencies,^[1] state governments are taking a variety of actions -- from legislation, administrative actions and government-funded studies -- that affect the operation of blockchain and cryptocurrency businesses.

This increase in state activity is both a blessing and a curse. The blockchain and cryptocurrency sector welcomes most enabling legislation and business development efforts, but the resulting patchwork of often conflicting definitions, laws and regulations creates a minefield for industry participants to maneuver, significantly increasing compliance costs.

State action has taken several different forms – some proactive, others defensive.^[2] Their actions include (1) business development initiatives promoting blockchain and cryptocurrencies; (2) new laws and regulations enabling blockchain technology in various applications, so that smart contracts, signatures and public data recorded on a blockchain are legally valid; (3) employing blockchain technology to make state government more efficient in managing tax records, business licenses, Medicaid rosters, food stamps and other programs; and (4) warning citizens about the dangers of initial coin offerings and unregistered cryptocurrency exchanges.

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

State	Legislative or Administrative Action
Alabama	Alabama in May 2017 enacted SB173/HB215, the “Alabama Monetary Transmission Act” to regulate non-banking entities that engage in the business of selling, issuing or otherwise dispensing checks or transfers of money and require businesses dealing with cryptocurrencies to obtain a money transmitters license.
Alaska	HB180 would, if enacted, define cryptocurrencies and subject businesses engaged in transmitting cryptocurrencies to Alaska’s money transmitter laws.
Arizona	Arizona enacted, in April 2017, both (1) HB2417, which authorizes the use of blockchain technology and smart contracts in the sale of goods and services, leases and documents of title under the Uniform Commercial Code, makes clear that blockchain and smart contracts are OK for commercial transactions, defines “blockchain” and “smart contract” and declares that all data tied to a blockchain is “considered to be in an electronic format and to be an electronic record” that is acceptable for use by the State; and (2) HB2216, which prohibits the requirement that citizens

	have their guns tracked via a blockchain. SB1091, which the Governor vetoed, would have permitted taxpayers to pay their state taxes in cryptocurrencies. Bills recently under consideration include SB1145, which would, if enacted, address taxability of gains or losses on cryptocurrency transactions; HB2602 (which has cleared the legislature), would, if enacted, prohibit municipalities from restricting the right of an individual from running a blockchain node in his or her home; and HB 2601, which would, if enacted, regulate ICOs.
California	SB843 was enacted in June 2016, prohibiting the sale of raffle tickets for cryptocurrency. Another bill recently considered (AB2658) would, if enacted, recognize blockchain signatures and other data as electronic records and provide certain regulations regarding ownership of data on blockchains. SB838 would, if enacted, permit a corporation's stock records to be kept on a blockchain. Efforts to prohibit the unlicensed engagement in any virtual currency business failed.
Colorado	Colorado enacted SB86 in May 2018, which calls for the evaluation of the use of blockchain technology to protect government computer systems from cyber-attacks (focusing on security and transparency). HB1426, which would have excluded specific cryptocurrencies from being regulated as securities, failed. Colorado is also considering action encouraging government use of blockchain technology, such as for business licensing records. HB1220, which recently failed in committee, would have regulated as money transmitters certain people who deal with cryptocurrencies.
Connecticut	Connecticut enacted HB6800 in June 2015, amending Connecticut's money transmission statute to require businesses engaged in virtual currency transmission to be licensed, and HB7141 in November 2017, requiring money transmitters holding virtual currency for another person actually hold such virtual currency (thus treating virtual currency as not fungible). Proposed Bill No. 5001 would, if enacted impose a fee on virtual currency transfers in Connecticut.
Delaware	Delaware in July 2017 enacted SB69, authorizing the use of blockchain technology for corporate records, including stock records and stock trading.
Florida	Florida enacted HB1379 in June 2017, an anti-money laundering bill classifying Bitcoin as a "monetary instrument," targeting people who leverage Bitcoin to hide funds generated from illicit activities. HB1357, which did not survive the legislative session, would have provided for "electronic credentialing" of motor vehicles (paving the way for blockchain applications in motor vehicle titling and licensing) and insured that contracts would remain valid even if they use an electronic record containing a smart contract term.
Georgia	Georgia enacted HB811 in April 2016, empowering state regulators to promulgate rules and regulations governing virtual currency businesses. SB464, which failed, would have required the State to accept cryptocurrencies for payment of taxes and license fees.
Hawaii	Hawaii by 2014 regulatory edict, prohibited the transmission of Bitcoin under its money transmitter laws. In 2016, the Hawaii Division of Financial Institutions decreed that Bitcoin businesses would be required to establish and maintain reserves, significantly and adversely affecting the industry. SB 2853 and SB 3082 would, if enacted, reclassify cryptocurrency-using businesses as "money transmitters" and impose licensing requirements on exchanges. HB1481 would, if enacted, encourage a study of how

	cryptocurrency and blockchain technology can help Hawaii develop economically.
Illinois	The Illinois Department of Financial and Professional Regulation issued guidance in June 2017 stating that persons or entities engaged in the transmission solely of digital currencies are not money transmitters subject to licensure. HR120 would, if enacted, create the Illinois Blockchain Initiative to study blockchain technology. HJR25, which would, if enacted, create the Illinois Legislative Blockchain and Distributed Ledger Task Force to study how, and if, Illinois and its counties and cities could benefit from blockchain technology for recordkeeping and service delivery. Some targeted applications include a Medicaid recipient roster, food stamp eligibility determinations, and digital marketplaces for snow removal, recycling and other services. HB5335 would, if enacted, allow the payment of taxes in cryptocurrency.
Kansas	Kansas in June 2014 issued guidance (through the State Bank Commissioner) stating that that persons or entities engaged in the transmission solely of digital currencies are not money transmitters subject to licensure.
Maine	SB950, which died in the legislature, would have authorized a 90 day study to learn the effects of using blockchain technology in conjunction with paper ballots in Maine elections.
Maryland	The Maryland Office of the Commissioner of Financial Regulation issued an advisory in April 2014, stating that the State would defer to federal laws and regulations when dealing with cryptocurrencies. SB1068/HB1634 would, if enacted, mandate the Maryland Financial Consumer Protection Commission to study cryptocurrencies, blockchain technology and the use of ICOs to raise capital.
Massachusetts	Massachusetts issued, through its Division of Banks, an opinion in May 2014 stating that Bitcoin ATMs are not "financial institutions" subject to regulation and exempting Bitcoin from foreign currency transmission regulations. Secretary of the Commonwealth William Galvin warned investors in December 2017 about cryptocurrency investments and announced a broad investigation into ICOs.
Michigan	The Michigan Department of Treasury issued guidance concerning virtual currencies and the taxability of cryptocurrency transactions, and clarified that purchases of cryptocurrencies would not be subject to state sales taxes.
Missouri	The Missouri Department of Revenue issued a private letter ruling in 2015 concluding that the purchase of Bitcoin through an ATM provider is not sales taxable because Bitcoin is intangible property, not tangible property to which Missouri's sales tax applies.
Montana	Montana strengthened its anti-money laundering laws by requiring the reporting of donations made through a payment gateway that includes Bitcoin. Montana also awarded one of the Nation's first governmental grants, to a private data center engaged in blockchain security services, with such funds to be used for hardware, software and wages.
Nebraska	LB694 would, if enacted, prohibit local governments from regulating or taxing blockchain technology. LB691 would, if enacted, make cryptocurrencies subject to Nebraska's anti-money laundering statutes. LB695 would, if enacted, define and recognize smart contracts and the use of blockchain technology for digital signatures. LB987 would, if enacted,

	adopt the Uniform Regulation of Virtual Currency Business Act, providing a regulatory framework for virtual currency business activity.
Nevada	Nevada in June 2017 enacted a law (SB 398) authorizing the use of blockchain technology and smart contracts by Nevada citizen in commercial transactions. The purpose was to insure that the state and its subdivisions don't erect barriers to such use -- no governmental entity can impose taxes, fees or licensing requirements on such use. The law also prohibits imposing taxes, permitting requirements or fees on blockchain use, and made clear that records on blockchain satisfy legal requirements for writing records.
New Hampshire	New Hampshire in June 2017 enacted HB436, which exempted users of cryptocurrency from registration as money transmitters.
New Jersey	The New Jersey Division of Taxation issued a memorandum in 2015 addressing the taxation of cryptocurrency transactions. AB3433 (the Uniform Fiduciary Access to Digital Assets Act) was enacted in September 2017, addressing fiduciary use of digital records. AB1906 (the "Digital Currency Jobs Creation Act") would establish a regulatory framework for digital currency use in New Jersey.
New Mexico	New Mexico enacted HB250 in January 2017, requiring the licensure of money transmitters (but not specifically listing cryptocurrency transmitters as money transmitters).
New York	New York in June 2015 became the first state to regulate virtual currency companies through state agency rulemaking. Specifically, New York in 2015 adopted regulations (NYCRR200) severely regulating cryptocurrency, requiring those engaged in any "virtual currency business activity" to obtain a license (the so-called "BitLicense"), employ a compliance officer and meet capital reserve and other requirements. This regulatory action significantly chilled the environment for cryptocurrency and blockchain projects in New York (despite New York City's desire to be known as the "Blockchain Capital of the World"). Few BitLicenses have been granted. Even in early 2018, at the Consensus 2018 conference in New York City, New York regulators were asking blockchain and cryptocurrency industry players "how can we make you love us again?" At the same conference, the Premier of Bermuda encouraged the audience to fly 90 minutes to Bermuda, where the government will "help you do your ICO." Several bills have been introduced in the New York Assembly, without adoption. One bill (AB8792) would provide for a study of blockchain technology to protect voter records and election results. Another bill (AB8780) would define blockchain technology and smart contracts and recognize digital signatures on a blockchain as valid. Others would promote the use of blockchain technology, create various task forces to study the technology and its applications, study the impact of a state-issued cryptocurrency, and study the impact of blockchain technology on the State's financial markets (AB8793, AB8783, AB9685). The Department of Financial Services issued guidance in February 2018 to BitLicense holders concerning anti-fraud measures and policies.
North Carolina	North Carolina enacted HB289 in June 2016, clarifying that virtual currency transmission constitutes money transmitting under the North Carolina Money Transmitters Act (but also clarifying blockchain-related elements that are not governed by the law). A related law (HB229) was enacted in July 2017.
Ohio	The Ohio Department of Public Safety determined that Bitcoin cannot be

	accepted for the purchase of alcohol because its fluctuating value means it is a commodity, not legal tender.
Oklahoma	Oklahoma supplemented an existing statute (1-9-332) to state that a Bitcoin transferee is not afforded the same protections as money transmitters, and that a seller of a product or service who accepts Bitcoin does not take the Bitcoin free and clear of liens, because it is property not a currency.
Oregon	Oregon required, in May 2015, that cryptocurrency exchanges be licensed as money transmitters.
Pennsylvania	Pennsylvania enacted HB850 in November 2016, to include cryptocurrencies in the definition of "money" for purposes of Pennsylvania's money transmitter laws.
South Carolina	South Carolina enacted AB266 in June 2016, a money transmitter law that includes regulation of cryptocurrencies.
Tennessee	The Tennessee Department of Financial Institutions issued guidance in December 2015, exempting cryptocurrency from its money transmitter laws because cryptocurrency is not money. SB1662/HB1507, which was enacted in March 2018, authorized the use of blockchain technology and smart contracts in conducting electronic transactions and protects certain ownership rights in data secured on a blockchain, following a similar, but not identical, path as Arizona's HB2417. HB2093 (which has passed through the legislature) would, if enacted, prohibit trustees of defined contribution plans or related investment vehicles from investing in cryptocurrencies.
Texas	The Texas Department of Banking issued guidance in April 2014 exempting cryptocurrency from its money transmitter laws because cryptocurrency is not money.
Utah	Utah enacted SB175 in March 2017, which made cryptocurrencies subject to Utah's Uniform Unclaimed Property Act.
Vermont	Vermont has enacted HB868 in June 2016 authorizing blockchain-based digital records to be "business records" under Vermont's rules of evidence; HB182 in May 2017 defining "virtual currency" for purposes of Vermont's money transmitter law; SB135 in June 2017, mandating a study into the benefits of blockchain technology; and SB269 in May 2018, defining "blockchain" and "blockchain technology"; enabling the creation and regulation of personal information protection companies; enabling the creation of blockchain-based limited liability companies; creating a study for the potential use of blockchain technology in government records; provide that any "fact or record" verified through the use of a blockchain is "authentic"; and imposing a tax on bitcoin transactions. Vermont is also exploring virtual or remote citizenship, similar to what the nation of Estonia did a year ago (e-citizens).
Virginia	Virginia enacted HB1608 in February 2017 creating the Uniform Fiduciary Access to Digital Assets Act, allowing fiduciaries to manage digital property (including cryptocurrencies). The Virginia Bureau of Financial Institutions has published a notice stating that transactions solely involving cryptocurrencies are not government by Virginia's money transmitter laws. HJR153 would, if enacted, mandate a study of blockchain applications for state recordkeeping, data storage and delivery of governmental services.
Washington	Washington enacted SB5031 in April 2017, bringing businesses engaged in cryptocurrency transactions under Washington's money transmissions

	laws. HB1045 would, if enacted, further address licensing of such businesses and enforcement of such laws.
West Virginia	West Virginia enacted HB2585 in April 2017, defining cryptocurrencies as monetary instruments and prohibiting the use of cryptocurrency in criminal activities. West Virginia's government is also piloting a voting system for absentee voters in the military using a blockchain technology driven mobile application, with plans to use it state-wide in November 2018 if the pilot is successful.
Wisconsin	Wisconsin now permits licensed money transmitting businesses to also transmit cryptocurrencies under agreement with the Department of Financial Institutions.
Wyoming	Wyoming (which may now be the most cryptocurrency friendly state in the United States) enacted laws exempting utility tokens (those not marketed as an investment and exchangeable for goods and services existing before tokenization) from Wyoming state securities laws (if the issuer has not entered into a repurchase agreement or an agreement to locate buyers for the token) (HB70), exempting cryptocurrencies from Wyoming's money transmission laws (HB19), modifying state statutes to allow for blockchain-based records, shareholder management and shareholder votes (HB101), creating "series LLCs", a specialized form of corporate governance contract favored by decentralized protocols (HB126), and exempting certain crypto assets from state taxation (SB111). Wyoming is also considering allowing taxpayers to pay their state taxes in cryptocurrency.

To address the patchwork created by the states, the newly-created Digital Assets Trade Association has a mission to promote self-governance, standardized definitions and laws and industry "best practices." It is seeking a regulatory climate that strikes the balance between innovation and consumer protection for all 50 states and US territories, and carry that message to international bodies as well. Until the various state, federal and industry interests coalesce, however, blockchain and cryptocurrency businesses must remain cognizant of the many regulations and regulators that affect them.

About Our Practice

Blockchain is the next precedent-setting technology disruptor of our time. This distributed and immutable digital platform of transactions and records has the potential to revolutionize countless industries over the next decade. Our ranks include not only experienced practitioners, but industry thought leaders, frequent speakers, and authors on emerging and transformative technologies. As a nationwide full-service law firm, we draw upon the expertise of attorneys from a wide host of practice areas to ensure our clients are well-supported and advised in all aspects of their business.

^[1] Several federal agencies are stepping up their efforts to oversee and regulate the evolving blockchain landscape: (1) The Securities and Exchange Commission has taken an evolving stance concerning the use of initial coin offerings to raise capital and the use of unlicensed cryptocurrency exchanges. See Lathrop Gage LLP Alert *Cryptocurrency 101* dated April 9, 2018. (2) The Internal Revenue Service has declared that cryptocurrencies are property (not currencies), and thus perhaps subject to taxation when transferred. See Lathrop Gage LLP Alert *Cryptocurrency Taxation* dated March 26, 2018. (3) The Treasury Department (through its Financial Crimes Enforcement Network, or FinCen is applying the Bank Secrecy Act and other anti-money laundering statutes and regulations to ICO issuers. (4) The Commodities Futures Trading Commission has determined that cryptocurrencies are commodities, subjecting exchanges and clearinghouses engaged in cryptocurrency transactions to CFTC oversight.

^[2] A recent Brookings Institute report entitled "Blockchain and US State Governments: An Initial Assessment," April 17, 2018, divided the states into seven categories according to their relative focus on blockchain issues: Unaware, Reactionary, Appreciative, Organized, Actively Engaged and Recognizing Innovation Potential.

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