

A Proposed Statutory Framework for State Regulation of Virtual Currency Businesses: The Uniform Law Commission's "Uniform Regulation of Virtual-Currency Businesses Act"

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Last July, the Uniform Law Commission completed a uniform model state law, known as the [Uniform Regulation of Virtual-Currency Businesses Act](#) ("URVCBA" or the "Act") (Steve Weise participated in the preparation of the Act). Currently, state regulation in the virtual currency space is carried out under a patchwork of laws that typically do not directly contemplate virtual currency and blockchain technology. Attempting to bring clarity as to which types of entities require state licensure and also to encourage responsible innovation in this emerging area, the URVCBA provides a statutory framework for the regulation of companies engaging in "virtual-currency business activity." After carefully defining which activities fall under the Act's purview, the uniform law requires covered entities to make the typical financial and business disclosures in its application, and also contains numerous user and consumer protections, including certain enforcement powers by the relevant state authority.

The mission of the Uniform Law Commission is to draft state laws on topics where standardized regulation across state lines is practical (e.g., the Uniform Commercial Code (the "UCC")). Gaining final approval in 2017, the Act has so far been [introduced in Connecticut, Hawaii, and Nebraska](#).

As expressed by the drafters, the goal of the URVCBA is not to regulate virtual currencies, but rather to “regulate persons that issue virtual currencies or that provide services that allow others to transfer virtual currencies, provide ‘virtual-currency’ exchange services to the public, or offer to take custody of virtual currency for other persons.” To that end, the Act only applies to activities that involve the provision of products or services constituting “virtual-currency business activity.” As explained in the Act’s prefatory note, “virtual-currency business activity” as covered under the Act is similar to services already subject to state licensing requirements as a “money transmitter” or provider of “money services.” The Act provides for a three-tier licensing system: exempting providers engaging in minor activities; providing a lighter regulatory environment and an “on-ramp” to encourage innovations in virtual currency businesses; and “full licensure” for providers with certain business volumes. To help reduce regulatory compliance costs, the Act outlines procedures for enabling reciprocal licensing across state lines.

Under URVCBA §102(25), “virtual-currency business activity” means:

- exchanging, transferring, or storing virtual currency;
- engaging in virtual currency administration, whether directly or through an agreement with a virtual currency control-services vendor;
- holding electronic precious metals or electronic certificates representing interests in electronic precious metals on behalf of another; or
- exchanging digital representations of value within online games or game platforms for virtual currency or legal tender.

Importantly, the Act contains express definitions of definitions of “exchange,” “store,” “transfer” and also “control” – a full discussion of which is beyond the scope of this post – but which affect the types of services that would be treated as engaging in virtual currency business activity and covered under the Act. Beyond the core concepts of exchange, transfer and store, covered business activity must occur between a service provider and customer (either a consumer or business user), and thus the Act does not regulate non-“end-user facing,” “enterprise level” non-currency functions.

Moreover, URVCBA §102(3)(A) defines the term “control” to mean the “power to execute unilaterally or prevent indefinitely a virtual currency transaction.” Under the Act, if the “owner” of the virtual currency gives less than such unilateral powers to enter into or prevent a transaction, “control” is not present. Thus, the Act would not cover so-called “multi-sig” arrangements, which require the authorization of multiple parties to initiate a virtual currency transaction. The drafters tout this transactional definition of “control” as “one of the major innovations that this act offers over other state efforts to regulate virtual-currency businesses.”

Lastly, URVCBA §103 lists specific exemptions. As such, the Act is inapplicable to activities by banks, licensed money services entities, and various computing infrastructure service providers, among others.

Some issues to think about as the URVCBA is considered by state legislatures:

- A number of states have recently sought to gain a pro-virtual currency and pro-blockchain reputation and become the new hub of technology start-ups in this area. This has translated into [several state laws and proposed bills](#) in the past year that have clarified some enforceability and evidentiary issues related to blockchain and smart contracts. Given this legislative environment, it is likely that more states will consider implementing the URVCBA in the coming year.
- A multi-state regulatory structure that clarifies rules and mitigates risks should encourage sound business practices that would engender trust in virtual currency users and potential investors in such businesses. With virtual currencies and blockchain-based businesses continuing to evolve in 2018, standardized regulation would only encourage this trend.
- In 2015, the New York State Dept. of Financial Services (NYDFS) released its final [“BitLicense” rules](#), a [comprehensive framework for regulating digital currency-related businesses](#). To date, the NYDFS has approved six firms for virtual currency charters or licenses. The URVCBA has been characterized as a marked improvement over the BitLicense regime – and should the New York legislature consider the URVCBA, it is possible that the BitLicense could be revamped or even replaced in favor of the uniform law.

It should also be noted that the Uniform Law Commission is also nearing completion of a companion act, the [Article 8 Companion Act to the Uniform Regulation of Virtual Currency](#). That act will provide a mechanism for holding and transfer of virtual currencies held by a person licensed under the URVCBA. This upcoming uniform law will accomplish that by using the existing legal structure in place for the holding and transfer of securities and financial assets held by a securities intermediary under UCC Article 8. The use of this well-understood and effective system should make the holding and transfer of virtual currencies more efficient and effective. The companion act will not treat virtual currencies as securities.

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