WEST virginia legislature

2022 regular session

Introduced

House Bill 4010

By Delegates Barrett, Dean, Linville, Steele, Pack, Wamsley, Bates and Capito

[Introduced February 03, 2022; Referred to the Committee on Banking and Insurance then the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-3tt; to amend said code by adding there to a new section, designated §8-12-5h; to amend and reenact §24-3-5 of said code; to amend and reenact §31D-1-125, §31D-1-150, §31D-1-151, and §31D-1-152 of said code; to amend said code by adding thereto a new section, designated §31D-6-605; to amend and reenact §31D-6-625 of said code; to amend and reenact §31D-7-720 of said code; to amend and reenact §31D-7-724 of said code; to amend and reenact §31D-7-730 of said code; to amend and reenact §31D-16-1601 and §31D-16-1603 of said code; to amend said code by adding thereto a new section, designated §31D-16-1607; to amend and reenact §31E-1-150, and §31E-1-151 of said code; to amend and reenact §31E-15-1501, and §31E-15-1503 of said code; to amend said code by adding thereto a new section, designated §31E-15-1507; to amend said code by adding thereto a new chapter, designated §31I-1-101, §31I-1-102, §31I-2-201, §31I-2-202, §31I-2-203, §31I-2-204, §31I-2-205, and §31I-2-206; to amend and reenact §32-4-401, and §32-4-402 of said code; to amend and reenact §32A-2-1, §32A-2-3, and §32A-2-22 of said code; to amend said code by adding thereto a new article, designated §39A-4-101, §39A-4-102, §39A-4-103, §39A-4-201, §39A-4-202, §39A-4-203, §39A-4-204, and §39A-4-205; to amend and reenact §46A-6-102 of said code; to amend and reenact §47-9-1 of said code; to amend said code by adding thereto a new section, designated §47-9-59a; to amend and reenact §47B-1-1 of said code; and to amend said code by adding thereto a new section, designated §47B-11-6, all relating to digital assets; recognizing virtual currency; prohibiting taxation of virtual currency by counties and municipalities; defining terms; prohibiting public utilities from charging fees or infringing upon the use of energy used in mining of digital or virtual currency; setting out duties of the Secretary of State; providing for the development of a blockchain filing system; providing for rulemaking; providing for notice requirements; setting out various effective dates; providing for use of blockchain by corporations and corporate shareholders; allowing for corporate shares may be issued by certificate tokens; providing for elements for use of data address in shareholder meetings and voting; providing for network signatures in corporate voting; allowing for corporate, nonprofit corporate, partnerships, limited partnerships, record keeping on an information storage device; providing for conversion of electronic records to writing; providing for admissibility of records as evidence; creating the Digital Assets Act; providing for a short title, setting our legislative findings; creating blockchain enabled institutions; providing blockchain institutions shall be established as a business corporation; setting powers and duties of blockchain institutions; providing for applicability of federal and state law; providing for required disclosures of blockchain institutions; providing for continuing jurisdiction of blockchain institutions during liquidation or conservatorship; making the Consumer Credit Protection Act applicable to blockchain institutions; providing for voluntary dissolution of blockchain institutions; providing for exemptions from securities regulations in certain circumstances; exempting virtual currency from regulation as checks and money order sales, money transmission services, transportation and current exchange; creating the Utility Token Act; providing for legislative findings; defining terms; classifying blockchain tokens as intangible personal property; setting out requirements for a blockchain token facilitator; making willful failure to comply with the act an unlawful trade practice; allowing referral for investigation and prosecution by secretary of state; providing for classification of digital assets as intangible personal property in certain circumstance; providing for procedure for perfection of security interest in digital assets; allowing state chartered banks to provide custodial service of digital assets; setting out duties of a bank to act as a qualified custodian; requiring banks to have an independent accountant conduct an examination consistent with federal law; providing that digital assets held in custody are not depositor liabilities or assets of a bank; establishing nature of relationship between the customer and a bank in custodial arrangements; allowing rulemaking of the banking commissioner; providing for jurisdiction of courts with respect to digital assets; and making the Consumer Credit Protection Act applicable to custodial arrangements.

*Be it enacted by the Legislature of West Virginia:*

CHAPTER 7. COUNTY COMMISSIONS **AND** OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3tt. Prohibition on virtual currency taxes and fees.

(a) No county commission as set forth in §7-1-1 of this code shall:

(1) Impose any tax or fee on the use of virtual currency as that term is defined in §32A-2-1 of this code by any person or entity;

(2) Require any person or entity to obtain from the county commission any certificate, license, or permit to use virtual currency; or

(3) Impose any other requirements relating to the use of virtual currency by any person or entity.

(b) Nothing in this section prohibits a county commission from using virtual currency in the performance of its powers or duties in a manner not inconsistent with the provisions of §32A-1-1 *et seq.* of this code.

**CHAPTER 8. MUNICIPAL CORPORATIONS**.

ARTICLE 12. GENERAL AND SPECIFIC **POWERS**, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5h. Prohibition on blockchain taxes and fees.

(a) No governing body of any municipality or city as those terms are defined in §8-1-2 of this code shall:

(1) Impose any tax or fee on the use of virtual currency as that term is defined in §32A-2-1 of this code by any person or entity;

(2) Require any person or entity to obtain from the governing body of any municipality or city any certificate, license, or permit to use virtual currency; or

(3) Impose any other requirements relating to the use of virtual currency by any person or entity.

(b) Nothing in this section prohibits a governing body of any municipality or city from using virtual currency in the performance of its powers or duties in a manner not inconsistent with the provisions of §32A-1-1 *et seq.* of this code.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-5. Schedule of rates to be filed with commission.

(a) Every public utility shall file with the commission, and keep open to public inspection, schedules showing all the rates, charges and tolls for service to be rendered by it or by other persons, firms or corporations in connection with it: *Provided,* That the reports and tariffs filed by interstate carriers with the Public Service Commission may be copies of its reports and tariffs filed with the Interstate Commerce Commission; but nothing herein shall preclude the Public Service Commission from requiring interstate carriers to furnish information bearing upon any complaint or question pending before said Public Service Commission and with which it has a right to deal.

(b) No public utility shall impose a surcharge, limitation, quota, fee, or infringe upon the use of energy in any way regardless of source of generation, including, but not limited to, coal, natural gas, propane, wind, solar, nuclear, geothermal or nuclear when utilized in the mining, transmitting, validating, minting or use of virtual or digital currency in any way.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31D-1-125. Filing duty of Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of §31D-1-120 of this code, the Secretary of State shall file it.

(b) The Secretary of State files a document by recording it as filed on the date and time of receipt unless a delayed effective time is specified in the document. After filing a document, except as provided in §31D-5-503 of this code and §31D-15-1509 of this code, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a receipt for the record and the fees. Upon request and payment of a fee, the Secretary of State shall send to the requester a certified copy of the requested record.

(c) If the Secretary of State refuses to file a document, he or she shall return it to the domestic or foreign corporation or its representative within five days after the document was delivered, together with a brief, written explanation of the reason for his or her refusal.

(d) The Secretary of State’s duty to file documents under this section is ministerial. His or her or her filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(e) (1) As used in this subsection the following words shall mean:

(A) “Application programming interface” means a computer software intermediary which allows two (2) distinct software applications to interact;

(B) “Blockchain” means a digital ledger or database which is chronological, consensus‑based, decentralized, and mathematically verified in nature;

(C) “Required filings” means all documents, reports, data, and other information required by law to be filed with the secretary of state.

(2) No later than January 1, 2023, the Secretary of State shall develop and implement an industry leading filing system through which all required filings, as defined in this subsection, may be submitted. The Secretary of State shall endeavor to use blockchain technology and include an application programming interface as components of the filing system, as well as robust security measures and other components determined by the Secretary of State to be best practices or which are likely to increase the effective and efficient administration of the laws of this state. The Secretary of State may create a blockchain for the purposes of this section or contract for the use of a privately created blockchain.

(3) The Secretary of State may:

(i) Consult with all interested parties before developing the filing system specified by this subsection, including businesses, registered agents, attorneys, law enforcement, and other interested persons;

(ii) If possible, partner with technology innovators and private companies to develop necessary components of the system.

(4)The Secretary of State may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to effectuate the provisions of this subsection.

§31D-1-150. Definitions.

As used in this chapter, unless the context otherwise requires a different meaning, the term:

~~(1)~~ “Articles of incorporation” includes, but is not limited to, amended and restated articles of incorporation and articles of merger.

~~(2)~~ “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

~~(3)~~ “Conspicuous” means written so that a reasonable person against whom the writing is to operate should have noticed, including, but not limited to, printing in italics or boldface or contrasting color, or typing in capitals or underlined.

~~(4)~~ “Corporation” or “domestic corporation” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

“Data address” means the string of alphanumeric characters on one or more distributed or other electronic networks for databases that may only be accessed by knowledge or possession of a private key in order to facilitate or record transactions on the distributed or other electronic network or database.

~~(5)~~ “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

~~(6)~~ “Distribution” means a direct or indirect transfer of money or other property or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares: *Provided,* That “distribution” does not include a direct or indirect transfer of a corporation’s own shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; or a distribution of indebtedness.

~~(7)~~ “Effective date of notice” means the date as determined pursuant to §31D-1-159 of this code.

~~(8)~~ “Electronic transmission” or “electronically transmitted” means any process of communication that does not directly ~~involving~~ involve the physical transfer of paper, including a process of communication that uses one or more distributed or other electronic networks, or databases, and that is suitable for the retention, retrieval and reproduction of information by the recipient.

~~(9)~~ “Employee” includes an officer and may include a director*: Provided,* That the director has accepted duties that make him or her also an employee.

~~(10)~~ “Entity” includes corporations and foreign corporations; nonprofit corporations; profit and nonprofit unincorporated associations; limited liability companies and foreign limited liability companies; business trusts, estates, partnerships, trusts and two or more persons having a joint or common economic interest; and state, United States and foreign government.

(11) “Foreign corporation” means a corporation for profit incorporated under a law other than the laws of this state.

~~(12)~~ “Governmental subdivision” includes, but is not limited to, authorities, counties, districts and municipalities.

“Identity” means the name of a shareholder or the data address for which the shareholder has knowledge or possession of this private key uniquely associated with the data address.

~~(13)~~ “Individual” includes, but is not limited to, the estate of an incompetent or deceased individual.

“Network signature” means a string of alphanumeric characters that when broadcast by a person to the data address’s provides reasonable assurances to a recipient that the broadcasting person has knowledge or possession of the private key uniquely associated with the data address.

~~(14)~~ “Person” includes, but is not limited to, an individual and an entity.

~~(15)~~ “Principal office” means the office so designated in the return required pursuant to §11-12C-3 of this code where the principal executive offices of a domestic or foreign corporation are located.

~~(16)~~ “Proceeding” includes, but is not limited to, civil suits and criminal, administrative and investigatory actions.

~~(17)~~ “Record date” means the date established under article six or seven of this chapter on which a corporation determines the identity of its shareholders and their shareholdings. The determinations are to be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

“Record of shareholders” means one or more records administered by or on behalf of a corporation that records the identity of all the corporation’s shareholders and the number and class of shares held by each shareholder.

~~(18)~~ “Registered agent” means the agent identified by the corporation pursuant to §31D-5-501 of this code.

~~(19)~~ “Registered office” means the address of the registered agent for the corporation, as provided in §31D-5-501 of this code.

~~(20)~~ “Secretary” means the corporate officer to whom the board of directors has delegated responsibility under §31D-8-840 of this code for custody of the minutes of the meetings of the board of directors and the meetings of the shareholders and for authenticating records of the corporation.

~~(21)~~ “Shareholder” means the person in whose name shares are registered in the records of a corporation, ~~or~~ the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation or the owner of a private key that is uniquely associated with a data address that facilitates or records the sending and receiving of shares.

~~(22)~~ “Shares” means the units into which the proprietary interests in a corporation are divided.

~~(23)~~ “Sign” or “signature” includes, but is not limited to, any manual, facsimile, conformed or electronic signature with means to identify a record by signature, mark or other symbol, with intent to authenticate it or a network signature.

~~(24)~~ “State”, when referring to a part of the United States, includes a state and commonwealth and a territory and insular possession of the United States and their agencies and governmental subdivisions.

~~(25)~~ “Subscriber” means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~(26)~~ “United States” includes, but is not limited to, districts, authorities, bureaus, commissions, departments and any other agency of the United States.

~~(27)~~ “Voting group” means all shares of one or more classes or series that, pursuant to the articles of incorporation or this chapter, are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

~~(28)~~ “Voting power” means the current power to vote in the election of directors.

§31D-1-151. Notice.

(a) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is to be considered written notice.

(b) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective: (1) Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders; ~~or~~ (2) When an electronic transmission has been made to a data address provided by the shareholder; or ~~(2)~~ (3) when electronically transmitted to the shareholder in a manner authorized by the shareholder.

(d) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent return required pursuant to section three, article twelve-c, chapter eleven of this code or, in the case of a foreign corporation that has not yet delivered a return, in its application for a certificate of authority.

(e) Except as provided in subsection (c) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States mail, if mailed postpaid and correctly addressed; or

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated, if communicated in a comprehensible manner.

(g) If other provisions of this chapter prescribe notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

§31D-1-152. Number of shareholders.

(a) For purposes of this chapter, the following, identified as a shareholder in a corporation’s current record of shareholders, constitutes one shareholder:

(1) Three or fewer coowners;

(2) A corporation, partnership, trust, estate or other entity; ~~or~~

(3) The trustees, guardians, custodians or other fiduciaries of a single trust, estate or account; or

(4) One data address.

(b) For purposes of this chapter, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

Article 6. Shares and distributions.

§31D-6-605.  Construction of terms relating to stock and certificate tokens.

As used in this title, any reference to:

(1) Share certificate, share, stock, share of stock or words of similar import shall be construed to include a certificate token;

(2) A requirement to print information on a share certificate or words of similar import shall be construed to be satisfied if the information satisfies the requirements set forth in §31D-6-625 of this code;

(3) Certificated shares or words of similar import shall be construed to include shares represented by certificate tokens, and any reference to the delivery or deposit of these shares to the corporation shall be construed to refer to any method of granting control of the tokens to the corporation;

(4) A certificate being duly endorsed or words of similar import shall be construed to mean that the transaction authorizing transfer of control of the certificate token was signed by the lawful holder of the token with the network signature corresponding to the lawful holder’s data address to which the certificate token was issued or last lawfully transferred.

§31D-6-625. Form and content of certificates.

(a) Shares may, but need not, be represented by certificates. Unless this chapter or another provision of this code expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:

(1) ~~The name of the issuing corporation and that it is organized under the law of this state~~ The name of the person to whom, or in the case of a certificate token, the data address to which the token was issued;

(2) The name of the person to whom issued; and

(3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations applicable to each class and the variations in rights, preferences and limitations determined for each series and the authority of the board of directors to determine variations for future series must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Except as otherwise provided in this section, each share certificate: (1) Must be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors; and (2) may bear the corporate seal or its facsimile.

(e) If the person who signed, ~~either manually or in facsimile,~~ a share certificate no longer holds office when the certificate is issued, the certificate remains valid.

(f) The articles of incorporation or bylaws of a corporation may specify that all or a portion of the shares of the corporation may be represented by share certificates in the form of certificate tokens. The electronic message, command or transaction that transmits the certificate tokens to the data address to which a certificate token was issued shall be authorized at the time of issuance by one or more messages, commands, or transactions signed with the network signatures of two officers designated in the bylaws or by the board of directors of the corporation.

(g) As used in this section:

(1) “Blockchain” means a digital ledger or database which is chronological, consensus based, decentralized, and mathematically verified in nature;

(2) “Certificate token” means a representation of shares that is stored in an electronic format which contains the information specified under subsections (b) and (c) of this section, and this information is:

(A) Entered into a blockchain or other secure, auditable database;

(B) Linked to or associated with the certificate token; and

(C) Able to be transmitted electronically to the issuing corporation, the person to whom the certificate token was issued and any transferee.

ARTICLE 7. SHAREHOLDERS.

PART 2. VOTING.

§31D-7-720. Shareholders list for meeting.

(a) After fixing a record date for a meeting, a corporation must prepare an alphabetical or numerical list of the ~~names~~ identities of all its shareholders who are entitled to notice of a shareholders’ meeting. The list must be arranged by voting group and, within each voting group, by class or series of shares and show the ~~address of and~~ number of shares held by each shareholder. The list shall also show each shareholder’s physical mailing address, if the identity of a shareholder on the list consists of the shareholder’s name, and each shareholder’s authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder’s data address.

(b) The shareholders’ list must be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation’s principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his or her agent or attorney is entitled on written demand to inspect and, subject to the requirements of §31D-16-602(c) of this code, to copy the list, during regular business hours and at his or her expense, during the period it is available for inspection.

(c) The corporation must make the shareholders’ list available at the meeting and any shareholder, his or her agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his or her agent or attorney to inspect the shareholders’ list before or at the meeting, or to copy the list as permitted by subsection (b) of this section, the circuit court, on application of the shareholder, may summarily order the inspection or copying at the corporation’s expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders’ list does not affect the validity of action taken at the meeting.

§31D-7-724. Corporations acceptance of votes.

(a) If the name or network signature signed on a vote, consent, waiver or proxy appointment corresponds to the name or data address of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder.

(b) If the name or network signature signed on a vote, consent, waiver or proxy appointment does not correspond to the name or data address of its shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder if:

(1) The shareholder is an entity and the name or network signature signed purports to be that of an officer or agent of the entity;

(2) The name or network signature signed purports to be that of an administrator, executor, guardian or conservator representing the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

(3) The name or network signature signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

(4) The name or network signature signed purports to be that of a pledgee, beneficial owner or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory’s authority to sign for the shareholder has been presented with respect to the vote, consent, waiver or proxy appointment; or

(5) Two or more persons are the shareholder as cotenants or fiduciaries and the name or network signature signed purports to be the name or data address of at least one of the coowners and the person signing appears to be acting on behalf of all the coowners.

(c) The corporation is entitled to reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory’s authority to sign for the shareholder.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with the standards of this section or §31D-7-722(b) of this code are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

PART 3. VOTING TRUSTS AND AGREEMENTS.

§31D-7-730. Voting trusts.

(a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, including, but not limited to, anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the ~~names and addresses~~ identities of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust. ~~and deliver copies of the list and agreement to the corporation's principal office.~~ The list shall also show each shareholder’s physical mailing address, if the identity of a shareholder on the list consists of the shareholder’s name, and each shareholder’s authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder’s data address.  Copies of the list and agreement shall be delivered to the corporation’s principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee’s name. A voting trust is valid for not more than ten years after its effective date unless extended under subsection (c) of this section.

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing written consent to the extension. An extension is valid for ten years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation’s principal office. An extension agreement binds only those parties signing it.

ARTICLE 16. RECORDS AND REPORTS.

§31D-16-1601. Corporate records.

(a) A record of shareholders administered by or on behalf of a corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of the identities its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical or numerical order by class of shares showing the number and class of shares held by each. The list shall also show each shareholder’s physical mailing address, if the identity of a shareholder on the list consists of the shareholder’s name, and each shareholder's authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder’s data address.  A record of shareholders may show both the shareholder’s name and data address.

(d) ~~A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time~~ Records administered by or on behalf of, or maintained by, a corporation may be kept on, or by means of, or be in the form of any information storage device or method or any one or more distributed or other electronic networks or databases provided that the records are kept in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences and limitations if shares issued pursuant to those resolutions are outstanding;

(4) The minutes of all shareholders meetings, and records of all action taken by shareholders without a meeting, for the past three years;

(5) All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section §31D-16-1620 of this code; and

(6) A list of the names and business addresses of its current directors and officers.

§31D-16-1603. Scope of inspection right.

(a) A shareholder’s agent or attorney has the same inspection and copying rights as the shareholder represented.

(b) The right to copy records under §31D-16-1602 of this code includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and requested by the shareholder. If a record is kept on or maintained in the form of an information storage device or method or any one or more distributed or other electronic networks or databases, the corporation is not required to convert the entire record into paper form but shall only be required to convert the requested record into paper form.

(c) The corporation may comply at its expense with a shareholders demand to inspect the record of shareholders under §31D-16-1602(b)(3) of this code by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder’s demand.

(d) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production, reproduction or transmission of the records.

§31D-16-1607. Conversion of electronic documents; admissibility as evidence.

(a) Except as otherwise required by federal or state law, any records maintained by a corporation in its regular course of business may be kept in the form of an electronic record and may be maintained on any information processing system or information storing device or medium.

(b) Upon a proper request by any person entitled to inspect the records maintained by a corporation, the corporation shall convert within a reasonable time any records that are kept in a manner as set forth in subsection (a) of this section into a clear and legible paper form. If the requested record is maintained in the form of any information storage device or method or any one or more distributed or other electronic networks or databases, the corporation is not required to convert the entire record into paper form but shall be deemed to comply with the requirements of this section by converting only the requested record into paper form.

(c) A clear and legible paper form produced from records that are kept in electronic format as described in this section is admissible as evidence and accepted for all other purposes to the same extent as an original paper record with the same information if the paper form portrays the record accurately.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31E-1-150. Chapter definitions.

As used in this chapter, unless the context otherwise requires a different meaning, the term:

~~(1)~~ “Articles of incorporation” includes, but is not limited to, amended and restated articles of incorporation and articles of merger.

~~(2)~~ “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

~~(3)~~ “Board” or “board of directors” means the group of persons vested with management of the affairs of the corporation irrespective of the name by which the group is designated.

~~(4)~~ “Business corporation” means a corporation with capital stock or shares incorporated for profit.

~~(5)~~ “Conspicuous” means written so that a reasonable person against whom the writing is to operate should have noticed, including, but not limited to, printing in italics or boldface or contrasting color, or typing in capitals or underlined.

~~(6)~~ “Corporation” or “domestic corporation” means a corporation without capital stock or shares, which is not a foreign corporation, incorporated under the laws of this state: *Provided,* That “corporation” or “domestic corporation” does not include towns, cities, boroughs or any municipal corporation or any department or any town, city, borough or municipal corporation.

~~(7)~~ “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

~~(8)~~ “Distribution” means a direct or indirect transfer of money or other property or incurrence of indebtedness by a corporation to or for the benefit of its members in respect of any of its membership interests or to or for the benefit of its officers or directors: *Provided,* That the payment of reasonable compensation for services rendered, the reimbursement of reasonable expenses, the granting of benefits to members in conformity with the corporation's nonprofit purposes and the making of distributions upon dissolution or final liquidation as provided §31E-13-1 *et seq.* of this code may not be deemed a distribution.

~~(9)~~ “Effective date of notice” means the date as determined pursuant to §31E-1-151 of this code.

~~(10)~~ “Electronic transmission” or “electronically transmitted” means any process of communication that does not directly ~~involving~~ involve the physical transfer of paper, including a process of communication that uses one or more distributed or other electronic networks or databases, and that is suitable for the retention, retrieval and reproduction of information by the recipient.

~~(11)~~ “Employee” includes an officer and may include a director: *Provided,* That the director has accepted duties that make him or her also an employee.

~~(12)~~ “Entity” includes corporation and foreign corporations; business corporations and foreign business corporations; profit and nonprofit unincorporated associations; limited liability companies and foreign limited liability companies; business trusts, estates, partnerships, trusts and two or more persons having a joint or common economic interest; and state, United States and foreign government.

~~(13)~~ “Foreign corporation” means any nonprofit corporation which is incorporated under a law other than the laws of this state.

~~(14)~~ “Governmental subdivision” includes, but is not limited to, authorities, counties, districts and municipalities.

~~(15)~~ “Individual” includes, but is not limited to, the estate of an incompetent or deceased individual.

~~(16)~~ “Member” means a person having membership rights in a corporation in accordance with the provisions of its certificate of incorporation or bylaws.

~~(17)~~ “Nonprofit corporation” means a corporation which may not make distributions to its members, directors or officers.

~~(18)~~ “Person” includes, but is not limited to, an individual and an entity.

~~(19)~~ “Principal office” means the office so designated in the return required pursuant to §11-12C-3 of this code, where the principal executive offices of a domestic or foreign corporation are located.

~~(20)~~ “Proceeding” includes, but is not limited to, civil suits and criminal, administrative and investigatory actions.

~~(21)~~ “Record date” means the date established under article six or seven of this chapter on which a corporation determines the identity of its members and their interests. The determinations are to be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

~~(22)~~ “Registered agent” means the agent identified by the corporation pursuant to §31E-5-501 of this code.

~~(23)~~ “Registered office” means the address of the registered agent for the corporation, as provided in §31E-5-501 of this code.

~~(24)~~ “Secretary” means the corporate officer to whom the board of directors has delegated responsibility under §31E-8-840(c) of this code for custody of the minutes of the meetings of the board of directors and the meetings of the members and for authenticating records of the corporation.

~~(25)~~ “Sign” or “signature” includes, but is not limited to, any manual, facsimile, conformed or electronic signature with means to identify a record by a signature, mark or other symbol, with intent to authenticate it.

~~(26)~~ “State”, when referring to a part of the United States, includes a state, commonwealth and a territory and insular possession of the United States and their agencies and governmental subdivisions.

~~(27)~~ “United States” includes, but is not limited to, districts, authorities, bureaus, commissions, departments and any other agency of the United States.

§31E-1-151. Notice.

(a) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is to be considered written notice.

(b) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective: (1) Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation’s current record of shareholders; ~~or~~ (2) When an electronic transmission has been made to a data address provided by the shareholder; or ~~(2)~~ (3) when electronically transmitted to the shareholder in a manner authorized by the shareholder.

(d) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent return required pursuant to §11-12C-3 of this code or, in the case of a foreign corporation that has not yet delivered a return, in its application for a certificate of authority.

(e) Except as provided in subsection (c) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States mail, if mailed postpaid and correctly addressed; or

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated, if communicated in a comprehensible manner.

(g) If other provisions of this chapter prescribe notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

ARTICLE 15. RECORDS AND REPORTS.

§31E-15-1501. Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members, if any, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order.

(d) ~~A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time~~ Records administered by or on behalf of, or maintained by, a corporation may be kept on, or by means of, or be in the form of any information storage device or method or any one or more distributed or other electronic networks or databases provided that the records are kept in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors;

(4) The minutes of all members’ meetings, and records of all action taken by members without a meeting, for the past three years;

(5) All written communications to members generally within the past three years, including the financial statements furnished for the past three years under §31E-15-1502 of this code; and

(6) A list of the names and business addresses of its current directors and officers.

§31E-15-1503. Scope of inspection right.

(a) A member’s agent or attorney has the same inspection and copying rights as the member represented.

(b) The right to copy records under §31E-15-1502 of this code includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and requested by the member. If a record is kept on or maintained in the form of an information storage device or method or any one or more distributed or other electronic networks or databases, the corporation is not required to convert the entire record into paper form but shall only be required to convert the requested record into paper form.

The term “inspect” for purposes of §31E-15-1502 of this code includes the making of extracts from the records reviewed.

(c) The corporation may comply at its expense with a member’s demand to inspect the record of members under §31E-15-1502(b)(3) of this code by providing the member with a list of members that was compiled no earlier than the date of the member’s demand.

(d) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production, reproduction or transmission of the records.

§31E-15-1507. Conversion of electronic documents; admissibility as evidence.

(a) Except as otherwise required by federal or state law, any records maintained by a corporation in its regular course of business may be kept in the form of an electronic record and may be maintained on any information processing system or information storing device or medium.

(b) Upon a proper request by any person entitled to inspect the records maintained by a corporation, the corporation shall convert within a reasonable time any records that are kept in a manner as set forth in subsection (a) of this section into a clear and legible paper form. If the requested record is maintained in the form of any information storage device or method or any one or more distributed or other electronic networks or databases, the corporation is not required to convert the entire record into paper form but shall be deemed to comply with the requirements of this section by converting only the requested record into paper form.

(c) A clear and legible paper form produced from records that are kept in electronic format as described in this section is admissible as evidence and accepted for all other purposes to the same extent as an original paper record with the same information if the paper form portrays the record accurately.

CHAPTER 31I. DIGITAL ASSETS ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31I-1-101. Short title.

This article may be cited as the Digital Assets Act.

§31I-1-102. Legislative findings.

The Legislature finds the following:

(1) The rapid innovation of blockchain technology, including the growing use of virtual currency and other digital assets, has resulted in many blockchain innovators being unable to access secure and reliable banking services, hampering development of blockchain services and products in the marketplace;

(2) Federally insured financial institutions are not generally permitted to manage accounts in virtual currency or hold other digital assets;

(3) Blockchain innovators have greater compliance challenges with federal customer identification, anti-money laundering and beneficial ownership requirements because of the complex nature of these obligations and the unfamiliarity of regulators with blockchain innovators’ businesses;

(4) These intricate obligations have resulted in many financial institutions in this state and across the United States refusing to provide banking services to blockchain innovators and also refusing to accept deposits in United States currency obtained from the sale of virtual currency or other digital assets;

(5) Compliance with applicable federal and state laws is critical to ensuring the future growth and reputation of the blockchain and technology industries as a whole;

(6) Most financial institutions today do not have the requisite expertise or familiarity with the challenges facing blockchain innovators which is required to provide secure and reliable banking services to these innovators;

(7) A new type of financial institution that has expertise with customer identification, anti-money laundering and beneficial ownership requirements could seamlessly integrate these requirements into its operating model; and

(8) Recognizing Blockchain enabled institutions to be chartered in this state will provide a necessary and valuable service to blockchain innovators, emphasize West Virginia’s partnership with the technology and financial industry and safely grow this states’ developing financial sector.

ARTICLE 2. BLOCKCHAIN INSTITUTIONS.

§31I-2-201.  Blockchain enabled institutions created as corporations; operating authority; powers.

(a) Blockchain enabled entities may be organized in any manner consistent with the provisions of the West Virginia Business Corporation Act set forth in chapter thirty-one-D of this code.

(b) Each entity may:

(1) Make contracts as a corporation pursuant to the laws of this state;

(2) Receive notes and buy and sell gold and silver coins and bullion as permitted by federal law;

(3) Carry on a business for depositors;

(4) Provide payment services upon the request of a depositor;

(5) Engage in any other activity that is usual or incidental to the use of digital assets, blockchain technology or distributed ledger technology; and

(6) Exercise powers and rights otherwise authorized by law which are not inconsistent with this chapter.

§31I-2-202.  Applicable federal and state laws.

A blockchain enabled entity shall comply with all applicable state and federal laws, including those relating to anti-money laundering and customer identification.

§31I-2-203.  Required disclosures.

(a) A blockchain enabled entity which accepts deposits shall display on any internet website it maintains, and at each window or place where it accepts deposits, a sign conspicuously stating that deposits are not insured by the federal deposit insurance corporation, if applicable.

(b) Upon opening an account if applicable, a blockchain enabled entity shall require each depositor to execute a statement acknowledging that all deposits at the blockchain enabled entity are not insured by the federal deposit insurance corporation. The blockchain enabled entity shall permanently retain this acknowledgment.

(c) A blockchain enabled entity shall include in all advertising a disclosure that deposits are not insured by the federal deposit insurance corporation, if applicable.

**§**31I-2-204.  Continuing jurisdiction.

If the charter of a blockchain enabled entity is surrendered, suspended, or revoked, the institution shall continue to be subject to the provisions of this chapter during any liquidation or conservatorship.

§31I-2-205.  Applicability of the Consumer Credit Protection Act.

All blockchain enabled entities are subject to the provisions of the West Virginia Consumer Credit Protection Act set forth in chapter forty-six-a of this code.

§31I-2-206. Voluntary dissolution of blockchain enabled entity; liquidation; reorganization; application for dissolution; filing fee; filing with the secretary of state; revocation of charter.

(a)  A blockchain enabled entity may voluntarily dissolve in accordance with the provisions of §31D-10-1401 *et seq.* of this code. Voluntary dissolution shall be accomplished by either liquidating the blockchain enabled entity or reorganizing the institution into an appropriate business entity that does not engage in any activity authorized only for a blockchain enabled entity. Upon complete liquidation or completion of the reorganization, the commissioner shall revoke the charter of the blockchain enabled entity and afterward, the company shall not use the word “blockchain enabled entity” or “bank” in its business name or in connection with its ongoing business.

(b) The blockchain enabled entity may dissolve its charter either by liquidation or reorganization. The board of directors shall file an application for dissolution with the Secretary of State, accompanied by a filing fee established by rule of the commissioner. The application shall include a comprehensive plan for dissolution setting forth the proposed disposition of all assets and liabilities, in reasonable detail to affect a liquidation or reorganization, and any other plans required by the commissioner. The plan of dissolution shall provide for the discharge or assumption of all of the known and unknown claims and liabilities of the blockchain enabled entity. Additionally, the application for dissolution shall include other evidence, certifications, affidavits, documents or information as the commissioner may require, including demonstration of how assets and liabilities will be disposed, the timetable for effecting disposition of the assets and liabilities and a proposal of the special purpose depository institution for addressing any claims that are asserted after dissolution has been completed. The Secretary of State shall examine the application for compliance with this section, the business entity laws applicable to the required type of dissolution and applicable rules. The secretary may conduct a special examination of the blockchain enabled entity, consistent with this code, for purposes of evaluating the application.

(c) If the Secretary of State finds that the application is incomplete, the secretary shall return it for completion not later than 60 days after it is filed. If the application is found to be complete by the secretary, the secretary shall approve or disapprove the application not later than 30 days after it is filed. If the secretary approves the application, the blockchain enabled entity may proceed with the dissolution pursuant to the plan outlined in the application, subject to any further conditions the secretary may prescribe. If the blockchain enabled entity subsequently determines that the plan of dissolution needs to be amended to complete the dissolution, it shall file an amended plan with the secretary and obtain approval to proceed under the amended plan. If the secretary does not approve the application or amended plan, the blockchain enabled entity may appeal the decision to the board pursuant to the State Administrative Procedure Act set forth at §29A-1-1 *et seq.* of this code.

(d) Upon completion of all actions required under the plan of dissolution and satisfaction of all conditions prescribed by the Secretary of State, the blockchain enabled entity shall submit a written report of its actions to the secretary. The report shall contain a certification made under oath that the report is true and correct.  Following receipt of the report, the secretary, no later than 60 days after the filing of the report, shall examine the blockchain enabled entity to determine whether the commissioner is satisfied that all required actions have been taken in accordance with the plan of dissolution and any conditions prescribed by the secretary. If all requirements and conditions have been met, the secretary shall, within 30 days of the examination, notify the blockchain enabled entity in writing that the dissolution has been completed and issue a certificate of dissolution.

(e) Upon receiving a certificate of dissolution, the blockchain enabled entity shall surrender its charter to the Secretary of State. The blockchain enabled entity shall then file articles of dissolution and other documents required by §31D-14-1 *et seq.* of this code for a corporation with the Secretary of State. In the case of reorganization, the blockchain enabled entity shall file the documents required by the Secretary of State to finalize the reorganization.

(f)  If the Secretary of State determines that all required actions under the plan for dissolution, or as otherwise required by the commissioner, have not been completed, the secretary shall notify the blockchain enabled entity, not later than 30 days after this determination, in writing what additional actions shall be taken in order for the institution to be eligible for a certificate of dissolution. The secretary shall establish a reasonable deadline for the submission of evidence that additional actions have been taken and the secretary may extend any deadline upon good cause. If the blockchain enabled entity fails to file a supplemental report showing that the additional actions have been taken before the deadline, or submits a report that is found not to be satisfactory by the secretary, the secretary shall notify the blockchain enabled entity in writing that its voluntary dissolution is not approved, and the institution may appeal the decision to the board pursuant to the State Administrative Procedure Act set forth in §29A-1-1 *et seq.* of this code.

CHAPTER 32. UNIFORM SECURITIES ACT.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-401. Definitions.

When used in this chapter, unless the context otherwise requires:

~~(a) "Commissioner" means the Auditor of the State of West Virginia.~~

~~(b)~~ “Agent” means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. “Agent” does not include an individual who represents an issuer in: (1) Effecting transactions in a security exempted by §32-4-402(a)(1), §32-4-402(a)(2), §32-4-402(a)(3), §32-4-402(a)(10), or §32-4-402(a)(11) of this code; (2) effecting transactions exempted by §32-4-402(b) of this code; (3) effecting transactions in a covered security as described in section 18(b)(3) and section 18(b)(4)(d) of the Securities Act of 1933; (4) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given, directly or indirectly, for soliciting any person in this state; or (5) effecting transactions in this state limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he or she otherwise comes within this definition.

“Branch office” means any location other than the main office, identified to the public, customers or clients as a location where a broker-dealer or investment adviser or federal-covered adviser conducts a securities or investment adviser business. Branch office does not include:

(1) A location identified solely in a telephone directory line listing or on a business card or letterhead if: (A) The listing, card or letterhead also includes the address and telephone number of the broker-dealer or investment adviser or federal covered adviser where the individuals conducting business from the location are directly supervised; and (B) no more than one agent or investment adviser representative transacts business on behalf of the broker-dealer or investment adviser or federal-covered adviser from an identified location; or

(2) Any other location as the commissioner may determine.

~~(c)~~ “Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. “Broker-dealer” does not include: (1) An agent; (2) an issuer; (3) a bank, savings institution or trust company; ~~or~~ (4) a person who has no place of business in this state if: (A) He or she or she effects transactions in this state exclusively with or through: (i) The issuers of the securities involved in the transactions; (ii) other broker-dealers; or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or (B) during any period of twelve consecutive months he or she does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in subparagraph (A), paragraph (4) of this subdivision, whether or not the offeror or any of the offerees is then present in this state; a person who facilities the exchange of an open blockchain token as that term is defined in §32-4-402 of this code.

“Commissioner” means the Auditor of the State of West Virginia.

“Federal-covered adviser” means a person who is: (1) Registered under section 203 of the Investment Advisers Act of 1940 or (2) is excluded from the definition of “investment advisor” under section two hundred two-a (11) of the Investment Advisers Act of 1940.

“Federal-covered security” means any security that is a covered security under section 18(b) of the Securities Act of 1933, as amended by the National Securities Markets Improvement Act of 1996, or rules promulgated thereunder.

~~(d)~~ “Fraud”, “deceit” and “defraud” are not limited to common-law deceit.

~~(e)~~ “Guaranteed” means guaranteed as to payment of principal, interest or dividends.

~~(f) "Federal-covered adviser" means a person who is: (1) Registered under section 203 of the Investment Advisers Act of 1940 or (2) is excluded from the definition of "investment advisor" under section two hundred two-a (11) of the Investment Advisers Act of 1940.~~

~~(g)~~ “Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. “Investment adviser” also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. “Investment adviser” does not include: (1) A bank, savings institution or trust company; (2) a lawyer, accountant, engineer or teacher whose performance of those services is solely incidental to the practice of his or her profession; (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for them; (4) a publisher, employee or columnist of a newspaper, news magazine or business or financial publication or an owner, operator, producer or employee of a cable, radio or television network, station or production facility if, in either case, the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of each client; (5) a person whose advice, analyses or reports relate only to securities exempted by §32-4-402(a)(1) of this code; (6) a person who has no place of business in this state if: (A) His or her or her only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or (B) during any period of 12 consecutive months he or she does not have more than five clients who are residents of this state other than those specified in subparagraph (A), paragraph (6), of this subdivision, whether or not he or she or any of the persons to whom the communications are directed is then present in this state; (7) an investment adviser representative; (8) a “federal-covered adviser”; or (9) such other persons not within the intent of this paragraph as the commissioner may by rule or order designate.

~~(h)~~ “Investment adviser representative” means any partner, officer, director of or a person occupying a similar status or performing similar functions or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under this chapter or who has a place of business located in this state and is employed by or associated with a federal-covered adviser; and including clerical or ministerial personnel, who does any of the following: (1) Makes any recommendations or otherwise renders advice regarding securities; (2) manages accounts or portfolios of clients; (3) determines which recommendation or advice regarding securities should be given; (4) solicits, offers or negotiates for the sale of or sells investment advisory services unless the person is registered as an agent pursuant to this article; or (5) supervises employees who perform any of the foregoing unless the person is registered as an agent pursuant to this article.

~~(i)~~ “Issuer” means any person who issues or proposes to issue any security, except that: (1) With respect to certificates of deposit, voting-trust certificates or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management or unit type, the term “issuer” means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest or participation in oil, gas or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any “issuer”.

~~(j)~~ “Nonissuer” means not, directly or indirectly, for the benefit of the issuer.

~~(k)~~ “Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

~~(l)~~ (1) “Sale” or “sell” includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value;

(2) “Offer” or “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value;

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value;

(4) A purported gift of assessable stock is considered to involve an offer and sale;

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;

(6) The terms defined in this subdivision do not include: (A) Any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (C) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

~~(m)~~ “Securities Act of 1933”, “Securities Exchange Act of 1934”, “Public Utility Holding Company Act of 1935” and “Investment Company Act of 1940” mean the federal statutes of those names as amended before the effective date of this chapter. The National Securities Markets Improvement Act of 1996 (“NSMIA”) means the federal statute which makes certain amendments to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

~~(n)~~ “Security” means any note; stock; treasury stock; 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; viatical settlement contract; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; 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. “Security” does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period*: Provided,* That “security” does include insurance or endowment policies or annuity contracts that are viatical settlement contracts, ~~or~~ agreements for the purchase, sale, assignment, transfer, devise or bequest of any portion of a death benefit or ownership of a life insurance policy or certificate that is less than the expected death benefit of the life insurance policy or certificate, or an open blockchain token, as defined in §32-4-402 of this code.

~~(o) "Federal-covered security" means any security that is a covered security under section 18(b) of the Securities Act of 1933, as amended by the National Securities Markets Improvement Act of 1996, or rules promulgated thereunder~~

~~(p)~~ “State” means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

~~(q) "Branch office" means any location other than the main office, identified to the public, customers or clients as a location where a broker-dealer or investment adviser or federal-covered adviser conducts a securities or investment adviser business. Branch office does not include:~~

~~(1) A location identified solely in a telephone directory line listing or on a business card or letterhead if: (A) The listing, card or letterhead also includes the address and telephone number of the broker-dealer or investment adviser or federal covered adviser where the individuals conducting business from the location are directly supervised; and (B) no more than one agent or investment adviser representative transacts business on behalf of the broker-dealer or investment adviser or federal-covered adviser from an identified location; or~~

~~(2) Any other location as the commissioner may determine~~

§32-4-402. **Exemptions**.

(a) The following securities are exempt from §32-3-301 and §32-4-403 of this code:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized and supervised under the laws of any state;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state;

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association or similar association organized and supervised under the laws of this state;

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is: (A) Subject to the jurisdiction of the interstate commerce commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935, or a subsidiary of such a company within the meaning of that act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or the Midwest Stock Exchange, any other stock exchange approved by the commissioner, the National Association of Securities Dealers Automated Quotation/National Market System (NASDAQ/NMS), or any other market system approved by the commissioner, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing, except that the commissioner may adopt and promulgate rules pursuant to §29A-3-1 *et seq.* of this code which, after notice to such exchange or market system and an opportunity to be heard, remove any such exchange or market system from this exemption if the commissioner finds that the listing requirements or market surveillance of such exchange or market system are such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association, and no part of the net earnings of which inures to the benefit of any person, private stockholder or individual;

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within 12 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(11) Any investment contract issued in connection with an employees’ stock purchase, savings, pension, profit-sharing or similar benefit plan if the commissioner is notified in writing 30 days before the inception of the plan or, with respect to plans which are in effect on the effective date of this chapter, within 60 days thereafter (or within 30 days before they are reopened if they are closed on the effective date of this chapter);

(12) Any security issued by an agricultural cooperative association operating in this state and organized under §19-4-1 *et seq.* of this code, or by a foreign cooperative association organized under the laws of another state and duly qualified to transact business in this state.

(b) The following transactions are exempt from §32-3- 301 and §32-4-403 of this code:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(2) Any nonissuer distribution of an outstanding security if: (A) A recognized securities manual contains the names of the issuer’s officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations; or (B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(6) Any transaction by an executor, administrator, sheriff, marshal, constable, receiver, trustee in bankruptcy, guardian or conservator, and any transaction constituting a judicial sale;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to an offer directed by the offeror to not more than ten persons (other than those designated in subdivision (8) above) in this state during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this state, if: (A) The seller reasonably believes that all the buyers in this state (other than those designated in subdivision (8) above) are purchasing for investment; and (B) no commission or other remuneration is paid or given, directly or indirectly, for soliciting any prospective buyer in this state (other than those designated in subdivision (8) above), but the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in clauses (A) and (B) with or without the substitution of a limitation on remuneration;

(10) Any offer or sale of a preorganization certificate or subscription if: (A) No commission or other remuneration is paid or given, directly or indirectly, for soliciting any prospective subscriber; (B) the number of subscribers does not exceed ten; and (C) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within not more than ninety days of their issuance, if: (A) No commission or other remuneration (other than a standby commission) is paid or given, directly or indirectly, for soliciting any security holder in this state; or (B) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow the exemption within the next five full business days;

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either chapter.

(c) The commissioner may by order deny or revoke any exemption specified in subdivision (9) or (11) of subsection (a) or in subsection (b) of this section with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated §32-3-301 and §32-4-403 of this code by reasons of any offer or sale effected after the entry of an order under this subsection if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order.

(d) (1) Except as otherwise provided by subsection (c) of this section, a developer or seller of an open or private blockchain token shall not be deemed the issuer of a security and shall not be subject to the provisions of §32-3-301 and §32-4-403 of this code if the following are met:

(A) The purpose of the token is for a consumptive purpose, which shall only be exchangeable for, or provided for the receipt of, goods, services, or content, including rights of access to goods, services or content; and

(B) The developer or seller of the token did not sell the token to the initial buyer as a financial investment. This paragraph shall only be satisfied if:

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

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

(2) Except as otherwise provided by subdivision (3) of this subsection, a person who facilitates the exchange of an open blockchain token shall not be deemed a broker‑dealer or a person who otherwise deals in securities under this chapter and shall not be subject to the provisions of §32-3-301 and §32-4-403 of this code if all of the following are met:

(A) The person has a reasonable and good faith belief that a token subject to exchange conforms to the requirements of subdivision (d)(1) of this subsection; and

(B) The person takes reasonably prompt action to terminate the exchange of a token that does not conform to the requirements of this subsection.

(3) Notwithstanding any other provision of this code to the contrary, a developer, seller or a person who facilitates the exchange of an open blockchain token is subject to the provisions of §32-3-301 and §32-4-403 of this code only to the extent necessary to carry out those sections. The auditor shall have the authority provided pursuant to §32-4-1 *et seq.* of this code to determine compliance with the provisions of this subsection, including whether a person qualifies for the exemptions set forth in this subsection.

(4) As used in this section, “open blockchain token” means a digital unit which is:

(A) Created:

(i) In response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(ii) By deploying computer code to a blockchain network that allows for the creation of digital tokens or other units; or

(iii) Using any combination of the methods specified in subparagraphs (A) and (B) of this paragraph.

(B) Recorded in a digital ledger or database which is chronological, consensus-based, decentralized, and mathematically verified in nature, especially related to the supply or units and their distribution; and

(C) Capable of being traded or transferred between persons without an intermediary or custodian of value.

~~(D)~~ (e) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

CHAPTER 32A. LAND SALES; FALSE ADVERTISING; ISSUANCE AND **SALE** OF CHECKS, DRAFTS, MONEY ORDERS, ETC.

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

**§32A-2-1. Definitions.**

~~(1) "Commissioner" means the Commissioner of Financial Institutions of this state.~~

~~(2)~~ “Check” or “payment instrument” means any check, traveler’s check, draft, money order or other instrument for the transmission or payment of money whether or not the instrument is negotiable. The term does not include a credit card voucher, a letter of credit or any instrument that is redeemable by the issuer in goods or services.

“Commissioner” means the Commissioner of Financial Institutions of this state.

~~(3)~~ “Currency” means a medium of exchange authorized or adopted by a domestic or foreign government.

~~(4)~~ “Currency exchange” means the conversion of the currency of one government into the currency of another government, but does not include the issuance and sale of travelers checks denominated in a foreign currency. Transactions involving the electronic transmission of funds by licensed money transmitters which may permit, but do not require, the recipient to obtain the funds in a foreign currency outside of West Virginia are not currency exchange transactions: *Provided,* That they are not reportable as currency exchange transactions under federal laws and regulations.

~~(5)~~ “Currency exchange, transportation, transmission business” means a person who is engaging in currency exchange, currency transportation or currency transmission as a service or for profit.

~~(6)~~ “Currency transmission” or “money transmission” means engaging in the business of selling or issuing checks or the business of receiving currency, the payment of money, or other value that substitutes for money by any means for the purpose of transmitting, either prior to or after receipt, that currency, payment of money or other value that substitutes for money by wire, facsimile or other electronic means, or through the use of a financial institution, financial intermediary, the Federal Reserve system or other funds transfer network. It includes the transmission of funds through the issuance and sale of stored value or similar prepaid products’ cards which are intended for general acceptance and used in commercial or consumer transactions.

~~(7)~~ “Currency transportation” means knowingly engaging in the business of physically transporting currency from one location to another in a manner other than by a licensed armored car service exempted under §32A-2-3 of this code.

~~(8)~~ “Licensee” means a person licensed by the commissioner under this article.

~~(9)~~ “Money order” means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his or her agent for the receipt, transmission or handling of money, whether the instrument is signed by the seller, the purchaser or remitter or some other person.

~~(10)~~ “Person” means any individual, partnership, association, joint stock association, limited liability company, trust or corporation.

~~(11)~~ “Principal” means a licensee’s owner, president, senior officer responsible for the licensee’s business, chief financial officer or any other person who performs similar functions or who otherwise controls the conduct of the affairs of a licensee. A person controlling 10 percent or more of the voting stock of any corporate applicant is a principal under this provision.

“Virtual currency” means any type of digital representation of value that is used as a medium of exchange, unit or account or store of value, and is not recognized as legal tender by the United States government.

§32A-2-3. Exemptions.

(a) The following are exempt from the provisions of this article:

(1) Banks, trust companies, foreign bank agencies, credit unions, savings banks, and savings and loan associations authorized to do business in the state or which qualify as federally insured depository institutions, whether organized under the laws of this state, any other state, or the United States;

(2) The United States and any department or agency of the United States;

(3) The United States Postal Service;

(4) This state and any political subdivision of this state;

(5) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for and on behalf of the United States or any department, agency, or instrumentality of the United States, or any state or any political subdivisions of a state;

(6) Persons engaged solely in the business of currency transportation who operate an armored car service in this state pursuant to licensure under §30-18-1 *et seq.* of this code: *Provided*, That the net worth of the licensee exceeds $5 million. The term “armored car service” as used in this article means a service provided by a person transporting or offering to transport, under armed security guard, currency or other things of value in a motor vehicle specially equipped to offer a high degree of security. Persons seeking to claim this exemption shall notify the commissioner of their intent to do so and demonstrate that they qualify for its use. Persons seeking an exemption under this subdivision are not exempt from the provisions of this article if they also engage in currency exchange or currency transmission;

(7) Persons engaged in the business of currency transportation whose activities are limited exclusively to providing services to federally insured depository institutions, or to any federal, state, or local governmental entities;

(8) Persons engaged solely in the business of removing currency from vending machines providing goods or services, if the machines are not used for gambling purposes or to convey any gambling ticket, token, or other device used in a game of chance;

(9) The State Regulatory Registry, LLC, which administers the Nationwide Mortgage Licensing System and Registry on behalf of states and federal banking regulators;

(10) The North American Securities Administrators Association and any subsidiaries, which administer the Electronic Filing Depository system on behalf of state securities regulators; ~~and~~

(11)(A) Persons operating a payment system that provides processing, clearing, or settlement services, between or among persons who are all excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, prepaid access transactions, automated clearinghouse transfers, or similar funds transfers;

(B) Contracted service providers of an entity set forth in §32A-2-3(a)(1) of this code that provide processing, clearing, or settlement services in connection with wire transfers, credit card transactions, debit card transactions, prepaid access transactions, automated clearinghouse transfers, or similar funds transfers; or

(C) Persons facilitating payment for goods or services (not including currency transmission or money transmission itself) pursuant to a contract with the payee and either payment to the person or persons facilitating the payment processing satisfies the payor’s obligation to the payee or that obligation is extinguished.

(12) Buying, selling, issuing, or taking custody of payment instruments participating or facilitating a transaction in the form of virtual currency as defined in this article, or receiving virtual currency as defined in this article for transmission to a location withing or outside the United States by any means.

(13) A person who develops, sells, or facilitates the exchange of an open or private blockchain token, as defined in §32-4-402 of this code.

(b) Any person who holds and maintains a valid license under this article may engage in the business of money transmission or currency exchange at one or more locations through or by means of an authorized delegate or delegates as set forth in §32A-2-27 of this code, as the licensee may designate and appoint from time to time. No such authorized delegate is required to obtain a separate license under this article, but the use of sub-delegates is prohibited and the authorized delegate may only conduct business on behalf of its licensee.

(c) The issuance and sale of stored value cards or similar prepaid products which are intended to purchase items only from the issuer or seller of the stored value card is exempt from the provisions of this article.

(d) Any person who is required and properly obtains a license under this article to transport currency is exempt from the requirements of §30-18-1 *et seq.* of this code.

§32A-2-22. Cease and desist orders.

(a) If the commissioner, upon information, has cause to believe that a licensee or other person is engaged in practices contrary to this article or the rules adopted under this article, the commissioner may issue an order directing the licensee or person to cease and desist the violation. A cease and desist order is appropriate in any case where the commissioner, upon information, reasonably believes that a principal or the licensee acting through any authorized person has:

(1) Violated or refused to comply with a provision of this article, a rule adopted under this article, or any other law or regulation applicable to a currency exchange, transportation or transmission business, or to the business of check cashing;

(2) Committed a fraudulent practice in the conduct of the licensee’s business;

(3) Refused to submit to an examination;

(4) Conducted business in an unsafe or unauthorized manner;

(5) Violated any federal law or regulation pertaining to the business of currency exchange, money transportation or transmission, or the business of check cashing; ~~or~~

(6) Violated any condition of its license or of any agreement entered into with the commissioner; or

(7) Engaged in or is about to engage in any activity which would be subject to the provisions of this article and the requirements of this article have not been met.

(b) The commissioner shall serve notice and a copy of the cease and desist order on the affected party either personally or by certified mail, return receipt requested. Service by mail shall be deemed completed if the notice is deposited in the post office, postage prepaid, addressed to the last known address for a licensee or the person designated by the licensee to accept service in this state.

(c) The order shall include a statement of the alleged conduct of the licensee or principal which gave rise to the order, and set forth the facts and law on which it is based.

(d) A person is entitled to a hearing on the cease and desist order before the commissioner, or a hearing examiner appointed by him or her, if the person files with the commissioner a written demand for hearing within 10 days after receiving written notice of the order, or within 30 days after the date of service, whichever occurs first. A persons right to a hearing as provided by this subsection shall be disclosed in the notice of service.

(e) Hearings and judicial review of any order shall be under procedures provided in §31A-8-1 and §31A-8-2 of this code and procedural rules thereunder.

(f) The issuance of a cease and desist order under this section shall not be a prerequisite to the taking of any action by the commissioner or others under any other section of this article.

CHAPTER 39A. ELECTRONIC COMMERCE.

ARTICLE 4. DIGITAL ASSETS.

Part 1. Utility Token act.

**§39A-4-101**. **Findings.**

The Legislature finds the following:

(1) Certain open blockchain tokens may be restricted to only be exchangeable for specified consumptive purposes, including services, software, content or property, whether real or tangible personal property, and do not entitle a token holder to a cash payment or a share of profits from the technology developer or business that created the token;

(2) Open blockchain tokens with specified consumptive purposes are similar to loyalty programs operated by many businesses today, in which an individual is provided with services, content or property redeemable from the developer or business in exchange for a specified number of transactions or cash paid to the developer or business;

(3) The open blockchain tokens governed by this act do not constitute securities because a person who is sold a consumptive open blockchain token cannot receive a cash payment or share of profits from a developer or business, but will instead receive a fixed amount of consumable services, content or property; and

(4) Because of the consumptive nature of open blockchain tokens and for the other reasons specified above, these tokens are properly classified as intangible personal property pursuant to the law of this state and, therefore, do not require an exemption from securities laws.

§39A-4-102. Definitions.

(a) As used in this section:

(1) “Blockchain” means a digital ledger or database which is chronological, consensus‑based, decentralized and mathematically verified in nature;

(2) “Consumptive” means a circumstance when a token is exchangeable for, or provided for the receipt of, services, software, content or real or tangible personal property, including rights of access to services, content or real or tangible personal property;

(3) “Developer” means the person primarily responsible for creating an open blockchain token or otherwise designing the token, including by executing the technological processes necessary to create the token;

(4) “Facilitator” means a person who, as a business, makes open blockchain tokens under subsection (b) of this section available for resale to the public after a token has been purchased by an initial buyer;

(5) “Financial investment” means a contract, transaction or arrangement where a person invests money in a common enterprise and is led to expect profits solely from the efforts of a promoter or a third party;

(6) Except as otherwise provided in subsection (b) of this section, "open blockchain token" means a digital unit which is:

(A) Created:

(i) In response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(ii) By deploying computer code to a digital ledger or database, which may include a blockchain, that allows for the creation of digital tokens or other units; or

(iii) Using a combination of the methods specified in subdivisions (i) and (ii) of this subparagraph.

(B) Recorded to a digital ledger or database, which may include a blockchain; and

(C) Capable of being traded or transferred between persons without an intermediary or custodian of value.

(7) “Seller” means a person who makes an open blockchain token available for purchase to an initial buyer.

(b) Virtual currency or a digital security, as defined in §32A‑2‑1 of this code, shall not constitute an open blockchain token.

§39A-4-103.  Open blockchain tokens classified as intangible personal property; characteristics; filing requirements; fee; enforcement authority; definitions; virtual currency.

(a) An open blockchain token with the following characteristics constitutes intangible personal property:

(1) The predominant purpose of the token is consumptive, as defined in §39A-4-102 of this code;

(2) The developer or seller did not market the token to the initial buyer as a financial investment, as defined in this section; and

(3) At least one of the following is satisfied:

(A) The developer or seller reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

(B) The token has a consumptive purpose that is available at or near the time of sale and can be used at or near the time of sale for a consumptive purpose;

(C) The initial buyer of the token is prohibited by the developer or seller of the token from reselling the token until the token is available to be used for a consumptive purpose;

(D) The developer or seller takes other reasonable precautions to prevent an initial buyer from purchasing the token as a financial investment.

(b) A facilitator shall comply with the following requirements:

(1) A facilitator shall, at all times, have a reasonable and good faith belief that a token subject to resale conforms to the requirements of paragraphs (a)(1) through (3) of this section; and

(2) The facilitator shall take reasonably prompt action to terminate the resale of a token which does not conform to the requirements of this subsection.

(c) A willful failure by a developer, seller or facilitator to comply with the duties imposed by this section shall constitute an unlawful trade practice pursuant to the provisions of §46A-6-101 *et seq.* of this code. A developer, seller or facilitator is subject to all applicable criminal statutes.

(d) The secretary of state may refer the following to appropriate state or federal agencies for investigation, criminal prosecution, civil penalties, and other appropriate enforcement actions:

(1) Suspected violations of this section;

(2) The developer, seller or facilitator of either an open blockchain token which conforms to the requirements of this section or another digital asset which substantially resembles an open blockchain token, but which, in the determination of the secretary of state, is being sold for financial investment or fraudulent purposes.

Part 2. Classification of Digital assets.

§39A-4-201.  Definitions.

(a) As used in this chapter:

(1) “Digital asset” means a representation of economic, proprietary or access rights that is stored in a computer readable format, and includes digital consumer assets, digital securities, and virtual currency;

(2)“Digital consumer asset” means a digital asset that is used or bought primarily for consumptive, personal, or household purposes and includes:

(A) An open blockchain token constituting intangible personal property as otherwise provided by law;

(B) Any other digital asset which does not fall within paragraphs (3) and (4) of this subsection.

(3) “Digital security” means a digital asset which constitutes a security, as defined in §32-4-401 of this code but shall exclude digital consumer assets and virtual currency;

(4) “Virtual currency” means a digital asset that is:

(A) Used as a medium of exchange, unit of account or store of value; and

(B) Not recognized as legal tender by the United States government.

(b) The terms in paragraphs (a)(1) through (4) of this section are mutually exclusive.

§39A-4-202.  Classification of digital assets as property; applicability to Uniform Commercial Code.

(a) Digital assets are classified in the following manner:

(1) Digital consumer assets are intangible personal property and shall be considered general intangibles, as defined in §46-9-102 of this code only for the purposes of article 9 of the Uniform Commercial Code, codified in chapter 46 of this code;

(2) Digital securities are intangible personal property and shall be considered securities, as defined in §46-8-102 of this code and investment property, as defined in §46-9-102 of this code only for the purposes of articles 8 and 9 of the Uniform Commercial Code, codified in chapter 46 of this code.

(3) Virtual currency is intangible personal property and shall be considered money, notwithstanding the provisions of §46-1-201 of this code, only for the purposes of article 9 of the Uniform Commercial Code, codified in chapter 46 of this code.

(b) Consistent with the provisions of §46-8-102 of this code, a digital asset may be treated as a financial asset under that paragraph, pursuant to a written agreement with the owner of the digital asset. If treated as a financial asset, the digital asset shall remain intangible personal property.

(c) A bank providing custodial services pursuant to the provisions of §39A-4‑204 of this code shall be considered to meet the requirements of a security intermediary as defined in §46-8-102 of this code.

(d) Classification of digital assets pursuant to this section shall be construed in a manner to give the greatest effect to this article but shall not be construed to apply to any other asset.

§39A-4-203.  Perfection of security interests in digital assets; financing statements.

(a) Notwithstanding the financing statement requirement specified by §46-9-301 of this code as otherwise applied to general intangibles or any other provision of law, perfection of a security interest in a digital asset may be achieved through control, as defined in paragraph (e)(1) of this section. A security interest held by a secured party having control of a digital asset has priority over a security interest held by a secured party that does not have control of the asset.

(b) Before a secured party may take control of a digital asset pursuant to this section, the secured party shall enter into a control agreement with the debtor.  A control agreement may also set forth the terms under which a secured party may pledge its security interest in the digital asset as collateral for another transaction.

(c) A secured party may file a financing statement with the secretary of state, including to perfect a security interest in proceeds from a digital asset pursuant to §46-9-315 of this code.

(d) Notwithstanding any other provision of law, including article 9 of the Uniform Commercial Code, codified in chapter 46 of this code, a transferee takes a digital asset free of any security interest two years after the transferee takes the asset for value and does not have actual notice of an adverse claim. This subsection only applies to a security interest perfected by a method other than control.

(e) As used in this section:

(1) Consistent with subsection (f) of this section, “control” is equivalent to the term “possession” when used in §46-9-101 *et seq*. of this code and means the following:

(A) A secured party, or an agent, custodian, fiduciary or trustee of the party, has the exclusive legal authority to conduct a transaction relating to a digital asset, including by means of a private key or the use of a multi‑signature arrangement authorized by the secured party;

(B) A smart contract created by a secured party which has the exclusive legal authority to conduct a transaction relating to a digital asset. As used in this subparagraph, “smart contract” means an automated transaction, as defined in §39A-1-2 of this code, or any substantially similar analogue, which is comprised of code, script, or programming language that executes the terms of an agreement, and which may include taking custody of and transferring an asset, or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.

(2) “Multi‑signature arrangement” means a system of access control relating to a digital asset for the purposes of preventing unauthorized transactions relating to the asset, in which two or more private keys are required to conduct a transaction, or any substantially similar analogue;

(3) “Private key” means a unique element of cryptographic data, or any substantially similar analogue, which is:

(A) Held by a person;

(B) Paired with a unique, publicly available element of cryptographic data; and

(C) Associated with an algorithm that is necessary to carry out an encryption or decryption required to execute a transaction.

(f) Perfection by control creates a possessory security interest and does not require physical possession. For purposes of §46-9-101 *et seg*. of this code, a digital asset is located in this state if the asset is held by a West Virginia custodian, the debtor or secured party is physically located in this state or the debtor or secured party is incorporated or organized in this state.

§39A-4-204.  Digital asset custodial services.

(a) A bank may provide custodial services consistent with this section upon providing 60 days written notice to the commissioner. The provisions of this section are cumulative and not exclusive as an optional framework for enhanced supervision of digital asset custody. If a bank elects to provide custodial services pursuant to this section, it shall comply with all provisions of this section.

(b) A bank may serve as a qualified custodian, as specified by the United States securities and exchange commission in 17 C.F.R. § 275.206(4)‑2. In performing custodial services pursuant to this section, a bank shall:

(1) Implement all accounting, account statement, internal control, notice, and other standards specified by applicable state or federal law and rules for custodial services;

(2) Maintain information technology best practices relating to digital assets held in custody. The commissioner may specify required best practices by rule;

(3) Fully comply with applicable federal anti‑money laundering, customer identification, and beneficial ownership requirements; and

(4) Take other actions necessary to carry out this section, which may include exercising fiduciary powers similar to those permitted to national banks and ensuring compliance with federal law governing digital assets classified as commodities.

(c) A bank providing custodial services shall enter into an agreement with an independent public accountant to conduct an examination conforming to the requirements of 17 C.F.R. § 275.206(4)‑2(a)(4) and (6), at the cost of the bank. The accountant shall transmit the results of the examination to the commissioner within 120 days of the examination and may file the results with the United States securities and exchange commission as its rules may provide. Material discrepancies in an examination shall be reported to the commissioner within one day. The commissioner shall review examination results upon receipt within a reasonable time and during any regular examination conducted pursuant to §31A-2-6 of this code.

(d) Digital assets held in custody pursuant to this section are not depository liabilities or assets of the bank. A bank, or a subsidiary, may register as an investment adviser, investment company, or broker dealer as necessary. A bank shall maintain control over a digital asset while in its custody. A customer shall elect, pursuant to a written agreement with the bank, one of the following relationships for each digital asset held in custody:

(1) Custody under a bailment as a nonfungible or fungible asset. Assets held under this paragraph shall be strictly segregated from other assets; or

(2) Custody under a bailment pursuant to subsection (e) of this section.

(e) If a customer makes an election under paragraph (d)(2) of this section, the bank may, based only on customer instructions, undertake transactions with the digital asset. A bank maintains control pursuant to subsection (d) of this section by entering into an agreement with the counterparty to a transaction which contains a time for return of the asset. The bank shall not be liable for any loss suffered with respect to a transaction under this subsection, except for liability consistent with fiduciary and trust powers as a custodian under this section.

(f) A bank and a customer shall agree in writing regarding the source code version the bank will use for each digital asset, and the treatment of each asset pursuant to the provisions of §46-1-101 *et seq.* of this code if necessary. Any ambiguity under this subsection shall be resolved in favor of the customer.

(g) A bank shall provide clear, written notice to each customer, and require written acknowledgement, of the following:

(1) Prior to the implementation of any updates, material source code updates relating to digital assets held in custody, except in emergencies which may include security vulnerabilities;

(2) The heightened risk of loss from transactions under subsection (e) of this section;

(3) That some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset or custody under paragraph (d)(2) of this section;

(4) That custody pursuant to paragraph (d)(2) of this section may not result in the digital assets of the customer being strictly segregated from other customer assets; and

(5) That the bank is not liable for losses suffered pursuant to subsection (e) of this section, except for liability consistent with fiduciary and trust powers as a custodian pursuant to this section.

(h) A bank and a customer shall agree in writing to a time period within which the bank must return a digital asset held in custody pursuant this section. If a customer makes an election pursuant to paragraph (d)(2) of this section, the bank and the customer may also agree in writing to the form in which the digital asset shall be returned.

(i) All ancillary or subsidiary proceeds relating to digital assets held in custody pursuant to this section shall accrue to the benefit of the customer, except as specified by a written agreement with the customer. The bank may elect not to collect certain ancillary or subsidiary proceeds, as long as the election is disclosed in writing. A customer who makes an election pursuant to paragraph (d)(1) of this section may withdraw the digital asset in a form that permits the collection of the ancillary or subsidiary proceeds.

(j) A bank shall not authorize or permit rehypothecation of digital assets under this section. The bank shall not engage in any activity to use or exercise discretionary authority relating to a digital asset except based on customer instructions.

(k) A bank shall not take any action pursuant to this section which would likely impair the solvency or the safety and soundness of the bank, as determined by the commissioner after considering the nature of custodial services customary in the banking industry.

(l) The commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seg.* of this code to implement the provisions of this section.

(m) As used in this section:

(1) “Bank” has the meaning ascribed to it in §31A-1-2 of this code.

(2) “Commissioner” means the banking commissioner;

(3) “Custodial services” means the safekeeping and management of customer currency and digital assets through the exercise of fiduciary and trust powers pursuant to this section as a custodian and includes fund administration and the execution of customer instructions.

§39A-4-205.  Jurisdiction of courts.

The courts of this state shall have jurisdiction to hear claims in both law and equity relating to digital assets, including those arising from this chapter and the Uniform Commercial Code codified at §46-1-101 *et seq.* of this code*.*

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-102. Definitions.

When used in this article, the following words, terms and phrases, and any variations thereof required by the context, shall have the meaning ascribed to them in this article except where the context indicates a different meaning:

(1) “Advertisement” means the publication, dissemination or circulation of any matter, oral or written, including labeling, which tends to induce, directly or indirectly, any person to enter into any obligation, sign any contract or acquire any title or interest in any goods or services and includes every word device to disguise any form of business solicitation by using such terms as “renewal”, “invoice”, “bill”, “statement” or “reminder” to create an impression of existing obligation when there is none or other language to mislead any person in relation to any sought-after commercial transaction.

(2) “Consumer” means a natural person to whom a sale or lease is made in a consumer transaction and a “consumer transaction” means a sale or lease to a natural person or persons for a personal, family, household or agricultural purpose.

(3) “Cure offer” means a written offer of one or more things of value, including, but not limited to, the payment of money, that is made by a merchant or seller and that is delivered by certified mail to a person claiming to have suffered a loss as a result of a transaction or to the attorney for such person.

(4) “Merchantable” means, in addition to the qualities prescribed in §46-2-314 of this code, that the goods conform in all material respects to applicable state and federal statutes and regulations establishing standards of quality and safety of goods and, in the case of goods with mechanical, electrical or thermal components, that the goods are in good working order and will operate properly in normal usage for a reasonable period of time.

(5) “Sale” includes any sale, offer for sale or attempt to sell any goods for cash or credit or any services or offer for services for cash or credit.

(6) “Trade” or “commerce” means the advertising, offering for sale, sale or distribution of any goods or services and shall include any trade or commerce, directly or indirectly, affecting the people of this state.

(7) “Unfair methods of competition and unfair or deceptive acts or practices” means and includes, but is not limited to, any one or more of the following:

(A) Passing off goods or services as those of another;

(B) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(C) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by another;

(D) Using deceptive representations or designations of geographic origin in connection with goods or services;

(E) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(F) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

(G) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model if they are of another;

(H) Disparaging the goods, services or business of another by false or misleading representation of fact;

(I) Advertising goods or services with intent not to sell them as advertised;

(J) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(K) Making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions;

(L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;

(M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;

(N) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading or deceptive or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

(O) Representing that any person has won a prize, one of a group of prizes or any other thing of value if receipt of the prize or thing of value is contingent upon any payment of a service charge, mailing charge, handling charge or any other similar charge by the person or upon mandatory attendance by the person at a promotion or sales presentation at the sellers place of business or any other location: *Provided,* That a person may be offered one item or the choice of several items conditioned on the person listening to a sales promotion or entering a consumer transaction if the true retail value and an accurate description of the item or items are clearly and conspicuously disclosed along with the person’s obligations upon accepting the item or items; such description and disclosure shall be typewritten or printed in at least eight point regular type, in upper or lower case, where appropriate; ~~or~~

(P) Violating any provision or requirement of §46A-6B-1 *et seq.* of this code; or

(Q) Willfully failing to comply with the duties imposed by §39A-4-201 *et seq.* of this code.

(8) “Warranty” means express and implied warranties described and defined in §46A-2-314, §46A-2-315, and §46A-2-316 of this code and expressions or actions of a merchant which assure the consumer that the goods have described qualities or will perform in a described manner.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-1. Definitions.

As used in this article, unless the context otherwise requires:

“Blockchain” has the same meaning as set forth in §39A-1-2 of this code.

~~(1)~~ “Certificate of limited partnership” means the certificate referred to in §47B-1-2 of this code and the certificate as amended;

~~(2)~~ “Contribution” means any cash, property, services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his or her capacity as a partner;

~~(3)~~ “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission;

~~(4)~~ “Electronic transmission” or “electronically transmitted” means any process of communication that does not directly ~~involving~~ involve the physical transfer of paper, including a process of communication that uses one or more distributed or other electronic networks, or databases, and that is suitable for the retention, retrieval and reproduction of information by the recipient.

~~(5)~~ “Event of withdrawal of a general partner” means an event that causes a person to cease to be a general partner as provided in §46A-6-23 of this code;

~~(6)~~ “Foreign limited partnership” means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners;

~~(7)~~ “General partner” means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner;

~~(8)~~ “Limited partner” means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;

~~(9)~~ “Limited partnership” and “domestic limited partnership” means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners;

~~(10)~~ “Partner” means a limited or general partner;

~~(11)~~ “Partnership agreement” means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business;

~~(12)~~ “Partnership interest” means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets;

~~(13)~~ “Person” means a natural person, partnership, limited partnership (domestic or foreign), limited liability company, professional limited liability company, trust, estate, association, corporation, or any other legal or commercial entity;

~~(14)~~ “Sign” or “signature” includes, but is not limited to, any manual, facsimile, conformed or electronic signature with means to identify a record by a signature, mark or other symbol, with intent to authenticate it; and

~~(15)~~ “State” means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

§47-9-59a. Conversion of electronic documents; admissibility as evidence.

(a) Except as otherwise required by federal or state law, any records maintained by a corporation in its regular course of business may be kept in the form of an electronic record and may be maintained on any information processing system or information storing device or medium.

(b) Upon a proper request by any person entitled to inspect the records maintained by a corporation, the corporation shall convert within a reasonable time any records that are kept in a manner as set forth in subsection (a) of this section into a clear and legible paper form. If the requested record is maintained in the form of any information storage device or method or any one or more distributed or other electronic networks or databases, the corporation is not required to convert the entire record into paper form but shall be deemed to comply with the requirements of this section by converting only the requested record into paper form.

(c) A clear and legible paper form produced from records that are kept in electronic format as described in this section is admissible as evidence and accepted for all other purposes to the same extent as an original paper record with the same information if the paper form portrays the record accurately.

CHAPTER 47B. UNIFORM PARTNERSHIP ACT.

ARTICLE 1. GENERAL PROVISIONS.

§47B-1-1. Definitions.

In this chapter:

~~(1)~~ “Business” includes every trade, occupation and profession.

~~(2)~~ “Debtor in bankruptcy” means a person who is the subject of:

(i) In order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) A comparable order under federal, state or foreign law governing insolvency.

~~(3)~~ “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

~~(4)~~ “Distribution” means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to the partner’s transferee.

~~(5)~~ “Electronic transmission” or “electronically transmitted” means any process of communication that does not directly ~~involving~~ involve the physical transfer of paper, including a process of communication that uses one or more distributed or other electronic networks, or databases, and that is suitable for the retention, retrieval and reproduction of information by the recipient.

~~(6)~~ “Foreign limited liability partnership” means a partnership or association formed under or pursuant to an agreement governed by the laws of any state or jurisdiction other than this state that is denominated as a registered limited liability partnership or limited liability partnership under the laws of such other jurisdiction.

~~(7)~~ “Partnership” means an association of two or more persons to carry on as coowners a business for profit formed under section two, article two of this chapter, predecessor law, or comparable law of another jurisdiction and includes, for all purposes of the laws of this state, a registered limited liability partnership.

~~(8)~~ “Partnership agreement” means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

~~(9)~~ “Partnership at will” means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

~~(10)~~ “Partnership interest” or “partner’s interest in the partnership” means all of a partner's interests in the partnership, including the partner’s transferable interest and all management and other rights.

~~(11)~~ “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, professional limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

~~(12)~~ “Property” means all property, real, personal or mixed, tangible or intangible, or any interest therein.

~~(13)~~ “Registered limited liability partnership” means a partnership formed pursuant to an agreement governed by the laws of this state, registered under §47B-10-1 of this code.

~~(14)~~ “Sign” or “signature” includes, but is not limited to, any manual, facsimile, conformed or electronic signature.

~~(15)~~ “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

~~(16)~~ “Statement” means a statement of partnership authority under §47B-3-3 of this code, a statement of denial under §47B-3-4 of this code, a statement of dissociation under §47B-7-4 of this code, a statement of dissolution under §47B-8-5 of this code, a statement of merger under §47B-9-7 of this code, a statement of registration and a statement of withdrawal under §47B-10-1 of this code, or an amendment or cancellation of any of the foregoing.

~~(17)~~ “Transfer” includes an assignment, conveyance, lease, mortgage, deed and encumbrance.

ARTICLE 11. MISCELLANEOUS PROVISIONS.

§47B-11-6. Conversion of electronic documents; admissibility as evidence.

(a) Except as otherwise required by federal or state law, any records maintained by a corporation in its regular course of business may be kept in the form of an electronic record and may be maintained on any information processing system or information storing device or medium.

(b) Upon a proper request by any person entitled to inspect the records maintained by a corporation, the corporation shall convert within a reasonable time any records that are kept in a manner as set forth in subsection (a) of this section into a clear and legible paper form. If the requested record is maintained in the form of any information storage device or method or any one or more distributed or other electronic networks or databases, the corporation is not required to convert the entire record into paper form but shall be deemed to comply with the requirements of this section by converting only the requested record into paper form.

(c) A clear and legible paper form produced from records that are kept in electronic format as described in this section is admissible as evidence and accepted for all other purposes to the same extent as an original paper record with the same information if the paper form portrays the record accurately.

NOTE: The purpose of this bill is to provide a statutory framework for the treatment of digital assets.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.