

California Blockchain Working Group

Finance Subcommittee: Banking

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What Topics Fall Under Banking?

- Consumer Banking – deposits, loans, etc
- Commercial Banking – business loans, simple bank accounts, etc
- Payments – between individuals, interbank, interstate, international
- Municipal Bonds – new method of bond issuance
- Treatment of Cryptocurrency – as property triggering tax liability?
- Digital Securities – utility tokens, security tokens
- Qualified Custodian designation – an issue for institutional investors
- Money Transmission – blockchain businesses conducting value-exchange on behalf of clients may be deemed money transfer agents

Suggestions & Informal Community Feedback

- Banking is a very big topic – break into subtopics to allow for more efficient work progress
- Bank policies – it is hard for blockchain companies to access banking services, which is why crypto-specific banking services exist. How to encourage better access?
- Cryptocurrency shouldn't be treated as property – every single purchase or coin exchange, no matter how small, triggers tax consequences and burden of tracking basis (federal IRS issue, however some states have passed legislation). Discourages taxpayers from using cryptocurrency for everyday purchases

Resources, Expert Testimony, & Examples

- Wyoming – Wyoming Blockchain Task Force
- Colorado – Colorado Blockchain Council
- Other States
- Major investment and commercial banks
- Asset managers – traditional and blockchain-specific
- Federal Government – SEC, FinCEN, CFTC
- Blockchain Companies

Wyoming

- Enacted 13 blockchain-enabling laws
- Recognizes direct property rights for individual owners of digital assets of all types (virtual currencies, digital securities, utility tokens) and commercial law treats like money (super-negotiability rules under existing law)
 - Means bitcoin purchaser can buy free and clear of any pre-existing liens against it, unless purchaser was defrauding a lender who had previously made a loan against that bitcoin
 - Defines “control” by possession of private keys, enables smart contract to take control of a digital asset
 - Makes security interests in digital assets “possessory security interests” (Wyoming law applies as long as assets are located in Wyoming)
 - Extinguishes pre-existing liens after 2 years (to match statute of limitations for fraudulent conveyance under federal bankruptcy law)
- Fintech sandbox to provide regulatory relief to financial innovators from existing laws for up to 3 years
- Authorizes new state-chartered depository institution to provide basic banking services to blockchain and other businesses. 100% reserves required, cannot lend, FDIC insurance optional. Slated to start operating in 2020
- Authorizes “qualified custodian” for digital assets, which is a Wyoming bank. Directly still own digital assets as a bailment, vs de facto indirect ownership
- Digital assets exempt from property tax and sales tax (digital assets are intangible personal property so not subject to sales tax)
- 25 opportunity zones in Wyoming that provide potential capital gains tax deferral
- Money transmitter law exempts crypto-to-crypto transactions
- Security tokens – recognizes uncertificated and certificated blockchain shares of stock
- Utility tokens – exempt from state securities laws
- Electric utilities can negotiate directly with miners (insulate retail electric customers)
- Rehypothecation of assets illegal (pledging the same asset as collateral for different loans, already illegal anyway)

<https://www.forbes.com/sites/caitlinlong/2019/03/04/what-do-wyomings-new-blockchain-laws-mean/#58a4341c5fde>

Colorado

- Digital Token Act of 2019 - exempts the offer or sale of “digital tokens” that primarily have a “consumptive purpose” from state securities registration as long as certain transactional conditions are met, and exempts the digital token issuer from the broker-dealer and salesperson licensing requirements of the Colorado Securities Act (CSA)
- Governor Polis, former tech entrepreneur (Techstars, American Information Systems, BlueMountain.com, ProFlowers.com), is supportive of blockchain
- ETHDenver – California has been invited to explore collaboration with Colorado and Wyoming as this is a national effort, not just a state one. Still early for us, but if we have interest in exploring, we are invited to send delegates to ETHDenver (Feb 14-16) as a kick off event

https://leg.colorado.gov/sites/default/files/documents/2019A/bills/2019a_023_enr.pdf

<https://www.ethdenver.com/#schedule>

Other States – Purpose: Capital, Jobs, Revenue

- Montana Securities Act – blockchain-based utility tokens are exempt from state securities laws so long as the tokens have a “primarily consumptive” purpose and a pre-offering notice is filed
- Arizona Utility Tokens – exempt from state securities laws, same proposed by 4 other states
- Missouri Security Tokens - recognizes uncertificated and certificated blockchain shares of stock

<https://www.bizjournals.com/denver/news/2019/10/01/colorado-digital-token-act-exempts-certain.html>

<https://www.forbes.com/sites/caitlinlong/2019/03/04/what-do-wyomings-new-blockchain-laws-mean/#58a4341c5fde>

Other States – Online Resource Summaries

<https://www.ncsl.org/research/financial-services-and-commerce/the-fundamentals-of-risk-management-and-insurance-viewed-through-the-lens-of-emerging-technology-webinar.aspx>

<https://www.jdsupra.com/legalnews/blockchain-cryptocurrency-state-law-59816/>

Questions for Subcommittee and Public

- What issues are most important to you in this area and why?
- What subtopics do you think should be included?
- Are there resources that we should and can tap?
- What specific legislation would be most helpful to your business/encourage blockchain businesses to set up in CA?
- What specific complaints do you have about the way it is handled currently?
- Which issues do we think are higher priority to bring to the Working Group for potential policy this calendar year?