

Blockchain and the State Government:

Legal Ramifications of Blockchain: How will it work with existing state and federal statutes?

The lack of blockchain legislation in California should not be seen as a failure to act, rather the state legislature has taken a more nuanced approach to studying the burgeoning technology in order to refrain from stifling innovation with heavy handed regulations. In fact under current law many of the activities outlined in this report can be practiced legally in the state, for example Civil Code (CIV) §1633.7 states that, “a record or signature may not be denied legal effect or enforceability solely because it is in electronic form.” This statute that was added to the California Civil Code in 1999 giving agencies the authority to accept documents that are held on a blockchain that otherwise meet regulatory requirements. Therefore it is not the intent of this to outline every possible use case and affirm it legally. Instead this section intends to focus on highlighting statutory changes that answer one central question: How can legislators ensure distributed ledger systems balance enduring policy goals while also mitigating new and unforeseen risks? (Language taken from Illinois report).

Legal Issues:

- Disintermediation allows for the speed of transactions to be increased and the cost reduce. However, the intermediaries who are being excluded from these transactions may have performed valuable functions beyond simply recording a transaction. This includes fulfilling the regulatory tasks without which the transaction are invalid or illegal.
- Data Protection: Natural persons have the right to be forgotten, to have personal data deleted or corrected.
- Currently there are no specific legal remedies against corrupt miners. Participants may be exposed to the “miners” who create new blocks acting irresponsibly or not acting in good faith.

Steps for State Government:

- Define Blockchain in Statutes with a comprehensive and effective definition.
 - Additionally new terminology will need to be defined in order to regulate such a new technology and industry. I.e. “oracle”, “immutable”, “block”, “Hash”.
- Assign jurisdiction and liability based on use cases.
 - Jurisdiction can be easier to assign when dealing with private or permissioned blockchain, but with a more decentralized permission-less blockchain, there is no anchor point to base it off of.

Statutes:

Right to be forgotten: California Consumer Privacy Act (CCPA) California Civil Code S1798.100 through 1798.198.

- 1798.105 (a) “A consumer shall have the right to request that a business delete any personal information about the consumer which the business has collected from the consumer.”

Marriage Certificates:

SB 373 (Hertzberg): Health and Safety Code (*HSC*) §103526.5.

- Existing code: *HSC*§103526.5(a) The State Registrar, local registrar, or county recorder shall, upon request and payment of the required fee, supply to an applicant a certified copy of the record of a birth, fetal death, death, marriage, or marriage dissolution registered with the official. When the original forms of certificates of live birth furnished by the State Registrar contain a printed section at the bottom containing medical and social data or labeled “Confidential Information for Public Health Use Only,” that section shall not be reproduced in a certified copy of the record except as specifically authorized in §102430.
- Amendments:
 - (a) Notwithstanding subdivision (b) of §103526.5, a county recorder may issue a certified copy of a marriage record pursuant to Section 103525 by means of blockchain technology.
 - (b) For purposes of this section, “blockchain technology” means a mathematically secured, chronological, and decentralized consensus ledger or database.
 - (Definition needs to be updated for new bills).
- §102130: All marriage licenses shall be written legibly and shall be photographically and micrographically reproducible. A marriage license is not complete and correct that does not supply all of the items of information called for, or satisfactorily account for their omission.

Smart Contracts:

- Gov Code §16.5 If a public entity elects to use a digital signature, that digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:
 - (1) It is unique to the persona using it.
 - (2) It is capable of verification.
 - (3) It is under the sole control of the person using it.
 - (4) It is linked to the data in such a manner that if the data are changed, the digital signature is invalidated.
 - (5) It conforms to regulation adopted by the Secretary of State....

Electronic Transactions:

- Civil Code (CIV) §1633.7: Added by SB 820 (Sher, 1999).

- (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- (b) If a law requires a record to be in writing, an electronic record satisfies the law.
- (c) If a law requires a signature, an electronic signature satisfies the law.

Essential Questions:

1. How can legislators ensure distributed ledger systems balance enduring policy goals while also mitigating new or unforeseen risks?
2. How do current regulations that focus solely on centralized systems interact with the distributed nature of Blockchain?