

**HB 273 Analysis and Proposed Technical Amendment to Virtual Currency Definition**  
**in**  
**Florida’s Money Services Business Act (MSBA)**

This is a brief analysis and a proposed technical amendment to HB 273 C1 (herein “HB 273,” version C1, recently passed by Committee)<sup>1</sup> which amends Florida’s Money Services Business Act (“MSBA”), Fla. Stat. 560.103 et seq., and amends Florida’s Financial Technology Sandbox law, F.S. 559.952.<sup>2</sup> The Office of Financial Regulation (“OFR”) issues money transmitter (“MT”) licenses under the MSBA.<sup>3</sup> The Business Law Section of the Florida Bar established the Digital Currency and Blockchain Taskforce in an effort to assist the Florida Legislature in connection with innovative financial products and other technology-related legislation.

HB 273 amends the MSBA to define virtual currency (“VC”)<sup>4</sup> and regulate VC exchange platforms under the MSBA licensing process.<sup>5</sup> Operators of VC exchange platforms accept VC on behalf of their customers and then, at the customer’s request, convert VC into fiat currency or other forms of VC such as Bitcoin or Ether (by Ethereum). If enacted, HB 273 will require VC exchange platforms to secure a Florida MT License.

**A. Florida’s New Virtual Currency (“VC”) Definition**

HB 273, at lines 130-139 (“LL 130-139”), defines VC as: “medium of exchange in electronic or digital format that *is not currency*. The term does not include a medium of exchange in electronic or digital format that is used: (a) Solely within online gaming platforms with no market or application outside such gaming platforms; or (b) Exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants but cannot be converted into or redeemed for currency or another medium of exchange.” Fla. Stat. 560.103(36), as amended by HB 273 (emphasis added).<sup>6</sup>

---

<sup>1</sup> The companion bill, SB 486, has not been analyzed.

<sup>2</sup> The amendments to Florida’s Financial Technology Sandbox law are not addressed in this memo.

<sup>3</sup> Western Union and some pawn shops have MT licenses issued by the OFR as money transmitters. See Fla. Stat. 560.103(23).

<sup>4</sup> Florida’s Financial Technology Sandbox law, Fla. Stat. 559.952, *does not define VC* but regulates “innovative financial products” wherein “innovative” is defined as a “new or emerging technology, or new uses of existing technology, which provide a product, service, business model, or delivery mechanism to the public and which are not known to have a comparable offering in this state outside the Financial Technology Sandbox.” Fla. Stat. 559.952(3)(h).

<sup>5</sup> Coinbase is a VC exchange platform which currently holds a Florida MT license. See <https://www.coinbase.com/legal/licenses>.

<sup>6</sup> The MSBA defines “currency” as: “coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign

HB 273 has a modified version of VC found in the Uniform Regulation of Virtual Currency Businesses Act (“UVCBA”) proposed by the National Conference of Commissioners on Uniform State Laws (NCUSL). Rhode Island is the only jurisdiction that has adopted UVCBA’s definition of VC. See R.I. Gen. Laws § 19-14-1(40).<sup>7</sup>

In summary, the Taskforce recommends that the “gaming platform exclusion” in HB 273 be changed to conform to the definition of VC in the UVCBA.

**B. Definitional Difference: HB 273 and the UVCBA Excluding Gaming Platforms**

The UVCBA and Rhode Island’s definition of VC includes a more refined delineation excluding gaming platform tokens of value.

HB 273, LL 134-135	UVCBA – Rhode Island
The term [VC] does not include a medium of exchange in electronic or digital format that is used: (a) Solely within online gaming platforms with no market or application outside such gaming platforms;	[VC] does not include: ... (ii) a digital representation of value issued by or on behalf of a publisher and used within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

**C. Proposed Technical Amendment**

The Taskforce suggests that HB 273, LL 134-135, be amended to be consistent with the UVCBA and Rhode Island in the following manner:

**... is used (a) Solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.**

**D. Rationale**

**First**, since this is the first definition of VC set forth in Florida law, consistency with the UVCBA and Rhode Island law is reasonable.

**Second**, the Taskforce has been informed that in FY 2022-2023, the OFR will consider amending Florida’s UCC, Article 9, Secured Transactions. See Fla. Stat. 679.1011, et seq. There is a growing concern in the traditional financial community that the lack of laws concerning recordation and perfection of security interests by a lender, to secure a debt of a

---

country.” Fla. Stat. 560.103(11). The Taskforce notes VC is not currency under HB 273. See LL 101-103.

<sup>7</sup> Rhode Island adopted the UVCBA in 2019. R.I. Gen. Laws § 19-14-1(4)(ii). Rhode Island substantially adopted the UVCBA’s definition of VC but further EXCLUDED “[n]ative digital token used in a proprietary blockchain service platform; or [a] gift certificate; store gift card; general-use prepaid card; or loyalty, award, or promotional gift card, ... or any card, code or device, or other device that can add funds to those products.” R.I. Gen. Laws § 19-14-1(40).

debtor involving the debtor's VC, will lead to unnecessary litigation. The Taskforce has plans to involve the Business Law Section's Bankruptcy and UCC substantive committees in developing amendments to UCC Article 9 regarding security interests in VC. The proposed definition of VC in HB 273 is a key element effecting amending Florida's UCC Article 9 to encompass VC. To this end in October 2021, the OFR and members of the Taskforce had a working seminar with members of NCUSL who drafted the UVCBA and who plan to propose amendments to UCC Article 9 involving VC security interests. These NCUSL members indicated that NCUSL may adopt and approve such UCC Article 9 amendments by mid-2022.

**Third**, members of the Taskforce have noted that many game platforms not only permit gamers to purchase game tokens with fiat currency and VC, but also permit gamers to convert their tokens back to other currencies when they retire from the game.<sup>8</sup> The current version of VC in HB 273 may bring existing game platforms within the scope of MT licensure because the proposed definition requires that the game tokens have "no market or application outside such gaming platforms". The Taskforce recognizes that the Florida Legislature establishes policies on this gaming platform topic but the Taskforce is concerned that the broad definition of VC in HB 273 may sweep-in several popular gaming platforms in its definition of VC, potentially to the detriment of Florida residents.

#### **E. Background and Further Commentary:**

**UVCBA's Definition of VC:** UVCBA §102(23) defines "Virtual currency" as: "(A) means a digital representation of value that: (1) is used as a medium of exchange, unit of account, or store of value; and (2) is not legal tender, whether or not denominated in legal tender; and (B) does not include: (i) a transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for legal tender, bank credit, or virtual currency; or (ii) a digital representation of value issued by or on behalf of a publisher and used within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform." The VCBA defines "store" as "except in the phrase 'store of value,' means to maintain control of virtual currency on behalf of a resident by a person other than the resident. 'Storage' and 'storing' have corresponding meanings." UVCBA §102(20). An example of a "store of value" is a debit card.

**HB 273's Expanded Definition of Money Transmitters:** HB 273, LL 104-117, amends the MSBA definition of "money transmitter," to include companies handling VC "acting as an intermediary to transmit currency, monetary value, a payment instrument, or virtual currency from one person to another location or person by any means, ... [and] [t]he term includes **only an**

---

<sup>8</sup> See "People are now selling Reddit's Fortnite crypto for cash" at <https://decrypt.co/43825/people-are-now-selling-reddits-fortnite-crypto-for-cash>. Oct. 2, 2020. Also, games are using Non-Fungible Tokens (NFTs), which represent in-game assets. The NFTs are usually maintained on a NFT blockchain platform and these game employ a play-to-earn model. Gamers seek to redeem these game tokens outside the game platform. See "Gaming Tokens. What are they and how can you get 'em!" at <https://zipmex.com/learn/what-are-gaming-tokens/> Oct. 11, 2021.

**intermediary** that has the ability to unilaterally execute or indefinitely prevent a transaction.” LL 104-117 (emphasis added). The intermediary limitation seems to be derived from the UVCBA in its definition of “control.” See UVCBA §102(3)<sup>9</sup>.

**Impact on Programmers Developing VC in Florida:** The Taskforce believes that Florida-based developers, that is, creators of VC, do not seem to be governed by the proposed amendments to the MSBA. However, VC exchange platforms are covered by HB 273. Since a VC developer does not necessarily act as “**an intermediary** that has the ability to unilaterally execute or indefinitely prevent a transaction,” HB 273, LL 104-117 (emphasis added), it appears such programmer, developing VC in Florida, is not a money transmitter, as defined in HB 273 and hence is not regulated by the MSBA.

Analysis and Technical Amendment confirmed by the Florida Bar’s Digital Currency and Blockchain Taskforce (“DCTF”) on January 18, 2022.

Woodrow "Woody" H. Pollack, Chair DCTF, [WPollack@shutts.com](mailto:WPollack@shutts.com); Jude Cooper, Co-Vice Chair, DCTF, [JCooper@beckerlawyers.com](mailto:JCooper@beckerlawyers.com).

Robert Kain, Co-Vice Chair DCTF  
Concept Law Group, Ft. Lauderdale, FL  
[rkain@conceptlaw.com](mailto:rkain@conceptlaw.com)  
assisted by Cindy Innocent  
Guerra King, Tampa FL  
[Cinnocent@guerraking.com](mailto:Cinnocent@guerraking.com)

Ver20220119

---

<sup>9</sup> The UVCBA regulates persons who engage in virtual currency business activity by defining the terms “virtual currency business activity,” “control” and “exchange.” UVCBA § 102(25), (3) and (5), respectively. The UVCBA defines “control” as “(A) when used in reference to a transaction or relationship involving virtual currency, power to *execute unilaterally or prevent indefinitely a virtual-currency transaction*; and (B) when used in reference to a person, the direct or indirect power to direct the management, operations, or policies of the person through legal or beneficial ownership of voting power in the person or under a contract, arrangement, or understanding.” § 102(3)(emphasis added). The UVCBA defines “exchange,” when used as a verb, as meaning “to assume *control* of virtual currency from or on behalf of a resident, at least momentarily, to sell, trade, or convert: (A) virtual currency for legal tender, bank credit, or one or more forms of virtual currency; or (B) legal tender or bank credit for one or more forms of virtual currency.” UVCBA § 102(5)(emphasis added).