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A BILL

11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
12 1976, SO AS TO ENACT THE “SOUTH CAROLINA
13 BLOCKCHAIN INDUSTRY EMPOWERMENT ACT OF 2019”
14 IN ORDER TO ESTABLISH THIS STATE AS AN INCUBATOR
15 FOR TECH INDUSTRIES SEEKING TO DEVELOP
16 INNOVATION BY USING BLOCKCHAIN TECHNOLOGY; BY
17 ADDING SECTION 33-6-245 SO AS TO FURTHER PROVIDE
18 FOR THE CONSTRUCTION OF TERMS RELATING TO
19 STOCK AND CERTIFICATE TOKENS; TO AMEND SECTION
20 33-6-250, RELATING TO THE FORM AND CONTENT OF
21 CORPORATE STOCK CERTIFICATES, SO AS TO
22 AUTHORIZE CORPORATIONS TO ISSUE CERTIFICATE
23 TOKENS IN LIEU OF STOCK CERTIFICATES; BY ADDING
24 CHAPTER 47 TO TITLE 34 SO AS TO PROVIDE THAT A
25 PERSON WHO DEVELOPS, SELLS, OR FACILITATES THE
26 EXCHANGE OF AN OPEN BLOCKCHAIN TOKEN IS NOT
27 SUBJECT TO SPECIFIED SECURITIES AND MONEY
28 TRANSMISSION LAWS, AND TO PROVIDE SPECIFIED
29 VERIFICATION AUTHORITY TO THE SECRETARY OF
30 STATE AND BANKING COMMISSIONER; BY ADDING
31 CHAPTER 49 TO TITLE 34 SO AS TO CREATE THE
32 FINANCIAL TECHNOLOGY SANDBOX FOR THE TESTING
33 OF FINANCIAL PRODUCTS AND SERVICES IN SOUTH
34 CAROLINA; TO AUTHORIZE LIMITED WAIVERS OF
35 SPECIFIED PROVISIONS OF LAW UNDER CERTAIN
36 CONDITIONS; TO ESTABLISH STANDARDS AND
37 PROCEDURES FOR SANDBOX APPLICATIONS,
38 OPERATIONS, AND SUPERVISION; TO AUTHORIZE
39 RECIPROCITY AGREEMENTS WITH OTHER REGULATORS;
40 TO REQUIRE CRIMINAL HISTORY BACKGROUND
41 CHECKS; TO REQUIRE THE CREATION OF FINANCIAL
42 TECHNOLOGY INNOVATION ACCOUNTS TO BE USED FOR

1 SPECIAL PURPOSES; TO REQUIRE A CONSUMER
2 PROTECTION BOND; AND TO SPECIFY STANDARDS FOR
3 THE SUSPENSION AND REVOCATION OF A SANDBOX
4 AUTHORIZATION; BY ADDING CHAPTER 51 TO TITLE 34
5 SO AS TO SPECIFY THAT DIGITAL ASSETS ARE PROPERTY
6 WITHIN THE UNIFORM COMMERCIAL CODE, TO
7 AUTHORIZE SECURITY INTERESTS IN DIGITAL ASSETS,
8 TO ESTABLISH AN OPT-IN FRAMEWORK FOR BANKS TO
9 PROVIDE CUSTODIAL SERVICES FOR DIGITAL ASSET
10 PROPERTY AS CUSTODIANS, TO SPECIFY STANDARDS
11 AND PROCEDURES FOR CUSTODIAL SERVICES, TO
12 CLARIFY THE JURISDICTION OF SOUTH CAROLINA
13 COURTS RELATING TO DIGITAL ASSETS, TO AUTHORIZE
14 A SUPERVISION FEE, AND TO PROVIDE FOR OTHER
15 RELATED PROVISIONS TO DIGITAL ASSETS; TO AMEND
16 SECTION 35-11-105, RELATING TO DEFINITIONS UNDER
17 THE SOUTH CAROLINA ANTI-MONEY LAUNDERING ACT,
18 SO AS TO DEFINE THE TERM “VIRTUAL CURRENCY”; AND
19 TO AMEND SECTION 35-11-110, RELATING TO MATTERS
20 AND TRANSACTIONS TO WHICH THE ANTI-MONEY
21 LAUNDERING ACT DOES NOT APPLY, SO AS TO PROVIDE
22 THAT THE ACT DOES NOT APPLY TO BUYING, SELLING,
23 ISSUING, OR TAKING CUSTODY OF PAYMENT
24 INSTRUMENTS OR STORED VALUE IN THE FORM OF
25 VIRTUAL CURRENCY OR RECEIVING VIRTUAL
26 CURRENCY FOR TRANSMISSION TO A LOCATION WITHIN
27 OR OUTSIDE THE UNITED STATES BY ANY MEANS.

28
29 Be it enacted by the General Assembly of the State of South
30 Carolina:

31
32 SECTION 1. This act must be known and may be cited as the
33 “South Carolina Blockchain Industry Empowerment Act of 2019”.

34
35 PART 1

36
37 Stock Certificate Issuance by Tokens

38
39 SECTION 2. Article 2, Chapter 6, Title 33 of the 1976 Code is
40 amended by adding:

41
42 “Section 33-6-245. As used in this title, a reference to:

- 1 (1) share certificate, share, stock, share of stock, or words of
2 similar import includes a certificate token;
- 3 (2) a requirement to print information on a share certificate or
4 words of similar import is satisfied if the information satisfies the
5 requirements set forth in Section 33-6-250(f);
- 6 (3) certificated shares or words of similar import includes shares
7 represented by certificate tokens, and a reference to the delivery or
8 deposit of these shares to the corporation refers to any method of
9 granting control of the tokens to the corporations; and
- 10 (4) a certificate being duly endorsed or words of similar import
11 means that the transaction authorizing transfer of control of the
12 certificate token was signed by the lawful holder of the token with
13 the network signature corresponding to the lawful holder's data
14 address to which the certificate token was issued or last lawfully
15 transferred.”

16

17 SECTION 3. Section 33-6-250 of the 1976 Code is amended to
18 read:

19

20 “Section 33-6-250. (a) Shares may be represented by
21 certificates, but need not be so represented, subject to the provisions
22 of Section 33-6-260(a). Unless Chapters 1 through 20 of this title
23 or another statute expressly provides otherwise, the rights and
24 obligations of shareholders are identical whether or not their shares
25 are represented by certificates.

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

27 (1) the name of the issuing corporation and that it is organized
28 under the laws of this State;

29 (2) the name of the person to whom, or in the case of a
30 certificate token, the data address to which the token was issued; and

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

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

1 (d) Except as otherwise provided by subsection (f), each share
2 certificate;

3 (1) must be signed (either manually or in facsimile) by two
4 officers designated in the bylaws or by the board of directors; and

5 (2) may bear the corporate seal or its facsimile.

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

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

18 (g) As used in this section:

19 (1) 'Blockchain' means a digital ledger or database which is
20 chronological, consensus based, decentralized, and mathematically
21 verified in nature.

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

25 (a) entered into a blockchain or other secure, auditable
26 database;

27 (b) linked to or associated with the certificate token; and

28 (c) able to be transmitted electronically to the issuing
29 corporation, the person to whom the certificate token was issued,
30 and any transfers.

31 (3) 'Network signature' means a string of alphanumeric
32 characters that, when broadcast by a person to the data address's
33 corresponding distributed or other electronic network or database,
34 provides reasonable assurances to a recipient that the broadcasting
35 person has knowledge or possession of the private key uniquely
36 associated with the data address.'

37

38

PART 11

39

40 Open Blockchain Tokens Not Subject to Security or Money
41 Transmission Laws

42

43 SECTION 4. Title 34 of the 1976 Code is amended by adding:

[4351]

1
2 “CHAPTER 47

3
4 Open Blockchain Tokens

5
6 Section 34-47-10. (A) Except as otherwise provided by
7 subsection (C), a developer or seller of an open blockchain token
8 must not be considered the issuer of a security if all of the following
9 are met:

10 (1) the developer or seller of the token, or the registered agent
11 of the developer or seller, files a notice of intent with the Secretary
12 of State, as specified in subsection (D);

13 (2) the purpose of the token is for a consumptive purpose,
14 which only must be exchangeable for or provided for the receipt of
15 goods, services, or content, including rights of access to goods,
16 services, or content; and

17 (3) the developer or seller of the token did not sell the token
18 to the initial buyer as a financial investment. This subsection must
19 be satisfied only if:

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

22 (b) at least one of the following is true:

23 (i) the developer or seller of the token reasonably
24 believed that it sold the token to the initial buyer for a consumptive
25 purpose;

26 (ii) the token has a consumptive purpose that is available
27 at the time of sale and can be used at or near the time of sale for use
28 for a consumptive purpose;

29 (iii) if the token does not have a consumptive purpose
30 available at the time of sale, the initial buyer of the token is
31 prevented from reselling the token until the token is available for
32 use for a consumptive purpose; or

33 (iv) the developer or seller takes other reasonable
34 precautions to prevent buyers from purchasing the token as a
35 financial investment.

36 (B) Except as otherwise provided by subsection (C), a person
37 who facilitates the exchange of an open blockchain token must not
38 be considered a broker-dealer or a person who otherwise deals in
39 securities if all of the following are met:

40 (1) the person, or the registered agent of the person, files a
41 notice of intent with the Secretary of State, as specified in subsection
42 (D);

1 (2) the person has a reasonable and good faith belief that a
2 token subject to exchange conforms to the requirements of
3 subsections (A)(1), (2), and (3); and

4 (3) the person takes reasonably prompt action to terminate the
5 exchange of a token that does not conform to the requirements of
6 this subsection.

7 (C) Notwithstanding another provision of law, a developer,
8 seller, or a person who facilitates the exchange of an open
9 blockchain token is subject to other applicable provisions of law
10 only to the extent necessary to carry out those sections. The
11 Secretary of State has the authority provided to determine
12 compliance with the provisions of this section, including whether a
13 person qualifies for the exemptions set forth in this section.

14 (D) A developer, seller, or a person who facilitates the exchange
15 of an open blockchain token, or the registered agent of the
16 applicable person, shall file electronically a notice of intent with the
17 Secretary of State before the person qualifies for an exemption
18 under this section. The notice of intent shall contain the name of the
19 person acting as a developer, seller, or facilitator, the contact
20 information of the person or the registered agent of the person and
21 specify whether the person will be acting as a developer, seller, or
22 facilitator. A secure form must be made available by the Office of
23 the Secretary of State on its Internet website for this purpose.

24 (E) As used in this section, 'open blockchain token' means a
25 digital unit which is:

26 (1) created:

27 (a) in response to the verification or collection of a
28 specified number of transactions relating to a digital ledger or
29 database;

30 (b) by deploying computer code to a blockchain network
31 that allows for the creation of digital tokens or other units; or

32 (c) using any combination of the methods specified in
33 subitems (a) and (b).

34 (2) Recorded in a digital ledger or database which is
35 chronological, consensus-based, decentralized, and mathematically
36 verified in nature, especially relating to the supply of units and their
37 distribution; and

38 (3) capable of being traded or transferred between persons
39 without an intermediary or custodian of value.

40

41 Section 34-47-20. This chapter does not apply to:

42 (1) banks, bank holding companies, credit unions, building and
43 loan associations, savings and loan associations, savings banks, or

1 mutual banks organized under the laws of a state or the United
2 States, provided that they do not issue or sell payment instruments
3 through authorized delegates or subdelegates who are not banks,
4 bank holding companies, credit unions, building and loan
5 associations, savings and loan associations, savings banks, or
6 mutual banks;

7 (2) electronic transfer of government benefits for a federal, state,
8 or county governmental agency as defined in Federal Reserve Board
9 Regulation E by a contractor for and on behalf of the United States
10 or a department, agency, or instrumentality of it, or a state or
11 political subdivision of the State; or

12 (3) a person who develops, sells, or facilitates the exchange of
13 an open blockchain token.

14

15 Section 34-47-30. (A) If the commissioner has reason to
16 believe a person is engaged in or is about to engage in an activity
17 which would be subject to this chapter and the person is not
18 otherwise exempt from the provisions of this chapter, the
19 commissioner may issue an order to show cause why an order to
20 cease and desist the activity should not issue.

21 (B) In an emergency, the commissioner may petition the circuit
22 court for the issuance of a temporary restraining order and the order
23 to cease and desist becomes effective upon service upon the person.

24 (C) An order to cease and desist remains effective and
25 enforceable pending the completion of any authorized appeals.”

26

27

PART III

28

29

Financial Technology Sandbox Applications

30

31 SECTION 5. The General Assembly finds the following:

32 (1) Financial technology is undergoing a transformation
33 period in which new technologies are providing greater automation,
34 connectivity, and transparency for financial products and services.

35 (2) Existing legal frameworks are restricting financial
36 technology innovation because these frameworks were largely
37 established at a time when technology was not a fundamental
38 component of financial products and services.

39 (3) Financial technology innovators require a supervised,
40 flexible regulatory sandbox to test new products and services using
41 waivers of specified statutes and rules under defined conditions.

42 (4) Jurisdictions which establish regulatory sandboxes are
43 more likely to provide a welcoming business environment for

1 technology innovators and may experience significant business
2 growth.

3 (5) Arizona, Illinois, and the United Kingdom have enacted,
4 or are considering, regulatory sandboxes for financial technology
5 innovators in their jurisdictions.

6 (6) The State of South Carolina currently offers one of the
7 best business environments in the United States for blockchain and
8 financial technology innovators, and should offer a regulatory
9 sandbox for these innovators to develop the next generation of
10 financial technology products and services in this State.

11

12 SECTION 6. Title 34 of the 1976 Code is amended by adding:

13

14

“CHAPTER 49

15

16

Financial Technology Sandbox Act

17

18 Section 34-49-110. This act may be cited as the ‘South Carolina
19 Financial Technology Sandbox Act’.

20

21 Section 34-49-120. As used in this act:

22

23 (1) ‘Blockchain’ means a digital ledger or database which is
24 chronological, consensus-based, decentralized, and mathematically
25 verified in nature.

26 (2) ‘Commissioner’ means the state banking commissioner.

27 (3) ‘Consumer’ means a person, whether a natural person or a
28 legal entity, in South Carolina who purchases or enters into an
29 agreement to receive an innovative financial product or service
30 made available through the financial technology sandbox.

31 (4) ‘Financial product or service’ means a product or service
32 related to finance, including banking, securities, consumer credit, or
33 money transmission, which is subject to statutory or rule
34 requirements identified in Section 34-49-130(A) and is under the
35 jurisdiction of the commissioner or Secretary.

36 (5) ‘Financial technology sandbox’ means the program created
37 by this act which allows a person to make an innovative financial
38 product or service available to consumers during a sandbox period
39 through a waiver of existing statutory and regulation requirements,
40 or portions of it, by the commissioner or Secretary.

41 (6) ‘Innovative’ means new or emerging technology, or new
42 uses of existing technology that provides a product, service,
43 business model, or delivery mechanism to the public and has no

1 substantially comparable, widely available analogue in South
2 Carolina, including blockchain technology.

3 (7) ‘Sandbox period’ means the period of time, initially not
4 longer than twenty-four months, in which the commissioner or
5 Secretary has authorized an innovative financial product or service
6 to be made available to consumers, which also shall encompass an
7 extension granted under Section 34-49-180.

8 (8) ‘Secretary’ means the Secretary of State.

9

10 Section 34-49-130. (A) Notwithstanding another provision of
11 law, a person who makes an innovative financial product or service
12 available to consumers in the financial technology sandbox may be
13 granted a waiver of specified requirements imposed by statute or
14 regulation, of portions thereof, if these statutes or regulations do not
15 currently permit the product or service to be made available to
16 consumers. A waiver under this subsection must be no broader than
17 necessary to accomplish the purposes and standards set forth in this
18 act, as determined by the commissioner or Secretary. The
19 commissioner or Secretary upon application may waive specified
20 provisions of law or the regulations promulgated under them while
21 they administer for the sandbox period, upon receipt and approval
22 of an application made pursuant to Section 34-49-140.

23 (B) A person who makes an innovative financial product or
24 service available to consumers in the financial technology sandbox
25 is:

26 (1) not immune from civil damages for acts and omissions
27 relating to this act; and

28 (2) subject to all criminal and consumer protection laws of
29 this State.

30 (C) The commissioner or Secretary may refer suspected
31 violations of law relating to this act to appropriate state or federal
32 agencies for investigation, prosecution, civil penalties, and other
33 appropriate enforcement actions.

34 (D) If service of process on a person making an innovative
35 financial product or service available to consumers in the financial
36 technology sandbox is not feasible, service on the Secretary of State
37 is considered service on the person.

38

39 Section 34-49-140. (A) A person shall apply to the
40 commissioner or Secretary to make an innovative financial product
41 or service available to consumers in the financial technology
42 sandbox, based on the office that administers the statute or
43 regulation, or a portion of it, for which a waiver is sought. If both

1 the commissioner and the Secretary jointly administer a statute or
2 regulation, or if the appropriate office is not known, an application
3 may be filed with either the commissioner or the Secretary. If an
4 application is filed with an office that does not administer the statute
5 or regulation for which a waiver is sought, the receiving office shall
6 forward the application to the correct office. The person shall
7 specify in an application the statutory or regulation requirements for
8 which a waiver is sought, and the reasons why these requirements
9 prohibit the innovative financial product or service from being made
10 available to consumers. The application also shall contain the
11 elements required for authorization which are set forth in subsection
12 (F). The commissioner and Secretary each, by regulation, shall
13 prescribe a method of application.

14 (B) A business entity making an application under this section
15 must be a domestic corporation or other organized domestic entity
16 with a physical presence, other than that of a registered office or
17 agent in South Carolina.

18 (C) Before an employee applies on behalf of an institution, firm,
19 or other entity intending to make an innovative financial product or
20 service available through the financial technology sandbox, the
21 employee shall obtain the consent of the institution, firm, or entity
22 before filing an application under this section.

23 (D) The individual filing an application under this section and
24 the individuals who are substantially involved in the development,
25 operation, or management of the innovative financial product or
26 service and as a condition of an application, shall submit to a
27 criminal history background check.

28 (E) An application made under this section must be
29 accompanied by a fee of five hundred dollars. The fee must be
30 deposited into the financial technology innovation account as
31 provided in Section 34-49-150.

32 (F) The commissioner or Secretary, as applicable, shall
33 authorize or deny a financial technology sandbox application in
34 writing within ninety days of receiving the application. The
35 commissioner or Secretary and the person who has made an
36 application may jointly agree to extend the time beyond ninety days.
37 The commissioner or Secretary may impose conditions on any
38 authorization consistent with this act. In deciding to authorize or
39 deny an application under this subsection, the commissioner or
40 Secretary shall consider each of the following:

41 (1) the nature of the innovative financial product or service
42 proposed to be made available to consumers in the sandbox,

1 including all relevant technical details, which may include whether
2 the product or service utilizes blockchain technology;

3 (2) the potential risk to consumers and methods which will be
4 used to protect consumers and resolve complaints during the
5 sandbox period;

6 (3) a business plan proposed by the person, including a
7 statements of arranged capital;

8 (4) whether the person has the necessary personnel, adequate
9 financial and technical expertise, and a sufficient plan to test,
10 monitor, and assess the innovative financial product or service;

11 (5) whether a person substantially involved in the
12 development, operation, or management of the innovative financial
13 product or service has been convicted of, or is currently under
14 investigation for, fraud, state or federal securities violations, or any
15 property-based offense;

16 (6) a copy of the disclosures required under Section
17 34-49-160(C) must be provided to consumers; and

18 (7) any other factor that the commissioner or Secretary
19 determines to be relevant.

20 (G) If an application is authorized under subsection (F), the
21 commissioner or Secretary shall specify the statutory or regulation
22 requirements, or portions of them, for which a waiver is granted and
23 the length of the initial sandbox period, consistent with Section
24 34-49-120(7). The commissioner or Secretary also shall post notice
25 of the approval of a sandbox application under this subsection, a
26 summary of the innovative financial product or service and the
27 contact information of the person making the product or service
28 available through the sandbox on the Internet website of the
29 commissioner or Secretary.

30 (H) A person authorized under subsection (F) to enter into the
31 financial technology sandbox shall post a consumer protection bond
32 with the commissioner or Secretary as security for potential losses
33 suffered by consumers. The bond amount is determined by the
34 commissioner or Secretary in an amount not less than ten thousand
35 dollars and must be commensurate with the risk profile of the
36 innovative financial product or service. The commissioner or
37 Secretary may require that a bond under this subsection be increased
38 or decreased at any time based on risk profile. Unless a bond is
39 enforced under Section 34-49-190(B)(2), the commissioner or
40 Secretary shall cancel or allow the bond to expire two years after the
41 date of the conclusion of the sandbox period.

42 (I) A person authorized to enter into the financial technology
43 sandbox under subsection (F), is considered to possess an

1 appropriate license for the purposes of federal law requiring state
2 licensure or authorization.

3 (J) Authorization under subsection (F) is not construed to create
4 a property right.

5
6 Section 34-49-150. (A) There is created the financial
7 technology innovation account. Funds within the account shall be
8 expended only by General Assembly appropriation. All funds
9 within the account must be invested by the State Treasurer and all
10 investment earnings from the account must be credited to the
11 account. The account must be divided into two subaccounts
12 controlled by the commissioner and Secretary, respectively, for the
13 purposes of administrative management. For the purpose of
14 accounting and investing only, the subaccounts must be treated as
15 separate accounts.

16 (B) Subject to General Assembly appropriation, application fees
17 remitted to the account pursuant to Section 34-49-140(E) must be
18 deposited into the subaccount controlled by the commissioner or
19 Secretary, as applicable, based on the receiving official. These
20 funds, and any additional funds appropriated by the General
21 Assembly, must be used only for the purposes of administering this
22 act, include processing of sandbox applications and monitors,
23 examination, and enforcement activities relating to this act.

24
25 Section 34-49-160. (A) Except as otherwise provided by Section
26 34-49-180, a person authorized under Section 34-49-140(F) to enter
27 into the financial technology sandbox may make an innovative
28 financial product or service available to consumers during the
29 sandbox periods.

30 (B) The commissioner or Secretary, on a case by case basis, may
31 specify the maximum number of consumers permitted to receive an
32 innovative financial product or service, after consultation with the
33 person authorized under Section 34-49-140(F), to make the product
34 or service available in the financial technology sandbox.

35 (C) Before a consumer purchases or enters into an agreement to
36 receive an innovative financial product or service through the
37 financial technology sandbox, the person making the product or
38 service available shall provide a written statement of the following
39 to the consumer:

40 (1) the name and contact information of the person making
41 the product or service available to consumers;

1 (2) that the product or service has been authorized to be made
2 available to consumers for a temporary period by the commissioner
3 or Secretary, as applicable, under the laws of South Carolina.

4 (3) that the State of South Carolina does not endorse the
5 product or service and is not subject to liability for losses or damages
6 caused by the product or service;

7 (4) that the product or service is undergoing testing, may not
8 function as intended, and may entail financial risk;

9 (5) that the person making the produce or service available to
10 consumers is not immune from civil liability for any losses or
11 damages caused by the product or service;

12 (6) the expected end date of the sandbox period;

13 (7) the name and contact information of the commissioner or
14 Secretary, as applicable, and notification that suspected legal
15 violations, complaints, or other comments related to the product or
16 service may be submitted to the commissioner or Secretary; and

17 (8) any other statements or disclosures required by regulation
18 of the commissioner or Secretary which are necessary to further the
19 purposes of this act.

20 (D) A person authorized to make an innovative financial product
21 or service available to consumers in the financial technology
22 sandbox shall maintain comprehensive records relating to the
23 innovative financial product or service. The person shall keep these
24 records for not less than five years after the conclusion of the
25 sandbox period. The commissioner and Secretary may specify
26 further records requirements under this subsection by regulation.

27 (E) The commissioner or Secretary, as applicable, may examine
28 the records maintained under subsection (D) at any time, with or
29 without notice. All direct and indirect costs of an examination
30 conducted under this subsection must be paid by the person making
31 the innovative financial product or service available in the financial
32 technology sandbox. Records made available to the commissioner
33 or Secretary under this subsection must be confidential and shall not
34 be subject to disclosure under the South Carolina Freedom of
35 Information Act, but may be released to appropriate state and federal
36 agencies for the purposes of investigation.

37 (F) Unless granted an extension pursuant to Section 34-49-180,
38 not less than thirty days before the conclusion of the sandbox period,
39 a person who makes an innovative financial product or service
40 available in the financial technology sandbox shall provide written
41 notification to consumers regarding the conclusion of the sandbox
42 period and shall not make the product or service available to new
43 consumers after the conclusion of the sandbox period until legal

1 authority outside of the sandbox exists to make the product or
2 service available to consumers. The person shall wind down
3 operations with existing consumers within sixty days after the
4 conclusion of the sandbox period, except that, after the sixtieth day,
5 the person may:

6 (1) collect and receive money owed to the person and service
7 loans made by the person, based on agreements with consumers
8 made before the conclusion of the sandbox period;

9 (2) take necessary legal action; and

10 (3) take other actions authorized by the commissioner or
11 Secretary by regulation which are not inconsistent with this
12 subsection.

13 (G) The commissioner and the Secretary may, jointly or
14 separately, enter into agreements with state, federal, or foreign
15 regulatory agencies to allow persons who make an innovative
16 financial product or service available in South Carolina through the
17 financial technology sandbox to make their products or services
18 available in other jurisdictions to make innovative financial
19 products and services available in South Carolina under the
20 standards of this chapter.

21

22 Section 34-49-170. (A) The commissioner or Secretary, by
23 order, may revoke or suspend authorization granted to a person
24 under Section 34-49-140(F) if:

25 (1) the person has violated or refused to comply with this act
26 or any lawful regulation, order, or decision adopted by the
27 commissioner or Secretary;

28 (2) a fact or condition exists that, if it had existed or become
29 known at the time of the financial technology sandbox application,
30 would have warranted denial of the application or the imposition of
31 material conditions;

32 (3) a material error, false statement, misrepresentation, or
33 material omission was made in the financial technology sandbox
34 application; or

35 (4) after consultation with the person, continued testing of the
36 innovative financial product or service would:

37 (a) be likely to harm consumers; or

38 (b) no longer serve the purpose of this act because of the
39 financial or operational failure of the product or service.

40 (B) Written notification of a revocation or suspension order
41 made under subsection (A) must be served using any means
42 authorized by law, and if the notice relates to a suspension, include

1 any conditions or remedial action which must be completed before
2 the suspension will be lifted by the commissioner or Secretary.

3

4 Section 34-49-180.eA person granted authorization under
5 Section 34-49-140(F) may apply for an extension of the initial
6 sandbox period for not more than twelve additional months. An
7 application for an extension must be made not later than sixty days
8 before the conclusion of the initial sandbox period specified by the
9 commissioner or Secretary. The commissioner or Secretary shall
10 approve or deny the application for extension in writing no more
11 than thirty-five days before the conclusion of the initial sandbox
12 period. An application for extension by a person shall cite one of
13 the following reasons as the basis for the application and provide all
14 relevant supporting information that:

15 (1) statutory or rule amendments are necessary to conduct
16 business in South Carolina on a permanent basis; or

17 (2) an application for a license or other authorization required
18 to conduct business in South Carolina on a permanent basis has been
19 filed with the appropriate office and approval is currently pending.

20

21 Section 34-49-190. (A) The commissioner and Secretary each
22 shall promulgate regulations to implement this act. The regulations
23 promulgated by the commissioner and Secretary under this
24 subsection must be as consistent as reasonably possible, but shall
25 account for differences in the statutes and programs administered by
26 the commissioner and Secretary.

27 (B) The commissioner or Secretary may issue:

28 (1) all necessary orders to enforce this act, including ordering
29 the payment of restitution, and enforce these orders in a court of
30 competent jurisdiction; and

31 (2) an order under item (D) to enforce the bond posted under
32 Section 34-49-140(H), or a portion of this bond, and use proceeds
33 from the bond to offset losses suffered by consumers as a result of
34 an innovative financial product or service.

35 (C) All actions of the commissioner or Secretary under this act
36 are subject to the South Carolina Administrative Procedures Act.

37

38 Section 34-49-200. Criminal history record information may be
39 disseminated by criminal justice agencies in this State, whether
40 directly or through an intermediary, to the banking commissioner or
41 the Secretary of State for purposes of obtaining background
42 information on persons specified in Section 34-49-140(D), as part
43 of a financial technology sandbox application.

1
2 Section 34-49-210. Persons specified in Section 34-49-140(D)
3 as part of a financial technology sandbox application must be
4 required to submit to fingerprinting in order to obtain state and
5 national criminal history record information.

6
7 Section 34-49-220. This act applies to all banks in this State
8 organized under state law and to national banks where specifically
9 provided or permitted.”

10

11 PART IV

12

13 Digital Assets

14

15 SECTION 7. Title 34 of the 1976 Code is amended by adding:

16

17 “CHAPTER 51

18

19 Digital Assets

20

21 Section 34-51-10. (A) As used in this chapter:

22 (1) ‘Digital asset’ means a representation of economic,
23 proprietary, or access rights that is stored in a computer-readable
24 format, and includes digital consumer assets, digital securities, and
25 virtual currency.

26 (2) ‘Digital consumer asset’ means a digital asset that is used
27 or bought primarily for consumptive, personal, or household
28 purposes and includes:

29 (a) an open blockchain token constituting intangible
30 personal property as otherwise provided by law; and

31 (b) any other digital asset which does not fall within items
32 (3) and (4).

33 (3) ‘Digital security’ means a digital asset which constitutes a
34 security, but excludes digital consumer assets and virtual currency.

35 (4) ‘Virtual currency’ means a digital asset that is:

36 (a) used as a medium of exchange, unit of account, or store
37 of value; and

38 (b) not recognized as legal tender by the United States
39 government.

40 (B) The terms in subsections (A)(3) and (4) are mutually
41 exclusive.

42

1 Section 34-51-20. (A) Digital assets are classified in the
2 following manner:

3 (1) Digital consumer assets are intangible personal property
4 and must be considered general intangibles, only for the purposes of
5 Article 9 of the Uniform Commercial Code.

6 (2) Digital securities are intangible personal property and
7 must be considered securities and investment property, only for the
8 purposes of Articles 8 and 9 of the Uniform Commercial Code.

9 (3) Virtual currency is intangible personal property and must
10 be considered money, only for the purposes of Article 9 of the
11 Uniform Commercial Code.

12 (B) A digital asset may be treated as a financial asset pursuant to
13 a written agreement with the owner of the digital asset. If treated as
14 a financial asset, the digital asset shall remain intangible personal
15 property.

16 (C) Classification of digital assets under this section must be
17 construed in a manner to give the greatest effect to this chapter, but
18 must not be construed to apply to any other asset.

19
20 Section 34-51-30. (A) Notwithstanding the financing statement
21 requirement under the Uniform Commercial Code as otherwise
22 applied to general intangibles or another provision of law, perfection
23 of a security interest in a digital asset may be achieved through
24 control, as defined in subsection (E)(1). A security interest held by
25 a secured party having control of a digital asset has priority over a
26 security interest held by a secured party that does not have control
27 of the asset.

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

33 (C) A secured party may file a financing statement with the
34 Secretary of State, including to perfect a security interest in proceeds
35 from a digital asset.

36 (D) Notwithstanding another provision of law, including Article
37 9 of the Uniform Commercial Code, a transferee takes a digital asset
38 free of any security interest two years after the transferee takes the
39 asset for value and does not have actual notice of an adverse claim.
40 This subsection only applies to a security interest perfected by a
41 method other than control.

42 (E) As used in this section:

1 (1) Consistent with subsection (F), ‘control’ is equivalent to
2 the term ‘possession’ when used in Article 9 of the Uniform
3 Commercial Code and means:

4 (a) a secured party, or an agent, custodian, fiduciary, or
5 trustee of the party, has the exclusive legal authority to conduct a
6 transaction relating to a digital asset, including by means of a private
7 key or the use of a multisignature arrangement authorized by the
8 secured party; and

9 (b) a smart contract created by a secured party which has
10 the exclusive legal authority to conduct a transaction relating to a
11 digital asset. As used in this subitem, ‘smart contract’ means an
12 automated transaction, or any substantially similar analogue, which
13 is comprised of code, script, or programming language that executes
14 the terms of an agreement, and which may include taking custody
15 of and transferring an asset, or issuing executable instructions for
16 these actions, based on the occurrence or nonoccurrence of specified
17 conditions.

18 (2) ‘Multisignature arrangement’ means a system of access
19 control relating to a digital asset for the purposes of preventing
20 unauthorized transactions relating to the asset, in which two or more
21 private keys are required to conduct a transaction, or any
22 substantially similar analogue.

23 (3) ‘Private keys’ means a unique element of cryptographic
24 data, or any substantially similar analogue, which is:

25 (a) held by a person;

26 (b) paired with a unique, publicly available element of
27 cryptographic data; and

28 (c) associated with an algorithm that is necessary to carry
29 out an encryption or decryption required to execute a transaction.

30 (F) Perfection by control creates a possessory security interest
31 and does not require physical possession. For purposes of Article 9
32 of the Uniform Commercial Code and this section, a digital asset is
33 located in South Carolina if the asset is held by a South Carolina
34 custodian, the debtor or secured party is physically located in South
35 Carolina, or the debtor or secured party is incorporated or organized
36 in South Carolina.

37
38 Section 34-51-40. (A) A bank may provide custodial services
39 consistent with this section upon providing sixty days written notice
40 to the banking commissioner. The provisions of this section are
41 cumulative and not exclusive as an optional framework for
42 enhanced supervision of digital asset custody. If a bank elects to

1 provide custodial services under this section, it shall comply with all
2 provisions of this section.

3 (B) A bank may serve as a qualified custodian, as specified by
4 the United States Securities and Exchange Commission in 17 C.F.R.
5 Section 275.206(4)-2. In performing custodial services under this
6 section, a bank shall:

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

10 (2) maintain information technology best practices relating to
11 digital assets held in custody. The commissioner may specify
12 required best practices by regulation;

13 (3) fully comply with applicable federal anti-money
14 laundering, customer identification, and beneficial ownership
15 requirements; and

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

20 (C) A bank providing custodial services shall enter into an
21 agreement with an independent certified public accountant to
22 conduct an examination conforming to the requirements of 17
23 C.F.R. Section 275.206(4)-2(a)(4) and (6), at the cost of the bank.
24 The accountant shall transmit the results of the examination to the
25 commissioner within one hundred twenty days of the examination
26 and may file the results with the United States Securities and
27 Exchange Commission as its rules may provide. Material
28 discrepancies in an examination must be reported to the
29 commissioner within one day. The commissioner shall review
30 examination results upon receipt within a reasonable time and
31 during any regular examination conducted.

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

39 (1) custody under a bailment as a nonfungible or fungible
40 asset. Assets held under this item must be strictly segregated from
41 other assets; or

42 (2) custody under a bailment pursuant to subsection (E).

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

9 (F) A bank and a customer shall agree in writing regarding the
10 source code version the bank will use for each digital asset, and the
11 treatment of each asset under the Uniform Commercial Code, if
12 necessary. Any ambiguity under this subsection must be resolved
13 in favor of the customer.

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

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

19 (2) the heightened risk of loss from transactions under
20 subsection (E);

21 (3) that some risk of loss as a prorata creditor exists as the
22 result of custody as a fungible asset or custody under subsection
23 (D)(2);

24 (4) that custody under subsection (D)(2) may not result in the
25 digital assets of the customer being strictly segregated from other
26 customer assets; and

27 (5) that the bank is not liable for losses suffered under
28 subsection (E), except for liability consistent with fiduciary and trust
29 powers as a custodian under this section.

30 (H) A bank and a customer shall agree in writing to a time period
31 within which the bank must return a digital asset held in custody
32 under this section. If a customer makes an election under subsection
33 (D)(2), the bank and the customer also may agree in writing to the
34 form in which the digital asset must be returned.

35 (I) All ancillary or subsidiary proceeds relating to digital assets
36 held in custody under this section shall accrue to the benefit of the
37 customer, except as specified by a written agreement with the
38 customer. The bank may elect not to collect certain ancillary or
39 subsidiary proceeds, as long as the election is disclosed in writing.
40 A customer who makes an election under subsection (D)(2) may
41 withdraw the digital asset in a form that permits the collection of the
42 ancillary or subsidiary proceeds.

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

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

9 (L) Banks are not subject to the bank license tax levied under the
10 laws of this State. In lieu of this tax and to offset the costs of
11 supervision and administration of this section, a bank which
12 provides custodial services under this section shall pay a supervision
13 fee equal to two-tenths of one mill on the dollar (\$.0002) relating to
14 assets held in custody under this section as of December thirty-first
15 of each year, with payment of the supervision fee made on or before
16 the following January thirty-first. Banks providing custodial
17 services outside of this section must not be required to pay this
18 supervision fee.

19 (M) The commissioner may promulgate regulations to
20 implement this section.

21 (N) As used in this section:

22 (1) 'Commissioner' means the banking commissioner of this
23 State.

24 (2) 'Custodial services' means the safekeeping and
25 management of customer currency and digital assets through the
26 exercise of fiduciary and trust powers under this section as a
27 custodian, and includes fund administration and the execution of
28 customer instructions.

29

30 Section 34-51-50. The courts of South Carolina have
31 jurisdiction to hear claims in both law and equity relating to digital
32 assets, including those arising from this chapter and the Uniform
33 Commercial Code.”

34

35

PART V

36

37 Anti-Money Laundering Exceptions for Virtual Currency

38

39 SECTION 8. Section 35-11-105 of the 1976 Code is amended by
40 adding a new item to read:

41

42 “(21) 'Virtual currency' means any type of digital
43 representation of value that:

1 (a) is used as a medium of exchange, unit of account or store
2 of value; and
3 (b) is not recognized as legal tender by the United States
4 government.”

5
6 SECTION 9. Section 35-11-110 of the 1976 Code is amended to
7 read:

8
9 “Section 35-11-110. This chapter does not apply to:

10 (1) the United States or a department, agency, or instrumentality
11 of the United States;

12 (2) money transmission by the United States Postal Service or
13 by a contractor on behalf of the United States Postal Service;

14 (3) a state, county, city, or another governmental agency or
15 governmental subdivision of a state;

16 (4) a bank, bank holding company, office of an international
17 banking corporation, branch of a foreign bank, corporation
18 organized pursuant to the Bank Service Corporation Act, 12 U.S.C.
19 Section 1861-1867 (Supp. V 1999), or corporation organized under
20 the Edge Act, 12 U.S.C. Section 611-633 (1994 & Supp. V 1999),
21 under the laws of a state or the United States if it does not issue, sell,
22 or provide payment instruments or stored value through an
23 authorized delegate who is not such a person;

24 (5) electronic funds transfer of governmental benefits for a
25 federal, state, county, or governmental agency by a contractor on
26 behalf of the United States or a department, agency, or
27 instrumentality of the United States, or a state or governmental
28 subdivision, agency, or instrumentality of a state;

29 (6) a board of trade designated as a contract market under the
30 federal Commodity Exchange Act, 7 U.S.C. Section 1-25 (1994), or
31 a person that, in the ordinary course of business, provides clearance
32 and settlement services for a board of trade to the extent of its
33 operation as or for a board of trade;

34 (7) a registered futures commission merchant under the federal
35 commodities laws to the extent of its operation as a futures
36 commission merchant;

37 (8) a person who provides clearance or settlement services
38 pursuant to a registration as a clearing agency or an exemption from
39 that registration granted under the federal securities laws to the
40 extent of its operation as a provider of clearance or settlement
41 services;

42 (9) an operator of a payment system to the extent that it provides
43 processing, clearing, or settlement services, between or among

1 persons excluded by this section, in connection with wire transfers,
2 credit card transactions, debit card transactions, stored-value
3 transactions, automated clearing house transfers, similar funds
4 transfers;

5 (10) a person registered as a securities broker-dealer under
6 federal or state securities laws to the extent of his operation as a
7 securities broker-dealer; ~~or~~

8 (11) a credit union regulated and insured by the National Credit
9 Union Association; or

10 (12) buying, selling, issuing, or taking custody of payment
11 instruments or stored value in the form of virtual currency or
12 receiving virtual currency for transmission to a location within or
13 outside the United States by any means.”

14

15

PART VI

16

17

Effective Date

18

19 SECTION 10. This act takes effect on January 1, 2020.

20

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21