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S.269

Introduced by Senator Clarkson

Referred to Committee on Economic Development, Housing and General
Affairs

Date: January 3, 2018

Subject: Commerce and trade; finance; financial technology and regulation

Statement of purpose of bill as introduced: This bill proposes to implement
strategies relating to blockchain, cryptocurrency, and financial technology in
order to: promote regulatory efficiency; enable business organizational and
governance structures that may expand opportunities in financial technology;
and promote education and adoption of financial technology in the public and
private sectors.

An act relating to blockchain, cryptocurrency, and financial technology

It is hereby enacted by the General Assembly of the State of Vermont:

~~*** Regulatory Update and Efficiency ***~~

~~Sec. 1. CONSUMER PROTECTION AND FINANCIAL TECHNOLOGY;
STATUTORY REVIEW; REPORT~~

~~(a) The Department of Financial Regulation and the Attorney General, in
consultation with the Office of Legislative Council, the Center for Legal~~

1 Innovation at Vermont Law School, and other interested stakeholders, shall
2 conduct a comprehensive review of Vermont's statutory and regulatory
3 consumer protection framework in light of evolving risks and opportunities
4 raised by evolving financial technology and shall consider statutory or
5 regulatory proposals necessary to ensure Vermont's statutes and rules are
6 modern and effective.

7 (b) On or before January 15, 2019, the Department shall submit a report of
8 its findings and recommendations to the House Committee on Commerce and
9 Economic Development and the Senate Committee on Economic
10 Development, Housing and General Affairs.

11 Sec. 2. REGULATORY TECHNOLOGY; STUDY; REPORT

12 (a) The Agency of Administration, in coordination with those agencies and
13 departments with specific regulatory authority, shall review areas for potential
14 adoption of regulatory technology in the oversight of Vermont businesses and
15 professionals, including how such technology may employ the power of
16 computation and digital communication to embed regulatory processes in
17 software.

18 (b) On or before January 15, 2019, the Agency shall submit a report of its
19 findings and recommendations to the House Committee on Commerce and
20 Economic Development and the Senate Committee on Economic
21 Development, Housing and General Affairs.

1 *** Enabling Provisions for FinTech and Blockchain Approaches ***

2 Sec. 3. 11 V.S.A. chapter 25, subchapter 12 is added to read:

3 Subchapter 12. Digital Currency Limited Liability Companies

4 § 4171. ELECTION

5 A limited liability company organized pursuant to this title for the purpose
6 of operating a digital currency system may elect to be a digital currency
7 limited liability company by:

8 (1) specifying in its articles of organization that it elects to be a digital
9 currency limited liability company; and

10 (2) meeting the requirements in subdivision 4172(2) and section 4173 of
11 this title.

12 § 4172. AUTHORITY; REQUIREMENTS

13 Notwithstanding any provision of this chapter to the contrary:

14 (1) A digital currency limited liability company may provide for its
15 governance, in whole or in part, through the technological architecture of the
16 system.

17 (2) A digital currency limited liability company shall:

18 (A) adopt procedures to respond to necessary innovations and
19 changes in the system architecture;

20 (B) adopt protocols to respond to system security breaches or other
21 unauthorized actions that affect the system,

1 ~~(C) specify how the company designates the participants within the~~
2 ~~system, including nodes and miners, as members or managers, or both;~~

3 ~~(D) specify the scope and extent to which limited liability and agency~~
4 ~~authority apply to a participant or class of participants in the system;~~

5 ~~(E) specify participants' access to information and protocols to~~
6 ~~ensure transparency;~~

7 ~~(F) specify the fiduciary duties of core developers;~~

8 ~~(G) adopt rules concerning hard forks; and~~

9 ~~(H) adopt rules governing the responsible use of computing power by~~
10 ~~mining pool operators.~~

11 § 4173. PHYSICAL PRESENCE; TAXATION; EXEMPTION

12 (a) A digital currency limited liability company shall maintain a physical
13 presence within this State or conduct some or all of its activities within this
14 State, or both.

15 (b) A digital currency limited liability company shall remit to the State in
16 the form of its digital currency a transaction tax equivalent to \$0.01, at the
17 then current exchange rate for the currency with the U.S. dollar, per
18 transaction for:

19 (1) each unit of currency mined or otherwise created; and

20 (2) each sale or other transfer of one or more units of currency.

21 ~~(c) A digital currency limited liability company is exempt from taxes~~

1 ~~otherwise applicable under Title 32 of the Vermont Statutes Annotated.~~

2 § 4174. MULTIPLE ROLES OF MEMBERS AND MANAGERS

3 (a) A member or manager of a digital currency limited liability company
4 may interact with the company in multiple roles, including as a node or miner
5 in the network or as a trader and holder of the currency in its own account and
6 for the account of others.

7 (b) A member or manager who interacts with the company in multiple
8 roles does not violate a fiduciary duty solely because of those interactions if
9 the member or manager acts in good faith with respect to the company.

10 (c) The activities of a member or manager who interacts with the company
11 through multiple roles are not deemed to take place in Vermont solely because
12 of the location of the digital currency limited liability company in Vermont.

13 § 4175. CONSENSUS FORMATION ALGORITHMS

14 In its governance, a digital currency limited liability company may adopt
15 any reasonable algorithmic means for accomplishing the consensus process for
16 validating records of the holders of its currency, and may, in accordance with
17 any procedure specified pursuant with section 4172 of this title, provide for the
18 modification of this consensus process or the substitution of a new process that
19 complies with the requirements of law and the governance provisions of the
20 digital currency limited liability company.

21 § 4176. SCOPE OF SUBCHAPTER, OTHER LAW

1 ~~Except as expressly provided otherwise, this subchapter does not exempt a~~
2 ~~digital currency limited liability company from any other judicial, statutory, or~~
3 ~~regulatory provision of Vermont law.~~

4 Sec. 4. E-RESIDENCY; STUDY; REPORT

5 (a) The Agency of Commerce and Community Development, in
6 collaboration with the Department of Financial Regulation, shall review the e-
7 residency program established in the country of Estonia and consider areas for
8 potential adoption of a comparable program or regulatory changes within
9 Vermont.

10 (b) On or before January 15, 2019, the Agency shall submit a report of its
11 findings and recommendations to the House Committee on Commerce and
12 Economic Development and the Senate Committee on Economic
13 Development, Housing and General Affairs.

14 * * * Enabling Provisions of FinTech Activities and Business Sectors;

15 Personal Identity and Information Trust Companies;

16 Financial Trustee Safe Harbor * * *

17 Sec. 5. 8 V.S.A. chapter 78 is added to read:

18 CHAPTER 78. PERSONAL IDENTITY AND INFORMATION TRUST

19 COMPANIES

20 § 2451. DEFINITIONS

21 ~~As used in this section,~~

1 (1) "Personal identity" means the identity of a particular natural person

2 (2) "Personal identity-related information" means data relating to the
3 identity of a natural person that includes data such as gender identification,
4 birth information, marital status, citizenship and nationality, government
5 identification designations, and personal, educational, and financial histories.

6 § 2452. PERSONAL INFORMATION AS THE SUBJECT OF A

7 FIDUCIARY RELATIONSHIP

8 (a) Personal identity and personal identity-related information may be held
9 under a trust relationship in accordance with the terms of this chapter.

10 (b) A person who holds personal identity or personal identity-related
11 information has a fiduciary responsibility to the individual whose identity is in
12 question over the maintenance and release of personal identity and personal
13 identity-related information.

14 (c) Personal identity and personal identity-related information held
15 pursuant to this section creates a personal identity trust.

16 § 2453. QUALIFIED PERSONAL IDENTITY TRUST COMPANY

17 (a) The trustee of a personal identity trust shall qualify to conduct its
18 business under the terms of this chapter and applicable rules adopted by the
19 Department.

20 (b) A person shall not engage in business as a personal identity trust
21 company in this State without first obtaining a certificate of authority from the

1 Department

2 (c) A personal identity trust company may be:

3 (1) a company empowered to do financial trust business under the
4 provisions of chapter 77 or 204 of this title, or otherwise, that meets the
5 requirements of this chapter and applicable rules adopted by the
6 Department; or

7 (2) an independent personal identity trust company formed for the
8 purpose of being a personal identity trust company that meets the requirements
9 of this chapter and applicable rules adopted by the Department.

10 (A) An independent personal identity trust company shall be
11 organized under the laws of this State as a business corporation, a benefit
12 corporation, a limited liability company, a low-profit limited liability company,
13 a partnership, a limited partnership, a nonprofit corporation, a consumer
14 cooperative, a mutual benefit enterprise, or a business trust.

15 (B) An independent personal identity trust company shall:

16 (i) maintain its principal place of business in this State;

17 (ii) appoint a registered agent to accept service of process and to
18 otherwise act on its behalf in this State, provided that whenever the registered
19 agent cannot with reasonable diligence be found at the Vermont registered
20 office of the company, the Secretary of State shall be an agent of the company
21 upon whom any process, notice, or demand may be served,

1 ~~(iii) hold at least one meeting of its governing body in this State~~

2 ~~each year; and~~

3 ~~(iv) have at least one Vermont resident as a member of its~~

4 ~~governing body.~~

5 § 2454. NAME; OFFICE

6 (a)(1) An independent personal identity trust company shall file with the

7 Department of Financial Regulation a name it proposes to use in connection

8 with a trust business or establishing a principal office or trust office in this

9 State pursuant to this chapter.

10 (2) The Department shall not approve a proposed name if it determines

11 that the name may be misleading or likely to confuse the public, or deceptively

12 similar to any name in use in this State.

13 (b) A personal identity trust company organized or regulated under this

14 chapter may petition the Commissioner for permission to establish and

15 maintain new or additional offices for the transaction of its personal identity

16 trust company business.

17 (c) An independent personal identity trust company shall maintain at least

18 one physical office in this State that meets the requirements for location and

19 operation as the Department establishes by rule.

20 § 2455. CONDUCT OF BUSINESS

21 ~~(a) A personal identity trust company.~~

1 (1) may operate through remote interaction with the individuals
2 entrusting personal identity and personal identity information to the company,
3 and there shall be no requirement of Vermont residency or other contact for
4 any such individual to establish such a relationship with the company; and

5 (2) may, subject to applicable fiduciary duties, the terms of any
6 agreement with the individual involved, and any applicable statutory or
7 regulatory provision:

8 (A) provide elements of personal identity-related information to third
9 parties with which the individual seeks to have a transaction, a service
10 relationship, or other particular purpose interaction;

11 (B) provide certification or validation concerning personal identity-
12 related information; and

13 (C) receive compensation for acting in these capacities.

14 (b) An authorization for providing personal identity-related information
15 may be either particular or general, provided it meets the terms of any
16 agreement with the individual involved and any regulatory requirements set by
17 the Department.

18 § 2456. REPORTS; FEES; AUTHORITY OF DEPARTMENT

19 (a) The Department of Financial Regulation shall prescribe by rule the
20 timing and manner of reports by a personal identity trust company to the State,
21 that, for an independent personal identity trust company, shall reflect the

1 approach mandated under section 2405 of this title.

2 (b) The Department shall have the authority to assess an annual fee for a
3 personal identity trust company, on a basis to be determined from time to time
4 by the Department, which may be linked to the revenues or transaction
5 frequency of the company, based on other metrics, or assessed on a flat-fee
6 basis.

7 (c) In addition to other powers conferred by this chapter, the Department
8 may exercise, with respect to a personal identity trust company, all of the
9 powers granted to the Commissioner under section 2410 of this title with
10 respect to oversight of an independent trust company.

11 § 2457. RULES

12 The Department of Financial Regulation shall adopt rules to govern other
13 aspects of the business of a personal identity trust company that shall address,
14 among other topics, issues of the winding up of a company and the transfer of
15 the personal identity-related information it holds.

16 Sec. 6. INSURANCE; E-BANKING; DFR STUDY; REPORT

17 (a) The Department of Financial Regulation shall review the potential
18 application of blockchain technology to the provision of insurance and e-
19 banking and consider areas for potential adoption of a comparable program or
20 regulatory changes within Vermont.

21 (b) On or before January 15, 2019, the Department shall submit a report on

1 ~~its findings and recommendations to the House Committee on Commerce and~~
2 Economic Development and the Senate Committee on Economic
3 Development, Housing and General Affairs.

4 Sec. 7. 8 V.S.A. § 14107(c) is amended to read:

5 (c)(1) Notwithstanding any other provision of law to the contrary, a
6 financial institution may invest its funds, operate a business, manage or deal in
7 property, or take any other action over whatever period of time may
8 reasonably be necessary to avoid loss on an investment or loan previously
9 made or an obligation created in good faith.

10 (2) A Vermont financial institution's investments, whether for its own
11 account or as a fiduciary, may include assets represented through financial
12 technology, provided such assets otherwise meet the applicable standards for
13 investment by the financial institution.

14 Sec. 8. 8 V.S.A. § 14410 is amended to read:

15 § 14410. FIDUCIARY INVESTMENTS

16 (a)(1) In the absence of an express prohibition in the instrument, judgment,
17 decree, power, order, or other writing creating a trust or other fiduciary
18 relationship, a financial institution acting as fiduciary may invest and reinvest
19 funds held by it in a fiduciary capacity in the securities of an open-end or
20 closed-end investment company or investment trust registered under 15 U.S.C.
21 ~~§§ 80a-1 to 80a-04 (Investment Company Act of 1940), as that act exists now~~

1 ~~or as amended in the future~~

2 (2) A financial institution's investments may include assets represented
3 through financial technology, provided such assets otherwise meet the
4 applicable standards for investment by the financial institution.

5 (b) The investments authorized in subsection (a) of this section may be
6 made even if the financial institution, or an affiliate thereof, is providing
7 services to the investment company and is receiving reasonable compensation
8 for such services as an advisor, manager, sponsor, administrator, broker,
9 distributor, custodian, shareholder servicing agent, transfer agent, registrar, or
10 any related services. At least annually, the financial institution shall disclose
11 in a clear and conspicuous manner to the principal of each fiduciary account
12 the fees it has charged or received from the investment company, or an affiliate
13 thereof, for such services and the basis upon which compensation is calculated,
14 expressed either in a specific amount or as a percentage of asset value.

15 Sec. 9. 14A V.S.A. § 804 is amended to read:

16 § 804. PRUDENT ADMINISTRATION

17 (a) A trustee shall administer the trust as a prudent person would, by
18 considering the purposes, terms, distributional requirements, and other
19 circumstances of the trust. In satisfying this standard, the trustee shall exercise
20 reasonable care, skill, and caution.

21 ~~(b) A trustee's investments may include assets represented through~~

1 ~~financial technology, provided such assets otherwise meet the applicable~~
2 standards for investment by the trustee.

3 Sec. 10. 14A V.S.A. § 902(e) is amended to read:

4 (e) A trustee may invest in any kind of property or type of investment
5 consistent with the standards of this chapter, including assets represented
6 through financial technology.

7 Sec. 11. 11A V.S.A. chapter 22 is added to read:

8 CHAPTER 22. AUTONOMOUS AGENT CORPORATIONS

9 § 22.01. DEFINITION

10 As used in this title, an “autonomous agent” is an artificial decision-capable
11 agent operating without the interference of a human being.

12 § 22.02. AUTHORITY; PURPOSE

13 (a) A corporation may be established for the purposes of providing legal
14 recognition of an autonomous agent and shall be known as an “autonomous
15 agent corporation.”

16 (b) An autonomous agent corporation may cover the activities of only one
17 autonomous agent.

18 § 22.03. STANDARD OF CARE

19 The standard of care necessary to rely on the limitation of liability for
20 officers, directors, and shareholders of a corporation as provided in section
21 6.22 and subsection 8.30(d) of this title is met by a corporation that does each

1 of the following:

2 (1) exercises reasonable care in the creation or procurement of the
3 hardware and software embodying the autonomous agent;

4 (2) exercises reasonable care in the deployment and supervision of the
5 autonomous agent;

6 (3) maintains, and when necessary exercises, the ability to turn off the
7 autonomous agent; and

8 (4) gathers and maintains reasonable records of the operation and
9 maintenance of the autonomous agent.

10 § 22.04. IDENTIFICATION

11 An autonomous agent shall have a unique identifier included in the name of
12 its autonomous agent corporation and shall be registered with a Legal Entity
13 Identifier process.

14 § 22.05. FEE

15 The Secretary of State's office shall collect an annual fee of \$200.00 from
16 an autonomous agent corporation in addition to the normal franchise and
17 business taxes with respect to each autonomous agent.

18 Sec. 12. AUTONOMOUS AGENT CORPORATIONS; REGULATORY
19 STRUCTURE; RECOMMENDATIONS

20 (a)(1) The Department of Financial Regulation shall develop and
21 recommend an overall regulatory structure for the activities of autonomous

1 ~~agency corporations and of autonomous agents in the State of Vermont~~

2 (2) In developing this structure, the Department shall coordinate with
3 other departments with jurisdiction over particular activities, including the
4 Agency of Transportation for autonomous vehicles.

5 (b) On or before January 15, 2019, the Department shall submit a report of
6 its findings and recommendations to the House Committee on Commerce and
7 Economic Development and the Senate Committee on Economic
8 Development, Housing and General Affairs.

9 * * * Adoption of Blockchain, Cryptocurrency, and FinTech in Vermont * * *

10 Sec. 13. UPDATE; STUDY AND REPORT; BLOCKCHAIN

11 TECHNOLOGY

12 (a) The Secretary of State, the Commissioner of Financial Regulation, and
13 the Attorney General, in consultation with one or more Vermont delegates to
14 the National Conference of Commissioners on Uniform State Laws and with
15 the Center for Legal Innovation at Vermont Law School, shall review and
16 update the findings and conclusions of the report to the General Assembly
17 directed in 2015 Acts and Resolves No. 51, Sec. A.3 concerning the potential
18 opportunities and risks of adopting blockchain technology in the operations of
19 Vermont State government.

20 (b) On or before January 15, 2019, the Secretary shall submit a report of its
21 findings and recommendations to the House Committee on Commerce and

1 Economic Development and the Senate Committee on Economic
2 Development, Housing and General Affairs.

3 Sec. 14. FINTECH SUMMIT

4 (a) The Agency of Commerce and Community Development, in
5 collaboration with the Department of Financial Regulation, the University of
6 Vermont, the Vermont State Colleges, Norwich University, Vermont Law
7 School, the Agency of Education, regional CTE centers, and in consultation
8 with private sector practitioners, shall organize and hold a FinTech Summit to:

9 (1) explore legal and regulatory mechanisms to promote the adoption of
10 financial technology in State government;

11 (2) explore opportunities to promote financial technology and economic
12 development in the private sector, including in the areas of banking, insurance,
13 retail and service businesses, and cryptocurrency providers and
14 proponents; and

15 (3) explore opportunities to integrate financial technology into
16 secondary and postsecondary education in Vermont.

17 (b) In fiscal year 2019, the amount of \$25,000.00 is appropriated from the
18 General Fund to the Agency of Commerce and Community Development to
19 implement this section.

20 * * * Effective Date * * *

21 Sec. 15. EFFECTIVE DATE

1 ~~This act shall take effect on July 1, 2018.~~

Sec. 1. 8 V.S.A. chapter 78 is added to read:

CHAPTER 78. PERSONAL INFORMATION TRUST COMPANIES

§ 2451. DEFINITIONS

As used in this section:

(1) "Personal information" means data capable of being associated with a particular natural person, including gender identification, birth information, marital status, citizenship and nationality, government identification designations, and personal, educational, and financial histories.

(2) "Personal information trust business" means a person that offers to the public by advertising, solicitation, or other means that the person is available to hold personal information in trust as a fiduciary.

§ 2452. PERSONAL INFORMATION AS THE SUBJECT OF A FIDUCIARY RELATIONSHIP

(a) Personal information may be held under a trust relationship in accordance with the terms of this chapter.

(b) A person who holds personal information under a trust relationship has a fiduciary responsibility to the individual whose identity is in question over the maintenance and release of personal information.

(c) Personal information held pursuant to this section creates a personal identity trust.

§ 2453. QUALIFIED PERSONAL INFORMATION TRUST COMPANY

(a) The trustee of a personal information trust shall qualify to conduct its business under the terms of this chapter and applicable rules adopted by the Department.

(b) A person shall not engage in business as a personal information trust company in this State without first obtaining a certificate of authority from the Department.

(c) A personal information trust company shall:

(1) be organized under the laws of this State as a business corporation, a benefit corporation, a limited liability company, a low-profit limited liability company, a partnership, a limited partnership, a nonprofit corporation, or a cooperative;

(2) maintain a place of business in this State;

(3) appoint a registered agent to accept service of process and to otherwise act on its behalf in this State, provided that whenever the registered agent cannot with reasonable diligence be found at the Vermont registered office of the company, the Secretary of State shall be an agent of the company upon whom any process, notice, or demand may be served; and

(4) hold at least one meeting of its governing body in this State each year.

§ 2454. NAME; OFFICE

A personal information trust business shall file with the Department of Financial Regulation the name it proposes to use in connection with its business, which the Department shall not approve if it determines that the name may be misleading, likely to confuse the public, or deceptively similar to any other business name in use in this State.

§ 2455. CONDUCT OF BUSINESS

(a) A personal information trust company may:

(1) operate through remote interaction with the individuals entrusting personal information to the company, and there shall be no requirement of Vermont residency or other contact for any such individual to establish such a relationship with the company; and

(2) subject to applicable fiduciary duties, the terms of any agreement with the individual involved, and any applicable statutory or regulatory provision:

(A) provide elements of personal information to third parties with which the individual seeks to have a transaction, a service relationship, or other particular purpose interaction;

(B) provide certification or validation concerning personal information;

(C) receive compensation for acting in these capacities; and

(D) transact business through the use of a mathematically secured, chronological, and decentralized consensus ledger or database, whether maintained via Internet interaction, peer-to-peer network, or otherwise.

(b) An authorization to provide personal information may be either particular or general, provided it meets the terms of any agreement with the individual involved and any rules adopted by the Department of Financial Regulation.

§ 2456. REPORTS; FEES; AUTHORITY OF DEPARTMENT

(a) The Department of Financial Regulation shall prescribe by rule the timing and manner of reports by a personal identity trust company to the Department that shall reflect the approach mandated under section 2405 of this title.

(b)(1) The Department shall assess the following fees for a personal information trust company:

(A) an initial registration fee of \$1,000.00, which includes a licensing fee of \$500.00 and an investigation fee of \$500.00;

(B) an annual renewal fee of \$500.00;

(C) a change in address fee of \$100.00.

(2) The Department shall have the authority to bill a personal information trust company for examination time at its standard rate.

(c) In addition to other powers conferred by this chapter, the Department may exercise, with respect to a personal information trust company, all of the powers granted to the Commissioner under section 2410 of this title with respect to oversight of an independent trust company.

§ 2457. RULES

The Department of Financial Regulation shall adopt rules to govern other aspects of the business of a personal information trust company, including its protection and safeguarding of personal information and its interaction with third parties with respect to personal information it holds.

Sec. 2. INSURANCE; E-BANKING; DFR STUDY; REPORT

(a) The Department of Financial Regulation shall review the potential application of blockchain technology to the provision of insurance and e-banking and consider areas for potential adoption of a comparable program or regulatory changes within Vermont.

(b) On or before January 15, 2019, the Department shall submit a report of its findings and recommendations to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs.

Sec. 3. FINTECH SUMMIT

The Agency of Commerce and Community Development, in collaboration with the Department of Financial Regulation, the University of Vermont and State Agricultural College, the Vermont State Colleges, Norwich University, Vermont Law School, the Agency of Education, and regional CTE centers, and in consultation with private sector practitioners, shall organize and hold a

FinTech Summit to:

(1) explore legal and regulatory mechanisms to promote the adoption of financial technology in State government;

(2) explore opportunities to promote financial technology and economic development in the private sector, including in the areas of banking, insurance, retail and service businesses, and cryptocurrency providers and proponents; and

(3) explore opportunities to integrate financial technology into secondary and postsecondary education in Vermont.

* * * Effective Date * * *

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2018.