



Kentucky Continues Progress in Blockchain Technology and Smart Contracts

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Effective July 15, 2020, Kentucky statutorily empowered its first “Blockchain Technology Working Group.” Under KRS § 42.747(3), this working group is charged with evaluating “the feasibility and efficacy of using blockchain technology to enhance the security of and increase protection for the state’s critical infrastructure, including but not limited to the electric utility grid, natural gas pipelines, drinking water supply and delivery, wastewater, telecommunications, and emergency services.” The working group then is charged with recommending which of the Commonwealth’s critical infrastructure can benefit from the integration of blockchain technology. While the legislative definition of critical infrastructure appears broadly drawn, it is noteworthy that the state’s financial systems or payments infrastructure is not included.

In conducting its work, the working group plans to focus on blockchain technology’s fit for the infrastructure, the stakeholders’ willingness to implement blockchain solutions, as well as the anticipated cost-benefit returns. The working group is charged with reporting to the governor and the Legislative Research Commission its findings and recommendations on December 1 of each year.

The composition of the nine-member group will be: (1) Chief Information Officer (CIO) for the Commonwealth Office of Technology (who will serve as chairperson); (2) Secretary for the Energy and Environment Cabinet; (3) CIO for the Finance and Administration Cabinet; (4) a representative selected by the Executive Director of the Kentucky Public Service Commission; (5) Executive Director of Kentucky Department of Homeland Security; (6) a member in academia, designated by the CIO of the Commonwealth Office of Technology, who has expertise in blockchain technology and its applicability to different industry sectors; (7) an *ex officio* member representing the Kentucky Municipal Utilities Association, to be selected by its Executive Director; (8) an *ex officio* member representing the investor-owned

electric utilities as designated by the Kentucky Public Service Commission; and (9) an *ex officio* representing Kentucky's electric cooperatives. Certain of the officials listed above are authorized to nominate a delegate in their stead.

This new law is important in that it also contains Kentucky's first legislative adoption of definitions central to blockchain's functionality, including "blockchain technology," "peer-to-peer networks" and "smart contracts". "Blockchain technology" is defined as "shared or distributed data structures or digital ledgers used in peer-to-peer networks that store digital transactions, verify and secure transactions cryptographically, and allow automated self-execution of smart contracts." A "smart contract" is "a computerized transaction protocol that self-executes the terms of a contract and that is integrated into the blockchain program architecture."

Frost Brown Todd takes a measure of pride in Kentucky's continued progress in this important field. In live testimony to the General Assembly in late Fall of 2019, our attorneys urged the legislators to "assist in economic development and growth in the region through consideration of a task force and potential legislation to provide legal recognition" of key blockchain concepts, as was recorded in a press release at the time.

In 2019 Kentucky adopted a resolution to "[u]rge the Kentucky Cabinet for Economic Development to work with state and federal officials and study the issue of blockchain technology." Also in 2019, the state amended its laws to [capture additional state tax revenue](#) from persons who "provides a virtual currency that purchasers are allowed or required to use to purchase tangible personal property, digital property, or services," as a "marketplace facilitator."

Kentucky was one of the first states in the country to adopt the model Uniform Abandoned Property Act. See KRS § 393A.010 – .860. Within the model statute's text, as adopted by Kentucky, "virtual currency" means "a digital representation of value used as a medium of exchange, unit of account or store of value that does not have legal tender status recognized by the United States."

Concerning statutorily abandoned property existing in the form of virtual currency, Kentucky now requires a "holder" to report such

assets to the State Treasurer's office, to convert the cryptocurrency to a U.S. dollar value within 90 days of reporting the same (as required under KRS § 393A.220), to transfer that converted dollar-amount value to the State Treasurer, and upon so doing, the virtual currency's actual owner "shall have no recourse against the holder" to recover any gains or losses. KRS § 393A.330(9). No discussion is offered within the Uniform Abandoned Property Act concerning required protocol for liquidation of cryptocurrency or what dormancy charges may be charged by a holder, save that those dormancy charges must not be "unconscionable." KRS § 393A.220.

Despite the changes noted above, Kentucky has not yet taken a position on virtual currency money transmission in connection with the Kentucky Money Transmitter Act. KRS § 286.11-001 *et seq.*

For more information about smart contracts and blockchain technology in Kentucky, contact [Bill Repasky](#) or any of the lawyers practicing in Frost Brown Todd's [Blockchain Technology](#) industry team.

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