

# REPEALING COLORADO'S DIGITAL TOKEN ACT: A REGULATORY ANALYSIS

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## ABSTRACT

The repeal of the Colorado Digital Token Act (2019) in 2024 marks a pivotal moment in the regulation of blockchain-based assets and tokenized economies within the state. This Article critically examines how the repeal signifies either a step forward in adapting regulatory frameworks to technological advancements or a regression that undermines innovation and economic growth. By analyzing the Act's original objectives to promote blockchain innovation while ensuring consumer protection and to enhance the motivations behind its repeal, the Article evaluates the broader implications for state-level and national regulatory strategies. The discussion contextualizes the repeal within the evolving legal and technological framework, offering insights into its impact on blockchain enterprises, investor confidence, and Colorado's position as a hub for digital innovation. The Article concludes by exploring whether the repeal represents a recalibration of regulatory priorities or an obstacle to technological progress, with broader lessons for policymakers navigating the intersection of law and emerging technologies. It is recommended that collaboration between state and federal authorities, alongside enhanced legal clarity, will be crucial to supporting the responsible growth of cryptocurrency markets in Colorado and beyond.

## Keywords:

Digital token; Blockchain; Cryptocurrency

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## INTRODUCTION

In July 2024, Adam Davis, a 47-year-old Colorado resident, was sentenced to 33 months in prison and ordered to pay more than \$2.1 million in restitution for cryptocurrency theft.<sup>1</sup> This case exemplifies the growing challenges posed by crimes involving digital assets within the expanding digital economy.<sup>2</sup> It also underscores the shortcomings of the *Colorado Digital Token Act (2019)*<sup>3</sup> in addressing fraudulent activities tied to cryptocurrencies. The Act's inability to prevent or mitigate such offenses highlights the urgent need for a more comprehensive regulatory framework that balances risk mitigation with the preservation of market integrity in an increasingly complex financial landscape.

Since the introduction of Bitcoin in 2008, cryptocurrencies have disrupted traditional frameworks of value exchange and regulation, giving rise to a multifaceted ecosystem of digital currencies, decentralized platforms, and blockchain-based innovations.<sup>4</sup> This rapid expansion has exposed significant gaps in existing legal and regulatory structures, particularly in addressing issues such as fraud, securities classification, taxation, and consumer protection.<sup>5</sup> Cases such as Adam Davis emphasize the necessity for legal frameworks to adapt to the unique characteristics of digital assets, ensuring both accountability and the protection of market participants.

Colorado takes up a distinctive position in this evolving domain. Recognized for its proactive embrace of blockchain technology and cryptocurrency, the state has cultivated an environment conducive to technological innovation.<sup>6</sup> The passage of the Colorado Digital Token Act in 2019 exemplifies the state's commitment to fostering a crypto-friendly atmosphere while navigating the regulatory complexities associated with the industry.<sup>7</sup> This dual focus on innovation and governance has placed Colorado at the center of numerous legal disputes involving cryptocurrency, drawing attention to its role as a battleground for defining the legal parameters of this blockchain

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1. Press Release, Colorado Man Sentenced to Nearly Three Years in Prison for Stealing \$2.1 Million of Cryptocurrency, U.S. ATTY'S OFF., E. DIST. OF PA. (July 3, 2024), <https://www.justice.gov/usao-edpa/pr/colorado-man-sentenced-nearly-three-years-prison-stealing-21-million-cryptocurrency>.

2. Jace Dela Cruz, *Colorado Man Convicted of Cryptocurrency Theft, Ordered to Pay \$2.1 Million in Damages*, VENTURE CAP. POST (July 8, 2024, 5:41 AM), <https://www.vcpost.com/articles/127946/20240708/colorado-man-convicted-cryptocurrency-theft-ordered-pay-2-1-million.html>.

3. Colorado Digital Token Act, COLO. REV. STAT. § 11-51-308.7 (2019), *repealed* by S. 180, 2024 Leg., Reg. Sess. (Colo. 2024) [hereinafter S.B. 24-180].

4. See generally Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, BITCOIN (Aug. 1, 2008), <https://bitcoin.org/bitcoin.pdf>.

5. See Sesha Kethineni & Ying Cao, *The Rise in Popularity of Cryptocurrency and Associated Criminal Activity*, 30 INT'L CRIM. JUST. R. 325, 329–32 (2020).

6. William Riggs & Vipul Vyas, *Current State of Blockchain and Cryptocurrency for Major US Cities*, U. S. F., 1, 7–11, 18–19, 28–29, 32–33, 55, 57, 70 (2022) (discussing the current state of blockchain and cryptocurrency in several major cities in Colorado, specifically noting Colorado's high level of cryptocurrency acceptance).

7. COLO. REV. STAT. § 11-51-308.7 (“Colorado has become a hub for companies and entrepreneurs that seek to utilize cryptoeconomic systems to power blockchain technology-based business models.”).

technology. The subsequent repeal of the Colorado Digital Token Act in 2024 reflects the state's response to the growing convergence of entrepreneurial innovation and regulatory oversight, positioning Colorado as a pivotal player in the broader cryptocurrency regulatory landscape.

## I. BACKGROUND ON CRYPTOCURRENCY REGULATION

A thorough understanding of cryptocurrency regulation necessitates examining the intersection of technological innovation and legal principles, with particular attention to the practical effects of legal uncertainties.<sup>8</sup> Cryptocurrencies, as digital or virtual assets, are underpinned by cryptographic protocols that secure transactions and control the creation of new units.<sup>9</sup> These assets operate on decentralized blockchain technology, which functions as a distributed ledger to record transactions across a network of computers.<sup>10</sup> By eliminating intermediaries, such as banks, the decentralized architecture of cryptocurrency offers potential advantages, including increased transparency, efficiency, and accessibility.

While Bitcoin, the first cryptocurrency, remains the most widely recognized example, it was Ethereum's introduction in 2019<sup>11</sup> that expanded blockchain's potential through the development of smart contracts.<sup>12</sup> These self-executing agreements, embedded with predefined rules, provide further complexity to the legal landscape, as they often involve issues such as jurisdiction, enforceability, and contractual obligations.<sup>13</sup> The proliferation of diverse cryptocurrencies, including stablecoins such as Tether<sup>14</sup> pegged to fiat currencies and privacy-focused coins like Monero, has further compounded the challenges for regulators.<sup>15</sup>

These technological innovations highlight the necessity for an adaptive and forward-looking regulatory approach that can address the specific legal uncertainties emerging from cryptocurrency transactions.

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8. See generally Ngozi Samuel Uzougbo, Chinonso Gladys Ikegwu, & Adefolake Olachi Adwusi, *International Enforcement of Cryptocurrency Laws: Jurisdictional Challenges and Collaborative Solutions*, 11 MAGNA SCIENTIFICA ADVANCED RSCH. AND REVS. 68 (2024).

9. Cryptocurrencies rely on cryptographic protocols to ensure the integrity, security, and decentralization of transactions while preventing unauthorized creation of new units. See Premkumar Chithaluru, Kulvinder Singh, & Manish Kumar Sharma, *Cryptocurrency and Blockchain*, in INFORMATION SECURITY AND OPTIMIZATION 143, 158 (Chapman & Hall, CRC eds., 2020).

10. See Intan Dwi Astuti, Suryazi Rajab, & Desky Setiyoudji, *Cryptocurrency Blockchain Technology in the Digital Revolution Era*, 4 APTISI TRANSACTIONS ON TECHNOENTREPREURSHIP 9, 11 (2022).

11. See Satpal Singh Kushwaha, Sandeep Joshi, Dilbag Singh, Manjit Kaur, & Heung-No Lee, *Ethereum Smart Contract Analysis Tools: A Systematic Review*, 10 IEEE ACCESS 57037, 57037 (2022).

12. *Id.*

13. See Stuart D. Levi, Alexander C. Drylewski, and Mana Ghaemmaghami, *Blockchain Agreements: Avoiding Ambiguity, Manifesting Assent*, REUTERS LEGAL NEWS (Mar. 11, 2025), <https://www.reuters.com/legal/transactional/blockchain-agreements-avoiding-ambiguity-manifesting-assent-2025-03-11/>.

14. See Klaus Grobys & Toan Luu Duc Huynh, *When Tether Says "Jump!" Bitcoin Asks "How Low?"*, 47 FIN. RSCH. LETTERS 1, 1–2 (2022).

15. Slava Gomzin, *How Monero Works*, in CRYPTO BASICS: A NONTECHNICAL INTRODUCTION TO CREATING YOUR OWN MONEY FOR INVESTORS AND INVENTORS 119, 120–21, 124 (Apress, 1st ed. 2022).

The lack of established legal definitions for cryptocurrencies, combined with jurisdictional issues and evolving technology, creates a dynamic and complex environment that demands careful consideration of both federal and state regulatory measures.<sup>16</sup> The practical implications of these uncertainties, including issues related to taxation, property rights, financial stability, and consumer protection, highlight the need for legal frameworks capable of effectively addressing the rapid evolution of this sector.<sup>17</sup>

Unfortunately, the regulatory framework governing cryptocurrency in the United States is notably fragmented, with oversight responsibilities distributed across multiple federal agencies, each applying its jurisdiction based on the specific characteristics and applications of digital currencies.<sup>18</sup> This decentralized approach stems from the complex and evolving nature of cryptocurrencies, which challenge traditional legal and financial classifications. The absence of a unified federal law to comprehensively regulate the industry has resulted in varying interpretations and regulatory approaches at both the federal and state levels.<sup>19</sup>

At the federal level, key agencies have assumed distinct roles in regulating digital currencies. The Securities and Exchange Commission (SEC), for instance, evaluates certain cryptocurrencies as securities under the Howey Test, which determines whether an asset constitutes an investment contract.<sup>20</sup> This has led to scrutiny of Initial Coin Offerings (ICOs), many of which the SEC classifies as unregistered securities offerings.<sup>21</sup> The Commodity Futures Trading Commission (CFTC) classifies cryptocurrencies as commodities, thereby asserting regulatory authority over derivatives markets, including futures and options tied to digital assets.<sup>22</sup> The Internal Revenue Service (IRS), meanwhile, treats cryptocurrency as property for tax purposes, requiring the reporting of gains and losses from crypto transactions.<sup>23</sup> The segmentation of regulatory authority among these agencies highlights the challenges of aligning legal frameworks with the unique and rapidly changing nature of digital currencies.

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16. See Sneha Solanki, *Cryptocurrency Laws—Legal Glossary*, THOMSON REUTERS LEGAL (Mar. 21, 2025), <https://legal.thomsonreuters.com/blog/cryptocurrency-laws/>.

17. See Allie Grace Garnett, *Cryptocurrency Regulation: Rules are in Development*, BRITANNICA MONEY (Apr. 16, 2025), <https://www.britannica.com/money/cryptocurrency-regulation>.

18. See generally Frank Emmert, *The Regulation of Cryptocurrencies in the United States of America*, 25 EUR. J. OF L. REFORM 1 (2023) (discussing the varying official responses, regulatory guides, and legislative mandates created for cryptocurrency across the United States).

19. *Id.*

20. See Ryan Nameth, Note, *The Issue of Utility Tokens: An Analysis of SEC v. Ripple Labs, Inc., Through the Lens of the Howey Investment Contract Test*, 19 RUTGERS BUS. L. REV. 81, 81 (2023).

21. See Cristiano Bellavitis, Christian Fisch, & Johan Wiklund, *A Comprehensive Review of the Global Development of Initial Coin Offerings (ICOs) and Their Regulation*, 15 J. BUS. VENTURING INSIGHTS, 1, 2, 21–26 (2020).

22. See Jerry W. Markham, *CFTC Regulation of Cryptocurrencies as “Commodities,”* in CRYPTOCURRENCY REGULATION: A PRIMER 92–93 (Edward Elgar Publ’g, 2023).

23. Paul C. Nylén & Brian W. Huels, *Using Unrelated IRS Guidance as a Framework for Taxing Crypto Transactions: Revenue Procedure 2019-18*, 20 THE ATA J. LEGAL TAX RSCH. 30, 34–35 (2022).

State-level legal initiatives are also critical in shaping the development of cryptocurrency and blockchain technologies. States such as Colorado and Wyoming have emerged as *de facto* leaders in crafting regulatory environments that balance innovation with regulatory oversight.<sup>24</sup> Colorado, through its Digital Token Act (2019), offered exemptions for certain digital tokens from securities registration requirements, provided they were intended for consumptive rather than speculative purposes.<sup>25</sup> This initiative was designed to alleviate regulatory burdens for blockchain startups while maintaining safeguards to prevent fraudulent activities. Additionally, the Governor of Colorado proposed integrating cryptocurrencies into the state's fiscal operations, allowing digital currencies for tax payments and other state transactions.<sup>26</sup> This initiative demonstrated the state's effort to harness blockchain technology to enhance the efficiency of financial systems, promote economic growth, and uphold regulatory integrity.

Wyoming, in contrast, established a more comprehensive and structured regulatory framework for blockchain and cryptocurrency development.<sup>27</sup> The state's 2018 legislation, including the Wyoming Blockchain Task Force Act, facilitated blockchain adoption across various sectors.<sup>28</sup> The *Wyoming Utility Token Act (2022)*<sup>29</sup> clarifies that open blockchain tokens are classified as intangible personal property, providing legal certainty regarding ownership and transfer.<sup>30</sup> Furthermore, Wyoming has created a regulatory framework for Special Purpose Depository Institutions (SPDIs),<sup>31</sup> which offers banking services specifically tailored to cryptocurrency businesses.<sup>32</sup> The state has also enacted laws governing decentralized autonomous organizations (DAOs) and the tokenization of assets, strengthening its position as a hub for blockchain innovation.<sup>33</sup> These legislative actions foster growth in the digital asset sector while ensuring consumer protection and compliance with broader regulatory standards, making Wyoming an attractive environment for blockchain-related enterprises.

In addition to these efforts, other states have pursued regulatory initiatives that reflect a variety of approaches to digital asset

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24. See, e.g., Zachary Miller, *The Right Side of the Coin: State Approaches in Regulating Virtual Currencies*, 45 SETON HALL LEGIS. J. 809, 817–18 (2021).

25. COLO. REV. STAT. § 11-51-308.7(3) (2019).

26. *Cryptocurrency*, COLO. DEP'T OF REVENUE: TAXATION DIV., <https://tax.colorado.gov/cryptocurrency> (last visited Nov. 3, 2024).

27. See generally Pawan Jain, *From Crypto Wild West to Regulated Frontier: Unleashing the Potential of Blockchain Technology*, 126 W. VA. L. REV. 239 (2023).

28. WYO. STAT. ANN. § 34-29-106 (2022).

29. *Id.* at § 34-29-106(g)(ii) (“‘Consumptive’ means a circumstance when a token is exchangeable for, or provided for the receipt of, services, software, content or real or tangible personal property, including rights of access to services, content or real or tangible personal property[.]”).

30. See Special Purpose Depository Institutions Act, WYO. STAT. ANN. §§ 13-12-101–26 (2019).

31. See *id.*

32. WYO. STAT. ANN. § 13-2-103(a) (2020) (“All banks, except special purpose depository institutions, shall obtain insurance of their deposits by the United States and shall subscribe for insurance of deposit accounts by the federal deposit insurance corporation (FDIC).”).

33. David M. Grant, Eric M. Kirby, & Steven Hawkins, *Decentralized Autonomous Organizations: To Statutorily Organize or Not?*, 24 WYO. L. REV. 59, 75–81 (2024).

governance.<sup>34</sup> For example, Arkansas amended the *Arkansas Data Centers Act 2023*<sup>35</sup> to address noise reduction standards for digital asset mining operations and to safeguard the rights of residents engaged in home-based mining.<sup>36</sup> Similarly, Louisiana's *Blockchain Basics Act 2024*<sup>37</sup> promotes node operations and supports home-based digital asset mining.<sup>38</sup> These state-level initiatives demonstrate a diverse yet deliberate approach to the regulation of digital currencies, each designed to support the development of the sector while addressing local concerns and maintaining regulatory oversight.

In essence, the fragmented and evolving regulatory landscape for cryptocurrencies in the United States reflects the complexity of integrating a rapidly advancing technology into established legal frameworks. Both federal and state-level approaches are critical in shaping the trajectory of cryptocurrency innovation, balancing the need for regulatory clarity with the promotion of technological development. The practical implications of these regulatory efforts highlight the ongoing challenges faced by lawmakers in adapting to an industry that continues to evolve at a rapid pace.

## II. CRYPTOCURRENCY IN COLORADO: LAW AND POLICY

Colorado has positioned itself as a prominent player in the blockchain and cryptocurrency industry.<sup>39</sup> This development stems from a combination of forward-thinking policies, efforts to attract technology companies, and a recognition of the power of digital assets to transform finance and commerce.<sup>40</sup> However, these advancements also bring regulatory complexities that require careful examination.

### A. Regulatory Challenges

The classification of cryptocurrencies as securities, assets, or commodities under different federal regulatory regimes further complicates compliance for Colorado-based blockchain enterprises.<sup>41</sup> The SEC's application of the Howey Test to ICOs has clarified that many tokens qualify as securities, necessitating registration and adherence to strict reporting requirements.<sup>42</sup> Simultaneously, CFTC's oversight of cryptocurrency derivatives introduces additional layers of regulation

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34. *Cryptocurrency, Digital or Virtual Currency and Digital Assets 2024 Legislation*, NCSL (Nov. 18, 2024), <https://www.ncsl.org/financial-services/cryptocurrency-digital-or-virtual-currency-and-digital-assets-2024-legislation>.

35. ARK. CODE ANN. §§ 14-1-601–06 (2023).

36. *See id.* at § 14-1-606.

37. Louisiana Blockchain Basics Act, LA. REV. STAT. §§ 49:1501–07 (2024).

38. *Id.*

39. *See* Gilad Edelman, *The Governor of Colorado Is High on Blockchain*, WIRED (Feb. 25, 2022), <https://www.wired.com/story/colorado-jared-polis-blockchain/>.

40. *Id.*

41. Joseph Jasperse, *50-State Review of Cryptocurrency and Blockchain Regulation*, WHARTON SCH. OF THE UNIV. OF PA., <https://stevenscenter.wharton.upenn.edu/publications-50-state-review/> (Feb. 2023).

42. M. Todd Henderson & Max Raskin, *A Regulatory Classification of Digital Assets: Toward an Operational Howey Test for Cryptocurrencies, ICOs, and Other Digital Assets*, 2019 COLUM. BUS. L. REV. 443, 459–60 (2019).

for platforms engaged in futures and options trading.<sup>43</sup> For instance, the Colorado Securities Commissioner charged Eligio Regalado and Kaitlyn Regalado, along with INDXcoin and Kingdom Wealth Exchange, with violations of anti-fraud, licensing, and registration provisions under the *Colorado Securities Act*.<sup>44</sup> The defendants marketed a cryptocurrency, INDXcoin, to Christian communities, raising \$3.2 million from over 300 individuals between June 2022 and April 2023.<sup>45</sup> Despite warnings from an audit identifying serious technical flaws in the INDXcoin code, they promoted it as a low-risk, high-return investment. The coin ultimately proved illiquid and nearly worthless, resulting in investor losses, while funds were allegedly used to support the defendants' lifestyle.<sup>46</sup>

Consumer protection remains a key concern. Cryptocurrency exchanges, which facilitate the buying, selling, and custody of digital assets, often operate with varying degrees of regulatory oversight.<sup>47</sup> Safeguarding user funds and protecting against unauthorized access requires enhanced cybersecurity standards and robust internal controls.<sup>48</sup> Colorado has explored measures to hold exchanges accountable while avoiding stifling innovation, but achieving this balance remains an ongoing challenge.<sup>49</sup> For example, a Colorado court case involving allegations of cryptocurrency theft is poised to set significant legal precedents for digital property rights.<sup>50</sup> Mark Shin faced felony charges, including cybercrime and theft exceeding \$9 million, after allegedly exploiting a vulnerability in the ICON cryptocurrency platform to mint unlimited ICX tokens worth millions.<sup>51</sup> Key issues in the case included whether Shin's actions granted him ownership of the tokens or if ICON retained control over the unminted assets. While prosecutors argued Shin understood ICON's system and repeatedly exploited the bug, the defense claimed there was no criminal intent, and others used the flaw as well.<sup>52</sup> Although the case could redefine ownership principles for digital currencies and expand regulatory

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43. CFTC v. Zhao, No. 1:23-CV-01887, 2023 WL 10449084, at \*1, \*1–7 (N.D. Ill. Dec. 14, 2023). This recent enforcement action by the CFTC against a major cryptocurrency exchange alleges, among other things, the unregistered offering of commodity derivatives to U.S. persons, highlighting the CFTC's active enforcement of its derivatives regulations in the crypto space. *Id.*

44. See Press Release, Securities Commissioner Files Complaint Against Alleged Cryptocurrency Fraud Scheme, COLO. DEP'T OF REGUL. AGENCIES (Jan. 18, 2024), <https://securities.colorado.gov/press-release/press-release-colorado-securities-commissioner-files-complaint-against-alleged>.

45. See Jason Scharfman, *Additional Cases and Trends in Cryptocurrency Fraud*, in THE CRYPTOCURRENCY AND DIGITAL ASSET FRAUD CASEBOOK, VOLUME II: DeFi, NFTs, DAOs, MEME COINS, AND OTHER DIGITAL ASSET HACKS 327–61 (Springer Nature Switzerland, 2024).

46. *Id.*

47. See generally Syren Johnstone, *Secondary Markets in Digital Assets: Rethinking Regulatory Policy in Centralized and Decentralized Environments*, 3 STAN. J. BLOCKCHAIN L. & POL'Y 146 (2020).

48. John M. Borky & Thomas H. Bradley, *Protecting Information with Cybersecurity*, in EFFECTIVE MODEL-BASED SYSTEMS ENGINEERING 345–400 (Springer Int'l Publ'g, 2019).

49. Cynthia Pasquale, *Colorado Cryptocurrency ATM Scams on the Rise*, AARP (Apr. 1, 2025, 12:00 AM), <https://states.aarp.org/colorado/colorado-cryptocurrency-atm-scams-on-rise>.

50. See *Colorado Cryptocurrency-related Court Case Garnering Global Attention*, KOAA NEWS5, <https://www.koaa.com/money/consumer/colorado-cryptocurrency-related-court-case-garnering-global-attention> (Aug 11, 2022).

51. See Colleen Flynn, *\$9M Cryptocurrency Theft Case Dropped*, KDVR (Aug. 4, 2023), <https://kdvr.com/news/local/mark-shin-cryptocurrency-theft-case-dropped/>.

52. *Id.*

oversight, thereby challenging the decentralized philosophy of cryptocurrencies like Bitcoin, it was eventually dismissed.<sup>53</sup>

Taxation presents further complexity, as the Internal Revenue Service's (IRS) classification of cryptocurrency as property subjects every transaction, including trading, spending, or exchanging, to potential capital gains or losses.<sup>54</sup> For Colorado residents actively involved in cryptocurrency, compliance with these tax obligations requires meticulous record-keeping and an understanding of federal and state tax laws. The lack of uniform standards across jurisdictions exacerbates these challenges, creating additional burdens for businesses and individuals.

#### *B. Colorado Digital Token Act of 2019*

The Colorado Digital Token Act of 2019 represents a strategic extension of the objectives established by the *Colorado Crowdfunding Act 2016*,<sup>55</sup> advancing the state's economic framework to accommodate emerging blockchain technologies.<sup>56</sup> By exempting certain digital tokens from securities registration requirements, the Digital Token Act reduces regulatory burdens for start-ups while fostering a user-friendly environment conducive to innovation and investment.<sup>57</sup> The exemption applies specifically to tokens intended for consumptive purposes, requiring that they be designed for use within networked environments rather than for speculative trading. Issuers must adhere to defined eligibility criteria, including compliance with disclosure requirements, to safeguard consumer and investor interests.<sup>58</sup> This regulatory framework not only facilitates access to capital for businesses but also aligns technological development with risk mitigation strategies, positioning Colorado as a proactive participant in the evolving blockchain economy.

The Act embodies a dual focus on innovation and regulatory efficiency, establishing a structure to integrate crypto-economic systems into Colorado's broader economic framework.<sup>59</sup> Through specific exemptions—namely, the issuer and licensing exemptions—the Act streamlines compliance processes for businesses leveraging blockchain technology.<sup>60</sup> These exemptions lower the costs and complexities of regulatory adherence, enabling entrepreneurs to raise capital through pre-sale mechanisms that simultaneously foster

53. In re Gov't Seizure of ICX Tokens, No. 1:21-Y-00065, 2022 WL 292923, at \*1, \*6 (D. C. Colo. Jan. 31, 2022).

54. See generally Eric D. Chason, *Crypto Assets and the Problem of Tax Classifications*, 100 WASH. U. L. REV. 765 (2022).

55. COLO. REV. STAT. ANN. § 11-51-308.5 (West 2016).

56. COLO. REV. STAT. ANN. § 11-51-308.7 (2019) ("Colorado has become a hub for companies and entrepreneurs that seek to utilize cryptoeconomic systems to power blockchain technology-based business models.").

57. Miller, *supra* note 24, at 835–38.

58. Jason K. Zachary & Michele A. Kulerman, *Colorado Digital Token Act Exempts Certain Cryptocurrency Transactions from Colorado Securities Laws*, GREENBERG TRAURIG: FIN. SERVICES OBSERVER (Mar. 1, 2019), <https://www.gtlaw-financialservicesobserver.com/2019/03/colorado-digital-token-act-exempts-certain-cryptocurrency-transactions-from-colorado-securities-laws>.

59. § 11-51-308.7.

60. *Id.*



consumer engagement and provide a precise forecast of production needs.<sup>61</sup> This model demonstrates how regulatory alignment with technological innovation can reduce financial risk and stimulate economic activity.

Colorado's approach has positioned it as a hub for decentralized digital platforms and applications, fostering entrepreneurial activity while maintaining regulatory safeguards. For example, the state's recreational cannabis industry benefits from the integration of blockchain technology for seed-to-sale tracking, with companies leveraging the same ledger systems to issue consumptive tokens.<sup>62</sup> By exempting these tokens from the registration requirements, Colorado created a framework that facilitates capital acquisition while maintaining compliance. Unlike Wyoming's Utility Token Act, which requires issuers to prevent speculative purchases, Colorado shifts responsibility to buyers, requiring acknowledgment of purchase intent to limit issuer liability.<sup>63</sup>

The Act also addresses potential conflicts between state and federal securities laws by incorporating licensing exemptions that allow the issuance of consumptive tokens without full registration under the Securities Exchange Act of 1934.<sup>64</sup> Issuers must file a notice of intent with the state securities commissioner and ensure tokens are employed for consumptive purposes. The Act further extends its impact by enabling virtual currencies from other states and foreign jurisdictions to access Colorado's market through agreements negotiated by the securities commissioner. This facilitates integration into broader markets while ensuring regulatory oversight.

Through these measures, Colorado has established a competitive regulatory framework that promotes innovation while addressing the challenges of compliance. The Digital Token Act not only supports local entrepreneurial activity but also positions the state as a leader in crypto-economic systems. By fostering an environment conducive to technological adoption and cross-jurisdictional collaboration, Colorado offers a replicable model for states aiming to stimulate economic transformation and expand their financial technology sectors.

### *C. Repeal of the Colorado Digital Token Act of 2019*

However, five years after its enactment, the Colorado Digital Token Act was repealed in 2024, executed through Senate Bill 24-180, reflecting a strategic reassessment of its regulatory framework and

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61. COLO. REV. STAT. ANN. §§ 11-51-301–11 (West 2018).

62. Chris Chafin, *Why Weed Companies Are Embracing Blockchain*, ROLLING STONE (Dec. 10, 2018), <https://www.rollingstone.com/culture/culture-features/weed-companies-blockchain-cryptocurrencies-760151/>.

63. *Compare* § 11-51-308.7(3)(a)(V)(C) (“The initial buyer provides a knowing and clear acknowledgement that the initial buyer is purchasing the digital token with the primary intent to use the digital token for a consumptive purpose and not for a speculative or investment purpose.”), *with* WYO. STAT. ANN. § 34-29-106(b)(iii)(D) (2019) (“The developer or seller takes other reasonable precautions to prevent an initial buyer from purchasing the token as a financial investment.”).

64. COLO. REV. STAT. ANN. § 11-51-402(1)(a) (exempting broker-dealers registered under the Securities Exchange Act of 1934 from state registration requirements).

functional efficacy.<sup>65</sup> The original intent of the Act was to foster innovation by exempting specific digital tokens from securities laws. This exemption was contingent on their design for consumptive, rather than speculative, purposes.<sup>66</sup> However, the Act's repeal signals a broader strategic shift toward regulatory frameworks that more effectively address the evolving dynamics of digital asset markets and their growing complexity.

### 1. Limitations of the Colorado Digital Token Act

The Colorado Digital Token Act was introduced with the objective of addressing regulatory uncertainties associated with digital tokens, aiming to provide blockchain ventures with a defined compliance pathway. Its implementation, however, revealed significant structural inadequacies that hindered its ability to achieve its foundational goals.<sup>67</sup>

One core deficiency of the Act lies in its ambiguous characterization of “utility tokens.” This lack of precise definition resulted in inconsistent interpretations by stakeholders and enforcement bodies.<sup>68</sup> Consequently, blockchain initiatives with speculative attributes were able to exploit these ambiguities to circumvent securities regulations.<sup>69</sup> This situation exposed investors to heightened risks and weakened the Act's protective intent. The legal ambiguities not only eroded trust in the regulatory framework but also invited judicial challenges that compounded the difficulty of regulatory oversight.<sup>70</sup>

The Act's broad exemptions also created unintended consequences. Designed to stimulate blockchain innovation within Colorado, these exemptions facilitated regulatory arbitrage. Blockchain ventures operating within the state leveraged these regulatory leniencies to sidestep stricter securities laws enforced elsewhere.<sup>71</sup> This misalignment between state and federal frameworks attracted federal scrutiny, leading to heightened concerns over regulatory exploitation. The resulting discrepancies further undermined the Act's coherence and effectiveness as a regulatory instrument.<sup>72</sup>

The Act was also unable to address the pace of technological advancements in blockchain, particularly in decentralized finance (DeFi), non-fungible tokens (NFTs), and tokenized assets. The emergence of hybrid tokens—those combining utility and speculative features—highlighted gaps in the legislation. These innovations, which straddled

65. COLO. REV. STAT. § 11-51-308.7 (2019), *repealed by* S. 180, 2024 Leg., Reg. Sess. (Colo. 2024) [hereinafter S.B. 24-180]. The Colorado Digital Token Act was repealed by the Repeal Colorado Digital Token Act (S.B. 24-180), approved by the Governor on May 17, 2024, and made effective August 7, 2024. *Id.*

66. S. 23, 2019 Leg., Gen. Assemb., Reg. Sess. (Colo. 2019).

67. S.B. 24-180.

68. *Id.* (highlighting the definition of “digital unit”).

69. Christopher Hugh Mao, *Imperfect Digital Certificates of Provenance: A Categorical Risk-Based Approach to Non-Fungible Tokens (NFTS)*, 21 COLO. TECH. L. J. 21, 50–53 (2023).

70. S.B. 24-180.

71. Zachary & Kulerman, *supra* note 59.

72. Scott H. Kimpel, *Colorado Enacts Digital Token Act*, HUNTON ANDREWS KURTH LLP BLOGS (Mar. 20, 2019), <https://www.hunton.com/blockchain-legal-resource/colorado-enacts-digital-token-act>.

the domains of functional assets and investment vehicles, exceeded the Act's regulatory scope. As a result, the rapid growth of blockchain technologies rendered the Act increasingly obsolete, diminishing its relevance as a tool for oversight.<sup>73</sup>

The repeal of the Colorado Digital Token Act reflects a strategic reorientation to address emerging risks within the blockchain sector. Rising incidents of fraud and misconduct in cryptocurrency markets have amplified calls for enhanced investor protections.<sup>74</sup> By removing exemptions that were central to the Act, Colorado has signaled a shift toward fostering a more trustworthy and secure blockchain ecosystem.<sup>75</sup> This adjustment demonstrates an acknowledgment that fragmented regulatory approaches are insufficient for ensuring sustainable growth and stability in the digital asset space.

The repeal further highlights the necessity of regulatory alignment at both the state and federal levels. As the SEC intensifies its regulatory focus on digital assets, the limitations of state-level exemptions have become increasingly evident.<sup>76</sup> In a parallel development, global regulatory initiatives, such as the European Union's Markets in Crypto-Assets (MiCA) regulation, underscore the need for comprehensive and harmonized frameworks. With digital asset markets operating across interconnected jurisdictions, competitiveness in the sector now requires regulatory approaches that integrate innovation and investor protection on a broader scale.

## 2. Strategic Implications of the Policy Shift

Colorado's decision to repeal its previous digital asset laws signals a shift towards a more comprehensive regulatory strategy. The repeal prioritizes robust oversight to mitigate risks associated with speculative digital assets. This approach aims to attract institutional investors who demand regulatory certainty and rigorous compliance.<sup>77</sup> A well-regulated environment is critical for fostering long-term investment and stability in the blockchain sector. While some argue that stricter regulations may hinder innovation, Colorado's new approach emphasizes fostering a transparent and accountable framework. This transition ensures that legitimate enterprises can thrive while discouraging practices that exploit regulatory loopholes. A predictable

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73. *Id.*

74. Steve Staeger & Anna Hewson, *Colorado Considers Regulations for Crypto ATMs Amid Growing Scams*, 9NEWS (Feb. 6, 2025, 6:23 PM MST), <https://www.9news.com/article/money/consumer/steve-on-your-side/colorado-considers-regulations-crypto-atms-scams/73-3955d4d8-f841-4105-94d6-0c49a5c084b3>.

75. S. 180, 2024 Leg., Reg. Sess. (Colo. 2024)

76. See *Colorado Securities Commissioner Files Complaint Against Alleged Cryptocurrency Fraud*, COLO. DEP'T OF REGUL. AGENCIES (Jan. 18, 2024), <https://dora.colorado.gov/press-release/colorado-securities-commissioner-files-complaint-against-alleged-cryptocurrency-fraud> (discussing charges filed against INDXcoin, LLCs, and others for violations of the anti-fraud, licensing, and registration provisions of the Colorado Securities Act).

77. See Joshua A.T. Fairfield, *Tokenized: The Law of Non-Fungible Tokens and Unique Digital Property*, 97 IND. L.J. 1261, 1289–90 (2022).

regulatory environment supports sustainable growth and encourages innovation within ethical and legal boundaries.<sup>78</sup>

The repeal signifies Colorado's strategic pivot from permissive policies to a prudential regulatory model. This shift positions the state as a jurisdiction capable of addressing the complexities of blockchain technologies while maintaining high governance standards. By aligning its policies with federal and international frameworks, Colorado enhances its reputation as a hub for responsible innovation, strengthening its appeal to blockchain enterprises and investors.<sup>79</sup>

Beyond regulatory adjustments, Colorado continues to explore the application of blockchain technology in public administration. Pilot programs in areas such as agricultural supply chain management, voter registration, and state procurement illustrate the state's commitment to leveraging blockchain for efficiency and transparency in government operations.<sup>80</sup> Colorado's efforts to attract blockchain businesses remain central to its strategy. By offering targeted tax incentives, streamlining regulatory processes, and fostering partnerships between regulators, academia, and the private sector, the state seeks to create an ecosystem conducive to blockchain innovation.<sup>81</sup> These initiatives aim to address legal and operational challenges proactively, ensuring the sustained development of blockchain applications within the state.

#### *D. Implications for Colorado and Beyond*

The repeal of the Colorado Digital Token Act (2019) marks a shift toward a more comprehensive regulatory model. The decision to reform the legislative framework was driven by the need to align state policies with federal and international standards, fostering legal clarity and operational predictability. By addressing deficiencies in the original Act, Colorado strengthens its commitment to fraud prevention, financial transparency, and environmentally responsible practices. This approach positions the state as a competitive jurisdiction for blockchain innovation while ensuring that ethical and societal considerations are central to its policy agenda.

Fraudulent schemes, including Ponzi and deceptive investment operations, represent persistent risks within the cryptocurrency sector.<sup>82</sup> However, Colorado has established a regulatory framework

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78. See DANIEL T. STABILE, KIMBERLY A. PRIOR, & ANDREW M. HINKES, *DIGITAL ASSETS AND BLOCKCHAIN TECHNOLOGY: US LAW AND REGULATION* 123-50 (Edward Elgar Publ'g, 2020).

79. *Colorado Digital Token Act: A Framework for Digital Tokens*, AMERICAS BITCOIN ATM, <https://americasbitcoinatm.com/colorado-digital-token-act-a-framework-for-digital-tokens/> (last visited Apr. 6, 2025).

80. Scott H. Kimpel, *Crypto Regulatory Roundup—Q1 2025*, WOMBLE BOND DICKINSON (Feb. 25, 2025), <https://www.womblebondnickinson.com/us/insights/alerts/crypto-regulatory-roundup-q1-2025> (last visited Apr. 6, 2025).

81. *Proposals in State Legislatures Target Digital Assets, CBDCs*, ABA BANKING J. (Aug. 7, 2024), <https://bankingjournal.aba.com/2024/08/proposals-in-state-legislatures-target-digital-assets-cbdc/>.

82. Sanmoy Mukherjee, Charles Larkin, & Shaen Corbet, *Cryptocurrency Ponzi Schemes, in UNDERSTANDING CRYPTOCURRENCY FRAUD: THE CHALLENGES AND HEADWINDS TO REGULATE DIGITAL CURRENCIES* 111-19 (De Gruyter, 2021).

requiring exchanges to adopt advanced fraud detection systems and uphold stringent accountability standards. Periodic compliance audits serve as an enforcement mechanism, creating a structured environment where ethical business practices are incentivized and deviations are penalized.

The state has also taken significant steps to address money laundering risks associated with the pseudonymous nature of cryptocurrency transactions. Regulatory requirements mandate that exchanges implement robust anti-money laundering (AML) protocols, such as transaction monitoring and the reporting of suspicious activities.<sup>83</sup> These measures align with federal standards, particularly those codified under the Bank Secrecy Act,<sup>84</sup> ensuring that exchanges operating in Colorado adhere to both state and national policies.

Environmental concerns surrounding cryptocurrency mining have emerged as a critical area of regulatory focus. Colorado has implemented incentives to encourage energy-efficient mining technologies and foster the use of renewable energy sources. The framework includes penalties for high-emission mining operations, alongside tax credits for businesses that implement sustainable practices. These initiatives reflect an effort to balance blockchain-driven innovation with environmental stewardship, establishing Colorado as a leader in reconciling economic and ecological priorities.

Furthermore, Colorado's regulatory strategy has implications that extend beyond its borders. The establishment of a stable, well-regulated ecosystem has attracted significant investment and entrepreneurial activity, reinforcing the state's reputation as a hub for blockchain development. By aligning regulatory policies with ethical principles, Colorado serves as an example for other jurisdictions aiming to incorporate blockchain technology into their economic systems.

On a national level, Colorado's approach contributes to the development of a cohesive regulatory system that bridges state and federal priorities. Harmonization of policies across these levels is vital for positioning the United States as a global leader in blockchain innovation, especially in an increasingly competitive international context. The focus on fraud prevention, financial transparency, and environmental sustainability addresses challenges with global resonance, offering a framework for international regulatory cooperation.

Colorado's experience demonstrates the potential of targeted regulatory measures to enable cryptocurrency markets to grow while addressing broader societal objectives. Through a combination of innovation and governance, the state exemplifies how economic development in the cryptocurrency sector can proceed without compromising ethical and environmental standards.

### III. FUTURE DIRECTIONS

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83. COLO. REV. STAT. § 18-5-309 (West 2025) (defining one example of money laundering as concealing the origins of illegally obtained money by passing it through commercial or banking transactions).

84. 31 U.S.C.A. §§ 5311–33 (West 2021).

The repeal of the Colorado Digital Token Act of 2019 represents a significant policy shift, addressing the changing dynamics of the cryptocurrency market, emerging legal challenges, and the demand for more robust regulatory oversight.<sup>85</sup> By acknowledging the Act's limitations and realignment with broader regulatory standards, Colorado aims to foster a cryptocurrency ecosystem that supports innovation while safeguarding ethical practices and ensuring long-term sustainability. This recalibration underscores the state's commitment to balancing economic growth with investor protection, positioning Colorado to maintain its competitiveness in the rapidly developing blockchain sector.

In the wake of the repeal, Colorado has adopted a more comprehensive and balanced approach to cryptocurrency governance. By reinforcing existing legislative frameworks and introducing targeted measures, the state aims to enhance transparency, protect investors, and promote sustainable technological advancements. These measures position Colorado as a potential leader in responsible blockchain development, balancing the opportunities and risks inherent in the cryptocurrency industry.

The cryptocurrency regulatory landscape is in continuous flux, driven by technological advances and evolving market demands. Central to this transformation are decentralized finance and stablecoins—two critical areas with significant regulatory implications. DeFi seeks to replicate traditional financial services without relying on centralized intermediaries, raising complex issues around liability and enforcement. Colorado's legislative initiatives play a vital role in addressing these challenges, ensuring that innovation is balanced with adequate regulatory oversight. Similarly, stablecoins, which are pegged to assets such as fiat currencies, have emerged as a potential medium of exchange, but they also raise questions regarding classification, monetary policy, and systemic risk. Federal agencies, including the SEC and the CFTC, continue to refine their jurisdictional boundaries over such instruments, with the interplay between state and federal approaches shaping the regulatory environment.<sup>86</sup> Colorado's proactive stance positions it centrally within these discussions, giving it influence over the broader regulatory framework.

A coordinated regulatory approach between state and federal authorities is crucial for addressing inconsistencies that create uncertainty for market participants, inhibit compliance, and stifle innovation.<sup>87</sup> A harmonized framework that clearly delineates the

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85. See generally Paul N. Watkins & Danielle DuBose, *The Uniform Token Regulation Act: A Proposal for a States to Lead on Regulatory Clarity for Digital Tokens*, *FEDERALIST SOC'Y REV.*, 130 (2022) (discussing how digital tokens need to be better regulated because of their potential for economic growth and, simultaneously, consumer harm).

86. See ROSARIO GIRASA, *REGULATION OF CRYPTOCURRENCIES AND BLOCKCHAIN TECHNOLOGIES: NATIONAL AND INTERNATIONAL PERSPECTIVES* 235–60 (Springer Nature Switzerland AG, 2nd ed. 2023) (noting that the federal government has acted slow in promulgating regulations for cryptocurrencies, ultimately, in great part, ceding to states to enact legislation or guidance of their use within their respective jurisdictions).

87. See *id.* (discussing the interactions between state and federal laws and how uniformity may address inconsistencies).

application of securities, commodities, and tax laws to cryptocurrency transactions would promote legal certainty and ensure uniform enforcement. Colorado is well-positioned to take a leadership role in developing model regulations that balance the promotion of innovation with effective risk management. The state's Digital Token Act, though repealed, provides a foundation from which to propose new guidelines that distinguish utility tokens from securities while prioritizing investor protection. Collaborative efforts with federal agencies and other states would further enhance the efficacy and reach of these regulatory initiatives.

Furthermore, environmental concerns linked to cryptocurrency mining also demand targeted regulatory attention. In light of the ecological consequences of energy-intensive mining practices, policies promoting the adoption of renewable energy sources within blockchain operations are consistent with Colorado's sustainability objectives. The implementation of tax credits or grants for businesses that incorporate green technologies has the potential to achieve dual objectives: environmental preservation and economic advancement. As DeFi continues to expand, it is essential for regulatory frameworks to evolve in tandem, addressing emerging risks and creating opportunities for innovation.<sup>88</sup> A regulatory sandbox for DeFi projects in Colorado could provide an environment where innovators can operate under flexible, temporary conditions, yielding valuable insights that inform broader policy development and reinforcing the state's commitment to responsible blockchain growth.<sup>89</sup>

Colorado's well-established infrastructure for supporting cryptocurrency and blockchain technology positions the state to influence both national and international regulatory conversations. Aligning state-level initiatives with federal priorities would enable Colorado to play a significant role in integrating cryptocurrency into mainstream financial systems. Forming strategic partnerships with academic institutions, business leaders, and regulatory bodies would serve to further solidify Colorado's preeminent role in defining the future trajectory of blockchain technology and cryptocurrency governance.

#### CONCLUSION

In conclusion, the repeal of the Colorado Digital Token Act marks an important step in the evolution of cryptocurrency regulation. It signals a shift toward a more coordinated, effective regulatory framework that addresses the complexities of blockchain technology while fostering innovation. Looking ahead, Colorado's leadership in developing balanced regulations, especially in areas like DeFi, stablecoins, and environmental sustainability, will be critical in positioning the state at the forefront of blockchain governance. Continued collaboration at the state and federal levels, along with strategic partnerships, will enable

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88. Christian Catalini, Alonso de Gortari, and Nihar Shah, *Some Simple Economics of Stablecoins*, MIT SLOAN, 1, 18–19, 25–29 (2021).

89. *Id.*

Colorado to shape the future of cryptocurrency in a way that is both competitive and responsible.