

AMENDED IN ASSEMBLY APRIL 20, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1326

Introduced by Assembly Member Dababneh

February 27, 2015

An act to add Division 11 (commencing with Section 26000) to the Financial Code, relating to virtual currency.

LEGISLATIVE COUNSEL'S DIGEST

AB 1326, as amended, Dababneh. Virtual currency.

Existing law, the Money Transmission Act, prohibits a person from engaging in the business of money transmission in this state, or advertising, soliciting, or holding itself out as providing money transmission in this state, unless the person is licensed by the Commission of Business Oversight or exempt from licensure under the act. Existing law requires applicants for licensure to pay the commissioner a specified nonrefundable fee and to complete an application form requiring certain information. As security, existing law requires each licensee to deposit and maintain on deposit with the Treasurer cash in an amount not less than, or securities having a market value not less than, such amount as the commissioner may find and order from time to time as necessary to secure the faithful performance of the obligations of the licensee with respect to money transmission in this state. Existing law requires a licensee at all times to own eligible securities, as defined, in a specified aggregate amount not less than the amount of all of its outstanding money received for transmission, as specified.

This bill would prohibit a person from engaging in this state in ~~the business of~~ any virtual currency, *currency business*, as defined, ~~in this~~

state unless the person is licensed by the Commissioner of Business Oversight or is exempt from the licensure requirement, as provided. The bill would require applicants for ~~licensure~~ *licensure, including an applicant for licensure and approval to acquire control of a licensee*, to pay the commissioner a specified nonrefundable *application* fee and complete an application form required to include, among other things, information about the applicant, prior virtual currency services provided by the applicant, a sample form of receipt for transactions involving the business of virtual currency, and specified financial statements. The bill would ~~require~~ *make these licenses subject to annual renewal and would require a renewal fee paid to the commissioner in a specified amount. The bill would require licensees to annually pay the commissioner a specified amount for each licensee branch office. The bill would require applicants and licensees to pay the commissioner a specified hourly amount for the commissioner's examination costs, as provided. The bill would also require the commissioner to levy an assessment each fiscal year, on a pro rata basis, on licensees in an amount sufficient to meet the commissioner's expenses in administering these provisions and to provide a reasonable reserve for contingencies.*

This bill would require each licensee to maintain at all times such capital as the commissioner determines, subject to specified factors, is sufficient to ensure the safety and soundness of the licensee, its ongoing operations, and maintain consumer protection. To satisfy this capital requirement, the bill would require each licensee to invest an aggregate amount equal to the value of the virtual currency that the licensee has on deposit for its customers in only specified investments. The bill would require each licensee to maintain a bond or trust account in United States dollars for the benefit of its customers in the form and amount as specified by the commissioner.

This bill would authorize the commissioner to examine the business and any branch office of any licensee to ascertain whether the business is being conducted in a lawful manner and all virtual currency is properly accounted for. The bill would require a licensee to file a report with the commissioner within a specified period of time after the licensee knows about the occurrence of certain events relating to the virtual currency business and those persons connected to that business, and to also maintain records as required by the commissioner for a specified period of time.

With regard to enforcement, among other things, this bill would, if it appears that a licensee is violating or failing to comply with these

provisions or conducting business in an unsafe or injurious manner, authorize the commissioner to order the licensee to comply or discontinue those practices. The bill would also authorize the commissioner to issue an order suspending or revoking a license, or placing a licensee in receivership, if after notice and an opportunity for a hearing, the commissioner makes a specified finding. The bill would provide that every order, decision, or other official act of the commissioner is subject to review.

This bill would authorize the commissioner to impose a civil penalty for a violation of these provisions. The bill would also make it a felony for a person to intentionally make a false statement, misrepresentation, or false certification in a record filed or required to be maintained or to intentionally make a false entry or omit a material entry in such a record. The bill would also make it a felony for a person to knowingly engage in an activity for which a license is required without being licensed or exempt from licensure, as provided. By creating these new crimes, the bill would impose a state-mandated local program.

This bill would prohibit a licensee from appointing or continuing any person as an agent unless the licensee and the person have made a specified written contract, including a requirement that the agent operate in full compliance with these provisions. The bill would prohibit a licensee from appointing any person as an agent unless it has conducted a review of the proposed agent's fitness to act as an agent, as provided. Subject to specified notice, if any agent of a licensee conducts any virtual currency business on behalf of the licensee, where the commissioner has suspended or revoked the license of the licensee or the commissioner has issued a specified order, the bill would make the agent jointly and severally liable.

Within a specified period after the fiscal year, the bill would require a licensee to file with the commissioner a specified audit report. Within a specified period after the end of each calendar quarter, the bill would require a licensee to file with the commissioner a report containing financial statements verified by 2 of the licensee's principal officers.

This bill would require a licensee to provide a specified consumer protection disclosure about virtual currency to its consumers.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Division 11 (commencing with Section 26000)
2 is added to the Financial Code, to read:

3
4 DIVISION 11. VIRTUAL CURRENCY

5
6 CHAPTER 1. GENERAL PROVISIONS

7
8 26000. For purposes of this division, the following definitions
9 shall apply:

10 (a) “Commissioner” means the Commissioner of Business
11 Oversight.

12 ~~(a)~~
13 (b) “Virtual currency” means any type of digital unit that is used
14 as a medium of exchange or a form of digitally stored value or that
15 is incorporated into payment system technology. Virtual currency
16 shall be broadly construed to include digital units of exchange that
17 (1) have a centralized repository or administrator, (2) are
18 decentralized and have no centralized repository or administrator,
19 or (3) may be created or obtained by computing or manufacturing
20 effort. Virtual currency shall not be construed to include digital
21 units that are used solely within online gaming platforms with no
22 market or application outside of those gaming platforms, nor shall
23 virtual currency be construed to include digital units that are used
24 exclusively as part of a customer affinity or rewards program, and
25 can be applied solely as payment redeemed for goods, services,
26 or for purchases with the issuer or other designated merchants, but
27 cannot be converted into, or redeemed for, fiat currency.

28 ~~(b) “Commissioner” means the Commissioner of Business~~
29 ~~Oversight.~~

30 (c) “Virtual currency business” means the conduct of either of
31 the following types of activities involving a California resident:

32 (1) Storing, holding, or maintaining custody or control of virtual
33 currency on behalf of others.

1 (2) *Providing conversion or exchange services of fiat currency*
2 *into virtual currency or the conversion or exchange of virtual*
3 *currency into fiat currency or other value, or the conversion or*
4 *exchange of one form of virtual currency into another form of*
5 *virtual currency.*

6 26001. *For the purposes of carrying out the provisions of this*
7 *division, the commissioner may adopt regulations pursuant to the*
8 *Administrative Procedure Act (Chapter 3.5 (commencing with*
9 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
10 *Code).*

11
12 CHAPTER 2. LICENSES
13

14 26002. ~~(a)~~ A person shall not engage in this state in ~~the~~
15 ~~business of~~ any virtual currency *business* unless the person is
16 licensed or exempt from licensure under this division.

17 ~~(b) No licensee may conduct any virtual currency business~~
18 ~~activity through an agent or agency arrangement if the agent is not~~
19 ~~a licensee.~~

20 26004. The following are exempt from the licensing
21 requirement described in Section 26002:

22 ~~(1)~~

23 (a) The United States or a department, agency, or instrumentality
24 thereof, including any federal reserve bank and any federal home
25 loan bank.

26 ~~(2)~~

27 (b) Money transmission by the United States Postal Service or
28 by a contractor on behalf of the United States Postal Service.

29 ~~(3)~~

30 (c) A state, city, county, city and county, or any other
31 governmental agency or governmental subdivision of a state.

32 ~~(4)~~

33 (d) A commercial bank or industrial bank, the deposits of which
34 are insured by the Federal Deposit Insurance Corporation or its
35 successor, or any foreign (other nation) bank that is licensed under
36 Chapter 20 (commencing with Section 1750) of Division 1.1 or
37 that is authorized under federal law to maintain a federal agency
38 or federal branch office in this state; a trust company licensed
39 pursuant to Section 1042 or a national association authorized under
40 federal law to engage in a trust banking business; an association

1 or federal association, as defined in Section 5102, the deposits of
2 which are insured by the Federal Deposit Insurance Corporation
3 or its successor; and any federally or state chartered credit union,
4 with an office in this state, the member accounts of which are
5 insured or guaranteed as provided in Section 14858.

6 ~~(5)~~

7 (e) An entity licensed as a money transmitter under the Money
8 Transmission Act described in Division 1.2 (commencing with
9 Section 2000).

10 ~~(6)~~

11 (f) A merchant or consumer that utilizes virtual currency solely
12 for the purchase or sale of goods or services.

13 (g) (1) *A transaction in which the recipient of virtual currency*
14 *is an agent of the payee pursuant to a preexisting written contract*
15 *and delivery of the virtual currency to the agent satisfies the*
16 *payor’s obligation to the payee.*

17 (2) *For purposes of this subdivision, the following shall apply:*

18 (A) *“Agent” has the same meaning as that term is defined in*
19 *Section 2295 of the Civil Code.*

20 (B) *“Payee” means the provider of goods or services, who is*
21 *owed payment of money or other monetary value from the payor*
22 *for the goods or services.*

23 (C) *“Payor” means the recipient of goods or services, who owes*
24 *payment of money or monetary value to the payee for the goods*
25 *or services.*

26 26006. (a) An applicant for licensure under this division shall
27 pay to the commissioner a nonrefundable *application* fee of five
28 thousand dollars (\$5,000).

29 (b) An applicant for a license shall do so in a form and in a
30 medium prescribed by the commissioner by order or regulation.
31 The application shall state or contain all of the following:

32 (1) The legal name and residential business address of the
33 applicant and any fictitious or trade name used by the applicant in
34 conducting its business.

35 (2) A list of any criminal convictions of the applicant and any
36 material litigation in which the applicant has been involved in the
37 10-year period next preceding the submission of the application.

38 (3) A description of any virtual currency services previously
39 provided by the applicant and the virtual currency services that
40 the applicant seeks to provide in this state.

- 1 (4) A list of the applicant’s proposed agents and the locations
2 in this state where the applicant and its agents propose to engage
3 in the business of virtual currency.
- 4 (5) A list of other states in which the applicant is licensed to
5 engage in the business of virtual currency and any license
6 revocations, suspensions, or other disciplinary action taken against
7 the applicant in another state.
- 8 (6) Information concerning any bankruptcy or receivership
9 proceedings affecting the licensee.
- 10 ~~(7) A sample form of payment instrument or instrument upon~~
11 ~~which stored value is recorded, if applicable.~~
- 12 ~~(8)~~
- 13 (7) A sample form of receipt for transactions that involve money
14 received for the business of virtual currency.
- 15 ~~(9)~~
- 16 (8) The name and address of any bank through which the
17 applicant’s ~~payment instruments and stored value will be paid.~~
18 *business will be conducted.*
- 19 ~~(10)~~
- 20 (9) A description of the source of money and credit to be used
21 by the applicant to provide virtual currency services.
- 22 ~~(11)~~
- 23 (10) The date of the applicant’s incorporation or formation and
24 the state or country of incorporation or formation.
- 25 ~~(12)~~
- 26 (11) A certificate of good standing from the state or country in
27 which the applicant is incorporated or formed.
- 28 ~~(13)~~
- 29 (12) A description of the structure or organization of the
30 applicant, including any parent or subsidiary of the applicant, and
31 whether any parent or subsidiary is publicly traded.
- 32 ~~(14)~~
- 33 (13) The legal name, any fictitious or trade name, all business
34 and residential addresses, and the employment, in the 10-year
35 period next preceding the submission of the application, of each
36 executive officer, manager, director, or person that has control, of
37 the applicant, and the educational background for each person.
- 38 ~~(15)~~
- 39 (14) A list of any criminal convictions and material litigation
40 in which any executive officer, manager, director, or person in

1 control, of the applicant has been involved in the 10-year period
2 next preceding the submission of the application.

3 ~~(16)~~

4 (15) A copy of the applicant's audited financial statements for
5 the most recent fiscal year and, if available, for the two-year period
6 next preceding the submission of the application.

7 ~~(17)~~

8 (16) A copy of the applicant's unconsolidated financial
9 statements for the current fiscal year, whether audited or not, and,
10 if available, for the two-year period next preceding the submission
11 of the application.

12 ~~(18)~~

13 (17) If the applicant is publicly traded, a copy of the most recent
14 report filed with the United States Securities and Exchange
15 Commission under Section 13 of the federal Securities Exchange
16 Act of 1934 (15 U.S.C. Sec. 78m).

17 ~~(19)~~

18 (18) If the applicant is a wholly owned subsidiary of:

19 (A) A corporation publicly traded in the United States, a copy
20 of audited financial statements for the parent corporation for the
21 most recent fiscal year or a copy of the parent corporation's most
22 recent report filed under Section 13 of the federal Securities
23 Exchange Act of 1934 (15 U.S.C. Sec. 78m) and, if available, for
24 the two-year period next preceding the submission of the
25 application.

26 (B) A corporation publicly traded outside the United States, a
27 copy of similar documentation filed with the regulator of the parent
28 corporation's domicile outside the United States.

29 ~~(20) The name and address of the applicant's registered agent~~
30 ~~in this state.~~

31 ~~(21)~~

32 (19) The applicant's plan for engaging in the business of virtual
33 currency, including without limitation three years of pro forma
34 financial statements.

35 ~~(22)~~

36 (20) Any other information the commissioner requires with
37 respect to the applicant.

38 (c) The commissioner may waive any of the information
39 required under subdivision (b) or permit an applicant to submit
40 other information instead of the required information.

1 (d) *The nonrefundable application fee for filing an application*
2 *for licensure and approval to acquire control of a licensee is three*
3 *thousand five hundred dollars (\$3,500). An applicant for licensure*
4 *and approval shall comply with subdivision (b).*

5 (e) *A licensee, including a licensee described in subdivision (b),*
6 *shall pay annually on or before July 1, a license renewal fee of*
7 *two thousand five hundred dollars (\$2,500).*

8 (f) *A licensee shall pay annually on or before July 1, one*
9 *hundred twenty-five dollars (\$125) for each licensee branch office*
10 *in this state.*

11 (g) *Whenever the commissioner examines a licensee, the licensee*
12 *shall pay, within 10 days after receipt of a statement from the*
13 *commissioner, a fee of seventy-five dollars (\$75) per hour for each*
14 *examiner engaged in the examination plus, if it is necessary for*
15 *any examiner engaged in the examination to travel outside this*
16 *state, the travel expenses of the examiner.*

17 (h) *Whenever the commissioner examines an applicant, the*
18 *applicant shall pay, within 10 days after receipt of a statement*
19 *from the commissioner, a fee of seventy-five dollars (\$75) per hour*
20 *for each examiner engaged in the examination plus, if it is*
21 *necessary for any examiner engaged in the examination to travel*
22 *outside this state, the travel expenses of the examiner.*

23 (i) *Each fee for filing an application shall be paid at the time*
24 *the application is filed with the commissioner. No fee for filing an*
25 *application shall be refundable, regardless of whether the*
26 *application is approved, denied, or withdrawn.*

27 26008. (a) Each licensee shall maintain at all times such capital
28 as the commissioner determines is sufficient to ensure the safety
29 and soundness of the licensee and maintain consumer protection
30 and its ongoing operations. In determining the minimum amount
31 of capital that must be maintained by a licensee, the commissioner
32 shall consider a variety of factors, including, but not limited to:

33 (1) The composition of the licensee's total assets, including the
34 position, size, liquidity, risk exposure, and price volatility of each
35 type of asset.

36 (2) The composition of the licensee's total liabilities, including
37 the size and repayment timing of each type of liability.

38 (3) The actual and expected volume of the licensee's virtual
39 currency business activity.

1 (4) Whether the licensee is already licensed or regulated by a
2 state or federal entity, and whether the licensee is in good standing
3 in such capacity.

4 (5) The amount of leverage employed by the licensee.

5 (6) The liquidity position of the licensee.

6 (7) The financial protection that the licensee provides for its
7 customers through its trust account or bond.

8 ~~(b) In order to satisfy subdivision (a), each licensee shall invest~~
9 ~~an aggregate amount equal to the value of the virtual currency that~~
10 ~~the licensee has on deposit for its customers in only the following~~
11 ~~high-quality, investment-grade permissible investments:~~

12 ~~(1) Certificates of deposit issued by financial institutions that~~
13 ~~are regulated by a United States federal or state regulatory agency.~~

14 ~~(2) Money market funds.~~

15 ~~(3) State or municipal bonds.~~

16 ~~(4) United States government securities.~~

17 ~~(5) United States government agency securities.~~

18 *(b) Each licensee shall maintain a bond or trust account in*
19 *United States dollars for the benefit of its customers in the form*
20 *and amount specified by the commissioner.*

21
22 *CHAPTER 2.5. AGENTS*

23
24 *26008.2. (a) A licensee shall not appoint or continue any*
25 *person as agent, unless the licensee and the person have made a*
26 *written contract. A written contract between a licensee and an*
27 *agent shall require the agent to operate in full compliance with*
28 *this division.*

29 *(b) The written contract shall contain each of the following*
30 *provisions:*

31 *(1) That the licensee appoints the person as its agent with*
32 *authority to conduct any virtual currency business on behalf of*
33 *the licensee.*

34 *(2) That the agent shall make and keep accounts,*
35 *correspondence, memoranda, papers, books, and other records*
36 *as the commissioner by regulation or order requires, and shall*
37 *preserve the records for the time specified by the commissioner*
38 *pursuant to a regulation or order.*

39 *(3) That all virtual currency, less fees due agents provided for*
40 *and expressly set forth in the written agreement, received by the*

1 agent on behalf of the licensee shall be trust funds owned by and
2 belonging to the licensee.

3 (4) That the agent is subject to joint and several liability
4 pursuant to Section 26008.8.

5 (5) Any other provisions that the commissioner may by
6 regulation or order find to be necessary to carry out the provisions
7 and purposes of this division.

8 (c) An agent shall not provide any virtual currency business
9 outside the scope of activity permissible under the written contract
10 between the agent and the licensee.

11 (d) An agent shall not use a subagent to conduct any virtual
12 currency business on behalf of a licensee.

13 (e) Each licensee shall exercise reasonable supervision over its
14 agents to ensure compliance with applicable laws, rules, and
15 regulations with regard to the virtual currency business.

16 (f) Licensees conducting any virtual currency business subject
17 to this division shall maintain full charge, control, and supervision
18 of any authorized agent and shall be responsible for ensuring any
19 activity undertaken by an authorized agent on behalf of the licensee
20 is in compliance with this division.

21 26008.4. (a) A licensee shall not appoint any person as an
22 agent unless it has conducted a review of the proposed agent's
23 fitness to act as an agent and has determined that the proposed
24 agent and any persons who control the proposed agent are of good
25 character and sound financial standing.

26 (b) A licensee shall maintain records of this review for each
27 agent while the agent is providing any virtual currency business
28 on behalf of the licensee, and for three years after the relationship
29 with the agent has terminated.

30 26008.6. A person, including an agent, shall not provide any
31 virtual currency business on behalf of a person not licensed or not
32 exempt from licensure under this division. A person that engages
33 in that activity provides virtual currency business to the same
34 extent as if the person was a licensee and shall be jointly and
35 severally liable with the unlicensed or nonexempt person.

36 26008.8. (a) No agent of a licensee who has actual notice that
37 the commissioner has suspended or revoked the license of the
38 licensee or that the commissioner has issued an order taking
39 possession of the property and business of the licensee shall
40 conduct any virtual currency business on behalf of the licensee.

1 (b) If any agent of a licensee, after first having actual notice
 2 that the commissioner has suspended or revoked the license of the
 3 licensee or that the commissioner has issued an order taking
 4 possession of the property and business of the licensee, conducts
 5 any virtual currency business on behalf of the licensee, the agent
 6 shall be jointly and severally liable with the licensee.

7
 8
 9

CHAPTER 3. EXAMINATIONS AND RECORDS

10 26009. (a) The commissioner may at any time and from time
 11 to time examine the business and any branch office, within or
 12 outside this state, of any licensee in order to ascertain whether
 13 that business is being conducted in a lawful manner and whether
 14 all virtual currency held or exchanged is properly accounted for.

15 (b) The directors, officers, and employees of any licensee being
 16 examined by the commissioner shall exhibit to the commissioner,
 17 on request, any or all of the licensee’s accounts, books,
 18 correspondence, memoranda, papers, and other records and shall
 19 otherwise facilitate the examination so far as it may be in their
 20 power to do so.

21 26010. The commissioner may consult and cooperate with
 22 other state or federal regulators in enforcing and administering
 23 this division. They may jointly pursue examinations and take other
 24 official action that they are otherwise empowered to take.

25 26011. A licensee shall file a report with the commissioner
 26 within five business days after the licensee has reason to know of
 27 the occurrence any of the following events:

28 (a) The filing of a petition by or against the licensee under the
 29 United States Bankruptcy Code (11 U.S.C. Secs. 101-110, incl.)
 30 for bankruptcy or reorganization.

31 (b) The filing of a petition by or against the licensee for
 32 receivership, the commencement of any other judicial or
 33 administrative proceeding for its dissolution or reorganization,
 34 or the making of a general assignment for the benefit of its
 35 creditors.

36 (c) The commencement of a proceeding to revoke or suspend
 37 its virtual currency business license in a state or country in which
 38 the licensee engages in such business or is licensed to engage in
 39 such business.

1 (d) *The cancellation or other impairment of the licensee’s bond*
2 *or trust account as required by subdivision (b) of Section 26008.*

3 (e) *A charge or conviction of the licensee or of an executive*
4 *officer, manager, director, or person in control of the licensee for*
5 *a felony.*

6 26012. *A licensee shall maintain any records as required by*
7 *the commissioner for determining its compliance with this division*
8 *for at least three years.*

9
10 CHAPTER 4. ENFORCEMENT

11
12 26013. *Any licensee may surrender its license by filing with*
13 *the commissioner the license and a report with any information*
14 *as the commissioner requires. The voluntary surrender of the*
15 *license shall become effective at the time and upon the conditions*
16 *as the commissioner specifies by order.*

17 26014. (a) *The commissioner may prepare written decisions,*
18 *opinion letters, and other formal written guidance to be issued to*
19 *persons seeking clarification regarding the requirements of this*
20 *division.*

21 (b) *The commissioner shall make public on the commissioner’s*
22 *Internet Web site all written decisions, opinion letters, and other*
23 *formal written guidance issued to persons seeking clarification*
24 *regarding the requirements of this division. The commissioner*
25 *may, at his or her discretion or upon request by an applicant or*
26 *licensee, redact proprietary or other confidential information*
27 *regarding an applicant or licensee from any decision, letter, or*
28 *other written guidance issued in connection with an applicant or*
29 *licensee.*

30 26015. *The commissioner may offer informal guidance to any*
31 *prospective applicant for a license under this division, regarding*
32 *the conditions of licensure that may be applied to that person. The*
33 *commissioner shall inform any applicant that requests that*
34 *guidance of the licensing requirements that will be required of*
35 *that applicant, based on the information provided by the applicant*
36 *concerning its plan to conduct business under this division, and*
37 *the factors used to make that determination.*

38 26016. *At any time, if the commissioner deems it necessary for*
39 *the general welfare of the public, he or she may exercise any power*
40 *set forth in this division with respect to a virtual currency business,*

1 regardless of whether an application for a license has been filed
2 with the commissioner, a license has been issued, or, if issued, the
3 license has been surrendered, suspended, or revoked.

4 (a) If it appears to the commissioner that a licensee is violating
5 or failing to comply with this division, the commissioner may direct
6 the licensee to comply with the law by an order issued under the
7 commissioner's official seal, or if it appears to the commissioner
8 that any licensee is conducting its business in an unsafe or
9 injurious manner, the commissioner may in like manner direct it
10 to discontinue the unsafe or injurious practices. The order shall
11 require the licensee to show cause before the commissioner, at a
12 time and place to be fixed by the commissioner, as to why the order
13 should not be observed.

14 (b) If, upon any hearing held pursuant to subdivision (a), the
15 commissioner finds that the licensee is violating or failing to
16 comply with any law of this state or is conducting its business in
17 an unsafe or injurious manner, the commissioner may make a final
18 order directing it to comply with the law or to discontinue the
19 unsafe or injurious practices. A licensee shall comply with the
20 final order unless, within 10 days after the issuance of the order,
21 its enforcement is restrained in a proceeding brought by the
22 licensee.

23 26017. (a) The commissioner may issue an order suspending
24 or revoking a license, or taking possession of and placing a
25 licensee in receivership, if after notice and an opportunity for
26 hearing, the commissioner finds any of the following:

27 (1) The licensee is violating this division or a regulation adopted
28 or an order issued under this division, or a condition of approval
29 issued under this division.

30 (2) The licensee does not cooperate with an examination or
31 investigation by the commissioner.

32 (3) The licensee engages in fraud, intentional misrepresentation,
33 or gross negligence.

34 (4) The competence, experience, character, or general fitness
35 of the licensee, or any director, officer, employee, or person in
36 control of a licensee, indicates that it is not in the public interest
37 to permit the person to provide virtual currency services.

38 (5) The licensee engages in an unsafe or unsound practice.

39 (6) The licensee is insolvent, suspends payment of its obligations,
40 or makes a general assignment for the benefit of its creditors.

1 (7) *The licensee has applied for an adjudication of bankruptcy,*
2 *reorganization, arrangement, or other relief under any bankruptcy,*
3 *reorganization, insolvency, or moratorium law, or any person has*
4 *applied for any such relief under that law against the licensee and*
5 *the licensee has by any affirmative act approved of or consented*
6 *to the action or the relief has been granted.*

7 (8) *Any fact or condition exists that, if it had existed at the time*
8 *when the licensee applied for its license, would have been grounds*
9 *for denying the application.*

10 (b) *In determining whether a licensee is engaging in an unsafe*
11 *or unsound practice, the commissioner may consider the size and*
12 *condition of the licensee's provision of virtual currency services,*
13 *the magnitude of the loss, the gravity of the violation of this*
14 *division, and the previous conduct of the person involved.*

15 26018. (a) *Every order, decision, or other official act of the*
16 *commissioner is subject to review in accordance with law.*

17 (b) *Whenever the commissioner has taken possession of the*
18 *property and business of any licensee, the licensee, within 10 days*
19 *after that taking, if it deems itself aggrieved thereby, may apply*
20 *to the superior court in the county in which the head office of the*
21 *licensee is located to enjoin further proceedings. The court, after*
22 *citing the commissioner to show cause why further proceedings*
23 *should not be enjoined and after a hearing and a determination*
24 *of the facts upon the merits, may dismiss the application or enjoin*
25 *the commissioner from further proceedings and direct the*
26 *commissioner to surrender the property and business to the*
27 *licensee.*

28 26019. (a) *If the commissioner finds that any of the factors*
29 *set forth in Section 26017 is true with respect to any licensee and*
30 *that it is necessary for the protection of the public interest, the*
31 *commissioner may issue an order immediately suspending or*
32 *revoking the licensee's license.*

33 (b) *Within 30 days after the license is suspended or revoked*
34 *pursuant to subdivision (a), the licensee may file with the*
35 *commissioner an application for a hearing on the suspension or*
36 *revocation.*

37 (c) *If the commissioner fails to commence a hearing within 15*
38 *business days after the application is filed with the commissioner*
39 *pursuant to subdivision (b) or within a longer period of time agreed*

1 to by the licensee, the suspension or revocation shall be deemed
2 rescinded.

3 (d) Within 30 days after the hearing, the commissioner shall
4 affirm, modify, or rescind the suspension or revocation. Otherwise,
5 the suspension or revocation shall be deemed rescinded.

6 (e) The right of the licensee to petition for judicial review of the
7 suspension or revocation shall not be affected by the failure of the
8 licensee to apply to the commissioner for a hearing on the
9 suspension or revocation pursuant to subdivision (b).

10 26020. The commissioner may assess a civil penalty against
11 a person that violates this division or a regulation adopted or an
12 order issued under this division in an amount not to exceed one
13 thousand dollars (\$1,000) for each violation or, in the case of a
14 continuing violation, one thousand dollars (\$1,000) for each day
15 or part thereof during which the violation continues, plus this
16 state's costs and expenses for the investigation and prosecution
17 of the matter, including reasonable attorney's fees.

18 26021. (a) A person that intentionally makes a false statement,
19 misrepresentation, or false certification in a record filed or
20 required to be maintained under this division or that intentionally
21 makes a false entry or omits a material entry in such a record is
22 guilty of a felony.

23 (b) A person that knowingly engages in an activity for which a
24 license is required under this division without being licensed or
25 exempt from licensure under this division is guilty of a felony.

26 (c) Nothing in this division limits the power of the state to punish
27 any person for any act that constitutes a crime under any statute.

28 26022. The enforcement provisions of this division are in
29 addition to any other enforcement powers that the commissioner
30 may have under law.

31 26023. (a) The commissioner may by order or regulation grant
32 exemptions from this section in cases where the commissioner
33 finds that the requirements of this section are not necessary or
34 may be duplicative.

35 (b) A licensee shall, within 90 days after the end of each fiscal
36 year, or within any extended time as the commissioner may
37 prescribe, file with the commissioner an audit report for the fiscal
38 year that shall comply with all of the following provisions:

39 (1) The audit report shall contain audited financial statements
40 of the licensee for or as of the end of the fiscal year prepared in

1 *accordance with United States generally accepted accounting*
2 *principles and any other information as the commissioner may*
3 *require.*

4 (2) *The audit report shall be based upon an audit of the licensee*
5 *conducted in accordance with United States generally accepted*
6 *auditing standards and any other requirements as the commissioner*
7 *may prescribe.*

8 (3) *The audit report shall be prepared by an independent*
9 *certified public accountant or independent public accountant who*
10 *is not unsatisfactory to the commissioner.*

11 (4) *The audit report shall include or be accompanied by a*
12 *certificate of opinion of the independent certified public accountant*
13 *or independent public accountant that is satisfactory in form and*
14 *content to the commissioner. If the certificate or opinion is*
15 *qualified, the commissioner may order the licensee to take any*
16 *action as the commissioner may find necessary to enable the*
17 *independent or certified public accountant or independent public*
18 *accountant to remove the qualification.*

19 (c) *Each licensee shall, not more than 45 days after the end of*
20 *each calendar year quarter, or within a longer period as the*
21 *commissioner may by regulation or order specify, file with the*
22 *commissioner a report containing all of the following:*

23 (1) *Financial statements, including balance sheet, income*
24 *statement, statement of changes in shareholders' equity, and*
25 *statement of cashflows, for, or as of the end of, that calendar year*
26 *quarter, verified by two of the licensee's principal officers. The*
27 *verification shall state that each of the officers making the*
28 *verification has a personal knowledge of the matters in the report*
29 *and that each of them believes that each statement in the report is*
30 *true.*

31 (2) *Other information as the commissioner may by regulation*
32 *or order require.*

33 26024. *In addition to the fees provided in Section 26006, the*
34 *commissioner shall levy an assessment each fiscal year, on a pro*
35 *rata basis, on those licensees that at any time during the preceding*
36 *calendar year engaged in this state in the virtual currency business*
37 *in an amount that is, in his or her judgment, sufficient to meet the*
38 *commissioner's expenses in administering the provisions of this*
39 *division and to provide a reasonable reserve for contingencies.*

CHAPTER 5. MISCELLANEOUS PROVISIONS

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26025. A licensee shall disclose to consumers the following disclosure in a form and manner prescribed by the commissioner:

“Once submitted to the network, a virtual currency transaction will be unconfirmed for a period of time (usually less than one hour, but up to one day or more) pending sufficient confirmation of the transaction by the network. A transaction is not complete while it is in a pending state. Virtual currency associated with transactions that are in a pending state will be designated accordingly, and will not be included in your account balance or be available to conduct transactions.

The risk of loss in trading or holding virtual currency can be substantial. You should therefore carefully consider whether trading or holding virtual currency is suitable for you in light of your financial condition. In considering whether to trade or hold virtual currency, you should be aware that the price or value of virtual currency can change rapidly, decrease, and potentially even fall to zero.

(Insert company name) is licensed by the Department of Business Oversight to do business in California. If you have complaints with respect to any aspect of the virtual currency business conducted by (company name), you may contact the California Department of Business Oversight at its toll-free telephone number, 1-800-622-0620, by email at consumer.services@dbo.ca.gov, or by mail at the Department of Business Oversight, Consumer Services, 1515 K Street, Suite 200, Sacramento, CA 95814.”

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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