
OLR Bill Analysis

sHB 5320

AN ACT CONCERNING VIRTUAL CURRENCY.

SUMMARY

This bill requires people conducting virtual currency business activity (e.g., receiving, storing, holding, buying, selling, issuing, or exchanging virtual currencies) to register with the Department of Banking, for a fee the banking commissioner sets. In doing so, the bill requires these people or businesses (“registrants”) to:

1. disclose to consumers the costs and material risks associated with virtual currency transactions;
2. provide consumers with detailed transaction receipts;
3. put their registration status on all advertisements, and keep associated marketing materials available for the commissioner’s inspection; and
4. allow the commissioner to examine them for compliance with the bill’s provisions as necessary.

Under the bill, the commissioner can impose a civil penalty of up to \$5,000 per violation on registrants violating the bill’s provisions.

The bill also specifically allows these businesses to accept credit or debit cards for virtual currency purchases (§ 10).

EFFECTIVE DATE: October 1, 2022

§1 — DEFINITIONS

Virtual Currency

Under existing law and the bill, “virtual currency” is a digital unit (1) used as a medium of exchange or form of digitally stored value or (2) incorporated into payment system technology (e.g., Bitcoin). It includes

digital units of exchange that:

1. have a centralized repository or administrator,
2. are decentralized without a centralized repository or administrator, or
3. may be created or obtained by computing or manufacturing effort.

However, it excludes digital units used:

1. solely in online gaming platforms with no other market or application or
2. exclusively in a consumer affinity or rewards program that (a) can be used only as payment for purchases with the issuer or another designated merchant and (b) cannot be converted into, or redeemed for, fiat currency (i.e., government-backed currency, such as the U. S. dollar).

Virtual Currency Business Activity

The bill's requirements apply to people conducting "virtual currency business activity," which is any of the following activities:

1. receiving virtual currency for transmission or transmitting virtual currency, except if the transaction has a nonfinancial purpose and is for a nominal amount of virtual currency;
2. storing, holding, or maintaining custody or control of virtual currency on behalf of others;
3. buying or selling virtual currency as a customer business;
4. performing exchange services as a customer business; and
5. controlling or issuing virtual currency.

Qualified Trust Companies

The bill's requirements do not apply to "qualified trust companies"

engaging in virtual currency business activity. These companies are state- or nationally chartered- banks, trust companies, bank holding companies, credit unions, building or loan associations, savings or loan associations, or savings or mutual banks, as long as they do not issue or sell payment instruments through an authorized delegate who is not one of these entities.

§§ 2 & 3 — REGISTRATION

The bill requires virtual currency businesses to register, in writing and under oath, with the department in a form the commissioner prescribes. The registration must include the:

1. registrant's name, including any business name, its form of organization, and jurisdiction where it is organized or incorporated;
2. registrant's affiliates and an organizational chart showing their relationship to the registrant; and
3. organizational chart of the registrant's management structure, including its principal officers or senior management and their lines of authority and allocation of duties.

The registration must also include specified information about the registrant's business plan, including:

1. a description of its proposed, current, and historical business and the products and services it provides or will provide;
2. all associated websites;
3. its principal place of business and any jurisdiction in which it conducts business;
4. its primary markets, projected customer base, and any specific marketing targets; and
5. the physical address for any of its Connecticut operations.

Under the bill, a registrant must change, supplement, or amend its registration on a form the commissioner prescribes within seven days of a material change to any of the above information.

§§ 4 & 8 — POLICIES, PROCEDURES, AND CONSUMER COMPLAINTS

The bill requires registrants to maintain and enforce confidential, written compliance policies, including those related to anti-fraud, anti-money laundering, cyber security, privacy, and information security. These policies must be reviewed and approved by the registrant's board of directors or equivalent governing body.

The bill also requires registrants to set and maintain written policies and procedures to fairly and timely resolve customer complaints. Accordingly, registrants must disclose in all physical locations and on their website:

1. their mailing address, email address, and telephone number for complaints; and
2. a statement that a person may complain to the department, along with the department's mailing address, website, and telephone number.

§ 5 — ADVERTISING REQUIREMENTS

The bill prohibits registrants from advertising products, services, or activities in Connecticut without including their legal name and a legend stating that they are registered to engage in virtual currency business activity in Connecticut.

Additionally, the bill requires registrants to maintain, for examination by the commissioner, all advertising and marketing materials for at least seven years from their creation (e.g., print media, internet media including websites, radio and television advertising, road show materials, presentations, and brochures). The bill requires registrants to maintain hard copies, website captures of material changes to online advertising, and marketing and audio and video transcripts, as applicable.

§ 6 — EXAMINATIONS

The bill requires registrants to allow the commissioner to examine them whenever he deems it necessary or advisable, including to determine compliance with the bill's provisions. Registrants must assist the commissioner in these exams, which may include examinations of the premises, books, records, and any other pertinent material, including that of their affiliates.

§ 7 — CONSUMER DISCLOSURES

The bill requires registrants, before engaging in virtual currency business activity, to disclose in clear conspicuous writing (1) all material risks associated with a particular virtual currency business activity; (2) the consumer terms and conditions, including a consumer's rights and potential liability; and (3) the terms and conditions of virtual currency transactions. Registrants must ensure that consumers acknowledge in writing they received these disclosures.

The bill specifies that these disclosures may include specified information, as noted below.

Material Risks

The risks that must be disclosed may include that:

1. virtual currency is not (a) legal tender, (b) backed by the U. S. government, or (c) insured by the Federal Deposit Insurance Corporation;
2. virtual currency transactions may be irreversible and losses due to fraudulent or accidental transactions may not be recoverable;
3. laws determining the rights and obligations of virtual currency users are not fully developed, and courts may find that certain transaction elements (such as the timing, amount, identity, or location of the parties involved) may not be the same as if the transaction occurred with a government currency;
4. the value of the virtual currency the registrant holds may change more quickly and unexpectedly than that of government currency,

and may become zero; and

5. technological difficulties may prevent a person from accessing their virtual currency.

The bill requires the commissioner to post on the department's website information substantially similar to the information that must be disclosed to consumers, including the material risks described above.

Consumer Terms and Conditions

The consumer terms and conditions that must be disclosed may include:

1. a person's liability for unauthorized transactions;
2. a person's right to interrupt or prevent any transaction and the associated procedures to do so;
3. the circumstances under which the registrant will, absent a court or government order, disclose a person's information to third parties;
4. the person's right to receive periodic account statements and valuations;
5. the person's right to receive a receipt, trade ticket, or other evidence of a transaction; and
6. the person's right to prior notice of a change in the registrant's rules or policies.

Transactions

The terms and conditions of transactions that must be disclosed may include:

1. the transaction's amount, including any fees, expenses, and charges (including applicable exchange rates) borne by the person;
2. the transaction's type and nature; and

3. a warning that, once executed, transactions may not be undone.

Under the bill, registrants must provide a receipt of a completed transaction to the person who initiated it. The receipt must include:

1. the registrant's name and contact information, including a telephone number the registrant establishes to answer questions and register complaints;
2. the transaction's type, value, date, and precise time; and
3. any fee charged or exchange rate applied.

§ 9 — ENFORCEMENT

The bill allows the banking commissioner to apply to the Superior Court for an order to temporarily or permanently restrain or enjoin a person from violating the bill's provisions or any of the commissioner's associated rules, regulations, or orders. He may also apply for injunctive or other relief as necessary.

If, after notice and hearing, the commissioner finds a person has violated the bill's provisions, he may order them to pay a civil penalty of up to \$5,000 per violation. Each violation constitutes a separate offense. The bill specifies that the civil penalty is in addition to any registration suspension or revocation he imposes.

Under the bill, no disciplinary proceeding can start, and no civil penalty can be assessed, until the registrant first receives written notice of the violation and is afforded reasonable time, as the notice establishes, to correct it.

The bill authorizes the commissioner to compromise, settle, and collect civil penalties for violations of the bill's provisions or any act, rule, regulation, or order issued under it.

BACKGROUND

Related Bill

SB 353, reported favorably by the Commerce Committee, defines a "digital asset," which may include virtual currency, and establishes the

legal nature of these assets.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/22/2022)