

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 introduced, 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 virtual currency, 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 to pay the commissioner a specified nonrefundable 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 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.

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

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:

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DIVISION 11. VIRTUAL CURRENCY

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6 26000. For purposes of this division, the following definitions
7 shall apply:

8 (a) "Virtual currency" means any type of digital unit that is used
9 as a medium of exchange or a form of digitally stored value or that
10 is incorporated into payment system technology. Virtual currency
11 shall be broadly construed to include digital units of exchange that
12 (1) have a centralized repository or administrator, (2) are
13 decentralized and have no centralized repository or administrator,
14 or (3) may be created or obtained by computing or manufacturing
15 effort. Virtual currency shall not be construed to include digital
16 units that are used solely within online gaming platforms with no
17 market or application outside of those gaming platforms, nor shall
18 virtual currency be construed to include digital units that are used
19 exclusively as part of a customer affinity or rewards program, and
20 can be applied solely as payment for purchases with the issuer or

1 other designated merchants, but cannot be converted into, or
2 redeemed for, fiat currency.

3 (b) “Commissioner” means the Commissioner of Business
4 Oversight.

5 26002. (a) A person shall not engage in this state in the
6 business of virtual currency unless the person is licensed or exempt
7 from licensure under this division.

8 (b) No licensee may conduct any virtual currency business
9 activity through an agent or agency arrangement if the agent is not
10 a licensee.

11 26004. The following are exempt from the licensing
12 requirement described in Section 26002:

13 (1) The United States or a department, agency, or instrumentality
14 thereof, including any federal reserve bank and any federal home
15 loan bank.

16 (2) Money transmission by the United States Postal Service or
17 by a contractor on behalf of the United States Postal Service.

18 (3) A state, city, county, city and county, or any other
19 governmental agency or governmental subdivision of a state.

20 (4) A commercial bank or industrial bank, the deposits of which
21 are insured by the Federal Deposit Insurance Corporation or its
22 successor, or any foreign (other nation) bank that is licensed under
23 Chapter 20 (commencing with Section 1750) of Division 1.1 or
24 that is authorized under federal law to maintain a federal agency
25 or federal branch office in this state; a trust company licensed
26 pursuant to Section 1042 or a national association authorized under
27 federal law to engage in a trust banking business; an association
28 or federal association, as defined in Section 5102, the deposits of
29 which are insured by the Federal Deposit Insurance Corporation
30 or its successor; and any federally or state chartered credit union,
31 with an office in this state, the member accounts of which are
32 insured or guaranteed as provided in Section 14858.

33 (5) An entity licensed as a money transmitter under the Money
34 Transmission Act described in Division 1.2 (commencing with
35 Section 2000).

36 (6) A merchant or consumer that utilizes virtual currency solely
37 for the purchase or sale of goods or services.

38 26006. (a) An applicant for licensure under this division shall
39 pay to the commissioner a nonrefundable fee of five thousand
40 dollars (\$5,000).

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

1 executive officer, manager, director, or person that has control, of
2 the applicant, and the educational background for each person.

3 (15) A list of any criminal convictions and material litigation
4 in which any executive officer, manager, director, or person in
5 control, of the applicant has been involved in the 10-year period
6 next preceding the submission of the application.

7 (16) A copy of the applicant's audited financial statements for
8 the most recent fiscal year and, if available, for the two-year period
9 next preceding the submission of the application.

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

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

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

34 (22) Any other information the commissioner requires with
35 respect to the applicant.

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

39 26008. (a) Each licensee shall maintain at all times such capital
40 as the commissioner determines is sufficient to ensure the safety

- 1 and soundness of the licensee and maintain consumer protection
2 and its ongoing operations. In determining the minimum amount
3 of capital that must be maintained by a licensee, the commissioner
4 shall consider a variety of factors, including, but not limited to:
- 5 (1) The composition of the licensee’s total assets, including the
6 position, size, liquidity, risk exposure, and price volatility of each
7 type of asset.
 - 8 (2) The composition of the licensee’s total liabilities, including
9 the size and repayment timing of each type of liability.
 - 10 (3) The actual and expected volume of the licensee’s virtual
11 currency business activity.
 - 12 (4) Whether the licensee is already licensed or regulated by a
13 state or federal entity, and whether the licensee is in good standing
14 in such capacity.
 - 15 (5) The amount of leverage employed by the licensee.
 - 16 (6) The liquidity position of the licensee.
 - 17 (7) The financial protection that the licensee provides for its
18 customers through its trust account or bond.
- 19 (b) In order to satisfy subdivision (a), each licensee shall invest
20 an aggregate amount equal to the value of the virtual currency that
21 the licensee has on deposit for its customers in only the following
22 high-quality, investment-grade permissible investments:
- 23 (1) Certificates of deposit issued by financial institutions that
24 are regulated by a United States federal or state regulatory agency.
 - 25 (2) Money market funds.
 - 26 (3) State or municipal bonds.
 - 27 (4) United States government securities.
 - 28 (5) United States government agency securities.