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AMENDED IN ASSEMBLY JUNE 1, 2015

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 repeal Section 107 of the Corporations Code, and to add Section 2178 to, and to add Division 11 (commencing with Section 26000) to, the Financial Code, relating to currency.

LEGISLATIVE COUNSEL'S DIGEST

AB 1326, as amended, Dababneh. Virtual currency.

Existing

(1) *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 enact the Virtual Currency Act. The bill would prohibit a person from engaging in any virtual 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, 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~~ *previous* 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 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. The bill would require each licensee to maintain a bond or trust account in United States dollars for the benefit of its consumers 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.

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.

By a specified date, the bill would require each licensee to file an annual report with the commissioner providing information regarding the licensee's business and operations within the state, as specified. The bill would also require each licensee to make other special reports to the commissioner. The bill would require these reports to be kept confidential. The bill would require the commissioner to prepare a report for publication on his or her Internet Web site summarizing the information from those reports and enforcement action information.

This bill would require a licensee to provide a specified consumer protection disclosure and receipt to its consumers.

This bill would authorize a virtual currency licensee in good standing that plans to engage in activities permitted under the Money Transmission Act to request that the commissioner convert his or her license into a license under the Money Transmission Act, as specified. The

This bill would authorize a person or entity conducting virtual currency business with less than \$1,000,000 in outstanding obligations, as defined, and whose business model, as determined by the commissioner, represents low or no risk to consumers to register with a \$500 license fee pay a \$500 application fee to the commissioner and, if approved, receive a provisional license to conduct virtual

currency business. *The bill would authorize the commissioner to request reports and documents, to examine the provisional licensee, and gather information regarding the business and operations of provisional licensees. The bill would require reports and documents concerning the business and operations of provisional licensees to be kept confidential.*

This bill would require a licensee, under the Money Transmission Act, to report to the commissioner its plan to engage in any virtual currency business and request permission to engage in that business subject to specified requirements and conditions, as determined by the commissioner.

This bill would make these ~~provisions~~ *aforementioned provisions*, including the Virtual Currency ~~Act Act~~, operative on July 1, 2016.

(2) Existing law, the General Corporation Law, prohibits a corporation, social purpose corporation, association, or individual from issuing or putting in circulation, as money, anything but the lawful money of the United States.

This bill would delete that prohibition.

(3) *Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.*

This bill would make legislative findings to that effect.

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. Section 107 of the Corporations Code is repealed.
- 2 SEC. 2. Section 2178 is added to the Financial Code, to read:
- 3 2178. (a) Notwithstanding any other law and consistent with
- 4 subdivision (e) of Section 26004, a licensee shall report to the
- 5 commissioner its plan to engage in any virtual currency business
- 6 as described in Division 11 (commencing with Section 26000) and
- 7 request, on a form provided by the commissioner, permission to
- 8 engage in any virtual currency business without the issuance of a
- 9 virtual currency license issued under Division 11 (commencing
- 10 with Section 26000). However, the commissioner may require the
- 11 licensee to increase its surety bond or eligible securities amounts

1 in an amount necessary to ensure the consumer protection of the
2 additional business. The commissioner may also place, as a
3 condition on the authorization to engage in any virtual currency
4 business pursuant to Division 11 (commencing with Section
5 26000), any condition authorized by Section 2036.

6 (b) This section shall become operative on July 1, 2016.

7 SEC. 3. Division 11 (commencing with Section 26000) is added
8 to the Financial Code, to read:

9
10 DIVISION 11. VIRTUAL CURRENCY

11
12 CHAPTER 1. GENERAL PROVISIONS

13
14 26000. For purposes of this division, the following definitions
15 shall apply:

16 (a) “Commissioner” means the Commissioner of Business
17 Oversight.

18 (b) (1) “Virtual currency” means any type of digital unit that
19 is used as a medium of exchange or a form of digitally stored value.

20 (2) Virtual currency does not include the following:

21 (A) Digital units that are used solely within online gaming
22 platforms with no market or application outside of those gaming
23 platforms.

24 (B) Digital units that are used exclusively as part of a consumer
25 affinity or rewards program.

26 (C) Digital units that can be redeemed for goods, services, or
27 for purchases with the issuer or other designated merchants, but
28 cannot be converted into, or redeemed for, fiat currency.

29 (c) “Virtual currency business” means maintaining full custody
30 or control of virtual currency in this state on behalf of others.

31 (d) “Fiat currency” means government-issued currency that is
32 designated as legal tender through government decree, regulation,
33 or law, that customarily refers to paper money and coin and is
34 circulated, used, and accepted as money.

35 26001. For the purposes of carrying out the provisions of this
36 division, the commissioner may adopt regulations pursuant to the
37 Administrative Procedure Act (Chapter 3.5 (commencing with
38 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
39 Code).

1 26001.5. This division shall be known and may be cited as the
2 Virtual Currency Act.

3

4

CHAPTER 2. LICENSES

5

6 26002. A person shall not engage in any virtual currency
7 business in this state unless the person is licensed or exempt from
8 licensure under this division.

9 26004. The following are exempt from the licensing
10 requirement described in Section 26002:

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

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

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

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

31 (e) Subject to Section 2178, an entity licensed as a money
32 transmitter under the Money Transmission Act described in
33 Division 1.2 (commencing with Section 2000).

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

36 (g) (1) A transaction in which the recipient of virtual currency
37 is an agent of the payee pursuant to a preexisting written contract
38 and delivery of the virtual currency to the agent satisfies the payor's
39 obligation to the payee.

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

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

3 (B) “Payee” means the provider of goods or services, who is
4 owed payment of money or other monetary value from the payor
5 for the goods or services.

6 (C) “Payor” means the recipient of goods or services, who owes
7 payment of money or monetary value to the payee for the goods
8 or services.

9 (h) A person or entity developing, distributing, or servicing a
10 virtual currency network software.

11 (i) A person or entity contributing software, connectivity, or
12 computing power to a virtual currency network.

13 (j) A person or entity providing data storage or cyber security
14 services for a licensed virtual currency business.

15 26006. (a) An applicant for licensure under this division shall
16 pay to the commissioner a nonrefundable application fee of five
17 thousand dollars (\$5,000).

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

21 (1) The legal name and residential business address of the
22 applicant and any fictitious or trade name used by the applicant in
23 conducting its business.

24 (2) A list of any criminal convictions of the applicant and any
25 material litigation in which the applicant has been involved in the
26 10-year period next preceding the submission of the application.

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

30 (4) A list of other states in which the applicant is licensed to
31 engage in the business of virtual currency and any license
32 revocations, suspensions, or other disciplinary action taken against
33 the applicant in another state.

34 (5) Information concerning any bankruptcy or receivership
35 proceedings affecting the licensee.

36 (6) A sample form of receipt for transactions that involve money
37 received for the business of virtual currency.

38 (7) The name and address of any bank through which the
39 applicant’s business will be conducted.

- 1 (8) A description of the source of money and credit to be used
2 by the applicant to provide virtual currency services.
- 3 (9) The date of the applicant’s incorporation or formation and
4 the state or country of incorporation or formation.
- 5 (10) A certificate of good standing from the state or country in
6 which the applicant is incorporated or formed.
- 7 (11) A description of the structure or organization of the
8 applicant, including any parent or subsidiary of the applicant, and
9 whether any parent or subsidiary is publicly traded.
- 10 (12) The legal name, any fictitious or trade name, all business
11 and residential addresses, and the employment, in the 10-year
12 period next preceding the submission of the application, of each
13 executive officer, manager, director, or person that has control, of
14 the applicant, and the educational background for each person.
- 15 (13) A list of any criminal convictions and material litigation
16 in which any executive officer, manager, director, or person in
17 control, of the applicant has been involved in the 10-year period
18 next preceding the submission of the application.
- 19 (14) A copy of the applicant’s audited financial statements for
20 the most recent fiscal year and, if available, for the two-year period
21 next preceding the submission of the application.
- 22 (15) A copy of the applicant’s unconsolidated financial
23 statements for the current fiscal year, whether audited or not, and,
24 if available, for the two-year period next preceding the submission
25 of the application.
- 26 (16) If the applicant is publicly traded, a copy of the most recent
27 report filed with the United States Securities and Exchange
28 Commission under Section 13 of the federal Securities Exchange
29 Act of 1934 (15 U.S.C. Sec. 78m).
- 30 (17) If the applicant is a wholly owned subsidiary of:
31 (A) A corporation publicly traded in the United States, a copy
32 of audited financial statements for the parent corporation for the
33 most recent fiscal year or a copy of the parent corporation’s most
34 recent report filed under Section 13 of the federal Securities
35 Exchange Act of 1934 (15 U.S.C. Sec. 78m) and, if available, for
36 the two-year period next preceding the submission of the
37 application.
38 (B) A corporation publicly traded outside the United States, a
39 copy of similar documentation filed with the regulator of the parent
40 corporation’s domicile outside the United States.

1 (18) The applicant’s plan for engaging in the business of virtual
2 currency, including without limitation three years of pro forma
3 financial statements.

4 (19) Any other information the commissioner requires with
5 respect to the applicant.

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

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

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

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

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

25 (h) Whenever the commissioner examines an applicant, the
26 applicant shall pay, within 10 days after receipt of a statement
27 from the commissioner, a fee of seventy-five dollars (\$75) per
28 hour for each examiner engaged in the examination plus, if it is
29 necessary for any examiner engaged in the examination to travel
30 outside this state, the travel expenses of the examiner.

31 (i) Each fee for filing an application shall be paid at the time
32 the application is filed with the commissioner. No fee for filing
33 an application shall be refundable, regardless of whether the
34 application is approved, denied, or withdrawn.

35 26008. (a) Each licensee shall maintain at all times such capital
36 as the commissioner determines is sufficient to ensure the safety
37 and soundness of the licensee and maintain consumer protection
38 and its ongoing operations. In determining the minimum amount
39 of capital that must be maintained by a licensee, the commissioner
40 shall consider a variety of factors, including, but not limited to:

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

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

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

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

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

12 (6) The liquidity position of the licensee.

13 (7) The financial protection that the licensee provides for its
14 consumers through its trust account or bond.

15 (b) Each licensee shall maintain a bond or trust account in
16 United States dollars for the benefit of its consumers in the form
17 and amount specified by the commissioner.

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19

CHAPTER 3. EXAMINATIONS AND RECORDS

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21 26009. (a) The commissioner may at any time and from time
22 to time examine the business and any branch office, within or
23 outside this state, of any licensee in order to ascertain whether that
24 business is being conducted in a lawful manner and whether all
25 virtual currency held or exchanged is properly accounted for.

26 (b) The directors, officers, and employees of any licensee being
27 examined by the commissioner shall exhibit to the commissioner,
28 on request, any or all of the licensee's accounts, books,
29 correspondence, memoranda, papers, and other records and shall
30 otherwise facilitate the examination so far as it may be in their
31 power to do so.

32 26010. The commissioner may consult and cooperate with
33 other state or federal regulators in enforcing and administering
34 this division. They may jointly pursue examinations and take other
35 official action that they are otherwise empowered to take.

36 26011. A licensee shall file a report with the commissioner
37 within five business days after the licensee has reason to know of
38 the occurrence *of* any of the following events:

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

4 (b) The filing of a petition by or against the licensee for
5 receivership, the commencement of any other judicial or
6 administrative proceeding for its dissolution or reorganization, or
7 the making of a general assignment for the benefit of its creditors.

8 (c) The commencement of a proceeding to revoke or suspend
9 its virtual currency business license in a state or country in which
10 the licensee engages in such business or is licensed to engage in
11 such business.

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

14 (e) A charge or conviction of the licensee or of an executive
15 officer, manager, director, or person in control of the licensee for
16 a felony.

17 26012. A licensee shall maintain any records as required by
18 the commissioner for determining its compliance with this division
19 for at least three years.

20
21 CHAPTER 4. ENFORCEMENT
22

23 26013. Any licensee may surrender its license by filing with
24 the commissioner the license and a report with any information as
25 the commissioner requires. The voluntary surrender of the license
26 shall become effective at the time and upon the conditions as the
27 commissioner specifies by order.

28 26014. (a) The commissioner may prepare written decisions,
29 opinion letters, and other formal written guidance to be issued to
30 persons seeking clarification regarding the requirements of this
31 division.

32 (b) The commissioner shall make public on the commissioner’s
33 Internet Web site all written decisions, opinion letters, and other
34 formal written guidance issued to persons seeking clarification
35 regarding the requirements of this division. The commissioner
36 may, at his or her discretion or upon request by an applicant or
37 licensee, redact proprietary or other confidential information
38 regarding an applicant or licensee from any decision, letter, or
39 other written guidance issued in connection with an applicant or
40 licensee.

1 26015. The commissioner may offer informal guidance to any
2 prospective applicant for a license under this division, regarding
3 the conditions of licensure that may be applied to that person. The
4 commissioner shall inform any applicant that requests that guidance
5 of the licensing requirements that will be required of that applicant,
6 based on the information provided by the applicant concerning its
7 plan to conduct business under this division, and the factors used
8 to make that determination.

9 26016. At any time, if the commissioner deems it necessary
10 for the general welfare of the public, he or she may exercise any
11 power set forth in this division with respect to a virtual currency
12 business, regardless of whether an application for a license has
13 been filed with the commissioner, a license has been issued, or, if
14 issued, the license has been surrendered, suspended, or revoked.

15 (a) If it appears to the commissioner that a licensee is violating
16 or failing to comply with this division, the commissioner may
17 direct the licensee to comply with the law by an order issued under
18 the commissioner’s official seal, or if it appears to the
19 commissioner that any licensee is conducting its business in an
20 unsafe or injurious manner, the commissioner may in like manner
21 direct it to discontinue the unsafe or injurious practices. The order
22 shall require the licensee to show cause before the commissioner,
23 at a time and place to be fixed by the commissioner, as to why the
24 order should not be observed.

25 (b) If, upon any hearing held pursuant to subdivision (a), the
26 commissioner finds that the licensee is violating or failing to
27 comply with any law of this state or is conducting its business in
28 an unsafe or injurious manner, the commissioner may make a final
29 order directing it to comply with the law or to discontinue the
30 unsafe or injurious practices. A licensee shall comply with the
31 final order unless, within 10 days after the issuance of the order,
32 its enforcement is restrained in a proceeding brought by the
33 licensee.

34 26017. (a) The commissioner may issue an order suspending
35 or revoking a license, or taking possession of and placing a licensee
36 in receivership, if after notice and an opportunity for hearing, the
37 commissioner finds any of the following:

38 (1) The licensee is violating this division or a regulation adopted
39 or an order issued under this division, or a condition of approval
40 issued under this division.

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

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

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

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

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

13 (7) The licensee has applied for an adjudication of bankruptcy,
14 reorganization, arrangement, or other relief under any bankruptcy,
15 reorganization, insolvency, or moratorium law, or any person has
16 applied for any such relief under that law against the licensee and
17 the licensee has by any affirmative act approved of or consented
18 to the action or the relief has been granted.

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

22 (b) In determining whether a licensee is engaging in an unsafe
23 or unsound practice, the commissioner may consider the size and
24 condition of the licensee's provision of virtual currency services,
25 the magnitude of the loss, the gravity of the violation of this
26 division, and the previous conduct of the person involved.

27 26018. (a) Every order, decision, or other official act of the
28 commissioner is subject to review in accordance with law.

29 (b) Whenever the commissioner has taken possession of the
30 property and business of any licensee, the licensee, within 10 days
31 after that taking, if it deems itself aggrieved thereby, may apply
32 to the superior court in the county in which the head office of the
33 licensee is located to enjoin further proceedings. The court, after
34 citing the commissioner to show cause why further proceedings
35 should not be enjoined and after a hearing and a determination of
36 the facts upon the merits, may dismiss the application or enjoin
37 the commissioner from further proceedings and direct the
38 commissioner to surrender the property and business to the
39 licensee.

1 26019. (a) If the commissioner finds that any of the factors
2 set forth in Section 26017 is true with respect to any licensee and
3 that it is necessary for the protection of the public interest, the
4 commissioner may issue an order immediately suspending or
5 revoking the licensee’s license.

6 (b) Within 30 days after the license is suspended or revoked
7 pursuant to subdivision (a), the licensee may file with the
8 commissioner an application for a hearing on the suspension or
9 revocation.

10 (c) If the commissioner fails to commence a hearing within 15
11 business days after the application is filed with the commissioner
12 pursuant to subdivision (b) or within a longer period of time agreed
13 to by the licensee, the suspension or revocation shall be deemed
14 rescinded.

15 (d) Within 30 days after the hearing, the commissioner shall
16 affirm, modify, or rescind the suspension or revocation. Otherwise,
17 the suspension or revocation shall be deemed rescinded.

18 (e) The right of the licensee to petition for judicial review of
19 the suspension or revocation shall not be affected by the failure of
20 the licensee to apply to the commissioner for a hearing on the
21 suspension or revocation pursuant to subdivision (b).

22 26020. The commissioner may assess a civil penalty against
23 a person that violates this division or a regulation adopted or an
24 order issued under this division in an amount not to exceed one
25 thousand dollars (\$1,000) for each violation or, in the case of a
26 continuing violation, one thousand dollars (\$1,000) for each day
27 or part thereof during which the violation continues, plus this
28 state’s costs and expenses for the investigation and prosecution of
29 the matter, including reasonable attorney’s fees.

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

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

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

1 (1) The audit report shall contain audited financial statements
2 of the licensee for or as of the end of the fiscal year prepared in
3 accordance with United States generally accepted accounting
4 principles and any other information as the commissioner may
5 require.

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

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

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

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

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

33 (2) Other information as the commissioner may by regulation
34 or order require.

35 (d) *Each licensee shall file an annual report with the*
36 *commissioner, on or before the 15th day of March, providing the*
37 *relevant information that the commissioner reasonably requires*
38 *concerning the business and operations conducted by the licensee*
39 *within the state during the preceding calendar year. Each licensee*
40 *shall also make other special reports to the commissioner that may*

1 *be required by the commissioner from time to time. The reports*
 2 *required by this subdivision shall be kept confidential pursuant to*
 3 *Chapter 3.5 (commencing with Section 6250) of Division 7 of Title*
 4 *I of the Government Code and any regulations adopted thereunder.*

5 *(e) The commissioner shall annually prepare a report for*
 6 *publication on his or her Internet Web site, summarizing*
 7 *consolidated information gained from the reports required*
 8 *pursuant to subdivision (d), documenting the number of licenses,*
 9 *including provisional licenses as described in Section 26032,*
 10 *outstanding during the prior calendar year, and summarizing the*
 11 *numbers and types of enforcement actions brought by the*
 12 *commissioner pursuant to this division during the prior calendar*
 13 *year.*

14 26024. In addition to the fees provided in Section 26006, the
 15 commissioner shall levy an assessment each fiscal year, on a pro
 16 rata basis, on those licensees that at any time during the preceding
 17 calendar year engaged in this state in the virtual currency business
 18 in an amount that is, in his or her judgment, sufficient to meet the
 19 commissioner’s expenses in administering the provisions of this
 20 division and to provide a reasonable reserve for contingencies.

21

22 CHAPTER 5. MISCELLANEOUS PROVISIONS

23

24 26025. A licensee shall disclose to consumers the following
 25 disclosure in a form and manner prescribed by the commissioner:

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

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

1 (Insert company name) is licensed by the Department of Business
2 Oversight to do business in California. If you have complaints
3 with respect to any aspect of the virtual currency business
4 conducted by (company name), you may contact the California
5 Department of Business Oversight at its toll-free telephone number,
6 1-800-622-0620, by email at consumer.services@dbo.ca.gov, or
7 by mail at the Department of Business Oversight, Consumer
8 Services, 1515 K Street, Suite 200, Sacramento, CA 95814.”

9 26026. (a) Upon completion of a transaction subject to this
10 division, the licensee shall provide to the consumer a receipt
11 containing the following information:

12 (1) The name and contact information of the licensee including
13 a telephone number of the licensee where consumers can contact
14 the licensee for questions or to register complaints.

15 (2) The type, value, date, and time of the transaction.

16 (3) The type and amount of any fees charged.

17 (4) The exchange rate, if applicable.

18 (5) A statement of the refund policy of the licensee.

19 (6) Additional information the commissioner may require.

20 (b) The receipt required by this section shall be made in English
21 and in the language principally used by that licensee to advertise,
22 solicit, or negotiate, either orally or in writing, if other than English.

23 (c) The receipt required by this section may be provided
24 electronically for transactions that are initiated electronically or
25 in which a consumer agrees to receive an electronic receipt.

26 26029. The commissioner may, by regulation or order, either
27 unconditionally or upon specified terms and conditions or for
28 specified periods, exempt from all or part of this division any
29 person or transaction or class of persons or transactions, if the
30 commissioner finds such action to be in the public interest and that
31 the regulation of such persons or transactions is not necessary for
32 the purposes of this division. The commissioner shall post on the
33 commissioner’s Internet Web site a list of all persons, transactions,
34 or classes of person or transactions exempt pursuant to this section,
35 and the provision or provisions of this division from which they
36 are exempt.

37 26031. Notwithstanding any other law, a licensee in good
38 standing under this division that plans to engage in activities
39 permitted under the Money Transmission Act (Division 1.2
40 (commencing with Section 2000)) may request from the

1 commissioner in a form specified by the commissioner to convert
2 their license into a license under Division 1.2 (commencing with
3 Section 2000). A licensee's request to convert its license shall be
4 accompanied by documentation or other evidence as determined
5 by the commissioner that the licensee meets the requirements for
6 licensure under Division 1.2 (commencing with Section 2000). If
7 a licensee's request for a converted license is granted, the licensee
8 shall be subject to Section 2178 in order to thereafter engage in
9 any virtual currency business.

10 26032. (a) ~~A(1)~~ *In lieu of Section 26006, a person or entity*
11 *conducting virtual currency business with less than one million*
12 *dollars (\$1,000,000) in outstanding obligations and whose business*
13 *model, as determined by the commissioner, represents low or no*
14 *risk to consumers may register with a five-hundred-dollar (\$500)*
15 *license fee with the pay an application fee of five hundred dollars*
16 *(\$500) to the commissioner and, if approved, receive a provisional*
17 *license to conduct virtual currency business. A person or entity*
18 *that receives such a license shall also register with FinCEN as a*
19 *money services business, if applicable.*

20 (2) *For the purposes of this section, "outstanding obligations"*
21 *means the value under the full custody and control of the person*
22 *or entity.*

23 (b) In determining whether to issue a provisional license, the
24 commissioner shall consider a variety of factors, including, but
25 not limited to:

26 (1) The nature and scope of the applicant's business.

27 (2) The anticipated volume of business to be transacted by the
28 applicant in California.

29 (3) The nature and scope of the risks that the applicant's business
30 presents to consumers.

31 (4) The measures which the applicant has taken to limit or
32 mitigate the risks its business presents.

33 (5) Whether the applicant is regulated or otherwise authorized
34 by another governmental entity to engage in financial services or
35 other business activities.

36 (c) ~~The Sections 26006, 26008, 26023, 26024, and 26031 shall~~
37 *not apply to a person or entity to which a provisional license has*
38 *been issued. However, the commissioner may require a provisional*
39 *licensee to certify adherence to certain risk based performance*

1 standards related to safety, soundness, and consumer protection
2 as prescribed by the commissioner.

3 (d) Based upon the factors identified in subdivision (b) and the
4 provisional licensee’s history as a holder of a provisional license,
5 the commissioner may at any time renew such license for an
6 additional length of time or remove the provisional status from the
7 license if the licensee meets all the requirements of this division.
8 Unless the commissioner otherwise removes the provisional status
9 of or renews such license, a provisional license shall expire two
10 years after the date of issuance. If the commissioner renews a
11 provisional license, the licensee shall pay a five-hundred-dollar
12 (\$500) renewal fee.

13 (e) The commissioner may request reports and documents and
14 may ~~audit~~ *examine* the provisional licensee as needed to further
15 ~~consumer protection and protection, enhance safety and soundness.~~
16 *soundness, and gather information regarding the business and*
17 *operations of provisional licensees. Reports and documents*
18 *concerning the business and operations of provisional licensees*
19 *shall be kept confidential pursuant to Chapter 3.5 (commencing*
20 *with Section 6250) of Division 7 of Title 1 of the Government Code*
21 *and any regulations adopted thereunder. The commissioner shall*
22 *include aggregated information about the business and operations*
23 *of provisional licensees in the report required by and subject to*
24 *subdivision (e) of Section 26023.*

25 (f) A provisional licensee shall notify the commissioner within
26 15 days of surpassing the threshold in subdivision (a) and shall,
27 within 30 days from that notice, apply for a license pursuant to
28 Chapter 2 (commencing with Section 26002).

29 (g) A provisional license may be suspended or revoked pursuant
30 to Section 26017.

31
32 CHAPTER 6. OPERATIVE DATE

33
34 26040. This division shall become operative on July 1, 2016.

35 *SEC. 4. The Legislature finds and declares that Section 3 of*
36 *this act, which adds Sections 26023 and 26032 to the Financial*
37 *Code, imposes a limitation on the public’s right of access to the*
38 *meetings of public bodies or the writings of public officials and*
39 *agencies within the meaning of Section 3 of Article I of the*
40 *California Constitution. Pursuant to that constitutional provision,*

1 *the Legislature makes the following findings to demonstrate the*
2 *interest protected by this limitation and the need for protecting*
3 *that interest:*

4 *In order to allow the Commissioner of Business Oversight of*
5 *the Department of Business Oversight to fully accomplish his or*
6 *her goals, it is imperative to protect the interests of those persons*
7 *submitting information to the department to ensure that any*
8 *personal or sensitive business information that this act requires*
9 *those persons to submit is protected as confidential information.*

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

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