

AMENDED IN SENATE AUGUST 8, 2016

AMENDED IN SENATE AUGUST 18, 2015

AMENDED IN SENATE JULY 6, 2015

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 amend, repeal, and add Section 2003 of,* and to add Division 11 (commencing with Section 26000) to, the Financial Code, relating to *digital* currency.

LEGISLATIVE COUNSEL'S DIGEST

AB 1326, as amended, Dababneh. ~~Virtual~~ *Digital* currency.

(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, 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.

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 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 aforementioned provisions, including the Virtual Currency Act, operative on July 1, 2016.~~

~~*This bill, until January 1, 2022, would enact the Digital Currency Business Enrollment Program, to be administrated by the Commissioner of Business Oversight, who would be granted authority to make rules and regulations for this purpose. The bill would prescribe various definitions in this regard and would define digital currency as a digital representation of value that can be digitally traded and is used to facilitate the sale, purchase, and exchange of goods, services, or other digital representations of value, except as specified. The bill would define digital currency business as offering or providing the service of storing, transmitting, exchanging, or issuing digital currency, subject to various exceptions. The bill would define a person to include an individual or other business entities, however organized.*~~

~~*The bill would prohibit a person from engaging in the digital currency business without enrolling in the program and would prohibit the conduct of digital currency business through an unenrolled agent. The bill would require a person seeking enrollment to pay a nonrefundable fee of up to \$5,000, not to exceed the reasonable costs of enrolling a person in the program, and would require the person to provide the commissioner specified personal and business information in a form and manner prescribed by the commissioner. The bill would also require the person to provide fingerprints and would authorize the commissioner to deliver the fingerprints to law enforcement agencies. The bill would require the commission to permit enrollment in the program unless it appears to the commissioner that the person, or related parties, are not of good character. The bill would prohibit a person from directly or indirectly acquiring control of an enrollee in the program without approval by the commissioner and would prescribe a process and a fee*~~

for applying for approval. The bill would require an application to acquire control of an enrollee to be under oath. By expanding the scope of the crime of perjury the bill would impose a state-mandated local program. The bill would require an enrollee to pay an annual fee of \$2,500 to maintain enrollment in the program. The bill would require that all moneys received by the commissioner in connection with its provisions to be placed in the Digital Currency Business Enrollment Program Account, which would be created in the State Corporations Fund, to be available, upon appropriation by the Legislature, to the commissioner for expenditure for the purposes of the program.

The bill would prohibit an enrollee in the program from advertising products, services, and activities without a statement regarding the program and that a government agency has not reviewed the safety or soundness of the business or digital currencies. The bill would require an enrollee to maintain advertising and marketing materials and would prohibit the materials from making false, misleading, or deceptive representations or omissions. The bill would require an enrollee to make a variety of specified disclosures in English and in any other language spoken by a majority of the enrollee's customers prior to entering into an initial transaction for, or on behalf of, a customer; when opening an account for a new customer; and prior to each transaction. The bill would also require an enrollee to provide a customer a receipt containing specified information when accepting digital currency or money. The bill would require that the English version of the receipt govern disputes over its terms and would provide that discrepancies between the English version and a translation be construed against the enrollee, as specified. The bill would prescribe a fine of \$100 for each violation of the provisions relating to receipts.

The bill would authorize the commissioner to require an enrollee and its agents to submit surveys, investigations, and questionnaires for the purpose of gathering information and to ascertain detailed facts about the enrollee's business model, capitalization and net worth, and cybersecurity, among other things. The bill would require an enrollee and its officers, agents, and employees to make the enrollee's accounts, books, correspondence, and other records available upon request and to facilitate the commissioner's fact-gathering. The bill would provide that these materials are not public records and shall be held in confidence. The bill would require an enrollee to provide an audit report containing specified information and prepared pursuant to prescribed standards and an annual report, the content of which would be

determined by the commissioner. The bill would provide that these reports are not public records and shall be held in confidence. The bill would prescribe fines and penalties for the failure to make reports or include required information, which would include disenrollment for repeated failures. The bill would require the commissioner to prepare and make available to the public an annual report on the state of the digital currency business industry by compiling the information received pursuant to these provisions.

The bill would grant the commissioner the authority to issue cease and desist orders when, in the commissioner's opinion, an unenrolled person is engaging in the digital currency business or violating provisions of the program. The bill would provide for a hearing after an order is served and a request for hearing is filed in writing within 30 days of service. If a request for a hearing is not filed within this time, the order would be deemed final and would not be subject to any judicial review. The bill would authorize the commissioner to bring actions to enjoin acts or practices in violation of its provisions and to enforce its provisions. The bill would authorize a superior court, upon proper showing, to appoint a receiver, monitor, conservator, or other designated fiduciary or officer of the court for a defendant or the defendant's assets. The bill would authorize the commissioner to include in civil actions claims for ancillary relief, including restitution and disgorgement, on behalf of a person injured, as well as attorney's fees and costs, and civil penalties of up to \$25,000. The bill would provide a limitations period in this regard of four years after an act constituting a violation occurred. The bill would authorize the commissioner to disenroll an enrollee if, after notice and an opportunity for hearing, the commissioner makes specified findings. The bill would authorize the commissioner to refer evidence regarding violations of the bill's provisions to the Attorney General, the Financial Crimes Enforcement Network of the United States Department of the Treasury, or the district attorney of the county in which the violation occurred, who would be authorized, with or without this type of a reference, to institute appropriate proceedings.

(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.

(4) *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. (a) *The Legislature finds and declares the*
2 *following:*

3 (1) *Digital currency is a new technology that, some predict, will*
4 *increase the speed and reduce the costs of payment transmission.*

5 (2) *Along with digital currency, a new industry has emerged*
6 *that specializes in providing digital currency-related services.*

7 (3) *Both the digital currency technology and the industry of*
8 *related services are in their developmental stages and evolving*
9 *rapidly.*

10 (4) *It is appropriate for the state to play a role in the*
11 *development of the new industry, for example by encouraging*
12 *compliance with law, preventing illicit finance, and ensuring that*
13 *users receive appropriate risk disclosures.*

14 (5) *At the same time, it is appropriate for the state to nurture,*
15 *rather than stifle, these ongoing innovations in payment technology.*

16 (b) *In light of the findings and declarations above, the*
17 *Legislature intends for the Digital Currency Business Enrollment*
18 *Program, created by this act, to do all of the following:*

19 (1) *Enable the Department of Business Oversight to identify all*
20 *of the businesses providing digital currency services in the state.*

21 (2) *Enable businesses to provide digital currency services in*
22 *the state in a lawful and transparent manner.*

1 (3) Enable the Department of Business Oversight to gather from
2 businesses providing digital currency services any information
3 helpful to determining whether and how the industry should be
4 licensed and regulated in the future.

5 (4) Ensure that consumers receive appropriate risk disclosures
6 and information about digital currency and digital currency-related
7 services.

8 SECTION 1.

9 SEC. 2. Section 107 of the Corporations Code is repealed.

10 SEC. 2. Section 2178 is added to the Financial Code, to read:

11 2178. (a) Notwithstanding any other law and consistent with
12 subdivision (c) of Section 26004, a licensee shall report to the
13 commissioner its plan to engage in any virtual currency business
14 as described in Division 11 (commencing with Section 26000) and
15 request, on a form provided by the commissioner, permission to
16 engage in any virtual currency business without the issuance of a
17 virtual currency license issued under Division 11 (commencing
18 with Section 26000). However, the commissioner may require the
19 licensee to increase its surety bond or eligible securities amounts
20 in an amount necessary to ensure the consumer protection of the
21 additional business. The commissioner may also place, as a
22 condition on the authorization to engage in any virtual currency
23 business pursuant to Division 11 (commencing with Section
24 26000), any condition authorized by Section 2036.

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

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

28
29 DIVISION 11. VIRTUAL CURRENCY

30
31 CHAPTER 1. GENERAL PROVISIONS

32
33 26000. For purposes of this division, the following definitions
34 shall apply:

35 (a) "Commissioner" means the Commissioner of Business
36 Oversight.

37 (b) (1) "Virtual currency" means any type of digital unit that
38 is used as a medium of exchange or a form of digitally stored value.

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

1 ~~(A) Digital units that are used solely within online gaming~~
2 ~~platforms with no market or application outside of those gaming~~
3 ~~platforms.~~

4 ~~(B) Digital units that are used exclusively as part of a consumer~~
5 ~~affinity or rewards program.~~

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

9 ~~(e) “Virtual currency business” means maintaining full custody~~
10 ~~or control of virtual currency in this state on behalf of others.~~

11 ~~(d) “Fiat currency” means government-issued currency that is~~
12 ~~designated as legal tender through government decree, regulation,~~
13 ~~or law, that customarily refers to paper money and coin and is~~
14 ~~circulated, used, and accepted as money.~~

15 ~~26001. For the purposes of carrying out the provisions of this~~
16 ~~division, the commissioner may adopt regulations pursuant to the~~
17 ~~Administrative Procedure Act (Chapter 3.5 (commencing with~~
18 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~
19 ~~Code).~~

20 ~~26001.5. This division shall be known and may be cited as the~~
21 ~~Virtual Currency Act.~~

22
23 ~~CHAPTER 2. LICENSES~~
24

25 ~~26002. A person shall not engage in any virtual currency~~
26 ~~business in this state unless the person is licensed or exempt from~~
27 ~~licensure under this division.~~

28 ~~26004. The following are exempt from the licensing~~
29 ~~requirement described in Section 26002:~~

30 ~~(a) The United States or a department, agency, or instrumentality~~
31 ~~thereof, including any federal reserve bank and any federal home~~
32 ~~loan bank.~~

33 ~~(b) Money transmission by the United States Postal Service or~~
34 ~~by a contractor on behalf of the United States Postal Service.~~

35 ~~(c) A state, city, county, city and county, or any other~~
36 ~~governmental agency or governmental subdivision of a state.~~

37 ~~(d) A commercial bank or industrial bank, the deposits of which~~
38 ~~are insured by the Federal Deposit Insurance Corporation or its~~
39 ~~successor, or any foreign (other nation) bank that is licensed under~~
40 ~~Chapter 20 (commencing with Section 1750) of Division 1.1 or~~

1 that is authorized under federal law to maintain a federal agency
 2 or federal branch office in this state; a trust company licensed
 3 pursuant to Section 1042 or a national association authorized under
 4 federal law to engage in a trust banking business; an association
 5 or federal association, as defined in Section 5102, the deposits of
 6 which are insured by the Federal Deposit Insurance Corporation
 7 or its successor; and any federally or state chartered credit union,
 8 with an office in this state, the member accounts of which are
 9 insured or guaranteed as provided in Section 14858.

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

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

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

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

20 (A) "Agent" has the same meaning as that term is defined in
 21 Section 2295 of the Civil Code.

22 (B) "Payee" means the provider of goods or services, who is
 23 owed payment of money or other monetary value from the payor
 24 for the goods or services.

25 (C) "Payor" means the recipient of goods or services, who owes
 26 payment of money or monetary value to the payee for the goods
 27 or services.

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

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

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

34 26006. (a) An applicant for licensure under this division shall
 35 pay to the commissioner a nonrefundable application fee of five
 36 thousand dollars (\$5,000).

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

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

1 ~~(15) A copy of the applicant's unconsolidated financial~~
2 ~~statements for the current fiscal year, whether audited or not, and;~~
3 ~~if available, for the two-year period next preceding the submission~~
4 ~~of the application.~~

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

9 ~~(17) If the applicant is a wholly owned subsidiary of:~~

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

17 ~~(B) A corporation publicly traded outside the United States, a~~
18 ~~copy of similar documentation filed with the regulator of the parent~~
19 ~~corporation's domicile outside the United States.~~

20 ~~(18) The applicant's plan for engaging in the business of virtual~~
21 ~~currency, including without limitation three years of pro forma~~
22 ~~financial statements.~~

23 ~~(19) Any other information the commissioner requires with~~
24 ~~respect to the applicant.~~

25 ~~(e) The commissioner may waive any of the information~~
26 ~~required under subdivision (b) or permit an applicant to submit~~
27 ~~other information instead of the required information.~~

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

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

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

38 ~~(g) Whenever the commissioner examines a licensee, the~~
39 ~~licensee shall pay, within 10 days after receipt of a statement from~~
40 ~~the commissioner, a fee of seventy-five dollars (\$75) per hour for~~

1 each examiner engaged in the examination plus, if it is necessary
2 for any examiner engaged in the examination to travel outside this
3 state, the travel expenses of the examiner.

4 ~~(h) Whenever the commissioner examines an applicant, the~~
5 ~~applicant shall pay, within 10 days after receipt of a statement~~
6 ~~from the commissioner, a fee of seventy-five dollars (\$75) per~~
7 ~~hour for each examiner engaged in the examination plus, if it is~~
8 ~~necessary for any examiner engaged in the examination to travel~~
9 ~~outside this state, the travel expenses of the examiner.~~

10 ~~(i) Each fee for filing an application shall be paid at the time~~
11 ~~the application is filed with the commissioner. No fee for filing~~
12 ~~an application shall be refundable, regardless of whether the~~
13 ~~application is approved, denied, or withdrawn.~~

14 ~~26008. (a) Each licensee shall maintain at all times such capital~~
15 ~~as the commissioner determines is sufficient to ensure the safety~~
16 ~~and soundness of the licensee and maintain consumer protection~~
17 ~~and its ongoing operations. In determining the minimum amount~~
18 ~~of capital that must be maintained by a licensee, the commissioner~~
19 ~~shall consider a variety of factors, including, but not limited to:~~

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

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

25 ~~(3) The actual and expected volume of the licensee's virtual~~
26 ~~currency business activity.~~

27 ~~(4) Whether the licensee is already licensed or regulated by a~~
28 ~~state or federal entity, and whether the licensee is in good standing~~
29 ~~in such capacity.~~

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

31 ~~(6) The liquidity position of the licensee.~~

32 ~~(7) The financial protection that the licensee provides for its~~
33 ~~consumers through its trust account or bond.~~

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

CHAPTER 3. EXAMINATIONS AND RECORDS

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2
3 ~~26009. (a) The commissioner may at any time and from time~~
4 ~~to time examine the business and any branch office, within or~~
5 ~~outside this state, of any licensee in order to ascertain whether that~~
6 ~~business is being conducted in a lawful manner and whether all~~
7 ~~virtual currency held or exchanged is properly accounted for.~~

8 ~~(b) The directors, officers, and employees of any licensee being~~
9 ~~examined by the commissioner shall exhibit to the commissioner,~~
10 ~~on request, any or all of the licensee's accounts, books,~~
11 ~~correspondence, memoranda, papers, and other records and shall~~
12 ~~otherwise facilitate the examination so far as it may be in their~~
13 ~~power to do so.~~

14 ~~26010. The commissioner may consult and cooperate with~~
15 ~~other state or federal regulators in enforcing and administering~~
16 ~~this division. They may jointly pursue examinations and take other~~
17 ~~official action that they are otherwise empowered to take.~~

18 ~~26011. A licensee shall file a report with the commissioner~~
19 ~~within five business days after the licensee has reason to know of~~
20 ~~the occurrence of any of the following events:~~

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

24 ~~(b) The filing of a petition by or against the licensee for~~
25 ~~receivership, the commencement of any other judicial or~~
26 ~~administrative proceeding for its dissolution or reorganization, or~~
27 ~~the making of a general assignment for the benefit of its creditors.~~

28 ~~(c) The commencement of a proceeding to revoke or suspend~~
29 ~~its virtual currency business license in a state or country in which~~
30 ~~the licensee engages in such business or is licensed to engage in~~
31 ~~such business.~~

32 ~~(d) The cancellation or other impairment of the licensee's bond~~
33 ~~or trust account as required by subdivision (b) of Section 26008.~~

34 ~~(e) A charge or conviction of the licensee or of an executive~~
35 ~~officer, manager, director, or person in control of the licensee for~~
36 ~~a felony.~~

37 ~~26012. A licensee shall maintain any records as required by~~
38 ~~the commissioner for determining its compliance with this division~~
39 ~~for at least three years.~~

CHAPTER 4. ENFORCEMENT

1
2
3 26013. Any licensee may surrender its license by filing with
4 the commissioner the license and a report with any information as
5 the commissioner requires. The voluntary surrender of the license
6 shall become effective at the time and upon the conditions as the
7 commissioner specifies by order.

8 26014. (a) The commissioner may prepare written decisions,
9 opinion letters, and other formal written guidance to be issued to
10 persons seeking clarification regarding the requirements of this
11 division.

12 (b) The commissioner shall make public on the commissioner's
13 Internet Web site all written decisions, opinion letters, and other
14 formal written guidance issued to persons seeking clarification
15 regarding the requirements of this division. The commissioner
16 may, at his or her discretion or upon request by an applicant or
17 licensee, redact proprietary or other confidential information
18 regarding an applicant or licensee from any decision, letter, or
19 other written guidance issued in connection with an applicant or
20 licensee.

21 26015. The commissioner may offer informal guidance to any
22 prospective applicant for a license under this division, regarding
23 the conditions of licensure that may be applied to that person. The
24 commissioner shall inform any applicant that requests that guidance
25 of the licensing requirements that will be required of that applicant,
26 based on the information provided by the applicant concerning its
27 plan to conduct business under this division, and the factors used
28 to make that determination.

29 26016. At any time, if the commissioner deems it necessary
30 for the general welfare of the public, he or she may exercise any
31 power set forth in this division with respect to a virtual currency
32 business, regardless of whether an application for a license has
33 been filed with the commissioner, a license has been issued, or, if
34 issued, the license has been surrendered, suspended, or revoked.

35 (a) If it appears to the commissioner that a licensee is violating
36 or failing to comply with this division, the commissioner may
37 direct the licensee to comply with the law by an order issued under
38 the commissioner's official seal, or if it appears to the
39 commissioner that any licensee is conducting its business in an
40 unsafe or injurious manner, the commissioner may in like manner

1 direct it to discontinue the unsafe or injurious practices. The order
2 shall require the licensee to show cause before the commissioner,
3 at a time and place to be fixed by the commissioner, as to why the
4 order should not be observed.

5 (b) If, upon any hearing held pursuant to subdivision (a), the
6 commissioner finds that the licensee is violating or failing to
7 comply with any law of this state or is conducting its business in
8 an unsafe or injurious manner, the commissioner may make a final
9 order directing it to comply with the law or to discontinue the
10 unsafe or injurious practices. A licensee shall comply with the
11 final order unless, within 10 days after the issuance of the order,
12 its enforcement is restrained in a proceeding brought by the
13 licensee.

14 26017. (a) The commissioner may issue an order suspending
15 or revoking a license, or taking possession of and placing a licensee
16 in receivership, if after notice and an opportunity for hearing, the
17 commissioner finds any of the following:

18 (1) The licensee is violating this division or a regulation adopted
19 or an order issued under this division, or a condition of approval
20 issued under this division.

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

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

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

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

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

33 (7) The licensee has applied for an adjudication of bankruptcy,
34 reorganization, arrangement, or other relief under any bankruptcy,
35 reorganization, insolvency, or moratorium law, or any person has
36 applied for any such relief under that law against the licensee and
37 the licensee has by any affirmative act approved of or consented
38 to the action or the relief has been granted.

1 ~~(8) Any fact or condition exists that, if it had existed at the time~~
2 ~~the licensee applied for its license, would have been grounds for~~
3 ~~denying the application.~~

4 ~~(b) In determining whether a licensee is engaging in an unsafe~~
5 ~~or unsound practice, the commissioner may consider the size and~~
6 ~~condition of the licensee's provision of virtual currency services,~~
7 ~~the magnitude of the loss, the gravity of the violation of this~~
8 ~~division, and the previous conduct of the person involved.~~

9 ~~26018. (a) Every order, decision, or other official act of the~~
10 ~~commissioner is subject to review in accordance with law.~~

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

22 ~~26019. (a) If the commissioner finds that any of the factors~~
23 ~~set forth in Section 26017 is true with respect to any licensee and~~
24 ~~that it is necessary for the protection of the public interest, the~~
25 ~~commissioner may issue an order immediately suspending or~~
26 ~~revoking the licensee's license.~~

27 ~~(b) Within 30 days after the license is suspended or revoked~~
28 ~~pursuant to subdivision (a), the licensee may file with the~~
29 ~~commissioner an application for a hearing on the suspension or~~
30 ~~revocation.~~

31 ~~(c) If the commissioner fails to commence a hearing within 15~~
32 ~~business days after the application is filed with the commissioner~~
33 ~~pursuant to subdivision (b) or within a longer period of time agreed~~
34 ~~to by the licensee, the suspension or revocation shall be deemed~~
35 ~~rescinded.~~

36 ~~(d) Within 30 days after the hearing, the commissioner shall~~
37 ~~affirm, modify, or rescind the suspension or revocation. Otherwise,~~
38 ~~the suspension or revocation shall be deemed rescinded.~~

39 ~~(e) The right of the licensee to petition for judicial review of~~
40 ~~the suspension or revocation shall not be affected by the failure of~~

1 the licensee to apply to the commissioner for a hearing on the
2 suspension or revocation pursuant to subdivision (b).
3 26020. The commissioner may assess a civil penalty against
4 a person that violates this division or a regulation adopted or an
5 order issued under this division in an amount not to exceed one
6 thousand dollars (\$1,000) for each violation or, in the case of a
7 continuing violation, one thousand dollars (\$1,000) for each day
8 or part thereof during which the violation continues, plus this
9 state's costs and expenses for the investigation and prosecution of
10 the matter, including reasonable attorney's fees.
11 26022. The enforcement provisions of this division are in
12 addition to any other enforcement powers that the commissioner
13 may have under law.
14 26023. (a) The commissioner may by order or regulation grant
15 exemptions from this section in cases where the commissioner
16 finds that the requirements of this section are not necessary or may
17 be duplicative.
18 (b) A licensee shall, within 90 days after the end of each fiscal
19 year, or within any extended time as the commissioner may
20 prescribe, file with the commissioner an audit report for the fiscal
21 year that shall comply with all of the following provisions:
22 (1) The audit report shall contain audited financial statements
23 of the licensee for or as of the end of the fiscal year prepared in
24 accordance with United States generally accepted accounting
25 principles and any other information as the commissioner may
26 require.
27 (2) The audit report shall be based upon an audit of the licensee
28 conducted in accordance with United States generally accepted
29 auditing standards and any other requirements as the commissioner
30 may prescribe.
31 (3) The audit report shall be prepared by an independent certified
32 public accountant or independent public accountant who is not
33 unsatisfactory to the commissioner.
34 (4) The audit report shall include or be accompanied by a
35 certificate of opinion of the independent certified public accountant
36 or independent public accountant that is satisfactory in form and
37 content to the commissioner. If the certificate or opinion is
38 qualified, the commissioner may order the licensee to take any
39 action as the commissioner may find necessary to enable the

1 independent or certified public accountant or independent public
2 accountant to remove the qualification.

3 (e) ~~Each licensee shall, not more than 45 days after the end of~~
4 ~~each calendar year quarter, or within a longer period as the~~
5 ~~commissioner may by regulation or order specify, file with the~~
6 ~~commissioner a report containing all of the following:~~

7 (1) ~~Financial statements, including balance sheet, income~~
8 ~~statement, statement of changes in shareholders' equity, and~~
9 ~~statement of cashflows, for, or as of the end of, that calendar year~~
10 ~~quarter, verified by two of the licensee's principal officers. The~~
11 ~~verification shall state that each of the officers making the~~
12 ~~verification has personal knowledge of the matters in the report~~
13 ~~and that each of them believes that each statement in the report is~~
14 ~~true.~~

15 (2) ~~Other information as the commissioner may by regulation~~
16 ~~or order require.~~

17 (d) ~~Each licensee shall file an annual report with the~~
18 ~~commissioner, on or before the 15th day of March, providing the~~
19 ~~relevant information that the commissioner reasonably requires~~
20 ~~concerning the business and operations conducted by the licensee~~
21 ~~within the state during the preceding calendar year. Each licensee~~
22 ~~shall also make other special reports to the commissioner that may~~
23 ~~be required by the commissioner from time to time. The reports~~
24 ~~required by this subdivision shall be kept confidential pursuant to~~
25 ~~Chapter 3.5 (commencing with Section 6250) of Division 7 of~~
26 ~~Title 1 of the Government Code and any regulations adopted~~
27 ~~thereunder.~~

28 (e) ~~The commissioner shall annually prepare a report for~~
29 ~~publication on his or her Internet Web site, summarizing~~
30 ~~consolidated information gained from the reports required pursuant~~
31 ~~to subdivision (d), documenting the number of licenses, including~~
32 ~~provisional licenses as described in Section 26032, outstanding~~
33 ~~during the prior calendar year, and summarizing the numbers and~~
34 ~~types of enforcement actions brought by the commissioner pursuant~~
35 ~~to this division during the prior calendar year.~~

36 ~~26024. In addition to the fees provided in Section 26006, the~~
37 ~~commissioner shall levy an assessment each fiscal year, on a pro~~
38 ~~rata basis, on those licensees that at any time during the preceding~~
39 ~~calendar year engaged in this state in the virtual currency business~~
40 ~~in an amount that is, in his or her judgment, sufficient to meet the~~

1 commissioner’s expenses in administering the provisions of this
2 division and to provide a reasonable reserve for contingencies.

3

4

CHAPTER 5. MISCELLANEOUS PROVISIONS

5

6 26025. ~~A licensee shall disclose to consumers the following
7 disclosure in a form and manner prescribed by the commissioner:~~

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

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

23 ~~(Insert company name) is licensed by the Department of Business
24 Oversight to do business in California. If you have complaints
25 with respect to any aspect of the virtual currency business
26 conducted by (company name), you may contact the California
27 Department of Business Oversight at its toll-free telephone number,
28 1-800-622-0620, by email at consumer.services@dbo.ca.gov, or
29 by mail at the Department of Business Oversight, Consumer
30 Services, 1515 K Street, Suite 200, Sacramento, CA 95814.”~~

31 26026. ~~(a) Upon completion of a transaction subject to this
32 division, the licensee shall provide to the consumer a receipt
33 containing the following information:~~

34 ~~(1) The name and contact information of the licensee including
35 a telephone number of the licensee where consumers can contact
36 the licensee for questions or to register complaints.~~

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

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

39 ~~(4) The exchange rate, if applicable.~~

40 ~~(5) A statement of the refund policy of the licensee.~~

1 ~~(6) Additional information the commissioner may require.~~

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

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

8 ~~26029. The commissioner may, by regulation or order, either~~
9 ~~unconditionally or upon specified terms and conditions or for~~
10 ~~specified periods, exempt from all or part of this division any~~
11 ~~person or transaction or class of persons or transactions, if the~~
12 ~~commissioner finds such action to be in the public interest and that~~
13 ~~the regulation of such persons or transactions is not necessary for~~
14 ~~the purposes of this division. The commissioner shall post on the~~
15 ~~commissioner's Internet Web site a list of all persons, transactions,~~
16 ~~or classes of person or transactions exempt pursuant to this section,~~
17 ~~and the provision or provisions of this division from which they~~
18 ~~are exempt.~~

19 ~~26031. Notwithstanding any other law, a licensee in good~~
20 ~~standing under this division that plans to engage in activities~~
21 ~~permitted under the Money Transmission Act (Division 1.2~~
22 ~~(commencing with Section 2000)) may request from the~~
23 ~~commissioner in a form specified by the commissioner to convert~~
24 ~~their license into a license under Division 1.2 (commencing with~~
25 ~~Section 2000). A licensee's request to convert its license shall be~~
26 ~~accompanied by documentation or other evidence as determined~~
27 ~~by the commissioner that the licensee meets the requirements for~~
28 ~~licensure under Division 1.2 (commencing with Section 2000). If~~
29 ~~a licensee's request for a converted license is granted, the licensee~~
30 ~~shall be subject to Section 2178 in order to thereafter engage in~~
31 ~~any virtual currency business.~~

32 ~~26032. (a) (1) In lieu of Section 26006, a person or entity~~
33 ~~conducting virtual currency business with less than one million~~
34 ~~dollars (\$1,000,000) in outstanding obligations and whose business~~
35 ~~model, as determined by the commissioner, represents low or no~~
36 ~~risk to consumers may pay an application fee of five hundred~~
37 ~~dollars (\$500) to the commissioner and, if approved, receive a~~
38 ~~provisional license to conduct virtual currency business. A person~~
39 ~~or entity that receives such a license shall also register with~~
40 ~~FinCEN as a money services business, if applicable.~~

1 ~~(2) For the purposes of this section, “outstanding obligations”~~
2 ~~means the value under the full custody and control of the person~~
3 ~~or entity.~~

4 ~~(b) In determining whether to issue a provisional license, the~~
5 ~~commissioner shall consider a variety of factors, including, but~~
6 ~~not limited to:~~

7 ~~(1) The nature and scope of the applicant’s business.~~

8 ~~(2) The anticipated volume of business to be transacted by the~~
9 ~~applicant in California.~~

10 ~~(3) The nature and scope of the risks that the applicant’s business~~
11 ~~presents to consumers.~~

12 ~~(4) The measures which the applicant has taken to limit or~~
13 ~~mitigate the risks its business presents.~~

14 ~~(5) Whether the applicant is regulated or otherwise authorized~~
15 ~~by another governmental entity to engage in financial services or~~
16 ~~other business activities.~~

17 ~~(e) Sections 26006, 26008, 26023, 26024, and 26031 shall not~~
18 ~~apply to a person or entity to which a provisional license has been~~
19 ~~issued. However, the commissioner may require a provisional~~
20 ~~licensee to certify adherence to certain risk based performance~~
21 ~~standards related to safety, soundness, and consumer protection~~
22 ~~as prescribed by the commissioner.~~

23 ~~(d) Based upon the factors identified in subdivision (b) and the~~
24 ~~provisional licensee’s history as a holder of a provisional license,~~
25 ~~the commissioner may at any time renew such license for an~~
26 ~~additional length of time or remove the provisional status from the~~
27 ~~license if the licensee meets all the requirements of this division.~~
28 ~~Unless the commissioner otherwise removes the provisional status~~
29 ~~of or renews such license, a provisional license shall expire two~~
30 ~~years after the date of issuance. If the commissioner renews a~~
31 ~~provisional license, the licensee shall pay a five-hundred-dollar~~
32 ~~(\$500) renewal fee.~~

33 ~~(e) The commissioner may request reports and documents and~~
34 ~~may examine the provisional licensee as needed to further~~
35 ~~consumer protection, enhance safety and soundness, and gather~~
36 ~~information regarding the business and operations of provisional~~
37 ~~licensees. Reports and documents concerning the business and~~
38 ~~operations of provisional licensees shall be kept confidential~~
39 ~~pursuant to Chapter 3.5 (commencing with Section 6250) of~~
40 ~~Division 7 of Title 1 of the Government Code and any regulations~~

1 adopted thereunder. The commissioner shall include aggregated
2 information about the business and operations of provisional
3 licensees in the report required by and subject to subdivision (e)
4 of Section 26023.

5 (f) A provisional licensee shall notify the commissioner within
6 15 days of surpassing the threshold in subdivision (a) and shall,
7 within 30 days from that notice, apply for a license pursuant to
8 Chapter 2 (commencing with Section 26002).

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

11
12 CHAPTER 6. OPERATIVE DATE

13
14 26040. This division shall become operative on July 1, 2016.

15 SEC. 3. Section 2003 of the Financial Code is amended to
16 read:

17 2003. For purposes of this division, the following definitions
18 shall apply:

19 (a) "Affiliate," when used with respect to a specified person,
20 means any person controlling, controlled by, or under common
21 control with, that specified person, directly or indirectly through
22 one or more intermediaries. For purposes of subdivisions (s) and
23 (x), a specified person is affiliated with another person if that
24 person controls, is controlled by, or under common control through
25 the ownership directly or indirectly of shares or equity securities
26 possessing more than 50 percent of the voting power of that
27 specified person.

28 (b) "Agent" means a person that is not itself licensed as a money
29 transmitter in California and provides money transmission in
30 California on behalf of the licensee, provided that the licensee
31 becomes liable for the money transmission from the time money
32 or monetary value is received by that person. However, "agent"
33 does not include any officer or employee of the licensee when
34 acting as such at an office of a licensee.

35 (c) "Applicant" means a person that files an application for a
36 license or for acquisition of control of a licensee under this division.

37 (d) "Average daily outstanding" means the amount of
38 outstanding money transmission obligations in California at the
39 end of each day in a given period of time, added together, and
40 divided by the total number of days in that period of time.

- 1 (e) “Branch office” means any office in this state of a licensee
2 or agent at which the licensee receives money or monetary value
3 to provide money transmission, either directly or through an agent.
- 4 (f) “Business day” means one of the following:
- 5 (1) When used with respect to any act to be performed in this
6 state, any day other than Saturday, Sunday, or any other day that
7 is provided for as a holiday in the Government Code.
- 8 (2) When used with respect to any act to be performed in any
9 jurisdiction other than this state, any day other than a day that is
10 a legal holiday under the laws of that jurisdiction.
- 11 (g) “Commissioner” means the Commissioner of Business
12 Oversight.
- 13 (h) “Control” has the meaning set forth in Section 1250.
- 14 (i) “Day” means calendar day.
- 15 (j) “E-commerce” means any transaction where the payment
16 for goods or services is initiated via a mobile application or an
17 Internet Web site.
- 18 (k) “In California” or “in this state” means physically located
19 in California, or with, to, or from persons located in California.
- 20 (l) “Issue” and “issuer” mean, with regard to a payment
21 instrument, the entity that is the maker or drawer of the instrument
22 in accordance with the California Commercial Code and is liable
23 for payment. With regard to stored value, “issue” and “issuer”
24 mean the entity that is liable to the holder of stored value and has
25 undertaken or is obligated to pay the stored value. Only a licensee
26 may issue stored value or payment instruments.
- 27 (m) “Licensee” means a corporation or limited liability company
28 licensed under this division.
- 29 (n) “Material litigation” means litigation that according to United
30 States generally accepted accounting principles is significant to
31 an applicant’s or a licensee’s financial health and would be required
32 to be disclosed in the applicant’s or licensee’s annual audited
33 financial statements, report to shareholders, or similar records.
- 34 (o) “Monetary value” means a medium of exchange, whether
35 or not redeemable in money. *Monetary value does not include any*
36 *form of value that qualifies as a digital currency under Division*
37 *11 (commencing with Section 26000).*
- 38 (p) “Money” means a medium of exchange that is authorized
39 or adopted by the United States or a foreign government. The term
40 includes a monetary unit of account established by an

1 intergovernmental organization or by agreement between two or
2 more governments.

3 (q) “Money transmission” means any of the following:

4 (1) Selling or issuing payment instruments.

5 (2) Selling or issuing stored value.

6 (3) Receiving money for transmission.

7 (r) “Outstanding,” with respect to payment instruments and
8 stored value, means issued or sold by the licensee in the United
9 States and not yet paid or refunded by the licensee, or issued or
10 sold on behalf of the licensee in the United States by its agent and
11 reported as sold, but not yet paid or refunded by the licensee.
12 “Outstanding,” with respect to receiving money for transmission
13 means all money or monetary value received in the United States
14 for transmission by the licensee or its agents but not yet paid to
15 the beneficiaries or refunded to the person from whom the money
16 or monetary value was received. All outstanding money
17 transmission of a licensee is and shall remain a liability of the
18 licensee until it is no longer outstanding.

19 (s) “Payment instrument” means a check, draft, money order,
20 traveler’s check, or other instrument for the transmission or
21 payment of money or monetary value, whether or not negotiable.
22 The term does not include a credit card voucher, letter of credit,
23 or any instrument that is redeemable by the issuer for goods or
24 services provided by the issuer or its affiliate.

25 (t) “Person” means an individual, corporation, business trust,
26 estate, trust, partnership, proprietorship, syndicate, limited liability
27 company, association, joint venture, government, governmental
28 subdivision, agency or instrumentality, public corporation or joint
29 stock company, or any other organization or legal or commercial
30 entity, provided, however, that “person,” when used with respect
31 to acquiring control of or controlling a specified person, includes
32 any combination of two or more persons acting in concert.

33 (u) “Receiving money for transmission” or “money received
34 for transmission” means receiving money or monetary value in
35 the United States for transmission within or outside the United
36 States by electronic or other means. The term does not include sale
37 or issuance of payment instruments and stored value.

38 (v) “Record” means information that is inscribed on a tangible
39 medium or that is stored in an electronic or other medium and is
40 retrievable in perceivable form.

1 (w) “State” means a state of the United States, the District of
2 Columbia, Puerto Rico, the United States Virgin Islands, or any
3 territory or insular possession subject to the jurisdiction of the
4 United States.

5 (x) “Stored value” means monetary value representing a claim
6 against the issuer that is stored on an electronic or digital medium
7 and evidenced by an electronic or digital record, and that is
8 intended and accepted for use as a means of redemption for money
9 or monetary value or payment for goods or services. The term does
10 not include a credit card voucher, letter of credit, or any stored
11 value that is only redeemable by the issuer for goods or services
12 provided by the issuer or its affiliate, except to the extent required
13 by applicable law to be redeemable in cash for its cash value.

14 (y) “Traveler’s check” means an instrument that meets all of
15 the following:

16 (1) Is designated on its face by the term “traveler’s check” or
17 by any substantially similar term or is commonly known and
18 marketed as a traveler’s check.

19 (2) Contains a provision for a specimen signature of the
20 purchaser to be completed at the time of purchase.

21 (3) Contains a provision for a countersignature of the purchaser
22 to be completed at the time of negotiation.

23 *This section shall remain in effect only until January 1, 2022,*
24 *and as of that date is repealed, unless a later enacted statute, that*
25 *is enacted before January 1, 2022, deletes or extends that date.*

26 *SEC. 4. Section 2003 is added to the Financial Code, to read:*
27 *2003. For purposes of this division, the following definitions*
28 *shall apply:*

29 (a) “Affiliate,” when used with respect to a specified person,
30 means any person controlling, controlled by, or under common
31 control with, that specified person, directly or indirectly through
32 one or more intermediaries. For purposes of subdivisions (s) and
33 (x), a specified person is affiliated with another person if that
34 person controls, is controlled by, or under common control through
35 the ownership directly or indirectly of shares or equity securities
36 possessing more than 50 percent of the voting power of that
37 specified person.

38 (b) “Agent” means a person that is not itself licensed as a money
39 transmitter in California and provides money transmission in
40 California on behalf of the licensee, provided that the licensee

1 *becomes liable for the money transmission from the time money*
2 *or monetary value is received by that person. However, “agent”*
3 *does not include any officer or employee of the licensee when*
4 *acting as such at an office of a licensee.*

5 (c) *“Applicant” means a person that files an application for a*
6 *license or for acquisition of control of a licensee under this*
7 *division.*

8 (d) *“Average daily outstanding” means the amount of*
9 *outstanding money transmission obligations in California at the*
10 *end of each day in a given period of time, added together, and*
11 *divided by the total number of days in that period of time.*

12 (e) *“Branch office” means any office in this state of a licensee*
13 *or agent at which the licensee receives money or monetary value*
14 *to provide money transmission, either directly or through an agent.*

15 (f) *“Business day” means one of the following:*

16 (1) *When used with respect to any act to be performed in this*
17 *state, any day other than Saturday, Sunday, or any other day that*
18 *is provided for as a holiday in the Government Code.*

19 (2) *When used with respect to any act to be performed in any*
20 *jurisdiction other than this state, any day other than a day that is*
21 *a legal holiday under the laws of that jurisdiction.*

22 (g) *“Commissioner” means the Commissioner of Business*
23 *Oversight.*

24 (h) *“Control” has the meaning set forth in Section 1250.*

25 (i) *“Day” means calendar day.*

26 (j) *“E-commerce” means any transaction where the payment*
27 *for goods or services is initiated via a mobile application or an*
28 *Internet Web site.*

29 (k) *“In California” or “in this state” means physically located*
30 *in California, or with, to, or from persons located in California.*

31 (l) *“Issue” and “issuer” mean, with regard to a payment*
32 *instrument, the entity that is the maker or drawer of the instrument*
33 *in accordance with the California Commercial Code and is liable*
34 *for payment. With regard to stored value, “issue” and “issuer”*
35 *mean the entity that is liable to the holder of stored value and has*
36 *undertaken or is obligated to pay the stored value. Only a licensee*
37 *may issue stored value or payment instruments.*

38 (m) *“Licensee” means a corporation or limited liability*
39 *company licensed under this division.*

1 (n) “Material litigation” means litigation that according to
2 United States generally accepted accounting principles is
3 significant to an applicant’s or a licensee’s financial health and
4 would be required to be disclosed in the applicant’s or licensee’s
5 annual audited financial statements, report to shareholders, or
6 similar records.

7 (o) “Monetary value” means a medium of exchange, whether
8 or not redeemable in money.

9 (p) “Money” means a medium of exchange that is authorized
10 or adopted by the United States or a foreign government. The term
11 includes a monetary unit of account established by an
12 intergovernmental organization or by agreement between two or
13 more governments.

14 (q) “Money transmission” means any of the following:

15 (1) Selling or issuing payment instruments.

16 (2) Selling or issuing stored value.

17 (3) Receiving money for transmission.

18 (r) “Outstanding,” with respect to payment instruments and
19 stored value, means issued or sold by the licensee in the United
20 States and not yet paid or refunded by the licensee, or issued or
21 sold on behalf of the licensee in the United States by its agent and
22 reported as sold, but not yet paid or refunded by the licensee.
23 “Outstanding,” with respect to receiving money for transmission
24 means all money or monetary value received in the United States
25 for transmission by the licensee or its agents but not yet paid to
26 the beneficiaries or refunded to the person from whom the money
27 or monetary value was received. All outstanding money
28 transmission of a licensee is and shall remain a liability of the
29 licensee until it is no longer outstanding.

30 (s) “Payment instrument” means a check, draft, money order,
31 traveler’s check, or other instrument for the transmission or
32 payment of money or monetary value, whether or not negotiable.
33 The term does not include a credit card voucher, letter of credit,
34 or any instrument that is redeemable by the issuer for goods or
35 services provided by the issuer or its affiliate.

36 (t) “Person” means an individual, corporation, business trust,
37 estate, trust, partnership, proprietorship, syndicate, limited liability
38 company, association, joint venture, government, governmental
39 subdivision, agency or instrumentality, public corporation or joint
40 stock company, or any other organization or legal or commercial

1 entity, provided, however, that “person,” when used with respect
2 to acquiring control of or controlling a specified person, includes
3 any combination of two or more persons acting in concert.

4 (u) “Receiving money for transmission” or “money received
5 for transmission” means receiving money or monetary value in
6 the United States for transmission within or outside the United
7 States by electronic or other means. The term does not include
8 sale or issuance of payment instruments and stored value.

9 (v) “Record” means information that is inscribed on a tangible
10 medium or that is stored in an electronic or other medium and is
11 retrievable in perceivable form.

12 (w) “State” means a state of the United States, the District of
13 Columbia, Puerto Rico, the United States Virgin Islands, or any
14 territory or insular possession subject to the jurisdiction of the
15 United States.

16 (x) “Stored value” means monetary value representing a claim
17 against the issuer that is stored on an electronic or digital medium
18 and evidenced by an electronic or digital record, and that is
19 intended and accepted for use as a means of redemption for money
20 or monetary value or payment for goods or services. The term
21 does not include a credit card voucher, letter of credit, or any
22 stored value that is only redeemable by the issuer for goods or
23 services provided by the issuer or its affiliate, except to the extent
24 required by applicable law to be redeemable in cash for its cash
25 value.

26 (y) “Traveler’s check” means an instrument that meets all of
27 the following:

28 (1) Is designated on its face by the term “traveler’s check” or
29 by any substantially similar term or is commonly known and
30 marketed as a traveler’s check.

31 (2) Contains a provision for a specimen signature of the
32 purchaser to be completed at the time of purchase.

33 (3) Contains a provision for a countersignature of the purchaser
34 to be completed at the time of negotiation.

35 This section shall become operative January 1, 2022.

36 SEC. 5. Division 11 (commencing with Section 26000) is added
37 to the Financial Code, to read:

DIVISION 11. DIGITAL CURRENCY BUSINESS
ENROLLMENT PROGRAM

CHAPTER 1. GENERAL PROVISIONS

26000. This division shall be known and may be cited as the Digital Currency Business Enrollment Program.

26002. For purposes of this division, the following definitions shall apply:

(a) "Circulation" means the capacity for transfer between persons.

(b) "Commissioner" means the Commissioner of Business Oversight.

(c) "Digital currency" means any digital representation of value that can be digitally traded and is used to facilitate the sale, purchase, and exchange of goods, services, or other digital representations of value among its users. Digital currency does not include fiat currency, e-money, or currency value of which was fixed by its issuer to the value of a fiat currency.

(d) "Digital currency business" means the business of offering or providing the service of storing, transmitting, exchanging, or issuing digital currency. "Digital currency business" does not include the following:

(1) Transmission of digital currency where the transaction is undertaken for nonfinancial purposes and does not involve the transfer of more than a nominal amount of digital currency necessary to complete the transaction.

(2) Online games or gaming platforms that use digital currency that (A) have no market or application outside of those games or gaming platforms, (B) cannot be converted into, or redeemed for, fiat currency or digital currency, and (C) are not redeemable for real-world goods, services, discounts, or purchases.

(3) Customer affinity or rewards programs that use digital currency that can be redeemed for goods, services, or for purchases with the issuer or other designated merchants, but cannot be converted into, or redeemed for, fiat currency or digital currency that is not part of the customer affinity or rewards program.

(4) Issuance of a credit card voucher, letter of credit, or any value that is redeemable only by the issuer for goods and services

1 *provided by the issuer or its affiliate, except to the extent required*
2 *by applicable law to be redeemable in cash for its cash value.*

3 (5) *A person or entity developing, distributing, or servicing*
4 *digital currency network software.*

5 (6) *A person or entity contributing software, connectivity, or*
6 *computing power to a digital currency network.*

7 (7) *A person or entity providing data storage or cybersecurity*
8 *services for an enrolled digital currency business, if the data*
9 *storage or cybersecurity services do not store digital currency.*

10 (e) *“E-money” means a digital representation of fiat currency*
11 *used to electronically transfer value denominated in fiat currency.*

12 (f) *“Exchanging,” with reference to digital currency, means*
13 *converting or exchanging fiat currency into digital currency,*
14 *converting or exchanging digital currency into fiat currency, or*
15 *converting or exchanging one form of digital currency into another*
16 *form of digital currency.*

17 (g) *“Fiat currency” means government-issued currency that is*
18 *designated as legal tender or lawful money, through government*
19 *decree, regulation, or law, of a government or intergovernmental*
20 *organization, or by agreement between two or more governments,*
21 *and customarily refers to paper money and coin and that is*
22 *circulated, used, and accepted as money.*

23 (h) *“In this state” or “in California” means physically located*
24 *in California, or with, from, and to a person located in California.*

25 (i) *“Issuing,” with reference to digital currency, means creating,*
26 *introducing into circulation, controlling, and administering digital*
27 *currency.*

28 (j) *“Person” means an individual, partnership, corporation,*
29 *association, joint stock association, trust, or other business*
30 *combination or entity, however organized.*

31 (k) *“Program” means the Digital Currency Business Enrollment*
32 *Program established by this division.*

33 (l) *“Storing,” with reference to digital currency, means to have*
34 *custody or control of digital currency on behalf of others. For the*
35 *purposes of this subdivision, custody or control of digital currency*
36 *includes having access to a customer’s digital currency credentials,*
37 *the ability to execute a digital currency transaction on behalf of*
38 *a customer, or the ability to prevent a customer from effecting a*
39 *desired transaction of digital currency.*

1 (m) “Transmitting,” with reference to digital currency, means
2 the transfer of digital currency, by or through a third party, from
3 one person to another person, or from one storage repository of
4 digital currency to another storage repository of digital currency.

5 26004. (a) The Digital Currency Business Enrollment Program
6 is hereby established. The commissioner shall administer the
7 program as required by this division.

8 (b) The commissioner may make general rules and regulations
9 and specific rulings, demands, and findings for the enforcement
10 of this division, in addition to, and within the general purposes of,
11 this division.

12
13 *CHAPTER 2. ENROLLMENT*
14

15 26010. (a) A person shall not engage in any digital currency
16 business in this state or offer to engage in digital currency business
17 in this state unless the person is enrolled in the program. An
18 enrollee shall not conduct any digital currency business through
19 an agent or agency arrangement if the agent is not an enrollee.

20 (b) A person seeking enrollment in the program shall pay to the
21 commissioner a nonrefundable fee of up to five thousand dollars
22 (\$5,000), which shall not exceed the reasonable costs of enrolling
23 a person in the program.

24 (c) A person seeking enrollment in the program shall provide
25 all of the following information to the commissioner in a form and
26 in a medium prescribed by the commissioner by order or
27 regulation:

28 (1) Legal name of the subject person.

29 (2) A description of the structure or organization of the subject
30 person, including any parent or subsidiary, and whether any parent
31 or subsidiary is publicly traded.

32 (3) Fictitious, trade, or business names of the subject person.

33 (4) Residential and business address of the subject person.

34 (5) All other physical addresses and locations of the subject
35 person.

36 (6) A list of any criminal convictions of the person seeking
37 enrollment and any material litigation in which that person has
38 been involved in the past 10-year period.

39 (7) Any Internet Web site connected with the subject person

1 (8) Detailed information about the type of digital currency
2 service to be provided, for example storing, transmitting,
3 exchanging, or issuing.

4 (9) The legal name, any fictitious or trade name, business and
5 residential addresses, and the employment, in the last 10-year
6 period, of each executive officer, manager, director, or person
7 that has control of the subject person.

8 (10) A list of any criminal convictions and material litigation
9 in which any executive officer, manager, director, or person in
10 control of the subject person has been involved in the past 10-year
11 period.

12 (11) The number of employees of the subject person, and their
13 titles and responsibilities.

14 (12) A contact person and his or her e-mail address and
15 telephone number.

16 (13) Any other license held by the enrollee in California or any
17 other state.

18 (14) Whether the subject person is a money services business
19 under the regulations adopted pursuant to the federal Bank Secrecy
20 Act (31 C.F.R. Chapter X) or its successor.

21 (15) Any other information that the commissioner may require
22 by order or regulation.

23 (d) A person seeking enrollment in the Enrollment Program
24 shall provide to the commissioner, in a form acceptable to the
25 commissioner, fingerprints of the subject person, and of any
26 executive officer, manager, director, or person in control of the
27 subject person. The commissioner may deliver, or cause to be
28 delivered, these fingerprints to local, state, or federal law
29 enforcement agencies.

30 (e) The commissioner shall permit enrollment in the program
31 unless it appears to the commissioner that the subject person, the
32 directors and officers of the subject person, any person that
33 controls the subject person, and the directors and officers of any
34 person that controls the subject person, are not of good character.

35 (f) Following enrollment, the enrollee shall notify the
36 commissioner, as soon as practicable, of any changes to the facts
37 provided to the commissioner prior to enrollment pursuant to
38 subdivision (d). The enrollee shall provide the information
39 identified in paragraphs (8) and (9) of subdivision (c) with respect
40 to any new executive officer, manager, or director of the enrollee.

1 Upon receiving this information, the commissioner may disenroll
2 an enrollee if he or she determines that such person or persons
3 are not of good character.

4 26012. A person shall not, directly or indirectly, acquire control
5 of an enrollee unless the commissioner has first approved, in
6 writing, the acquisition of control. An application to acquire
7 control of an enrollee shall be in writing, under oath, and in a
8 form prescribed by the commissioner. The application shall contain
9 information about the proposed controlling person identified in
10 paragraphs (8) and (9) of subdivision (c) of Section 26010. The
11 fee for filing an application for approval to acquire control of an
12 enrollee shall be two thousand five hundred dollars (\$2,500), which
13 shall not exceed the costs associated with the approval. For
14 purposes of this section, “control” has the meaning set forth in
15 Section 1250.

16 26014. Persons seeking to engage in both money transmission,
17 as defined in Section 2003, and digital currency business shall
18 obtain both a license under the Money Transmission Act (Division
19 1.2 (commencing with Section 2000)) and be enrolled in the
20 program.

21 26016. An enrollee shall immediately notify the commissioner
22 in writing if it no longer engages in any digital currency business
23 in this state or offers to engage in digital currency business in this
24 state, or if any other circumstances exist that would otherwise
25 make enrollment in the program no longer applicable.

26

27 *CHAPTER 3. ADVERTISING, DISCLOSURES, AND RECEIPTS*

28

29 26020. (a) An enrollee engaged in digital currency business
30 shall not advertise its products, services, or activities without
31 including the name of the enrollee and the following statement:
32 “Our digital currency business in California is conducted pursuant
33 to the Digital Currency Business Enrollment Program that is
34 administered by the Department of Business Oversight (“DBO”).
35 However, neither the DBO nor any other government agency has
36 reviewed the safety and soundness of our business or the digital
37 currencies in which we transact. For more information about the
38 Enrollment Program, visit: [www.dbo.ca.gov/dc].”

39 (b) An enrollee shall maintain, for examination by the
40 commissioner, all advertising and marketing materials, including,

1 *but not limited to, print media, Internet media, which includes*
2 *Internet Web sites and podcasts, radio and television advertising,*
3 *road show materials, presentations, and brochures. An enrollee*
4 *shall maintain hard copy, Internet Web site captures, and audio*
5 *and video recordings of its advertising and marketing materials,*
6 *as applicable.*

7 *(c) An enrollee's advertising and marketing materials shall*
8 *comply with all disclosure requirements applicable under federal*
9 *and state laws, rules, and regulations.*

10 *(d) In advertising and marketing materials, an enrollee, and*
11 *any person or entity acting on an enrollee's behalf, shall not make*
12 *any false, misleading, or deceptive representations or omissions.*
13 *Any representation or omission that is contrary to any of the*
14 *disclosures required under this division is presumptively false,*
15 *misleading, and deceptive.*

16 26022. *(a) Prior to entering into an initial transaction for, on*
17 *behalf of, or with a customer, an enrollee shall disclose clearly*
18 *and conspicuously in writing in English and in any other language*
19 *that may be spoken by the majority of the customers of the enrollee,*
20 *all material risks associated with its products, services, and*
21 *activities and with digital currency generally. The disclosures shall*
22 *include, but are not limited to, the following:*

23 *(1) A statement that, unlike traditional financial institutions,*
24 *neither the Department of Business Oversight nor any other*
25 *government agency has licensed, sanctioned, endorsed, or*
26 *otherwise reviewed the operations of the enrollee or reviewed the*
27 *enrollee for safety or soundness.*

28 *(2) A statement that, unlike some other financial institutions,*
29 *accounts and value balances are not covered by Federal Deposit*
30 *Insurance Corporation guarantees or Securities Investor Protection*
31 *Corporation protections.*

32 *(3) A statement that the customer may not be protected if the*
33 *enrollee becomes insolvent.*

34 *(4) A statement that digital currency is not legal tender and is*
35 *not backed by the government.*

36 *(5) A statement that legislative and regulatory changes or*
37 *actions at the state, federal, or international level may adversely*
38 *affect the use, transfer, exchange, or value of digital currency.*

1 (6) A statement that transactions in digital currency generally
2 are irreversible and that, accordingly, losses due to fraudulent or
3 accidental transactions may not be recoverable.

4 (7) A statement that some digital currency transactions are
5 deemed completed when recorded on a centralized ledger, which
6 is not necessarily the date or time that the customer initiates the
7 transaction.

8 (8) A statement that the value of digital currency is usually
9 derived from the continued willingness of market participants to
10 exchange fiat currency for digital currency, which may result in
11 the potential for permanent and total loss of value of a particular
12 digital currency should the market for that digital currency
13 disappear.

14 (9) A statement that there is no assurance that a person who
15 accepts a digital currency as payment today will continue to do
16 so in the future.

17 (10) A statement that the volatility and unpredictability of the
18 price of digital currency relative to fiat currency may result in
19 significant loss or tax liability over a short period of time.

20 (11) A statement that the nature of digital currency may lead
21 to an increased risk of fraud or cyberattack.

22 (12) A statement that any technological difficulties experienced
23 by the enrollee may prevent the access or use of a customer's
24 digital currency.

25 (13) A statement that any bond or trust account for the benefit
26 of customers may not be sufficient to fully cover all losses incurred
27 by customers.

28 (14) Any other disclosures the commissioner deems are
29 necessary to adequately inform consumers about the risks
30 associated with digital currency.

31 (b) When opening an account for a new customer, and prior to
32 entering into an initial transaction for, on behalf of, or with the
33 customer, an enrollee shall disclose clearly and conspicuously in
34 writing in English and in any other language that may be spoken
35 by the majority of the customers of the enrollee, all relevant general
36 terms and conditions associated with its products, services, and
37 activities. At minimum, if applicable, the disclosures shall include:

38 (1) The customer's liability for unauthorized digital currency
39 transactions.

1 (2) *The customer’s right to stop payment of a preauthorized*
2 *digital currency transfer and the procedure to initiate a*
3 *stop-payment order.*

4 (3) *The enrollee’s liability to the customer under any applicable*
5 *federal or state laws, rules, or regulations.*

6 (4) *The circumstances under which the enrollee will, absent a*
7 *court or government order, disclose information concerning the*
8 *customer’s account to third parties.*

9 (5) *The customer’s right to receive periodic account statements*
10 *and valuations from the enrollee.*

11 (6) *The customer’s right to receive a receipt, trade ticket, or*
12 *other evidence of a transaction.*

13 (7) *The customer’s right to prior notice of a change in the*
14 *enrollee’s rules or policies.*

15 (8) *Any other disclosures that are customarily given in*
16 *connection with the opening of a customer account.*

17 (9) *A statement of the following: “The digital currency business*
18 *of [Enrollee’s legal name] in California is conducted pursuant to*
19 *the Digital Currency Business Enrollment Program that is*
20 *administered by the Department of Business Oversight (“DBO”).*
21 *[Enrollee’s legal name] conducts digital currency business in*
22 *California under the name(s) [a listing of all trade names enrollee*
23 *does business under in California]. If you have complaints with*
24 *respect to any aspect of the digital currency business conducted*
25 *by [Enrollee’s legal name], you may contact the Department of*
26 *Business Oversight at its toll-free telephone number,*
27 *1-800-622-0620, by e-mail at consumer.services@dbo.ca.gov, or*
28 *by mail at the Department of Business Oversight, Consumer*
29 *Services, 1515 K Street, Suite 200, Sacramento, CA 95814. For*
30 *more information about the Digital Currency Business Enrollment*
31 *Program visit: [\[www.dbo.ca.gov/dc\]](http://www.dbo.ca.gov/dc).”*

32 (c) *Prior to each transaction in digital currency, for, on behalf*
33 *of, or with a customer, an enrollee shall furnish to the customer*
34 *a written disclosure clearly and conspicuously in writing in English*
35 *and in any other language that may be spoken by the majority of*
36 *the customers of the enrollee, containing the terms and conditions*
37 *of the transaction. At minimum, if applicable, the disclosures shall*
38 *include:*

39 (1) *The amount of the transaction.*

1 (2) Any fees, expenses, and charges borne by the customer,
2 including applicable exchange rates.

3 (3) The type and nature of the digital currency transaction.

4 (4) A warning if the transaction, once executed, cannot be
5 reversed.

6 (5) Any other disclosures that are customarily given in
7 connection with a transaction of this nature.

8 (d) The disclosures required by this section may be provided to
9 the customer electronically and shall in be in minimum 10-point
10 font.

11 (e) An enrollee shall ensure that all disclosures required by this
12 section are acknowledged as received by customers.

13 26024. (a) When an enrollee accepts digital currency or fiat
14 currency from a customer, the enrollee shall provide the customer
15 a receipt containing the following information:

16 (1) The name and contact information of the enrollee, including
17 a telephone number and California mailing address established
18 by the enrollee to answer questions and register complaints.

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

20 (3) The fee charged.

21 (4) The exchange rate, if applicable.

22 (5) A statement of the liability of the enrollee for nondelivery
23 or delayed delivery.

24 (6) A statement of the refund policy of the enrollee.

25 (7) Any additional information the commissioner may require.

26 (b) Before a new enrollee issues its first receipt to a customer,
27 it shall file with the commissioner a certified copy of the receipt
28 forms to be used. An enrollee shall not use a receipt form if a
29 certified copy of it has not been filed with the commissioner and
30 approved by it or use a receipt form that the commissioner has
31 deemed not to be in compliance pursuant to subdivision (c).

32 (c) If the commissioner determines, within 30 business days of
33 the filing date of a receipt, that the receipt does not comply with
34 the requirements of this section, the commissioner shall notify the
35 enrollee in writing that the receipt is not in compliance with these
36 requirements.

37 (d) If a receipt is required by this division to be in English and
38 another language, the English version of the receipt shall govern
39 any dispute concerning the terms of the receipt. However, any
40 discrepancies between the English version and any other version

1 *due to the translation of the receipt from English to another*
2 *language including errors or ambiguities shall be construed*
3 *against the enrollee and the enrollee shall be liable for any*
4 *damages caused by these discrepancies.*

5 *(e) An enrollee violating the requirements of this section shall*
6 *be subject to a fine of one hundred dollars (\$100) for each*
7 *violation. This fine shall be in addition to any other enforcement*
8 *provisions that may apply to the violation.*

9 *(f) The receipt required by subdivision (a) may be transmitted*
10 *to the customer electronically, including by electronic mail or text*
11 *message. Disclosures in the receipt required by subdivision (a)*
12 *shall be in a minimum 8-point font, except for receipts provided*
13 *via mobile telephone or text message.*

14 26026. *The commissioner may by order or regulation modify*
15 *the content of the notices and disclosures required under Sections*
16 *26020, 26022, and 26024.*

17

18

CHAPTER 4. FACT GATHERING

19

20 26030. *(a) The commissioner may, at any time, require an*
21 *enrollee and agents of an enrollee to submit to surveys,*
22 *investigations, questionnaires, and other items for*
23 *information-gathering in order to ascertain detailed facts about,*
24 *without limitation, the enrollee's:*

25 *(1) Business model.*

26 *(2) Revenue.*

27 *(3) Volume of business activity.*

28 *(4) Capitalization and net worth.*

29 *(5) Bonding and insurance.*

30 *(6) Liquidity.*

31 *(7) Investment activity in connection with digital currency stored*
32 *or deposited with the digital currency business.*

33 *(8) Cybersecurity and breaches of cybersecurity.*

34 *(9) Compliance with the federal Bank Secrecy Act and*
35 *associated regulations.*

36 *(10) Operational safety, including, but not limited to, the proper*
37 *accounting of an enrollee's digital currency stored, exchanged,*
38 *transmitted, or issued by the enrollee.*

39 *(11) Advertising materials.*

1 (12) Complaints by the enrollee's customers and their
2 resolution.

3 (b) The directors, officers, and employees of any enrollee or
4 agent of an enrollee shall exhibit to the commissioner, on request,
5 any or all of the enrollee's accounts, books, correspondence,
6 memoranda, papers, and other records and shall otherwise
7 facilitate the commissioner's fact-gathering so far as it may be in
8 their power to do so. These materials shall be received in
9 confidence by the commissioner and are not public records under
10 the California Public Records Act (Chapter 3.5 (commencing with
11 Section 6250) of Division 7 of Title 1 of the Government Code)
12 and any regulations adopted thereunder.

13 (c) An enrollee shall file within 90 days after the end of each
14 fiscal year, or within any extended time as the commissioner may
15 prescribe, an audit report with the commissioner for the fiscal
16 year that shall comply with all of the following provisions:

17 (1) The audit report shall be based upon an audit of the enrollee
18 conducted in accordance with generally accepted auditing
19 standards and any other requirements as the commissioner may
20 prescribe.

21 (2) The audit report shall contain audited financial statements
22 of the enrollee for, or as of, the end of the fiscal year, prepared in
23 accordance with generally accepted accounting principles and
24 any other information as the commissioner may require.

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

28 (4) The audit report shall include, or be accompanied by, a
29 certificate of opinion of the independent certified public accountant
30 or independent public accountant that is satisfactory in form and
31 content to the commissioner. If the certificate or opinion is
32 qualified, the commissioner may order the enrollee to take any
33 action as the commissioner may find necessary to enable the
34 independent certified public accountant or independent public
35 accountant to remove the qualification.

36 (5) The audit report shall be accompanied by financial
37 statements, including balance sheet, income statement, statement
38 of changes in shareholders' equity, and statement of cash flow,
39 for each calendar year quarter, verified by two of the enrollee's
40 principal officers. The verification shall state that each of the

1 officers making the verification has a personal knowledge of the
2 matters in the report and that each of them believes that each
3 statement in the report is true.

4 (d) An enrollee shall file an annual report with the
5 commissioner, on or before March 15, providing the relevant
6 information that the commissioner reasonably requires concerning
7 the business and operations conducted by the enrollee within the
8 state during the preceding calendar year. An enrollee shall also
9 make other special reports to the commissioner that may be
10 required by the commissioner from time to time.

11 (e) The reports required by this section shall be received in
12 confidence by the Commissioner and are not public records under
13 the California Public Records Act (Chapter 3.5 (commencing with
14 Section 6250) of Division 7 of Title 1 of the Government Code)
15 and any regulations adopted thereunder.

16 (f) (1) If any enrollee fails to do any of the following, the
17 enrollee shall be liable for a sum of up to one hundred dollars
18 (\$100) for every day up to the 10th day:

19 (A) To make any report required by the commissioner within
20 10 days from the day designated for the making of the report or
21 within any extension of time granted by the commissioner.

22 (B) To include in a report any matter required by law or by the
23 commissioner.

24 (2) Any subsequent failure to perform an act following
25 imposition of a penalty under paragraph (1) shall constitute
26 grounds for immediate disenrollment from the program.

27 (g) The commissioner shall annually prepare and make available
28 to the public a report on the state of the digital currency business
29 industry compiling the information obtained pursuant to this
30 section.

31

32

33

CHAPTER 5. BANK SECRECY ACT

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26036. (a) An enrollee that is a money services business under
the regulations adopted pursuant to the federal Bank Secrecy Act
(31 C.F.R. Chapter X) or its successor shall comply with those
regulations.

(b) The commissioner may, at any time, and from time to time,
examine the business and any office, within or outside this state,

1 of any enrollee or any agent of an enrollee in order to ascertain
2 compliance with this rule.

3
4 *CHAPTER 6. FEES*

5
6 26040. *Following enrollment in the program, an enrollee shall*
7 *pay thereafter an annual fee of two thousand five hundred dollars*
8 *(\$2,500) to maintain enrollment in the program.*

9 26042. *All moneys received by the commissioner in connection*
10 *with this division shall be placed in the Digital Currency Business*
11 *Enrollment Program Account, which is hereby created in the State*
12 *Corporations Fund, to be available, upon appropriation by the*
13 *Legislature, to the commissioner for expenditure for the purposes*
14 *of the program.*

15
16 *CHAPTER 7. ENFORCEMENT*

17
18 26046. (a) *Whenever, in the opinion of the commissioner, any*
19 *person who is not enrolled in the program engages in any digital*
20 *currency business in this state or is offering to engage in digital*
21 *currency business in this state, or is violating any provision of this*
22 *division or any regulation or order adopted or issued pursuant to*
23 *the division, the commissioner may issue an order directing the*
24 *person to desist and refrain from engaging in the act, practice, or*
25 *course of business, or take other action necessary or appropriate*
26 *to comply with this division. If, after an order has been served, a*
27 *request for hearing is filed in writing within 30 days of the date*
28 *of service of the order, a hearing shall be held. If that person fails*
29 *to file a written request for a hearing within 30 days from the date*
30 *of service of the order, the order shall be deemed a final order of*
31 *the commissioner and is not subject to review by any court or*
32 *agency, notwithstanding that every official act of the commissioner*
33 *is subject to judicial review in accordance with law.*

34 (b) *Whenever the commissioner believes from the evidence*
35 *satisfactory to the commissioner that any person who is not*
36 *enrolled in the program is engaging in any digital currency*
37 *business in this state or is offering to engage in digital currency*
38 *business in this state, or is violating any provision of this division*
39 *or any regulation or order adopted or issued pursuant to the*
40 *division, the commissioner may, in the commissioner's discretion,*

1 *bring an action in the name of the people of the State of California*
2 *in superior court to enjoin the act or practice or to enforce*
3 *compliance with this division or any rule or order hereunder. Upon*
4 *a proper showing, a permanent or preliminary injunction,*
5 *restraining order, or writ of mandate shall be granted and a*
6 *receiver, monitor, conservator, or other designated fiduciary or*
7 *officer of the court may be appointed for the defendant or the*
8 *defendant's assets, or any other ancillary relief may be granted*
9 *as appropriate. A receiver, monitor, conservator, or other*
10 *designated fiduciary or officer of the court appointed by the*
11 *superior court pursuant to this section may, with the approval of*
12 *the court, exercise any or all of the powers of the defendant's*
13 *officers, directors, partners, trustees, or persons who exercise*
14 *similar powers and perform similar duties, including the filing of*
15 *a petition for bankruptcy. No action at law or in equity may be*
16 *maintained by any party against the commissioner, or a receiver,*
17 *monitor, conservator, or other designated fiduciary or officer of*
18 *the court, by reason of their exercising these powers or performing*
19 *these duties pursuant to the order of, or with the approval of, the*
20 *superior court.*

21 *(c) (1) If the commissioner determines it is in the public interest,*
22 *the commissioner may include in any civil action authorized by*
23 *subdivision (b) a claim for ancillary relief, including, but not*
24 *limited to, a claim for restitution or disgorgement or damages on*
25 *behalf of a person injured by the act or practice constituting the*
26 *subject matter of the action and attorney fees and costs, and the*
27 *court shall have jurisdiction to award additional relief.*

28 *(2) In any civil action taken by the commissioner pursuant to*
29 *subdivision (b), the commissioner may include a claim for civil*
30 *penalties not to exceed twenty-five thousand dollars (\$25,000) for*
31 *each violation.*

32 *(3) No action shall be maintained to enforce any liability created*
33 *under subdivision (b) unless brought before the expiration of four*
34 *years after the act or transaction constituting the violation.*

35 *(d) The remedies provided by this section and by other sections*
36 *of this division are not exclusive and may be sought and employed*
37 *in any combination to enforce the provisions of this division.*

38 *26048. The commissioner may issue an order disenrolling an*
39 *enrollee if, after notice and an opportunity for hearing, the*
40 *commissioner finds that:*

1 (a) *The enrollee has failed to cooperate with examinations,*
2 *investigations, surveys, questionnaires, or other fact-gathering*
3 *efforts by the commissioner, including failing to submit its books,*
4 *papers, and affairs to the inspection of any examiner.*

5 (b) *The enrollee has failed to submit to the commissioner any*
6 *information, documents, updates, or reports required by this*
7 *division or by regulation or order of the commissioner.*

8 (c) *The enrollee has willfully made or caused to be made in any*
9 *document submitted to the commissioner under this division, or*
10 *in any proceeding before the commissioner, or in any*
11 *communication to the commissioner, any statement that was at the*
12 *time, and in the light of the circumstances under which it was*
13 *made, false or misleading with respect to any material fact, or has*
14 *willfully omitted to state any material fact that was required to be*
15 *stated therein.*

16 (d) *The enrollee has failed to pay to the commissioner any fees,*
17 *penalties, or other sums required by this division.*

18 (e) *The enrollee has failed to provide the disclosures and*
19 *receipts required by Section 26022 or 26024 or has failed to*
20 *comply with the prohibitions on advertising set forth in Section*
21 *26020.*

22 (f) *The enrollee has failed to comply with Section 26036.*

23 (g) *The enrollee has been permanently or temporarily enjoined*
24 *by order, judgment, or decree of any court of competent jurisdiction*
25 *from engaging in or continuing a digital currency business.*

26 (h) *The enrollee is or has been subject to an order, judgment,*
27 *or decree of any court of competent jurisdiction finding that the*
28 *enrollee has engaged in fraud, deceit, or other unfair and abusive*
29 *business practices or finding there to be substantial evidence, a*
30 *likelihood, or a probability of success on the claim, that the*
31 *enrollee has engaged in fraud, deceit, or other unfair and abusive*
32 *business practices.*

33 26049. *The commissioner may refer evidence available*
34 *concerning any violation of this division or of any rule or order*
35 *hereunder to the Attorney General, the Financial Crimes*
36 *Enforcement Network of the United States Department of the*
37 *Treasury, or the district attorney of the county in which the*
38 *violation occurred, who may, with or without this type of a*
39 *reference, institute appropriate proceedings under this division.*
40 *The commissioner and his or her counsel, deputies, or assistants*

1 *may, upon request of the Attorney General or the district attorney,*
2 *assist the prosecuting attorney in presenting the law or facts at*
3 *the trial.*

4
5 *CHAPTER 8. OPERATIVE DATES*
6

7 *26050. This division shall remain in effect only until January*
8 *1, 2022, and as of that date is repealed, unless a later enacted*
9 *statute, that is enacted before January 1, 2022, deletes or extends*
10 *that date.*

11 ~~SEC. 4.~~

12 *SEC. 6. The Legislature finds and declares that Section 3 4 of*
13 *this act, which adds Sections 26023 and 26032 Section 26030 to*
14 *the Financial Code, imposes a limitation on the public’s right of*
15 *access to the meetings of public bodies or the writings of public*
16 *officials and agencies within the meaning of Section 3 of Article*
17 *I of the California Constitution. Pursuant to that constitutional*
18 *provision, the Legislature makes the following findings to*
19 *demonstrate the interest protected by this limitation and the need*
20 *for protecting that interest:*

21 *In order to allow the Commissioner of Business Oversight of*
22 *the Department of Business Oversight to fully accomplish his or*
23 *her goals, it is imperative to protect the interests of those persons*
24 *submitting information to the department to ensure that any*
25 *personal or sensitive business information that this act requires*
26 *those persons to submit is protected as confidential information.*

27 *SEC. 7. No reimbursement is required by this act pursuant to*
28 *Section 6 of Article XIII B of the California Constitution because*
29 *the only costs that may be incurred by a local agency or school*
30 *district will be incurred because this act creates a new crime or*
31 *infraction, eliminates a crime or infraction, or changes the penalty*
32 *for a crime or infraction, within the meaning of Section 17556 of*
33 *the Government Code, or changes the definition of a crime within*
34 *the meaning of Section 6 of Article XIII B of the California*
35 *Constitution.*

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