
OLR Bill Analysis

sHB 5211 (as amended by House "A")*

AN ACT CONCERNING VIRTUAL CURRENCY AND MONEY TRANSMISSION.

SUMMARY

PA 23-82 generally (1) authorized the banking commissioner to regulate the business use of digital assets by entities and individuals under his regulatory jurisdiction and (2) created several requirements regulating virtual currency kiosks. This bill makes various related changes and other revisions to the state's Money Transmission Act, which regulates businesses, other than banks or credit unions, that receive and transmit money.

Principally, the bill:

1. explicitly adds nonfungible tokens (a.k.a. NFTs) to the list of examples of digital assets the banking commissioner may regulate (§ 5);
2. makes several changes regarding eligibility and the process by which virtual currency kiosk customers can receive refunds, principally by limiting their availability to fraudulent virtual currency transactions (§ 4(h));
3. eliminates the banking commissioner's authority to set a schedule of maximum service fees for virtual currency kiosks and instead caps the total amount of service fees and commission charges at 15% per transaction (§ 4(f));
4. directs money transmitters to have a plan and accounting for winding down operations, which the bill outlines (e.g., records of sufficient finances and procedures for disbursing funds) (§ 3(d));
and

5. prohibits money transmitters from ending their businesses until certain notices and information are provided to the banking commissioner and consumers, funds have been distributed, and the commissioner has accepted the transmitter's request to surrender its license (§ 3(e)).

The bill also makes technical and conforming changes.

*House Amendment "A" principally (1) removes the underlying bill's requirement that money transmitters give senders of money a receipt for funds transmitted and the information that must be included on the receipt; (2) makes several changes to the current disclosures that virtual currency kiosk owners and operators must provide to customers; (3) adds several pieces of information to virtual currency kiosk transaction receipts; (4) increases, generally from 10% to 15%, the maximum service fees in the underlying bill for virtual currency kiosks; (5) modifies and bifurcates the current maximum daily virtual currency kiosk transaction limit based on whether a customer is new or existing; (6) makes several changes regarding eligibility and the process by which virtual currency kiosk customers can receive refunds; (7) imposes several safeguard duties on kiosk owners and operators; (8) extends an existing definition of virtual currency and adds NFT exclusions for the digital asset regulations; and (9) makes minor changes to the provisions on money transmission licensee wind down planning and execution.

EFFECTIVE DATE: October 1, 2024

§ 1 — MONEY TRANSMISSION ACT DEFINITION CHANGES

Limitation

The bill adds a limitation that applies to all the Money Transmission Act's definitions. Specifically, that the definitions apply unless the context requires otherwise.

Permissible Investment

By law, "permissible investment" includes, among other things, cash in U.S. currency. The bill specifies that this cash includes cash equivalents, demand deposits, savings deposits, and funds in demand deposit and savings deposit accounts held in an insured depository

institution for the benefit of the customers of a “licensee” (i.e., any person licensed or required to be licensed as a money transmitter). Under the bill, cash equivalents include:

1. automated clearing house items in transit to a licensee or payee;
2. international wires in transit to a payee;
3. cash in transit via armored car;
4. cash in smart safes;
5. cash in locations owned by licensees;
6. transmission receivables that are funded by debit cards or credit cards and owed by any bank; and
7. money market mutual funds rated “AAA” or the equivalent by S&P Global, Incorporated in the “S&P Global Ratings” or by any other rating service recognized by the banking commissioner.

The Money Transmission Act has several requirements for permissible investments that are affected by the bill’s change. The affected existing provisions generally require:

1. money transmission license applicants to include a list of their permissible investments with their applications (CGS § 36a-598),
2. money transmission licensees to maintain permissible investments having a value at least equal to the aggregate amount of their outstanding money transmissions in Connecticut (CGS § 36a-603), and
3. money transmission licensees to file a list of permissible investments with the banking commissioner within 90 days of the end of their fiscal years (CGS § 36a-606).

Receipt

The bill adds a definition for “receipt,” which means a paper record, electronic record, or other written confirmation of a money transmission transaction.

§§ 1 & 4 — VIRTUAL CURRENCY KIOSKS

Material Risk Disclosures

Before entering into an initial virtual currency transaction for, on behalf of, or with a customer, existing law requires virtual currency kiosk owners and operators to disclose all material risks generally associated with virtual currency in clear, conspicuous, and legibly written English. Under current law, this includes at least the following:

1. there is no assurance that a person who accepts a virtual currency as payment today will do so in the future,
2. the nature of virtual currency may lead to an increased risk of fraud or cyber attack, and
3. the nature of virtual currency means that any technological difficulties experienced by the owner or operator may prevent access to or use of a customer's virtual currency.

The bill removes these three specific disclosures and adds a new one: that virtual currency transactions are irreversible and are used by people seeking to defraud customers, including someone impersonating a customer's loved one, threatening jail time, stating that a customer's identity has been stolen, insisting that a customer withdraw money from the customer's bank account and purchase cryptocurrency, or alleging a customer's personal computer has been hacked.

Products', Services', and Activities' Terms and Conditions

When opening an account for a new customer and before entering into an initial virtual currency transaction for, on behalf of, or with the customer, the act requires kiosk owners and operators to disclose all relevant terms and conditions generally associated with the products, services, and activities of the owner or operator and virtual currency.

The bill adds a definition for "new customer" that applies to the state's virtual currency kiosk statute and other Money Transmission Act laws. It specifically defines a "new customer" as a consumer who (1) is engaging in a transaction at a virtual currency kiosk in Connecticut, (2) has performed fewer than three virtual currency transactions with the

virtual currency kiosk owner or operator, and (3) has been registered as a customer of the owner or operator for less than 72 hours.

The bill makes several changes to the specific disclosures for new customers. It removes a disclosure about the customer's right to receive periodic account statements and valuations from the owner or operator. The bill adds a disclosure about the requirement that the owner or operator communicate to the customer what customer information may be disclosed to third parties. It also modifies two other disclosures.

Current law requires disclosing the customer's right to (1) receive a receipt, trade ticket, or other evidence of a transaction; and (2) prior notice of a change in the rules or policies of the owner or operator. The bill instead, respectively, requires disclosing the customer's right to (1) receive a physical, printed receipt for a virtual currency transaction at the time of the transaction; and (2) consent to any change in the owner's or operator's rules or policies before performing any transaction after such a change.

Receipts

Upon a transaction's completion, existing law requires kiosk owners and operators to give customers a receipt with certain information. The bill generally carries the current list of information forward with several additions. Altogether, a receipt must have the following information:

1. the owner's or operator's name and contact information, including their business address and a customer service telephone number to answer questions and register complaints;
2. the customer's name;
3. the type, value, date, and precise time of the transaction and each "virtual currency address" (i.e., an alphanumeric identifier representing a destination for a virtual currency transfer that is associated with a "virtual currency wallet" (i.e., a software application or other mechanism that provides a means for holding, storing, and transferring virtual currency));

4. the virtual currency transaction amount expressed in U.S. currency;
5. the full unique transaction hash or identification number;
6. the customer's public virtual currency address;
7. the unique identifier;
8. any fee charged, including any fee charged directly or indirectly by the owner or operator or a third party involved in the virtual currency transaction;
9. the exchange rate, if applicable;
10. any tax collected by the owner or operator for the virtual currency transaction;
11. a statement of the owner's or operator's liability for non-delivery or delayed delivery;
12. a statement of the owner's or operator's refund policy;
13. the Department of Banking's name and telephone number and a statement disclosing that the owner or operator's customers may contact the department with questions or complaints about their kiosk services; and
14. any additional information the banking commissioner may require.

The bill further requires that the receipt be provided in (1) a retainable form; (2) the English language; and (3) the language principally used by the kiosk's owner or operator to advertise, solicit, or negotiate, either orally or in writing. It allows the receipt to be provided electronically if the customer requests or agrees to receive an electronic receipt.

Fees

Current law allows the banking commissioner to establish a schedule of maximum fees that a virtual currency kiosk owner or operator may

charge for specific services. The bill eliminates this authority and instead sets a statutory cap for the maximum total amount of any fee and commission that may be charged for specific services for a virtual currency transaction at 15% of the amount of the transaction.

Daily Transaction Limits

The bill modifies and bifurcates the current maximum daily virtual currency kiosk transaction limit. Current law sets the limit at \$2,500 for each virtual currency kiosk customer. The bill instead sets a (1) \$2,000 limit for each “new customer” (see above) and (2) \$5,000 limit for each existing customer.

The bill adds a definition for “existing customer” that applies to the state’s virtual currency kiosk statute and other Money Transmission Act laws. It specifically defines an “existing customer” as a consumer who (1) is engaging in a transaction at a virtual currency kiosk in Connecticut, (2) has performed three or more virtual currency transactions with the virtual currency kiosk owner or operator, and (3) has been registered as the owner’s or operator’s customer for more than 72 hours.

Refunds

The bill makes several changes regarding eligibility and the process by which virtual currency kiosk customers can receive refunds. Under current law, virtual currency kiosk owners and operators must allow customers to cancel and receive a full refund, at the owner’s or operator’s cost, for a virtual currency transaction within 72 hours afterwards if it is (1) a customer’s first transaction with the owner or operator and (2) to a virtual currency wallet or exchange located outside of the United States.

The bill instead requires kiosk owners and operators to allow a “new customer” (see above), upon his or her request, to cancel and receive a full refund for any fraudulent virtual currency transactions that took place within 72 hours after the new customer registered as a customer of the owner and operator if, within 30 days after the last virtual currency transaction that occurred during the 72-hour period, the new customer:

1. contacts the owner or operator and a government or law enforcement agency to inform them about the fraudulent nature of the transaction and
2. files a report with a government or law enforcement agency memorializing the fraudulent nature of the transaction.

Safeguard Duties on Kiosk Owners and Operators

The bill requires each kiosk owner and operator to:

1. obtain a copy of a government-issued identification card that identifies each of their customers;
2. maintain restrictions that prevent more than one of their customers from using the same virtual currency wallet;
3. be able to prevent designated virtual currency wallets from being used at any of the virtual currency kiosks they own or operate;
4. use an established third party that specializes in performing blockchain analyses to preemptively perform the analyses to identify and prevent high risk or sanctioned virtual currency wallets from being used by customers at the virtual currency kiosks they own or operate;
5. define, in their policies and procedures, a risk-based method of monitoring their customers on a post-transaction basis;
6. offer, during the kiosks' hours of operation, live customer support by telephone from a telephone number prominently displayed at or on the kiosks;
7. identify and speak by telephone with any new customer over age 60 before he or she completes his or her first virtual currency transaction with the owner or operator; record and retain the communication, during which the owner or operator must (a) reconfirm any attestations made by the new customer, (b) discuss the transaction, and (c) discuss types of fraudulent schemes relating to virtual currency; and make approval of the transaction dependent upon their assessment of the communication;

8. identify and speak by telephone with any new customer attempting to perform a virtual currency transaction that exceeds an amount that has been predesignated by the owner or operator as a large transaction amount before it may be completed; record and retain the communication, during which the owner or operator must (a) positively identify the new customer, (b) review the new customer's stated purpose of the transaction, and (c) discuss types of fraudulent schemes relating to virtual currency; and make approval of the transaction dependent upon their assessment of the communication;
9. designate and employ a chief compliance officer who must (a) be qualified to coordinate and monitor a program to ensure compliance with Connecticut's virtual currency kiosk law and all other applicable federal and state laws, rules, and regulations; (b) be employed on a full-time basis by the owner or operator; and (c) not own more than 20% of the virtual currency kiosk owner or operator that employs the officer; and
10. use full-time employees to fulfill their compliance responsibilities under federal and state laws, rules, and regulations.

§§ 1 & 6 — DIGITAL ASSET REGULATION

Existing law allows the banking commissioner to adopt regulations, forms, and orders governing the business use of digital assets by entities and individuals under his regulatory jurisdiction. By law, digital assets include virtual currencies and stablecoins. The bill applies an existing definition of virtual currency and explicitly adds nonfungible tokens as another example of these digital assets.

Current law does not define virtual currency or stablecoin for the purposes of regulating digital assets. (The Federal Reserve has referred to stablecoins as cryptocurrencies that peg their value to a real-world asset, typically the U.S. dollar.) The bill extends the existing definition of "virtual currency" under the Money Transmission Act to this law, which is a digital unit (1) used as a medium of exchange or form of digitally stored value or (2) incorporated into payment system

technology. It includes digital units of exchange that have a centralized repository or administrator, are decentralized without a centralized repository or administrator, or may be created or obtained by computing or manufacturing effort.

Virtual currency does not include digital units used:

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

The bill does not define what nonfungible tokens includes, but specifically excludes tokens issued or sold primarily for consumptive, personal, or household purposes.

By law, the commissioner's regulations, forms, and orders must ensure consumer protection and the commissioner may consult with federal and other states' financial services regulators, other stakeholders, and industry professionals to ensure that digital assets receive, to the extent practicable, consistent treatment.

Under existing law, the commissioner has broad, general authority to adopt regulations within the jurisdiction of his position (CGS § 36a-10). The banking commissioner administers and enforces laws that apply to, among others, state-chartered banks and credit unions, mortgage lenders and brokers, small loan lenders, consumer collection agencies, money transmission businesses, securities broker-dealers, and investment advisors (CGS Titles 36a & 36b).

§ 2 — LICENSING AND VIRTUAL CURRENCY KIOSKS

The bill explicitly requires, on and after October 1, 2024, any person who owns, operates, solicits, markets, advertises, or facilitates virtual currency kiosks physically located in Connecticut to have a money transmission license.

Existing law already prohibits any person from engaging in the

business of money transmission, or advertising or soliciting money transmitter services, without the license. PA 23-82 specified that the use of virtual currency kiosks for engaging in the business of transmitting money or monetary value is a type of “money transmission” under state law, which effectively subjected kiosk owners, operators, and others to the licensing and other existing requirements under the state’s Money Transmission Act.

§ 3 — LICENSEE WIND DOWN PLANNING AND EXECUTION

The bill requires each money transmission licensee to maintain a detailed plan and accounting as to how it will engage in winding down operations, which they must give to the banking commissioner upon request.

The plan and accounting must contain:

1. a record showing that the licensee has enough minimum net worth and reserves to prevent losses to consumers and purchasers and to repay any outstanding obligations or accounts payable;
2. procedures to ensure that after winding down operations the licensee will not retain any consumer funds, purchaser funds, or other client funds;
3. a plan demonstrating that consumers will have access to consumer funds in the licensee’s custody;
4. detailed instructions informing consumers how they may withdraw consumer funds upon request; and
5. any other records and information the commissioner requests regarding winding down operations.

The bill also prohibits licensees from terminating their businesses unless the licensee does the following:

1. provides written notice to the commissioner of the proposed termination at least 30 days before its effective date;

2. notifies, in writing, all its consumers, purchasers, and users of the proposed termination and its date at least 30 days beforehand;
3. provides all its consumers, purchasers, and users with detailed final accountings of their accounts;
4. remits all money held in its custody on behalf of consumers, purchasers, and users to them; and
5. files a request to surrender its license and the commissioner accepts the request.

COMMITTEE ACTION

Banking Committee

Joint Favorable

Yea 12 Nay 0 (03/12/2024)