

JAN 19 2018

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# A BILL FOR AN ACT

RELATING TO VIRTUAL CURRENCY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 489D-4, Hawaii Revised Statutes, is  
2 amended as follows:

3           1. By adding five new definitions to be appropriately  
4 inserted and to read:

5           "Exchange", in the context of virtual currency, means to  
6 assume control of virtual currency from or on behalf of a person  
7 in the State, at least momentarily, to sell, trade, or convert:

8           (1) Virtual currency for money, monetary value, or one of  
9 more forms of virtual currency; or

10           (2) Money or monetary value for one or more forms of  
11 virtual currency.

12           "Money" means a medium of exchange or unit of value,  
13 including coin or paper money, issued by the United States or  
14 another country or union of countries recognized by the United  
15 States.



1       "Store" or "storage", in the context of virtual currency,  
2 means maintaining control of virtual currency on behalf of  
3 another person.

4       "Transfer", in the context of virtual currency, means to  
5 assume control of virtual currency from or on behalf of a person  
6 in the State and to:

7       (1) Credit the virtual currency to the account of another  
8 person;

9       (2) Move the virtual currency from one account of the  
10 person to another account of the same person; or

11       (3) Relinquish control of virtual currency to another  
12 person.

13       "Virtual currency" means a digital representation of value  
14 that is used as a medium of exchange, unit of account, or store  
15 of value; and is not money, regardless of whether denominated in  
16 money. "Virtual currency" does not include:

17       (1) Units of value that are issued in affinity or rewards  
18 programs that cannot be redeemed for either money or  
19 virtual currencies; or



1        (2) Units of value that are used solely within online  
2        gaming platforms that have no market or application  
3        outside of the gaming platforms."

4        2. By amending the definition of "control" to read:

5        "Control" means:

6        (1) In reference to a person, ownership of, or the power  
7        to vote, twenty-five per cent or more of the  
8        outstanding voting securities of a licensee or  
9        controlling person. For purposes of determining the  
10       percentage of a licensee controlled by any person,  
11       there shall be aggregated with the controlling  
12       person's interest the interest of any other person  
13       controlled by the person, or by any spouse, parent, or  
14       child of the person~~[-]~~; and

15       (2) In reference to a transaction or relationship  
16       involving virtual currency, power to execute  
17       unilaterally or prevent indefinitely a virtual  
18       currency transaction."

19       3. By amending the definition of "monetary value" to read:



1            "Monetary value" means a medium of exchange, regardless of  
2 whether [~~or not~~] redeemable in money[-] and includes virtual  
3 currency."

4            4. By amending the definition of "money transmission" to  
5 read:

6            "Money transmission" means to engage in the business of:

- 7            (1) Selling or issuing payment instruments; or  
8            (2) Receiving money or monetary value for transmission,  
9            transfer, exchange, or delivery to a location within  
10            or outside the United States by any and all means,  
11            including wire, Internet, facsimile, or electronic  
12            transfer.

13 Money transmission does not apply to courier services. Money  
14 transmission does not include solely providing connection  
15 services to the Internet, telecommunications services, or  
16 network access."

17            5. By amending the definition of "outstanding payment  
18 obligation" to read:

19            "Outstanding payment obligation" means:

- 20            (1) Any payment instrument issued by the licensee that has  
21            been sold in the United States:



- 1 (A) Directly by the licensee; or
- 2 (B) By an authorized delegate of the licensee in the
- 3 United States, which has been reported to the
- 4 licensee as having been sold,
- 5 and that has not yet been paid by or for the licensee;
- 6 and
- 7 (2) All other [~~outstanding~~] money transmission obligations
- 8 [~~of~~] that the licensee has issued, or has agreed to
- 9 transmit, deliver, or instruct to be delivered, in the
- 10 United States[-] that have not been fully performed by
- 11 the licensee."

12 6. By amending the definition of "permissible investments"  
13 to read:

14 "Permissible investments" means:

- 15 (1) Cash;
- 16 (2) Certificates of deposit or other debt obligations of a
- 17 financial institution, either domestic or foreign;
- 18 (3) Bills of exchange or time drafts drawn on and accepted
- 19 by a commercial bank, known as bankers' acceptances,
- 20 that are eligible for purchase by member banks of the
- 21 Federal Reserve System;



- 1           (4) Any investment bearing a rating of one of the three  
2                   highest grades as defined by a nationally recognized  
3                   organization that rates securities;
- 4           (5) Investment securities that are obligations of the  
5                   United States, its agencies, or its instrumentalities,  
6                   obligations that are guaranteed fully as to principal  
7                   and interest by the United States, or any obligations  
8                   of any state, municipality, or any political  
9                   subdivision thereof;
- 10          (6) Shares in a money market mutual fund, interest-bearing  
11                   bills, notes, or bonds, debentures or stock traded on  
12                   any national securities exchange or on a national  
13                   over-the-counter market, mutual funds primarily  
14                   composed of these securities, or a fund composed of  
15                   one or more permissible investments as set forth in  
16                   paragraphs (1) to (5);
- 17          (7) Any demand borrowing agreement or agreements made with  
18                   a corporation or a subsidiary of a corporation whose  
19                   capital stock is listed on a national exchange;
- 20          (8) Receivables that are due to a licensee from its  
21                   authorized delegates pursuant to a contract under



1 section 489D-21, that are not past due or doubtful of  
2 collection; [e#]

3 (9) Virtual currency subject to this chapter; or  
4 ~~[-(9)]~~ (10) Any other investments or security device  
5 approved by the commissioner."

6 SECTION 2. Section 489D-8, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 **"§489D-8 Permissible investments and statutory trust. (a)**

9 A licensee, at all times, shall possess permissible investments  
10 having an aggregate market value, calculated in accordance with  
11 generally accepted accounting principles, of not less than the  
12 aggregate amount of all outstanding payment obligations. This  
13 requirement may be waived by the commissioner if the dollar  
14 volume of a licensee's outstanding payment obligations does not  
15 exceed the bond or other security devices posted by the licensee  
16 pursuant to section 489D-7.

17 (b) In lieu of the permissible investments required in  
18 subsection (a), a licensee, in connection with storage or  
19 transfer of virtual currency, may possess like-kind virtual  
20 currency of the same volume as the outstanding payment



1 obligations of the licensee contracted to be completed in  
2 virtual currency.

3 (c) A licensee transmitting money and virtual currency  
4 shall maintain applicable levels and types of permissible  
5 investments as described in subsections (a) and (b).

6 (d) The commissioner, with respect to any money  
7 transmitter licensee, may limit the extent to which a type of  
8 investment within a class of permissible investments may be  
9 considered a permissible investment, except for money, time  
10 deposits, savings deposits, demand deposits, and certificates of  
11 deposit issued by a federally insured financial institution.  
12 The commissioner may prescribe by rule, or allow by order, other  
13 types of investments that the commissioner determines to have a  
14 safe and sound equivalent to other permissible investments.

15 [~~(b)~~] (e) Permissible investments, even if commingled with  
16 other assets of the licensee, shall be held in trust for the  
17 benefit of the purchasers and holders of the licensee's  
18 outstanding payment obligations in the event of the bankruptcy  
19 of the licensee."

20 SECTION 3. Section 489D-9, Hawaii Revised Statutes, is  
21 amended by amending subsection (d) to read as follows:



1           "(d) An application for a license under this chapter shall  
2 be made in writing, and in a form prescribed by NMLS or by the  
3 commissioner. Each application shall contain the following:

4           (1) For all applicants:

5           (A) The exact name of the applicant, any fictitious  
6 or trade name used by the applicant in the  
7 conduct of its business, the applicant's  
8 principal address, and the location of the  
9 applicant's business records;

10          (B) The history of the applicant's material  
11 litigation and criminal convictions for the five-  
12 year period prior to the date of the application;

13          (C) A description of the business activities  
14 conducted by the applicant and a history of  
15 operations;

16          (D) A description of the business activities in which  
17 the applicant seeks to engage within the State;

18          (E) A list identifying the applicant's proposed  
19 authorized delegates in the State, if any, at the  
20 time of the filing of the license application;



- 1 (F) A sample authorized delegate contract, if
- 2 applicable;
- 3 (G) A sample form of payment instrument, if
- 4 applicable;
- 5 (H) The locations where the applicant and its
- 6 authorized delegates, if any, propose to conduct
- 7 their licensed activities in the State;
- 8 (I) The name and address of the clearing bank or
- 9 banks on which the applicant's payment
- 10 instruments will be drawn or through which
- 11 payment instruments will be payable;
- 12 (J) Disclosure of any pending or final suspension,
- 13 revocation, or other enforcement action by any
- 14 state or governmental authority for the five-year
- 15 period prior to the date of the application; and
- 16 (K) Any other information the commissioner may
- 17 require;
- 18 (2) If the applicant is a corporation, the applicant shall
- 19 also provide:
- 20 (A) The date of the applicant's incorporation and
- 21 state of incorporation;



- 1 (B) A certificate of good standing from the state in  
2 which the applicant was incorporated;
- 3 (C) A description of the corporate structure of the  
4 applicant, including the identity of any parent  
5 or subsidiary company of the applicant, and the  
6 disclosure of whether any parent or subsidiary  
7 company is publicly traded on any stock exchange;
- 8 (D) The name, business and residence address, and  
9 employment history, for the past five years, of  
10 the applicant's principals, and each person who  
11 upon approval of the application will be a  
12 principal of the licensee;
- 13 (E) For the five-year period prior to the date of the  
14 application, the history of material litigation  
15 involving, and criminal convictions of, each  
16 principal of the applicant;
- 17 (F) A copy of the applicant's most recent audited  
18 financial statement, including balance sheets,  
19 statements of income or loss, statements of  
20 changes in shareholder equity, and statements of  
21 changes in financial position, and, if available,



1 the applicant's audited financial statements for  
2 the preceding two-year period or, if the  
3 applicant is a wholly owned subsidiary of another  
4 corporation, either the parent corporation's  
5 consolidated audited financial statements for the  
6 current year and for the preceding two-year  
7 period, or the parent corporation's Form 10-K  
8 reports filed with the United States Securities  
9 and Exchange Commission for the prior three years  
10 in lieu of the applicant's financial statements,  
11 or if the applicant is a wholly owned subsidiary  
12 of a corporation having its principal place of  
13 business outside the United States, similar  
14 documentation filed with the parent corporation's  
15 non-United States regulator;

16 (G) Copies of all filings, if any, made by the  
17 applicant with the United States Securities and  
18 Exchange Commission, or with a similar regulator  
19 in a country other than the United States, within  
20 the year preceding the date of filing of the  
21 application; and



- 1           (H) Information necessary to conduct a criminal  
2           history record check in accordance with section  
3           846-2.7 of each person who upon approval of the  
4           application will be a principal of the licensee,  
5           accompanied by the appropriate payment of the  
6           applicable fee for each record check; [~~and~~]
- 7       (3) If the applicant is not a corporation, the applicant  
8       shall also provide:
- 9           (A) The name, business and residence address,  
10          personal financial statement, and employment  
11          history, for the past five years, of each  
12          principal of the applicant;
- 13          (B) The name, business and residence address, and  
14          employment history, for the past five years, of  
15          any other persons who upon approval of the  
16          application will be a principal of the licensee;
- 17          (C) The place and date of the applicant's  
18          registration or qualification to do business in  
19          this State;
- 20          (D) The history of material litigation and criminal  
21          convictions for the five-year period before the



1 date of the application for each principal of the  
2 applicant;

3 (E) Copies of the applicant's audited financial  
4 statements, including balance sheets, statements  
5 of income or loss, and statements of changes in  
6 financial position for the current year and, if  
7 available, for the preceding two-year period; and

8 (F) Information necessary to conduct a criminal  
9 history record check in accordance with section  
10 846-2.7 of each principal of the applicant,  
11 accompanied by the appropriate payment of the  
12 applicable fee for each record check[-]; and

13 (4) If the applicant's business model transfers or stores  
14 virtual currency on behalf of others, the applicant  
15 shall also provide a third party security audit of all  
16 electronic information and data systems acceptable to  
17 the commissioner."

18 SECTION 4. Section 489D-12, Hawaii Revised Statutes, is  
19 amended by amending subsection (b) to read as follows:



1           (b) The annual license fee shall be accompanied by a  
2 report, in a form prescribed by the commissioner, which shall  
3 include:

4           (1) A copy of the licensee's most recent audited annual  
5 financial statement, including balance sheets,  
6 statement of income or loss, statement of changes in  
7 shareholder's equity, and statement of cash flows or,  
8 if a licensee is a wholly owned subsidiary of another  
9 corporation, the consolidated audited annual financial  
10 statement of the parent corporation in lieu of the  
11 licensee's audited annual financial statement[+]. If  
12 the applicant's business model transfers or stores  
13 virtual currency on behalf of others, the applicant  
14 shall also provide a third party security audit of all  
15 electronic information and data systems acceptable to  
16 the commissioner;

17           (2) For the most recent quarter for which data is  
18 available prior to the date of filing the annual  
19 report, but in no event more than one hundred twenty  
20 days prior to the renewal date, the licensee shall  
21 provide the number of money transmissions sold,



1           issued, or received for transmission, transfer,  
2           exchange, or delivery by the licensee in the State,  
3           and as applicable, the dollar amount and monetary  
4           value of those transmissions, and the dollar amounts  
5           and monetary value of outstanding payment obligations;

6           (3) Any material changes to any of the information  
7           submitted by the licensee on its original application  
8           that have not previously been reported to the  
9           commissioner on any other report required to be filed  
10          under this chapter;

11          (4) For the most recent quarter for which data is  
12          available prior to the date of filing the annual  
13          report, but in no event more than one hundred twenty  
14          days prior to the renewal date, a list of the  
15          licensee's permissible investments, including the  
16          total market value of each type of permissible  
17          investment, and the total dollar amount and monetary  
18          value of all outstanding payment obligations[+], as  
19          applicable;

20          (5) A list of the locations, if any, within this State  
21          where business regulated by this chapter is being



1           conducted by either the licensee or the licensee's  
2           authorized delegates;

3           (6) Disclosure of any pending or final suspension,  
4           revocation, or other enforcement action by any state  
5           or governmental authority;

6           (7) The licensee's evidence of a valid bond or other  
7           security device as required pursuant to section  
8           489D-7; and

9           (8) Any other information the commissioner may require.

10          A license may be renewed by filing a renewal statement on a  
11         form prescribed by NMLS or by the commissioner and paying a  
12         renewal fee at least four weeks prior to the renewal date for  
13         licensure for the following year."

14          SECTION 5. Section 489D-18, Hawaii Revised Statutes, is  
15         amended by amending subsection (a) to read as follows:

16          "(a) Each licensee shall make, keep, preserve, and make  
17         available for inspection by the commissioner the following  
18         books, accounts, and other records for a period of three years:

19           (1) A record or records of each payment instrument [7] and  
20           other money transmission;



- 1           (2) A general ledger containing all assets, liability,  
2                   capital, income, and expense accounts that shall be  
3                   posted at least monthly;
- 4           (3) Bank statements and bank reconciliation records;
- 5           (4) Records of all outstanding payment obligations;
- 6           (5) Records of each payment instrument and other money  
7                   transmission paid within the three-year period;
- 8           (6) A list of the names and addresses of all of the  
9                   licensee's authorized delegates; and
- 10          (7) Any other records the commissioner reasonably requires  
11                   by rule adopted pursuant to chapter 91."

12           SECTION 6. Section 489D-20, Hawaii Revised Statutes, is  
13 amended to read as follows:

14           "~~§~~489D-20~~§~~ Money transmitter receipts and refunds.

- 15          (a) Each licensee who receives money or monetary value for  
16 transmission and the licensee's authorized delegates shall  
17 transmit the monetary equivalent of all money or equivalent  
18 value received from a customer for transmission, net of any  
19 fees, or issue instructions committing the money or its monetary  
20 equivalent, to the person designated by the customer within ten  
21 business days after receiving the money or equivalent value,



1 unless otherwise ordered by the customer or unless the licensee  
2 or its authorized delegate has reason to believe that a crime  
3 has occurred, is occurring, or may occur as a result of  
4 transmitting the money.

5 (b) Each licensee who receives money or monetary value for  
6 transmission and the licensee's authorized delegates shall  
7 provide a receipt to the customer that clearly states the amount  
8 of money or equivalent value presented for transmission and the  
9 total of the fees charged by the licensee. If the rate of  
10 exchange for a money transmission to be paid in the currency of  
11 another country is fixed by the licensee for that transaction at  
12 the time the money transmission is initiated, the receipt  
13 provided to the customer shall disclose the rate of exchange for  
14 that transaction, and the duration, if any, for the payment to  
15 be made at that fixed rate of exchange. If the rate of exchange  
16 for a money transmission to be paid in the currency of another  
17 country is not fixed at the time the money transmission is sent,  
18 the receipt provided to the customer shall disclose that the  
19 rate of exchange for that transaction will be set at the time  
20 the recipient of the money transmission picks up the funds in  
21 the foreign country.



1 (c) For purposes of this section:

2 (1) Money is considered to have been transmitted when it  
3 is available to the person designated by the customer,  
4 whether or not the designated person has taken  
5 possession of the money;

6 (2) "Monetary equivalent", when used in connection with a  
7 money transmission in which the customer provides the  
8 licensee or its authorized delegate with the money of  
9 one government, and the designated recipient is to  
10 receive the money of another government, means the  
11 amount of money, in the currency of the government  
12 that the designated recipient is to receive, as  
13 converted at the retail exchange rate offered by the  
14 licensee or its authorized delegate to the customer in  
15 connection with the transaction; and

16 (3) "Fees" do not include revenue that a licensee or its  
17 authorized delegate generates, in connection with a  
18 money transmission, in converting the money of one  
19 government into the money of another government.

20 (d) Each licensee who receives money or monetary value for  
21 a money transmission and the licensee's authorized delegates



1 shall refund to a customer all moneys received for transmittal  
2 within ten days of receipt of a written request for a refund  
3 unless any of the following occurs:

4 (1) The moneys have been transmitted and delivered to the  
5 person designated by the customer prior to receipt of  
6 the written request for a refund;

7 (2) Instructions have been given committing an equivalent  
8 amount of money to the person designated by the  
9 customer prior to receipt of a written request for a  
10 refund;

11 (3) The licensee or its authorized delegate has reason to  
12 believe that a crime has occurred, is occurring, or  
13 may occur as a result of transmitting the money as  
14 requested by the customer or refunding the money as  
15 requested by the customer; or

16 (4) The licensee is otherwise barred by law from making a  
17 refund.

18 (e) Before entering into any agreement to perform money  
19 transmission involving virtual currency, a licensee shall obtain  
20 the customer's agreement that contains the following language,  
21 and retain it as a record pursuant to section 489D-18:



1 "Most virtual currencies are based on computer cryptography  
2 and derive their value solely from the market's perception  
3 of their value, which can experience great swings. These  
4 currencies are:

5 (1) Not backed by any physical commodity, such as gold or  
6 silver;

7 (2) Not backed by the United States or any other national  
8 government;

9 (3) Not legal tender for debts; and

10 (4) Not insured by the Federal Deposit Insurance  
11 Corporation or any government agency.

12 You should be aware that there is the potential for  
13 consumers to lose all of their virtual currency. Though  
14 cash can also be lost, with virtual currency this loss can  
15 occur because of a computer failure, malicious software  
16 attack, an attack, closure, or disappearance of a virtual  
17 currency exchange company, lack of security, loss of your  
18 private key, or a sudden or dramatic change in value, as  
19 just a few examples. Some virtual currency users have been  
20 unable to access their legitimate virtual currency account  
21 because of heavy traffic by other users, or a prevalence of



1        criminal activity in virtual currency use. To protect  
2        yourself, become educated as to potential risks before  
3        deciding whether you want to transact in virtual  
4        currency."

5        SECTION 7. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7        SECTION 8. This Act shall take effect on July 1, 2018.

8

INTRODUCED BY: Will Eyo



# S.B. NO. 2225

**Report Title:**

Money Transmitters; Virtual Currency

**Description:**

Amends the laws relating to money transmitters to include virtual currency as a money transmission.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

