
A BILL FOR AN ACT

RELATING TO SPECIAL PURPOSE DIGITAL CURRENCY LICENSURE.

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

1 SECTION 1. The legislature finds that digital currencies
2 are assets that are primarily managed or stored electronically.
3 Digital currencies refer to digital currency, cryptocurrency,
4 e-money, network money, e-cash, and others, as defined by
5 various governmental jurisdictions. Digital currency may be
6 recorded on a decentralized ledger on the Internet or a
7 centralized database or ledger system owned by a company.

8 Digital currencies do not have physical form like banknotes
9 or minted coins. Digital currencies are also usually not issued
10 by a governmental body and are generally not considered legal
11 tender.

12 Although digital currency has grown in popularity and
13 acceptance worldwide, there is little regulation of the industry
14 in the United States, with a few states treating digital
15 currency activities as within the scope of money transmitter
16 laws. The division of financial institutions of the department
17 of commerce and consumer affairs and the Hawaii technology



1 development corporation are currently conducting a "sandbox"
 2 program, called the digital currency innovation lab, to study
 3 digital currency transactions. This study allows companies to
 4 conduct digital currency transactions without obtaining a money
 5 transmitter license while the division of financial institutions
 6 evaluates the need for more permanent and comprehensive
 7 oversight.

8 The data gathered through the digital currency innovation
 9 lab program confirmed that digital currency transactions are not
 10 best regulated through existing money transmitter laws and that
 11 a new regulatory framework is appropriate.

12 The purpose of this Act is to establish a licensing program
 13 that will replace the digital currency innovation lab.

14 SECTION 2. The Hawaii Revised Statutes is amended by
 15 adding a new chapter to title 22, to be appropriately designated
 16 and to read as follows:

17 **"CHAPTER**

18 **SPECIAL PURPOSE DIGITAL CURRENCY LICENSING ACT**

19 **PART I. GENERAL PROVISIONS**

20 § -1 **Definitions.** As used in this chapter, unless the
 21 context otherwise requires:



1 "Commissioner" means the commissioner of financial
2 institutions.

3 "Consumer" means a natural person who engages in a
4 transaction that is primarily for that natural person's
5 personal, family, or household purposes.

6 "Control of digital currency", when used in reference to a
7 transaction or relationship involving digital currency, means
8 the power to execute unilaterally or prevent indefinitely a
9 digital currency transaction.

10 "Custodial services" means the safekeeping, servicing, and
11 management of customer digital currency and digital assets.

12 "Department" means the department of commerce and consumer
13 affairs.

14 "Digital currency" means any type of digital unit that is
15 used as a medium of exchange or a form of digitally stored
16 value. Digital currency shall be broadly construed to include
17 digital units of exchange that have a centralized repository or
18 administrator; are decentralized and have no centralized
19 repository or administrator; or may be created or obtained by
20 computing or manufacturing effort. Digital currency shall not
21 be construed to include any of the following:



- 1 (1) Digital units that:
 - 2 (A) Are used solely within online gaming platforms;
 - 3 (B) Have no market or application outside of those
 - 4 gaming platforms; and
 - 5 (C) Cannot be converted into, or redeemed for, fiat
 - 6 currency or digital currency;
- 7 (2) Digital units that can be redeemed for:
 - 8 (A) Goods, services, discounts, or purchases as part
 - 9 of a customer affinity or rewards program with
 - 10 the issuer or other designated merchants; or
 - 11 (B) Digital units in another customer affinity or
 - 12 rewards program,
 - 13 but cannot be converted into or redeemed for fiat
 - 14 currency or digital currency; or
- 15 (3) Digital units used as part of prepaid cards.

16 "Digital currency administration" means issuing digital
17 currency with the authority to redeem the currency for money,
18 bank credit, or other digital currency.

19 "Digital currency business activity" means:

- 20 (1) Exchanging, transferring, or storing digital currency
- 21 or engaging in digital currency administration,



- 1 whether directly or through an agreement with a
2 digital currency control-services vendor;
- 3 (2) Exchanging one or more digital representations of
4 value used within one or more online games, game
5 platforms, or family of games for money or bank credit
6 outside the online game, game platform, or family of
7 games offered by or on behalf of the same publisher
8 from which the original digital representation of
9 value was received;
- 10 (3) Storing, holding, or maintaining custody or control of
11 digital currency on behalf of others;
- 12 (4) Buying and selling digital currency as a business;
- 13 (5) Performing exchange services as a business; or
- 14 (6) Controlling, administering, or issuing a digital
15 currency.

16 "Digital currency control-services vendor" means a person
17 who has control of digital currency solely under an agreement
18 with a person who, on behalf of another person, assumes control
19 of digital currency.

20 "Division" means the division of financial institutions of
21 the department of commerce and consumer affairs.



1 "Elder" means an individual who is sixty-two years of age
2 or older.

3 "Exchange" means the conversion or change of:

- 4 (1) Fiat currency or other value into digital currency;
5 (2) Digital currency into fiat currency or other value; or
6 (3) One form of digital currency into another form of
7 digital currency.

8 "Licensee" means a person who is licensed or required to be
9 licensed under this chapter.

10 "NMLS" means a nationwide multi-state licensing and
11 registry system developed and maintained by the Conference of
12 State Bank Supervisors for the state licensing and registration
13 of state-licensed financial services providers.

14 "Person" means an individual, sole proprietorship,
15 partnership, corporation, limited liability company, limited
16 liability partnership, or other association of individuals,
17 however organized.

18 "Private key" means a unique element of cryptographic data,
19 or any substantially similar analogue, that is:

- 20 (1) Held by a person;



1 (2) Paired with a unique, publicly available element of
2 cryptographic data; and

3 (3) Associated with an algorithm that is necessary to
4 carry out an encryption or decryption required to
5 execute a transaction.

6 "Special purpose digital currency company" means a person
7 who holds a special purpose digital currency license under this
8 chapter.

9 "Stored value" means monetary value that is evidenced by an
10 electronic record.

11 "Tangible net worth" means total assets, excluding
12 intangible assets, less total liabilities, in accordance with
13 United States generally accepted accounting principles.

14 "Transfer" means to assume control of digital currency from
15 or on behalf of a person and to:

16 (1) Credit the digital currency to the account of another
17 person;

18 (2) Move the digital currency from one account of a person
19 to another account of the same person; or

20 (3) Relinquish control of digital currency to another
21 person.



1 "United States dollar equivalent of digital currency" means
2 the equivalent value of a particular digital currency in United
3 States dollars shown on a digital currency exchange based in the
4 United States for a particular date or specified period.

5 § -2 **Exclusions.** This chapter shall not apply to:

6 (1) The exchange, transfer, or storage of digital currency
7 or to digital currency administration to the extent
8 regulated by the Securities Exchange Act of 1934,
9 title 15 United States Code chapter 2B, or the
10 Commodity Exchange Act, title 7 United States Code
11 chapter 1;

12 (2) Activity by a person that:
13 (A) Contributes only connectivity software or
14 computing power to a:
15 (i) Decentralized digital currency; or
16 (ii) Protocol governing transfer of the digital
17 representation of value;
18 (B) Provides only data storage or security services
19 for a business engaged in digital currency
20 business activity and does not otherwise engage



- 1 in digital currency business activity on behalf
2 of another person; or
- 3 (C) Provides only to a person otherwise exempt from
4 this chapter digital currency as one or more
5 enterprise solutions used solely among each other
6 and has no agreement or relationship with a
7 person that is an end-user of digital currency;
- 8 (3) A person using digital currency, including creating,
9 investing, buying or selling, or obtaining digital
10 currency as payment for the purchase or sale of goods
11 or services, solely for academic purposes;
- 12 (4) A person whose digital currency business activity with
13 or on behalf of persons is reasonably expected to be
14 valued, in the aggregate, on an annual basis at \$5,000
15 or less, measured by the United States dollar
16 equivalent of digital currency;
- 17 (5) An attorney to the extent of providing escrow services
18 to a person;
- 19 (6) A securities intermediary, as defined in
20 section 490:8-102, or a commodity intermediary, as
21 defined in section 490:9-102;



- 1 (7) A digital currency control-services vendor;
- 2 (8) A person that:
 - 3 (A) Does not receive compensation from a person for:
 - 4 (i) Providing digital currency products or
 - 5 services; or
 - 6 (ii) Conducting digital currency business
 - 7 activity; or
 - 8 (B) Is engaged in testing products or services with
 - 9 the person's own funds or digital currency;
- 10 (9) Non-custodial digital currency business activity by a
- 11 person using a digital currency:
 - 12 (A) Acknowledged as legal tender by the United States
 - 13 or a government recognized by the United States;
 - 14 or
 - 15 (B) That has been determined to not be a security by
 - 16 a United States regulatory agency; or
- 17 (10) Banks, bank holding companies, credit unions, savings
- 18 banks, financial services loan companies, and mutual
- 19 banks organized under the laws of the United States or
- 20 any state.



1 The commissioner may determine that a person or class of
2 persons should be exempt from this chapter.

3 § -3 **Powers of commissioner.** In addition to any other
4 powers provided by law, the commissioner may:

- 5 (1) Adopt rules pursuant to chapter 91 as the commissioner
6 deems necessary for the administration of this
7 chapter;
- 8 (2) Issue declaratory rulings or informal nonbinding
9 interpretations;
- 10 (3) Investigate and conduct hearings regarding any
11 violation of this chapter or any rule or order of, or
12 agreement with, the commissioner;
- 13 (4) Create fact-finding committees that may make
14 recommendations to the commissioner for the
15 commissioner's deliberations;
- 16 (5) Require an applicant or any of its control persons,
17 executive officers, directors, general partners, and
18 managing members to disclose their relevant criminal
19 history and request a criminal history record check to
20 be conducted by or through NMLS or pursuant to
21 chapter 846. The information shall be accompanied by



- 1 the appropriate payment of the applicable fee for each
2 criminal history record check;
- 3 (6) Contract with or employ qualified persons, including
4 accountants, attorneys, investigators, examiners,
5 auditors, or other professionals who may be exempt
6 from chapter 76 and who shall assist the commissioner
7 in exercising the commissioner's powers and duties;
- 8 (7) Process and investigate complaints, subpoena witnesses
9 and documents, administer oaths, receive affidavits
10 and oral testimony, including telephonic
11 communications, and do anything necessary or
12 incidental to the exercise of the commissioner's power
13 and duties, including the authority to conduct
14 contested case proceedings under chapter 91;
- 15 (8) Require a licensee to comply with:
- 16 (A) Any rule, guidance, guideline, statement,
17 supervisory policy, or any similar proclamation
18 issued or adopted by the Federal Deposit
19 Insurance Corporation; or
- 20 (B) Any policy position of the Conference of State
21 Bank Supervisors,



- 1 to the same extent and in the same manner as a bank
2 chartered by the State;
- 3 (9) Enter into agreements or relationships with other
4 government officials or regulatory associations to
5 improve efficiencies and reduce regulatory burden by
6 sharing resources, standardized or uniform methods or
7 procedures, and documents, records, information, or
8 evidence obtained under this chapter;
- 9 (10) Use, hire, contract, or employ public or privately
10 available analytical systems, methods, or software to
11 investigate or examine a licensee or person subject to
12 this chapter;
- 13 (11) Accept and rely on investigation or examination
14 reports made by other government officials, within or
15 outside of this State;
- 16 (12) Accept audit reports made by an independent certified
17 public accountant for the licensee or person subject
18 to this chapter during that part of the examination
19 covering the same general subject matter as the audit
20 and may incorporate the audit report in the report of



1 the examination, report of investigation, or other
2 writing of the commissioner; and

3 (13) Enter into agreements with, hire, retain, or contract
4 with private and governmental entities to develop and
5 create educational programs relating to special
6 purpose digital currency.

7 § -4 **License required.** (a) A person shall not engage
8 in digital currency business activity, or hold itself out as
9 being able to engage in digital currency business activity, with
10 or on behalf of a person unless the person is:

11 (1) Licensed in this State under this chapter; or

12 (2) Excluded from licensing under section -2.

13 (b) Any transaction made in violation of this section is
14 void, and no person shall have the right to collect, receive, or
15 retain any principal, interest, fees, or other charges in
16 connection with the transaction.

17 § -5 **Payment of fees.** All fees, fines, penalties, and
18 other charges collected pursuant to this chapter or by rule
19 shall be deposited with the director of commerce and consumer
20 affairs to the credit of the compliance resolution fund



1 established pursuant to section 26-9(o). Payments shall be made
2 through NMLS, to the extent allowed by NMLS.

3 **PART II. LICENSING**

4 **§ -6 License; application; issuance.** (a) The
5 commissioner shall require all licensees to register with NMLS.

6 (b) Applicants for a license shall apply in a form as
7 prescribed by NMLS or by the commissioner. The application
8 shall contain, at a minimum, the following information:

9 (1) The legal name, trade names, and business address of:

10 (A) The applicant; and

11 (B) Every member, officer, principal, or director
12 thereof, if the applicant is a partnership,
13 association, limited liability company, limited
14 liability partnership, or corporation;

15 (2) The principal place of business located in the United
16 States;

17 (3) The complete address of any other branch offices at
18 which the applicant currently proposes to engage in
19 digital currency business activity in the State; and

20 (4) Other data, financial statements, and pertinent
21 information as the commissioner may require with



1 respect to the applicant or, if an applicant is not an
2 individual, each of the applicant's control persons,
3 executive officers, directors, general partners, and
4 managing members.

5 (c) To fulfill the purposes of this chapter, the
6 commissioner may enter into agreements or contracts with NMLS or
7 other entities to use NMLS to collect and maintain records and
8 process transaction fees or other fees related to licensees or
9 other persons subject to this chapter.

10 (d) For the purpose and to the extent necessary to
11 participate in NMLS, the commissioner may waive or modify, in
12 whole or in part, by rule or order, any or all of the
13 requirements of this chapter and establish new requirements as
14 reasonably necessary to participate in NMLS.

15 (e) In connection with an application for a license under
16 this chapter, the applicant, at a minimum, shall furnish to NMLS
17 information or material concerning the applicant's identity,
18 including:

19 (1) Fingerprints of the applicant or, if an applicant is
20 not an individual, fingerprints of each of the
21 applicant's control persons, executive officers,



1 directors, general partners, and managing members for
2 submission to the Federal Bureau of Investigation and
3 any governmental agency or entity authorized to
4 receive the fingerprints for a state, national, and
5 international criminal history background check,
6 accompanied by the applicable fee charged by the
7 entities conducting the criminal history background
8 check; and
9 (2) Personal history and experience of the applicant or,
10 if an applicant is not an individual, the personal
11 history and experience of each of the applicant's
12 control persons, executive officers, directors,
13 general partners, and managing members in a form
14 prescribed by NMLS, including the submission of
15 authorization for NMLS and the commissioner to obtain:
16 (A) An independent credit report obtained from a
17 consumer reporting agency described in
18 section 603(p) of the Fair Credit Reporting Act,
19 title 15 United States Code section 1681a(p); and



1 (B) Information related to any administrative, civil,
2 or criminal findings by any governmental
3 jurisdiction;

4 provided that the commissioner may use any information obtained
5 pursuant to this subsection or through NMLS to determine an
6 applicant's demonstrated financial responsibility, character,
7 and general fitness for licensure.

8 (f) The commissioner may use NMLS as an agent for
9 requesting information from and distributing information to the
10 United States Department of Justice or any governmental agency.

11 (g) The commissioner may use NMLS as an agent for
12 requesting and distributing information to and from any source
13 directed by the commissioner.

14 (h) An applicant for a license as a special purpose
15 digital currency company shall be registered with the business
16 registration division of the department to do business in this
17 State before a license pursuant to this chapter shall be issued.

18 **§ -7 Issuance of license; grounds for denial.** (a) The
19 commissioner shall investigate every applicant to determine the
20 financial responsibility, character, and general fitness of the
21 applicant. The commissioner shall issue the applicant a license



1 to engage in digital currency business activity if the
2 commissioner determines that:

3 (1) The applicant or, in the case of an applicant that is
4 not an individual, each of the applicant's control
5 persons, executive officers, directors, general
6 partners, and managing members has never had a digital
7 currency license revoked in any jurisdiction; provided
8 that a subsequent formal vacation of a revocation
9 shall not be deemed a revocation;

10 (2) The applicant or, in the case of an applicant that is
11 not an individual, each of the applicant's control
12 persons, executive officers, directors, general
13 partners, and managing members has not been convicted
14 of, pled guilty or nolo contendere to, or been granted
15 a deferred acceptance of a guilty plea under federal
16 law or the laws of any state to a felony in a
17 domestic, foreign, or military court:

18 (A) During the seven-year period preceding the date
19 of the application for licensing; or



1 (B) At any time preceding the date of application, if
2 the felony involved an act of fraud, dishonesty,
3 breach of trust, or money laundering;
4 provided that any pardon of a conviction shall not be
5 deemed a conviction for the purposes of this section;
6 (3) The applicant or, in the case of an applicant that is
7 not an individual, each of the applicant's control
8 persons, executive officers, directors, general
9 partners, and managing members has demonstrated
10 financial responsibility, character, and general
11 fitness to command the confidence of the community and
12 to warrant a determination that the applicant shall
13 operate honestly, fairly, and efficiently, pursuant to
14 this chapter. For the purposes of this paragraph, a
15 person is not financially responsible when the person
16 has shown a disregard in the management of the
17 person's financial condition. A determination that a
18 person has shown a disregard in the management of the
19 person's financial condition may be based upon:
20 (A) Current outstanding judgments, except judgments
21 solely as a result of medical expenses;



- 1 (B) Current outstanding tax liens or other government
2 liens and filings, subject to applicable
3 disclosure laws and administrative rules;
- 4 (C) Foreclosures within the prior three years; and
- 5 (D) A pattern of seriously delinquent accounts within
6 the prior three years;
- 7 (4) The applicant or, in the case of an applicant that is
8 not an individual, each of the applicant's control
9 persons, executive officers, directors, general
10 partners, and managing members has not been convicted
11 of, pled guilty or nolo contendere to, or been granted
12 a deferred acceptance of a guilty plea under federal
13 law or the laws of any state to any misdemeanor
14 involving an act of fraud, dishonesty, breach of
15 trust, or money laundering;
- 16 (5) The applicant has satisfied the licensing requirements
17 of this chapter; and
- 18 (6) The applicant has provided the bond required by
19 section -10.
- 20 (b) The applicant or, in the case of an applicant that is
21 not an individual, each of the applicant's control persons,



1 executive officers, directors, general partners, and managing
2 members shall submit authorization to the commissioner for the
3 commissioner to conduct background checks to determine or verify
4 the information in subsection (a) in each state where the person
5 has conducted digital currency business activity. Authorization
6 pursuant to this subsection shall include consent to provide
7 additional fingerprints, if necessary, to law enforcement or
8 regulatory bodies in other states.

9 (c) A license shall not be issued to an applicant:

10 (1) Whose license to conduct business under this chapter,
11 or any similar statute in any other jurisdiction, has
12 been suspended or revoked within five years of the
13 filing of the present application;

14 (2) Whose license to conduct digital currency business
15 activity has been revoked by an administrative order
16 issued by the commissioner or the commissioner's
17 designee, or the licensing authority of another state
18 or jurisdiction, for the period specified in the
19 administrative order;



1 (3) Who has advertised directly and purposefully to
2 consumers in the State or conducted transactions in
3 violation of this chapter; or

4 (4) Who has failed to complete an application for
5 licensure.

6 (d) A license issued in accordance with this chapter shall
7 remain in force and effect until surrendered, suspended, or
8 revoked, or until the license expires as a result of nonpayment
9 of the annual license renewal fee required by this chapter.

10 § -8 **Anti-money laundering program.** (a) Each licensee
11 shall conduct an initial risk assessment that shall consider
12 legal, compliance, financial, and reputational risks associated
13 with the licensee's activities, services, customers,
14 counterparties, and geographic location and shall establish,
15 maintain, and enforce an anti-money laundering program based
16 thereon. The licensee shall conduct additional assessments on
17 an annual basis, or more frequently as risks change, and shall
18 modify its anti-money laundering program as appropriate to
19 reflect the changes.

20 (b) Each licensee, at a minimum, shall:



- 1 (1) Establish an effective anti-money laundering
- 2 compliance program in accordance with the federal
- 3 Anti-Money Laundering Act of 2020;
- 4 (2) Establish an effective customer due diligence system
- 5 and monitoring program;
- 6 (3) Screen against the Specially Designated Nationals and
- 7 Blocked Persons List maintained by the Office of
- 8 Foreign Assets Control and other government lists;
- 9 (4) Maintain records of cash purchases or cash
- 10 transactions and report to the appropriate federal
- 11 regulatory agency, as required by the federal
- 12 Anti-Money Laundering Act of 2020;
- 13 (5) Establish an effective suspicious activity monitoring
- 14 and reporting process; and
- 15 (6) Develop a risk-based anti-money laundering program
- 16 (c) Each licensee shall have in place appropriate policies
- 17 and procedures to block or reject specific or impermissible
- 18 transactions that violate federal or state laws, rules, or
- 19 regulations.

20 § -9 **Cybersecurity program.** (a) Each licensee shall

21 establish and maintain an effective cybersecurity program to



1 ensure the availability and functionality of the licensee's
2 electronic systems and to protect those systems and any
3 sensitive data stored on those systems from unauthorized access,
4 use, or tampering. The cybersecurity program shall be designed
5 to perform the following five core cyber security functions:

6 (1) Identify internal and external cybersecurity risks by,
7 at a minimum, identifying the information stored on
8 the licensee's systems, the sensitivity of the
9 information, and how and by whom the information may
10 be accessed;

11 (2) Protect the licensee's electronic systems, and the
12 information stored on those systems, from unauthorized
13 access, use, or other malicious acts through the use
14 of defensive infrastructure and the implementation of
15 policies and procedures;

16 (3) Detect systems intrusions, data breaches, unauthorized
17 access to systems or information, malware, and other
18 cybersecurity events;

19 (4) Respond to detected cybersecurity events to mitigate
20 any negative effects; and



1 (5) Recover from cybersecurity events and restore normal
2 operations and services.

3 (b) Each licensee shall implement a written cybersecurity
4 policy setting forth the licensee's policies and procedures for
5 the protection of its electronic systems and customer and
6 counterparty data stored on those systems, which shall be
7 reviewed and approved by the licensee's board of directors or
8 equivalent governing body at least annually. The cybersecurity
9 policy shall:

- 10 (1) Establish effective policies, procedures, and controls
11 to effectuate subsection (a);
- 12 (2) Designate a cybersecurity officer;
- 13 (3) Develop and implement employee training in accordance
14 with position responsibilities to keep abreast of the
15 changing cybersecurity risk and threats;
- 16 (4) Establish a method of independent testing; and
- 17 (5) Maintain records.

18 § -10 Fees; bond. (a) A special purpose digital
19 currency company shall pay the following fees to the division
20 through NMLS to obtain and maintain a valid license under this
21 chapter:



- 1 (1) Initial nonrefundable application fee of \$9,000;
- 2 (2) Nonrefundable renewal application fee of \$1,000; and
- 3 (3) Fees collected by NMLS for the processing of the
- 4 application:
- 5 (A) Applicable fee charged by the entities conducting
- 6 the criminal history background check of each of
- 7 the applicant's control persons, executive
- 8 officers, directors, general partners, and
- 9 managing members for submission to the Federal
- 10 Bureau of Investigation and any governmental
- 11 agency or entity authorized to receive the
- 12 fingerprints for a state, national, and
- 13 international criminal history background check;
- 14 and
- 15 (B) Applicable fee charged by the entities conducting
- 16 an independent credit report obtained from a
- 17 consumer reporting agency described in
- 18 section 603(p) of the Fair Credit Reporting Act,
- 19 title 15 United States Code section 1681a(p).
- 20 (b) The applicant shall file and maintain a surety bond
- 21 that is approved by the commissioner and executed by the



1 applicant as obligor and by a surety company authorized to
2 operate as a surety in this State, whose liability as a surety
3 does not exceed, in the aggregate, the penal sum of the bond.
4 The penal sum of the bond shall be a minimum of \$500,000, based
5 upon the annual United States dollar equivalent of digital
6 currency as reported in the annual renewal report.

7 (c) The bond required by subsection (b) shall run to the
8 State of Hawaii as obligee for the use and benefit of the State
9 and of any person or persons who may have a cause of action
10 against the licensee as obligor under this chapter. The bond
11 shall be conditioned upon the following:

12 (1) The licensee as obligor shall faithfully conform to
13 and abide by this chapter and all the rules adopted
14 under this chapter; and

15 (2) The bond shall pay to the State and any person or
16 persons having a cause of action against the licensee
17 as obligor all moneys that may become due and owing to
18 the State and those persons under and by virtue of
19 this chapter.

20 § -11 **Renewal of license; annual report; quarterly**

21 **reports.** (a) Every licensee shall be assessed quarterly fees



1 based on the total value of transactions in the State, in United
2 States dollar equivalent of digital currency, as reported in the
3 quarterly reports. The quarterly fees shall be assessed the
4 quarter after the applicant is licensed in accordance with the
5 following:

6 (1) For licensees with a total value of transactions, in
7 United States dollar equivalent of digital currency,
8 not over \$10,000, the quarterly assessment shall be
9 \$2,500;

10 (2) For licensees with a total value of transactions, in
11 United States dollar equivalent of digital currency,
12 over \$10,000 but not over \$15,000, the quarterly
13 assessment shall be \$3,750;

14 (3) For licensees with a total value of transactions, in
15 United States dollar equivalent of digital currency,
16 over \$15,000 but not over \$25,000, the quarterly
17 assessment shall \$6,250;

18 (4) For licensees with a total value of transactions, in
19 United States dollar equivalent of digital currency,
20 over \$25,000 but not over \$35,000, the quarterly
21 assessment shall be \$8,750; and



1 (5) For licensees with a total value of transactions, in
2 United States dollar equivalent of digital currency,
3 over \$35,000, the quarterly assessment shall be
4 \$12,500.

5 (b) The assessments shall be paid quarterly on
6 February 15, May 15, August 15, and November 15 of each year
7 based on the licensee's quarterly reports as of the previous
8 December 31, March 31, June 30, and September 30, respectively.

9 (c) The digital assets shall be based on the United States
10 dollar value of cryptocurrency assets held on behalf of
11 customers, calculated on United States dollars from the
12 company's quarterly report based on the trading price of the
13 asset on the licensee's platform as of 4:30 p.m. Hawaii Aleutian
14 Standard Time.

15 (d) An annual report shall be filed in accordance with
16 NMLS policy. The annual report shall include the licensee's
17 most recent audited annual financial statement, including
18 balance sheets, a statement of income or loss, a statement of
19 changes in shareholders' equity, and a statement of cash flows
20 or, if a licensee is a wholly owned subsidiary of another
21 corporation, the consolidated audited annual financial statement



1 of the parent corporation in lieu of the licensee's audited
2 annual financial statement.

3 (e) Quarterly reports shall be filed in a form prescribed
4 by the commissioner, that shall include:

5 (1) A report detailing the special purpose digital
6 currency company's activities in this State since the
7 prior reporting period, including:

8 (A) The number of stored value accounts opened;

9 (B) The number of transactions processed;

10 (C) The total value of transactions in United States
11 dollar equivalent of digital currency;

12 (D) The number of system outages;

13 (E) A chart of accounts, including a description of
14 each account; and

15 (F) Any other information that the commissioner may
16 require related to performance metrics and the
17 efficacy of the special purpose digital currency
18 license program;

19 (2) A report of any material changes to any of the
20 information submitted by the licensee on its original
21 application that have not previously been reported to



1 the commissioner on any other report required to be
2 filed under this chapter;

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

6 (4) Any other information the commissioner may require.

7 (f) A licensee may renew its license by:

8 (1) Continuing to meet the licensing requirements of
9 sections -6, -7, -8, -9, and -10;

10 (2) Filing a completed renewal statement on a form
11 prescribed by NMLS or by the commissioner;

12 (3) Paying a renewal fee; and

13 (4) Meeting all other requirements of this section.

14 (g) At renewal, a licensee that has not filed an
15 application deemed complete by the commissioner, an annual
16 report, quarterly reports, or paid the quarterly assessments,
17 and has not been granted an extension of time to do so by the
18 commissioner, shall have its license suspended on the renewal
19 date. The licensee shall have thirty days after its license is
20 suspended to file the annual report, quarterly reports, or pay
21 the quarterly assessments, plus a late filing fee of \$250 for



1 each day after suspension that the commissioner does not receive
2 the annual report, quarterly reports, and the quarterly fee.
3 The commissioner, for good cause, may reduce or suspend the late
4 filing fee.

5 **§ -12 Authorized places of business; principal office.**

6 (a) Every special purpose digital currency company licensed
7 under this chapter shall have and maintain a principal place of
8 business in the United States, regardless of whether the special
9 purpose digital currency company maintains its principal office
10 outside of the United States.

11 (b) The principal place of business of the special purpose
12 digital currency company shall be identified in NMLS.

13 **§ -13 Sale or transfer of license; change of control.**

14 (a) No special purpose digital currency company license shall
15 be transferred, except as provided in this section.

16 (b) A person or group of persons requesting approval of a
17 proposed change of control of a licensee shall submit to the
18 commissioner an application requesting approval of a proposed
19 change of control of the licensee, accompanied by a
20 nonrefundable application fee of \$10,000.



1 (c) After review of a request for approval under
2 subsection (b), the commissioner may require the licensee or
3 person or group of persons requesting approval of a proposed
4 change of control of the licensee, or both, to provide
5 additional information concerning the persons who shall assume
6 control of the licensee. The additional information shall be
7 limited to similar information required of the licensee or
8 persons in control of the licensee as part of its original
9 license or renewal application. The information shall include,
10 for the five-year period prior to the date of the application
11 for change of control of the licensee, a history of material
12 litigation and criminal convictions of each person who, upon
13 approval of the application for change of control, will be a
14 principal of the licensee. Authorization shall also be given to
15 conduct criminal history record checks of those persons,
16 accompanied by the appropriate payment of the applicable fee for
17 each record check.

18 (d) The commissioner shall approve a request for change of
19 control under subsection (b) if, after investigation, the
20 commissioner determines that the person or group of persons
21 requesting approval has the competence, experience, character,



1 and general fitness to control the licensee or person in control
2 of the licensee in a lawful and proper manner, and that the
3 interests of the public will not be jeopardized by the change of
4 control.

5 (e) The following persons shall be exempt from the
6 requirements of subsection (b); provided that the licensee shall
7 notify the commissioner when control is assumed by a person:

8 (1) Who acts as a proxy for the sole purpose of voting at
9 a designated meeting of the security holders or
10 holders of voting interests of a licensee or person in
11 control of a licensee;

12 (2) Who acquires control of a licensee by devise or
13 descent;

14 (3) Who acquires control as a personal representative,
15 custodian, guardian, conservator, trustee, or as an
16 officer appointed by a court of competent jurisdiction
17 or by operation of law; or

18 (4) Whom the commissioner, by rule or order, exempts in
19 the public interest.

20 (f) Before filing a request for approval for a change of
21 control, a person may request, in writing, a determination from



1 the commissioner as to whether the person would be considered a
2 person in control of a licensee upon consummation of a proposed
3 transaction. If the commissioner determines that the person
4 would not be a person in control of a licensee, the commissioner
5 shall enter an order to that effect and the proposed person and
6 transaction shall not be subject to subsections (b) through (d).

7 (g) Subsection (b) shall not apply to public offerings of
8 securities.

9 **§ -14 Ownership and control of digital currency.** (a) A
10 licensee that has control of digital currency for one or more
11 persons shall maintain control of digital currency in each type
12 of digital currency sufficient to satisfy the aggregate
13 entitlements of the persons to the type of digital currency.

14 (b) If a licensee violates subsection (a), the property
15 interests of the persons in the digital currency shall be pro
16 rata property interests in the type of digital currency to which
17 the persons are entitled, without regard to the time the persons
18 became entitled to the digital currency or the licensee obtained
19 control of the digital currency.

20 (c) The digital currency referred to in this section
21 shall:



- 1 (1) Be held for the persons entitled to the digital
2 currency;
- 3 (2) Not be considered property of the licensee; and
- 4 (3) Not be subject to the claims of creditors of the
5 licensee.
- 6 (d) To the extent a licensee stores, holds, or maintains
7 custody or control of digital currency on behalf of another
8 person, the licensee shall hold digital currency of the same
9 type and amount as that which is owed or obligated to that other
10 person.
- 11 (e) Each licensee shall be prohibited from selling,
12 transferring, assigning, lending, hypothecating, pledging, or
13 otherwise using or encumbering assets, including digital
14 currency, stored, held, or maintained by, or under the custody
15 or control of, the licensee on behalf of another person except
16 for the sale, transfer, or assignment of the assets at the
17 direction of that other person, unless clearly presented and
18 stated to the client that doing so is the intent of the product.

19 **PART III. DISCLOSURES, ADVERTISING, AND RECORDKEEPING**

- 20 § -15 **Required disclosures.** (a) A licensee that
21 engages in digital currency business activity shall provide to a



1 person who uses the licensee's products or service the
2 disclosures required by subsection (b) and any additional
3 disclosure the commissioner determines reasonably necessary for
4 the protection of persons. The commissioner shall determine the
5 time and form required for disclosure. A disclosure required by
6 this section shall be made separately from any other information
7 provided by the licensee and in a clear and conspicuous manner
8 in a record the person may keep. A licensee may propose for the
9 commissioner's approval alternate disclosures as more
10 appropriate for its digital currency business activity.

11 (b) Before establishing a relationship with a person, a
12 licensee, to the extent applicable to the digital currency
13 business activity the licensee will undertake with the person,
14 shall disclose:

15 (1) A schedule of fees and charges the licensee may
16 assess, how fees and charges will be calculated if
17 they are not set in advance and disclosed, and the
18 timing of the fees and charges;

19 (2) That the product or service provided by the licensee
20 is not covered by:



- 1 (A) A form of insurance or is otherwise guaranteed
- 2 against loss by an agency of the United States,
- 3 including the Federal Deposit Insurance
- 4 Corporation and the Securities Investor
- 5 Protection Corporation, for the United States
- 6 dollar equivalent of digital currency purchased
- 7 from the licensee or for control of digital
- 8 currency by the licensee; or
- 9 (B) Private insurance against theft or loss,
- 10 including cyber theft or theft by other means;
- 11 (3) The irrevocability of a transfer or exchange;
- 12 (4) The method for the person to update the person's
- 13 contact information with the licensee;
- 14 (5) That the date or time when the transfer or exchange is
- 15 made, and when the person's account is debited, may
- 16 differ from the date or time when the person initiates
- 17 the instruction to make the transfer or exchange;
- 18 (6) The person's right to receive a receipt or other
- 19 evidence of the transfer or exchange;
- 20 (7) The person's right to at least thirty days' prior
- 21 notice of a change in the licensee's fee schedule,



1 other terms and conditions of operating its digital
2 currency business activity with the person, and the
3 policies applicable to the person's account; and

4 (8) That digital currency is not money.

5 (c) At the end of a digital currency transaction with or
6 on behalf of a person, a licensee shall provide the person a
7 confirmation in a record that contains:

8 (1) The name and contact information of the licensee,
9 including information the person may need to ask a
10 question or file a complaint;

11 (2) The type, value, date, precise time, and amount of the
12 transaction; and

13 (3) The fee charged for the transaction, including any
14 charge for conversion of digital currency to money,
15 bank credit, or other digital currency.

16 § -16 **Records, net worth requirement.** (a) A licensee
17 engaged in digital currency business activity shall maintain at
18 all times, a tangible net worth of not less than \$500,000, or in
19 an amount determined by the commissioner necessary to ensure
20 safe and sound operation.



1 (b) Each licensee shall make, keep, preserve, and make
2 available for inspection by the commissioner the books,
3 accounts, and other records required in subsection (c).

4 (c) A licensee shall maintain, for all digital currency
5 business activity with or on behalf of a person five years after
6 the date of the activity, a record of:

7 (1) Each transaction of the licensee with or on behalf of
8 the person or for the licensee's account in this
9 State, including:

10 (A) The identity of the person;

11 (B) The form of the transaction;

12 (C) The amount, date, and payment instructions given
13 by the person; and

14 (D) The account number, name, and United States
15 Postal Service address of the person and, to the
16 extent feasible, other parties to the
17 transaction;

18 (2) The aggregate number of transactions and aggregate
19 value of transactions by the licensee with or on
20 behalf of the person and for the licensee's account in
21 this State, expressed in United States dollar



- 1 equivalent of digital currency for the previous twelve
2 calendar months;
- 3 (3) Each transaction in which the licensee exchanges one
4 form of digital currency for money or another form of
5 digital currency with or on behalf of the person;
- 6 (4) A general ledger posted at least monthly that lists
7 all assets, liabilities, capital, income, ownership
8 equity, and expenses of the licensee;
- 9 (5) Each business-call report the licensee is required to
10 create or provide to the division of financial
11 institutions or NMLS;
- 12 (6) Bank statements and bank reconciliation records for
13 the licensee and the name, account number, and United
14 States Postal Service address of each bank the
15 licensee uses in the conduct of its digital currency
16 business activity with or on behalf of the person;
- 17 (7) Communications and documentation related to
18 investigations of customer complaints; and
- 19 (8) A report of any digital currency business activity
20 transaction with or on behalf of a person, that the
21 licensee was unable to complete.



1 (d) A licensee shall maintain records required by
2 subsection (c) in a form that enables the commissioner to
3 determine whether the licensee is in compliance with this
4 chapter, any court order, and laws of this State.

5 § -17 **Advertising and marketing.** (a) Each licensee
6 engaged in digital currency business activity shall not
7 advertise its products, services, or activities in the State or
8 to consumers in the State without including the name of the
9 licensee and the legend that the licensee is "Licensed to engage
10 in Digital Currency Business Activity by the State of Hawaii
11 Department of Commerce and Consumer Affairs' Division of
12 Financial Institutions."

13 (b) Each licensee shall maintain, for examination by the
14 commissioner, all advertising and marketing materials for a
15 period of at least seven years from the date of their creation,
16 including but not limited to print media, internet media,
17 websites, radio and television advertising, road show materials,
18 presentations, and brochures. Each licensee shall maintain hard
19 copy, website captures of material changes to internet
20 advertising and marketing, and audio and video scripts of its
21 advertising and marketing materials, as applicable.



1 (c) In all advertising and marketing materials, each
2 licensee shall comply with all disclosure requirements under
3 federal and state laws, rules, and regulations.

4 (d) In all advertising and marketing materials, each
5 licensee and any person or entity acting on its behalf, shall
6 not, directly or by implication, make any false, misleading, or
7 deceptive representations or omissions.

8 § -18 Confidentiality. (a) Except as otherwise
9 provided in title 12 United States Code section 5111, the
10 requirements under any federal or state law regarding the
11 privacy or confidentiality of any information or material
12 provided to NMLS, and any privilege arising under federal or
13 state law, including the rules of any federal or state court,
14 with respect to the information or material, shall continue to
15 apply to the information or material after the information or
16 material has been disclosed to NMLS. The information and
17 material may be shared with all state and federal regulatory
18 officials with oversight authority over transactions subject to
19 this chapter, without the loss of privilege or the loss of
20 confidentiality protections provided by federal or state law.



1 (b) For the purposes of this section, the commissioner may
2 enter into agreements or sharing arrangements with other
3 governmental agencies, the Conference of State Bank Supervisors,
4 or other associations representing governmental agencies as
5 established by rule or order of the commissioner.

6 (c) Information or material that is subject to a privilege
7 or confidentiality under subsection (a) shall not be subject to:

8 (1) Disclosure under chapter 92F; or

9 (2) Subpoena or discovery, or admission into evidence, in
10 any private civil action or administrative process,
11 unless any privilege is determined by NMLS to be
12 applicable to the information or material; provided
13 that the person to whom the information or material
14 pertains waives that privilege, in whole or in part,
15 in the discretion of the person.

16 (d) Notwithstanding chapter 92F, the examination process
17 and related information and documents, including the reports of
18 examination, shall be confidential and shall not be subject to
19 discovery or disclosure in civil or criminal lawsuits.

20 (e) In the event of a conflict between this section and
21 any other section of law relating to the disclosure of



1 privileged or confidential information or material, this section
2 shall control.

3 (f) This section shall not apply to information or
4 material relating to the employment history of, and publicly
5 adjudicated disciplinary and enforcement actions against, any
6 persons that are included in NMLS for access by the public.

7 **PART IV. ENFORCEMENT**

8 **§ -19 Enforcement authority; violations; penalties.** (a)

9 To ensure the effective supervision and enforcement of this
10 chapter, the commissioner may take any disciplinary action as
11 specified in subsection (b) against an applicant or licensee if
12 the commissioner finds that:

13 (1) The applicant or licensee has violated this chapter,
14 or any rule or order lawfully adopted pursuant to this
15 chapter;

16 (2) The applicant has failed to disclose facts or
17 conditions that would clearly have justified the
18 commissioner in denying an application for licensure,
19 had these facts or conditions been known to exist at
20 the time the application was made;



- 1 (3) The applicant or licensee has failed to provide
- 2 information required by the commissioner within a
- 3 reasonable time, as specified by the commissioner;
- 4 (4) The applicant or licensee has failed to provide or
- 5 maintain proof of financial responsibility;
- 6 (5) The applicant or licensee is insolvent;
- 7 (6) The applicant or licensee has made, in any document or
- 8 statement filed with the commissioner, a false
- 9 representation of a material fact or has omitted to
- 10 state a material fact;
- 11 (7) The applicant, licensee, or, if an applicant or
- 12 licensee is not an individual, any of the applicant's
- 13 or licensee's control persons, executive officers,
- 14 directors, general partners, and managing members have
- 15 been convicted of or entered a plea of guilty or nolo
- 16 contendere to a crime involving fraud or deceit, or to
- 17 any similar crime under the jurisdiction of any
- 18 federal court or court of another state;
- 19 (8) The applicant or licensee has failed to make,
- 20 maintain, or produce records that comply with



1 section -20 or any rule adopted by the commissioner
2 pursuant to chapter 91;

3 (9) The applicant or licensee has been the subject of any
4 disciplinary action by any state or federal agency
5 that resulted in revocation of a license;

6 (10) A final judgment has been entered against the
7 applicant or licensee for violations of this chapter,
8 any state or federal law concerning a digital currency
9 license or money transmitters, or any state or federal
10 law prohibiting unfair or deceptive acts or practices;
11 or

12 (11) The applicant or licensee has failed, in a timely
13 manner as specified by the commissioner, to take or
14 provide proof of the corrective action required by the
15 commissioner after an investigation or examination
16 pursuant to section -20.

17 (b) After a finding of one or more of the conditions under
18 subsection (a), the commissioner may take any or all the
19 following actions:

20 (1) Deny an application for licensure, including an
21 application for a branch office license;



- 1 (2) Revoke the license;
- 2 (3) Suspend or condition the license in accordance with
- 3 section -23;
- 4 (4) Issue an order to the licensee to cease and desist
- 5 from engaging in any act specified under
- 6 subsection (a) or in accordance with section -24;
- 7 (5) Order the licensee to make refunds to consumers of
- 8 excess charges under this chapter; or
- 9 (6) Impose penalties of up to \$10,000 for each violation
- 10 in accordance with section -26.
- 11 (c) The commissioner may issue a temporary cease and
- 12 desist order if the commissioner makes a finding that the
- 13 licensee, applicant, or person is engaging, has engaged, or is
- 14 about to engage in an illegal, unauthorized, unsafe, or unsound
- 15 practice in violation of this chapter. Whenever the
- 16 commissioner denies a license application or takes disciplinary
- 17 action pursuant to this subsection, the commissioner shall enter
- 18 an order to that effect and notify the licensee, applicant, or
- 19 person of the denial or disciplinary action. The notification
- 20 required by this subsection shall be given by personal service
- 21 or by certified mail to the last known address of the licensee



1 or applicant as shown on the application, license, or as
2 subsequently furnished in writing to the commissioner.

3 (d) The revocation, suspension, expiration, or surrender
4 of a license shall not affect the licensee's liability for acts
5 previously committed or impair the commissioner's ability to
6 issue a final agency order or take disciplinary action against
7 the licensee.

8 (e) No revocation, suspension, consent order, or surrender
9 of a license shall impair or affect the obligation of any
10 preexisting lawful contract between the licensee and any
11 consumer.

12 (f) The commissioner may reinstate a license, terminate a
13 suspension, or grant a new license to a person whose license has
14 been revoked or suspended if no fact or condition then exists
15 that clearly would justify the commissioner in revoking,
16 suspending, or refusing to grant a license.

17 (g) The commissioner may impose an administrative fine on
18 a licensee or person subject to this chapter if the commissioner
19 finds on the record after notice and opportunity for hearing
20 that the licensee or person subject to this chapter has violated
21 or failed to comply with any requirement of this chapter or any



1 rule prescribed by the commissioner under this chapter or order
2 issued under the authority of this chapter.

3 (h) Each violation or failure to comply with any directive
4 or order of the commissioner shall be a separate and distinct
5 violation.

6 (i) Any violation of this chapter that is directed toward,
7 targets, or injures an elder may be subject to an additional
8 civil penalty not to exceed \$10,000 for each violation, in
9 addition to any other fines or penalties assessed for the
10 violation.

11 § -20 **Investigation and examination authority.** (a) In
12 addition to the authority granted under section -3, the
13 commissioner may conduct investigations and examinations in
14 accordance with this section. The commissioner may access,
15 receive, and use any books, accounts, records, files, documents,
16 information, or evidence that the commissioner deems relevant to
17 the investigation or examination, regardless of the location,
18 possession, control, or custody of the documents, information,
19 or evidence.

20 (b) For the purposes of investigating violations or
21 complaints arising under this chapter, or for the purposes of



1 examination, the commissioner may review, investigate, or
2 examine any licensee or person subject to this chapter as often
3 as necessary to carry out the purposes of this chapter. The
4 commissioner may direct, subpoena, or order the attendance of,
5 and examine under oath, all persons whose testimony may be
6 required about digital currency transactions or the business or
7 subject matter of any investigation or examination and may
8 direct, subpoena, or order the person to produce books,
9 accounts, records, files, and any other documents the
10 commissioner deems relevant to the inquiry.

11 (c) Each licensee or person subject to this chapter shall
12 provide to the commissioner, upon request, the books and records
13 relating to the operations of the licensee or person subject to
14 this chapter. The commissioner shall have access to the books
15 and records and shall be permitted to interview the control
16 persons, executive officers, directors, general partners,
17 managing members, principals, managers, employees, independent
18 contractors, agents, and consumers of the licensee or person
19 subject to this chapter concerning their business.

20 (d) Each licensee or person subject to this chapter shall
21 make or compile reports or prepare other information, as



1 directed by the commissioner, to carry out the purposes of this
2 section, including:

- 3 (1) Accounting compilations;
- 4 (2) Information lists and data concerning digital currency
5 transactions in a format prescribed by the
6 commissioner; or
- 7 (3) Other information that the commissioner deems
8 necessary.

9 (e) In conducting any investigation or examination
10 authorized by this chapter, the commissioner may control access
11 to any documents and records of the licensee or person under
12 investigation or examination. The commissioner may take
13 possession of the documents and records or place a person in
14 exclusive charge of the documents and records. During the
15 period of control, no person shall remove or attempt to remove
16 any of the documents and records except pursuant to a court
17 order or with the consent of the commissioner. Unless the
18 commissioner has reasonable grounds to believe the documents or
19 records of the licensee or person under investigation or
20 examination have been, or are at risk of being, altered or
21 destroyed for the purposes of concealing a violation of this



1 chapter, the licensee or owner of the documents and records
2 shall have access to the documents or records as necessary to
3 conduct its ordinary business affairs.

4 (f) The authority of this section shall remain in effect,
5 whether a licensee or person subject to this chapter acts or
6 claims to act under any licensing or registration law of this
7 State or claims to act without this authority.

8 (g) No licensee or person subject to investigation or
9 examination under this section may knowingly withhold, abstract,
10 remove, mutilate, destroy, or conceal any books, records,
11 computer records, or other information.

12 (h) The commissioner may charge an investigation or
13 examination fee, payable to the commissioner, based upon the
14 cost per hour per examiner for all licensees and persons subject
15 to this chapter investigated or examined by the commissioner or
16 the commissioner's staff. The hourly fee shall be \$60 or an
17 amount as the commissioner shall establish by rule pursuant to
18 chapter 91. In addition to the investigation or examination
19 fee, the commissioner may charge any person who is investigated
20 or examined by the commissioner or the commissioner's staff
21 pursuant to this section additional fees for travel, per diem,



1 mileage, and other reasonable expenses incurred in connection
2 with the investigation or examination, payable to the
3 commissioner.

4 (i) Any person having reason to believe that this chapter
5 or the rules adopted under this chapter have been violated, or
6 that a license issued under this chapter should be suspended or
7 revoked, may file a written complaint with the commissioner,
8 setting forth the details of the alleged violation or grounds
9 for suspension or revocation.

10 § -21 **Prohibited practices.** (a) It shall be a
11 violation of this chapter for a licensee, its control persons,
12 executive officers, directors, general partners, managing
13 members, employees, or independent contractors, or any other
14 person subject to this chapter to:

- 15 (1) Engage in any act that limits or restricts the
16 application of this chapter;
- 17 (2) Use a customer's digital currency account number to
18 prepare, issue, or create a digital currency
19 transaction on behalf of the consumer without the
20 customer's authorization;



- 1 (3) Charge, collect, or receive, directly or indirectly,
2 fees for negotiating digital currency transactions
3 except those explicitly authorized in this chapter;
- 4 (4) Fail to make disclosures as required by this chapter
5 and any other applicable state or federal law,
6 including rules or regulations adopted pursuant to
7 state or federal law;
- 8 (5) Directly or indirectly employ any scheme, device, or
9 artifice to defraud or mislead any consumer or person;
- 10 (6) Directly or indirectly engage in unfair or deceptive
11 acts, practices, or advertising in connection with a
12 digital currency business activity toward any person;
- 13 (7) Directly or indirectly obtain digital assets by fraud
14 or misrepresentation;
- 15 (8) Conduct digital currency business activity with or on
16 behalf of any person physically located in the State
17 through the use of the Internet, facsimile, telephone,
18 kiosk, or other means without first obtaining a
19 license under this chapter;
- 20 (9) Make, in any manner, any false or deceptive statement
21 or representation, including with regard to the rates,



- 1 fees, or other financing terms or conditions for
2 digital currency business activity, or engage in bait
3 and switch advertising;
- 4 (10) Make any false statement or knowingly make any
5 omission of material fact in connection with any
6 reports filed with the division by a licensee or in
7 connection with any investigation conducted by the
8 division;
- 9 (11) Conduct digital currency business activity from any
10 unlicensed location;
- 11 (12) Draft funds from any depository financial institution
12 without written approval of the consumer; provided
13 that nothing in this paragraph shall prohibit the
14 conversion of a negotiable instrument into an
15 electronic form for processing through the Automated
16 Clearing House or similar system;
- 17 (13) Fail to comply with all applicable state and federal
18 laws relating to the activities governed by this
19 chapter; or
- 20 (14) Fail to pay any fee, assessment, or moneys due to the
21 department.



1 (b) In addition to any other penalties provided for under
2 this chapter, any digital currency transaction in violation of
3 subsection (a) shall be void and unenforceable.

4 § -22 Voluntary surrender of license. (a) A licensee
5 may voluntarily cease business and surrender its license by
6 giving written notice through NMLS to the commissioner of its
7 intent to surrender its license. Prior to the surrender date,
8 the licensee shall have either completed all pending digital
9 currency transactions or assigned each pending digital currency
10 transaction to another licensee.

11 (b) Notice pursuant to this section shall be provided at
12 least thirty days before the surrender of the license and shall
13 include:

- 14 (1) The date of surrender;
- 15 (2) The name, address, telephone number, facsimile number,
16 and electronic mail address of a contact individual
17 with knowledge and authority sufficient to communicate
18 with the commissioner regarding all matters relating
19 to the licensee during the period that it was licensed
20 pursuant to this chapter;
- 21 (3) The reason or reasons for surrender;

- 1 (4) The total dollar amount of the licensee's outstanding
2 digital currency transactions in the State and the
3 individual amounts of each outstanding digital
4 currency transactions and the name, address, and
5 contact telephone number of the licensee to whom each
6 outstanding digital currency transaction was assigned;
- 7 (5) A list of the licensee's authorized branch offices in
8 the State, if any, as of the date of surrender;
- 9 (6) Confirmation that the licensee has notified each of
10 its authorized branch offices in the State, if any,
11 that the branch offices shall no longer conduct
12 digital currency business activity on the licensee's
13 behalf; and
- 14 (7) Confirmation that the licensee has notified each of
15 its digital currency accounts, if any, that the
16 digital currency account is being transferred and the
17 name, address, telephone number, and any other contact
18 information of the licensee or entity described in
19 section -13 to whom the digital currency was
20 assigned.



1 (c) Voluntary surrender of a license shall be effective
2 upon the date of surrender specified on the written notice to
3 the commissioner as required by this section; provided that the
4 licensee has met all the requirements of voluntary surrender and
5 has returned the original license issued.

6 § -23 **Suspension or revocation of licenses.** The
7 commissioner may suspend or revoke a license if the commissioner
8 finds that:

9 (1) Any fact or condition exists that, if it had existed
10 at the time when the licensee applied for its license,
11 would have been grounds for denying the licensee's
12 application;

13 (2) The licensee's tangible net worth becomes inadequate
14 and the licensee, after ten days written notice from
15 the commissioner, fails to take steps as the
16 commissioner deems necessary to remedy a deficiency;

17 (3) The licensee knowingly violates any material provision
18 of this chapter or any rule or order duly adopted by
19 the commissioner under authority of this chapter;

20 (4) The licensee is conducting its business in an unsafe
21 or unsound manner;



- 1 (5) The licensee is insolvent;
- 2 (6) The licensee has suspended payment of its obligations,
- 3 has made an assignment for the benefit of its
- 4 creditors, or has admitted, in writing, its inability
- 5 to pay its debts as they become due;
- 6 (7) The licensee has filed for bankruptcy, reorganization,
- 7 arrangement, or other relief under any bankruptcy law;
- 8 (8) The licensee refuses to permit the commissioner to
- 9 make any examination authorized by this chapter; or
- 10 (9) The competence, experience, character, or general
- 11 fitness of the licensee indicates that it is not in
- 12 the public interest to allow the licensee to have a
- 13 license.

14 § -24 **Orders to cease and desist.** (a) If the
15 commissioner determines a violation of this chapter or a rule
16 adopted or an order issued under this chapter by a licensee is:

- 17 (1) Likely to cause immediate and irreparable harm to the
- 18 licensee, the licensee's customers, or the public as a
- 19 result of the violation; or
- 20 (2) Cause insolvency or significant dissipation of assets
- 21 of the licensee,



1 the commissioner may issue an order requiring the licensee to
2 cease and desist from the violation. The order becomes
3 effective upon service of the order upon the licensee.

4 (b) An order to cease and desist remains effective and
5 enforceable pending the completion of an administrative
6 proceeding pursuant to chapter 91.

7 (c) A licensee that is served with an order to cease and
8 desist may petition the circuit court for a judicial order
9 setting aside, limiting, or suspending the enforcement,
10 operation, or effectiveness of the order pending the completion
11 of an administrative proceeding pursuant to sections -29
12 or -30.

13 (d) The commissioner shall commence an administrative
14 proceeding pursuant to chapter 91 within twenty days after
15 issuing an order to cease and desist.

16 (e) The commissioner may apply to the circuit court for an
17 appropriate order to protect the public interest.

18 § -25 **Consent orders.** The commissioner may enter into a
19 consent order at any time with a person to resolve a matter
20 arising under this chapter. A consent order shall be signed by
21 the person to whom the order is issued or by the person's



1 authorized representative and shall indicate agreement with the
2 terms contained in the order. A consent order may provide that
3 it does not constitute an admission by a person that this
4 chapter or a rule adopted or an order issued under this chapter
5 has been violated.

6 **§ -26 Civil penalties.** The commissioner may assess a
7 fine against a person who violates this chapter or a rule
8 adopted or an order issued under this chapter in an amount not
9 to exceed \$10,000 per violation, plus the State's costs and
10 expenses for the investigation and prosecution of the matter,
11 including reasonable attorneys' fees.

12 **§ -27 Criminal penalties.** (a) A person who
13 intentionally makes a false statement, misrepresentation, or
14 false certification in a record filed or required to be
15 maintained under this chapter, who intentionally makes a false
16 entry, or who omits a material entry in a record shall be guilty
17 of a class C felony and subject to a fine in an amount up to
18 \$10,000.

19 (b) An individual or person who knowingly engages in any
20 activity for which a license is required under this chapter,
21 without being licensed under this chapter, shall be guilty of a



1 misdemeanor, and be subject to a fine in an amount not to exceed
2 \$1,000, imprisonment of not more than one year, or both, and
3 each day a violation exists shall be deemed a separate offense.

4 **§ -28 Unlicensed persons.** (a) If the commissioner has
5 reason to believe that a person has violated or is violating
6 section -4, the commissioner may issue an order to show cause
7 why an order to cease and desist should not issue requiring that
8 the person cease and desist from the violation of section -4.

9 (b) If the commissioner has reason to believe that a
10 person has violated or is violating section -4, the
11 commissioner may petition the circuit court for the issuance of
12 a temporary restraining order if the public would be irreparably
13 harmed.

14 (c) An order to cease and desist becomes effective upon
15 service of the order upon the person.

16 (d) An order to cease and desist remains effective and
17 enforceable pending the completion of an administrative
18 proceeding pursuant to section -24.

19 (e) A person who is served with an order to cease and
20 desist for violating section -4 may petition the circuit
21 court for a judicial order setting aside, limiting, or



1 suspending the enforcement, operation, or effectiveness of the
2 order to cease and desist pending the completion of an
3 administrative proceeding pursuant to section -24.

4 (f) The commissioner shall commence an administrative
5 proceeding within twenty days after issuing an order to cease
6 and desist.

7 § -29 **Administrative procedures.** All administrative
8 proceedings under this chapter shall be conducted in accordance
9 with chapter 91.

10 § -30 **Hearings.** Except as otherwise provided in
11 sections -11(g) and -24, the commissioner may not suspend
12 or revoke a license, issue an order to cease and desist, or
13 assess a civil penalty without notice and an opportunity to be
14 heard.

15 § -31 **Division functions.** (a) The division shall
16 exercise all administrative functions of the State in relation
17 to the regulation, supervision, and licensing of special purpose
18 digital currency companies.

19 (b) The division shall interpret and enforce this
20 chapter."



1 SECTION 3. Section 489D-4, Hawaii Revised Statutes, is
2 amended by amending the definition of "monetary value" to read
3 as follows:

4 "Monetary value" means a medium of exchange, whether or
5 not redeemable in money[-], except as defined as digital
6 currency under chapter ."

7 SECTION 4. Section 846-2.7, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) Criminal history record checks may be conducted by:

- 10 (1) The department of health or its designee on operators
11 of adult foster homes for individuals with
12 developmental disabilities or developmental
13 disabilities domiciliary homes and their employees, as
14 provided by section 321-15.2;
- 15 (2) The department of health or its designee on
16 prospective employees, persons seeking to serve as
17 providers, or subcontractors in positions that place
18 them in direct contact with clients when providing
19 non-witnessed direct mental health or health care
20 services as provided by section 321-171.5;



- 1 (3) The department of health or its designee on all
2 applicants for licensure or certification for,
3 operators for, prospective employees, adult
4 volunteers, and all adults, except adults in care, at
5 healthcare facilities as defined in section 321-15.2;
- 6 (4) The department of education on employees, prospective
7 employees, and teacher trainees in any public school
8 in positions that necessitate close proximity to
9 children as provided by section 302A-601.5;
- 10 (5) The counties on employees and prospective employees
11 who may be in positions that place them in close
12 proximity to children in recreation or child care
13 programs and services;
- 14 (6) The county liquor commissions on applicants for liquor
15 licenses as provided by section 281-53.5;
- 16 (7) The county liquor commissions on employees and
17 prospective employees involved in liquor
18 administration, law enforcement, and liquor control
19 investigations;
- 20 (8) The department of human services on operators and
21 employees of child caring institutions, child placing



- 1 organizations, and foster boarding homes as provided
2 by section 346-17;
- 3 (9) The department of human services on prospective
4 adoptive parents as established under
5 section 346-19.7;
- 6 (10) The department of human services or its designee on
7 applicants to operate child care facilities, household
8 members of the applicant, prospective employees of the
9 applicant, and new employees and household members of
10 the provider after registration or licensure as
11 provided by section 346-154, and persons subject to
12 section 346-152.5;
- 13 (11) The department of human services on persons exempt
14 pursuant to section 346-152 to be eligible to provide
15 child care and receive child care subsidies as
16 provided by section 346-152.5;
- 17 (12) The department of health on operators and employees of
18 home and community-based case management agencies and
19 operators and other adults, except for adults in care,
20 residing in community care foster family homes as
21 provided by section 321-15.2;



- 1 (13) The department of human services on staff members of
2 the Hawaii youth correctional facility as provided by
3 section 352-5.5;
- 4 (14) The department of human services on employees,
5 prospective employees, and volunteers of contracted
6 providers and subcontractors in positions that place
7 them in close proximity to youth when providing
8 services on behalf of the office or the Hawaii youth
9 correctional facility as provided by section 352D-4.3;
- 10 (15) The judiciary on employees and applicants at detention
11 and shelter facilities as provided by section 571-34;
- 12 (16) The department of public safety on employees and
13 prospective employees who are directly involved with
14 the treatment and care of persons committed to a
15 correctional facility or who possess police powers
16 including the power of arrest as provided by
17 section 353C-5;
- 18 (17) The board of private detectives and guards on
19 applicants for private detective or private guard
20 licensure as provided by section 463-9;



- 1 (18) Private schools and designated organizations on
2 employees and prospective employees who may be in
3 positions that necessitate close proximity to
4 children; provided that private schools and designated
5 organizations receive only indications of the states
6 from which the national criminal history record
7 information was provided pursuant to section 302C-1;
- 8 (19) The public library system on employees and prospective
9 employees whose positions place them in close
10 proximity to children as provided by
11 section 302A-601.5;
- 12 (20) The State or any of its branches, political
13 subdivisions, or agencies on applicants and employees
14 holding a position that has the same type of contact
15 with children, vulnerable adults, or persons committed
16 to a correctional facility as other public employees
17 who hold positions that are authorized by law to
18 require criminal history record checks as a condition
19 of employment as provided by section 78-2.7;
- 20 (21) The department of health on licensed adult day care
21 center operators, employees, new employees,



- 1 subcontracted service providers and their employees,
2 and adult volunteers as provided by section 321-15.2;
- 3 (22) The department of human services on purchase of
4 service contracted and subcontracted service providers
5 and their employees serving clients of the adult
6 protective and community services branch, as provided
7 by section 346-97;
- 8 (23) The department of human services on foster grandparent
9 program, senior companion program, and respite
10 companion program participants as provided by
11 section 346-97;
- 12 (24) The department of human services on contracted and
13 subcontracted service providers and their current and
14 prospective employees that provide home and
15 community-based services under section 1915(c) of the
16 Social Security Act, title 42 United States Code
17 section 1396n(c), or under any other applicable
18 section or sections of the Social Security Act for the
19 purposes of providing home and community-based
20 services, as provided by section 346-97;



- 1 (25) The department of commerce and consumer affairs on
2 proposed directors and executive officers of a bank,
3 savings bank, savings and loan association, trust
4 company, and depository financial services loan
5 company as provided by section 412:3-201;
- 6 (26) The department of commerce and consumer affairs on
7 proposed directors and executive officers of a
8 nondepository financial services loan company as
9 provided by section 412:3-301;
- 10 (27) The department of commerce and consumer affairs on the
11 original chartering applicants and proposed executive
12 officers of a credit union as provided by
13 section 412:10-103;
- 14 (28) The department of commerce and consumer affairs on:
15 (A) Each principal of every non-corporate applicant
16 for a money transmitter license;
- 17 (B) Each person who upon approval of an application
18 by a corporate applicant for a money transmitter
19 license will be a principal of the licensee; and
- 20 (C) Each person who upon approval of an application
21 requesting approval of a proposed change in



1 control of licensee will be a principal of the
2 licensee,

3 as provided by sections 489D-9 and 489D-15;

4 (29) The department of commerce and consumer affairs on
5 applicants for licensure and persons licensed under
6 title 24;

7 (30) The Hawaii health systems corporation on:

8 (A) Employees;

9 (B) Applicants seeking employment;

10 (C) Current or prospective members of the corporation
11 board or regional system board; or

12 (D) Current or prospective volunteers, providers, or
13 contractors,

14 in any of the corporation's health facilities as
15 provided by section 323F-5.5;

16 (31) The department of commerce and consumer affairs on:

17 (A) An applicant for a mortgage loan originator
18 license, or license renewal; and

19 (B) Each control person, executive officer, director,
20 general partner, and managing member of an



- 1 applicant for a mortgage loan originator company
2 license or license renewal,
3 as provided by chapter 454F;
- 4 (32) The state public charter school commission or public
5 charter schools on employees, teacher trainees,
6 prospective employees, and prospective teacher
7 trainees in any public charter school for any position
8 that places them in close proximity to children, as
9 provided in section 302D-33;
- 10 (33) The counties on prospective employees who work with
11 children, vulnerable adults, or senior citizens in
12 community-based programs;
- 13 (34) The counties on prospective employees for fire
14 department positions that involve contact with
15 children or vulnerable adults;
- 16 (35) The counties on prospective employees for emergency
17 medical services positions that involve contact with
18 children or vulnerable adults;
- 19 (36) The counties on prospective employees for emergency
20 management positions and community volunteers whose
21 responsibilities involve planning and executing



1 homeland security measures including viewing,
2 handling, and engaging in law enforcement or
3 classified meetings and assisting vulnerable citizens
4 during emergencies or crises;

5 (37) The State and counties on employees, prospective
6 employees, volunteers, and contractors whose position
7 responsibilities require unescorted access to secured
8 areas and equipment related to a traffic management
9 center;

10 (38) The State and counties on employees and prospective
11 employees whose positions involve the handling or use
12 of firearms for other than law enforcement purposes;

13 (39) The State and counties on current and prospective
14 systems analysts and others involved in an agency's
15 information technology operation whose position
16 responsibilities provide them with access to
17 proprietary, confidential, or sensitive information;

18 (40) The department of commerce and consumer affairs on:
19 (A) Applicants for real estate appraiser licensure or
20 certification as provided by chapter 466K;



- 1 (B) Each person who owns more than ten per cent of an
2 appraisal management company who is applying for
3 registration as an appraisal management company,
4 as provided by section 466L-7; and
- 5 (C) Each of the controlling persons of an applicant
6 for registration as an appraisal management
7 company, as provided by section 466L-7;
- 8 (41) The department of health or its designee on all
9 license applicants, licensees, employees, contractors,
10 and prospective employees of medical cannabis
11 dispensaries, and individuals permitted to enter and
12 remain in medical cannabis dispensary facilities as
13 provided under sections 329D-15(a)(4) and
14 329D-16(a)(3);
- 15 (42) The department of commerce and consumer affairs on
16 applicants for nurse licensure or license renewal,
17 reactivation, or restoration as provided by
18 sections 457-7, 457-8, 457-8.5, and 457-9;
- 19 (43) The county police departments on applicants for
20 permits to acquire firearms pursuant to section 134-2



1 and on individuals registering their firearms pursuant
2 to section 134-3;

3 (44) The department of commerce and consumer affairs on:

4 (A) Each of the controlling persons of the applicant
5 for licensure as an escrow depository, and each
6 of the officers, directors, and principals who
7 will be in charge of the escrow depository's
8 activities upon licensure; and

9 (B) Each of the controlling persons of an applicant
10 for proposed change in control of an escrow
11 depository licensee, and each of the officers,
12 directors, and principals who will be in charge
13 of the licensee's activities upon approval of the
14 application,

15 as provided by chapter 449;

16 (45) The department of taxation on current or prospective
17 employees or contractors who have access to federal
18 tax information in order to comply with requirements
19 of federal law, regulation, or procedure, as provided
20 by section 231-1.6;



1 (46) The department of labor and industrial relations on
2 current or prospective employees or contractors who
3 have access to federal tax information in order to
4 comply with requirements of federal law, regulation,
5 or procedure, as provided by section 383-110;

6 (47) The department of human services on current or
7 prospective employees or contractors who have access
8 to federal tax information in order to comply with
9 requirements of federal law, regulation, or procedure,
10 as provided by section 346-2.5;

11 (48) The child support enforcement agency on current or
12 prospective employees or contractors who have access
13 to federal tax information in order to comply with
14 federal law, regulation, or procedure, as provided by
15 section 576D-11.5;

16 (49) The department of the attorney general on current or
17 prospective employees or employees or agents of
18 contractors who have access to federal tax information
19 to comply with requirements of federal law,
20 regulation, or procedure, as provided by
21 section 28-17;



1 [+] (50) [+] The department of commerce and consumer affairs
2 on each control person, executive officer, director,
3 general partner, and managing member of an installment
4 loan licensee, or an applicant for an installment loan
5 license, as provided in chapter 480J;

6 [+] (51) [+] The University of Hawaii on current and
7 prospective employees and contractors whose duties
8 include ensuring the security of campus facilities and
9 persons; [and]

10 (52) The department of commerce and consumer affairs on
11 each control person, executive officer, director,
12 general partner, and managing member of a special
13 purpose digital currency company licensee, or an
14 applicant for a special purpose digital currency
15 license, as provided in chapter ; and

16 [+(52)+] (53) Any other organization, entity, or the State,
17 its branches, political subdivisions, or agencies as
18 may be authorized by state law.

19 SECTION 5. (a) Notwithstanding any law to the contrary,
20 the participating companies in the digital currency innovation
21 lab operated by the department of commerce and consumer affairs



1 and the Hawaii technology development corporation shall be
2 allowed to continue operations until their applications are
3 acted upon by the division of financial institutions of the
4 department of commerce and consumer affairs; provided that the
5 complete application is submitted to the division of financial
6 institutions of the department of commerce and consumer affairs
7 by March 1, 2024.

8 (b) A company authorized to participate in the digital
9 currency innovation lab as of June 30, 2023, and whose
10 application for licensure under section 2 of this Act has been
11 submitted to the division of financial institutions of the
12 department of commerce and consumer affairs on or before
13 March 1, 2024, shall be exempt from the requirements in
14 section -4 of section 2 of this Act for a period of six
15 months from the date the application is deemed complete or until
16 the commissioner of financial institutions approves or denies
17 the application, whichever occurs first. The commissioner of
18 financial institutions, for good cause, may reduce or extend the
19 six-month period. Submission of an application for licensure
20 shall be evidenced through the nationwide multi-state licensing
21 and registry system developed and maintained by the Conference



1 of State Bank Supervisors for the state licensing and
2 registration of state-licensed financial services providers to
3 the commissioner of financial institutions.

4 SECTION 6. The department of commerce and consumer affairs
5 may employ necessary personnel without regard to chapter 76,
6 Hawaii Revised Statutes, including three full-time equivalent
7 (3.0 FTE) positions for examiners, to assist with the
8 implementation and continuing function of this Act.

9 SECTION 7. There is appropriated out of the compliance
10 resolution fund established pursuant to section 26-9(o), Hawaii
11 Revised Statutes, the sum of \$500,000 or so much thereof as may
12 be necessary for fiscal year 2023-2024 and the same sum or so
13 much thereof as may be necessary for fiscal year 2024-2025 to
14 implement the licensing program established by this Act.

15 The sums appropriated shall be expended by the department
16 of commerce and consumer affairs for the purposes of this Act.

17 SECTION 8. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 9. This Act shall take effect on July 1, 2023;
20 provided that the special purpose digital currency licensing



1 requirements established by section 2 of this Act shall take
2 effect on January 1, 2024.

3

INTRODUCED BY:



JAN 24 2023



H.B. NO. 1261

Report Title:

Department of Commerce and Consumer Affairs; Division of Financial Institutions; Digital Currency Companies; Licensure; Appropriations.

Description:

Establishes a program for the licensure, regulation, and oversight of digital currency companies. Appropriates moneys.

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