

JAN 20 2023

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 currency is
2 an asset that is 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 various
5 governmental jurisdictions. Digital currency may be recorded on
6 a decentralized ledger on the internet or a centralized database
7 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, and many states treat digital currency
15 activities as within the scope of money transmitter laws. The
16 division of financial institutions of the department of commerce
17 and consumer affairs and the Hawaii technology development



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

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

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

16 "CHAPTER

17 SPECIAL PURPOSE DIGITAL CURRENCY LICENSING ACT

18 PART I. GENERAL PROVISIONS

19 § -1 Definitions. As used in this chapter, unless the
 20 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 "Control person" means an individual who directly or
11 indirectly exercises control over a licensee or applicant.

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

14 "Digital currency" means any type of digital representation
15 of value that is used as a medium of exchange or a form of
16 digitally stored value. Digital currency shall be broadly
17 construed to include digital representations of value of
18 exchange that have a centralized repository or administrator;
19 are decentralized and have no centralized repository or
20 administrator; or may be created or obtained by computing or



1 manufacturing effort. "Digital currency" does not include any
2 of the following:

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

19 "Digital currency administration" means issuing digital
20 currency with the authority to redeem the currency for money,
21 bank credit, or other digital currency.



1 "Digital currency business activity" means:

2 (1) Exchanging, transferring, or storing digital currency
3 or engaging in digital currency administration,
4 whether directly or through an agreement with a
5 digital currency control-services vendor;

6 (2) Holding electronic certificates representing interests
7 in a thing of value on behalf of another person or
8 issuing shares; or

9 (3) Exchanging one or more digital representations of
10 value used within one or more online games, game
11 platforms, or family of games for:

12 (A) Digital currency offered by or on behalf of the
13 same publisher from which the original digital
14 representation of value was received; or

15 (B) Money or bank credit outside the online game,
16 game platform, or family of games offered by or
17 on behalf of the same publisher from which the
18 original digital representation of value was
19 received;

20 (4) Storing, holding, or maintaining custody or control of
21 digital currency on behalf of others;



- 1 (5) Buying and selling digital currency as a business;
- 2 (6) Performing exchange services as a business; or
- 3 (7) Controlling, administering, or issuing a digital
- 4 currency.

5 "Digital currency control-services vendor" means a person
6 who has control of digital currency solely under an agreement
7 with a person who, on behalf of another person, assumes control
8 of digital currency.

9 "Division" means the division of financial institutions of
10 the department of commerce and consumer affairs.

11 "Exchange" means the conversion or change of fiat currency
12 or other value into digital currency, the conversion or change
13 of digital currency into fiat currency or other value, or the
14 conversion or change of one form of digital currency into
15 another form of digital currency.

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

18 "NMLS" means a multi-state licensing system developed and
19 maintained by the Conference of State Bank Supervisors for the
20 state licensing and registration of state-licensed financial
21 services providers.



1 "Person" means an individual, sole proprietorship,
2 partnership, corporation, limited liability company, limited
3 liability partnership, or other association of individuals,
4 however organized.

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

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

10 "Tangible net worth" means total assets excluding tangible
11 assets, less total liabilities, in accordance with United States
12 Generally Accepted Accounting Principles.

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

- 15 (1) Credit the digital currency to the account of another
16 person;
- 17 (2) Move the digital currency from one account of a person
18 to another account of the same person; or
- 19 (3) Relinquish control of digital currency to another
20 person.



1 "U.S. dollar equivalent of digital currency" means the
2 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 Electronic Fund Transfer Act of 1978,
9 15 U.S.C. sections 1693 through 1693r, the Securities
10 Exchange Act of 1934, 15 U.S.C. sections 78a through
11 78oo, or the Commodity Exchange Act, 7 U.S.C.
12 sections 1 through 27f;

13 (2) Activity by a person that:

14 (A) Contributes only connectivity software or
15 computing power to a decentralized digital
16 currency, or to a protocol governing transfer of
17 the digital 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 U.S. dollar equivalent of
16 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 section
20 490:8-102, or a commodity intermediary, as defined in
21 section 490:9-102;



- 1 (7) A digital currency control services vendor; or
- 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; or
- 10 (9) A financial institution chartered or licensed by
- 11 chapter 412.

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

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

- 16 (1) Adopt rules pursuant to chapter 91 as the commissioner
- 17 deems necessary for the administration of this
- 18 chapter;
- 19 (2) Issue declaratory rulings or informal nonbinding
- 20 interpretations;



- 1 (3) Investigate and conduct hearings regarding any
2 violation of this chapter or any rule or order of, or
3 agreement with, the commissioner;
- 4 (4) Create fact-finding committees that may make
5 recommendations to the commissioner for the
6 commissioner's deliberations;
- 7 (5) Require an applicant or any of its control persons,
8 executive officers, directors, general partners, and
9 managing members to disclose their relevant criminal
10 history and request a criminal history record check to
11 be conducted by or through NMLS or pursuant to chapter
12 846. The information shall be accompanied by the
13 appropriate payment of the applicable fee for each
14 criminal history record check;
- 15 (6) Contract with or employ qualified persons, including
16 accountants, attorneys, investigators, examiners,
17 auditors, or other professionals who may be exempt
18 from chapter 76 and who shall assist the commissioner
19 in exercising the commissioner's powers and duties;
- 20 (7) Process and investigate complaints, subpoena witnesses
21 and documents, administer oaths, and receive



1 affidavits and oral testimony, including telephonic
2 communications, and do anything necessary or
3 incidental to the exercise of the commissioner's power
4 and duties, including the authority to conduct
5 contested case proceedings under chapter 91;

6 (8) Enter into agreements or relationships with other
7 government officials or regulatory associations to
8 improve efficiencies and reduce regulatory burden by
9 sharing resources, standardized or uniform methods or
10 procedures, and documents, records, information, or
11 evidence obtained under this chapter;

12 (9) Use, hire, contract, or employ public or privately
13 available analytical systems, methods, or software to
14 investigate or examine a licensee or person subject to
15 this chapter;

16 (10) Accept and rely on investigation or examination
17 reports made by other government officials, within or
18 outside of the State;

19 (11) Accept audit reports made by an independent certified
20 public accountant for the licensee or person subject
21 to this chapter during that part of the examination



1 covering the same general subject matter as the audit
2 and may incorporate the audit report in the report of
3 the examination, report of investigation, or other
4 writing of the commissioner; and

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

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

13 (1) Licensed in the State under this chapter; or

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

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

19 § -5 Payment of fees. All fees, fines, penalties, and
20 other charges collected pursuant to this chapter or by rule
21 shall be deposited with the director to the credit of the



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

4 **PART II. LICENSING**

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

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

- 10 (1) The legal name, trade names, and business address of
11 the applicant and, if the applicant is a partnership,
12 association, limited liability company, limited
13 liability partnership, or corporation, of every
14 member, officer, principal, or director thereof;
- 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; 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, each of the applicant's control
21 persons, executive officers, directors, general



1 partners, and managing members for submission to the
2 Federal Bureau of Investigation or any governmental
3 agency or entity authorized to receive the
4 fingerprints for a state, national, and international
5 criminal history background check, accompanied by the
6 applicable fee charged by the entities conducting the
7 criminal history background check; and

8 (2) Personal history and experience of the applicant or,
9 if an applicant is not an individual, each of the
10 applicant's control persons, executive officers,
11 directors, general partners, and managing members in a
12 form prescribed by NMLS, including the submission of
13 authorization for NMLS and the commissioner to obtain:

14 (A) An independent credit report obtained from a
15 consumer reporting agency described in section
16 603(p) of the Fair Credit Reporting Act, title 15
17 United States Code section 1681a(p); and

18 (B) Information related to any administrative, civil,
19 or criminal findings by any governmental
20 jurisdiction;



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

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

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

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

16 § -7 Issuance of license; grounds for denial. (a) The
17 commissioner shall investigate every applicant to determine the
18 financial responsibility, character, and general fitness of the
19 applicant. The commissioner shall issue the applicant a license
20 to engage in the digital currency business activity if the
21 commissioner determines that:



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

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

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

18 (B) At any time preceding the date of application, if
19 the felony involved an act of fraud, dishonesty,
20 breach of trust, or money laundering; provided
21 that any pardon of a conviction shall not be



1 deemed a conviction for the purposes of this
2 section;

3 (3) 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 demonstrated
7 financial responsibility, character, and general
8 fitness to command the confidence of the community and
9 to warrant a determination that the applicant shall
10 operate honestly, fairly, and efficiently, pursuant to
11 this chapter. For the purposes of this paragraph, a
12 person is not financially responsible when the person
13 has shown a disregard in the management of the
14 person's financial condition. A determination that a
15 person has shown a disregard in the management of the
16 person's financial condition may be based upon:

- 17 (A) Current outstanding judgments, except judgments
18 solely because of medical expenses;
- 19 (B) Current outstanding tax liens or other government
20 liens and filings, subject to applicable
21 disclosure laws and administrative rules;



- 1 (C) Foreclosures within the past three years; or
- 2 (D) A pattern of seriously delinquent accounts within
- 3 the past three years;
- 4 (4) The applicant or, in the case of an applicant that is
- 5 not an individual, each of the applicant's control
- 6 persons, executive officers, directors, general
- 7 partners, and managing members, has not been convicted
- 8 of, pled guilty or nolo contendere to, or been granted
- 9 a deferred acceptance of a guilty plea under federal
- 10 law or the laws of any state to any misdemeanor
- 11 involving an act of fraud, dishonesty, breach of
- 12 trust, or money laundering;
- 13 (5) The applicant has satisfied the licensing requirements
- 14 of this chapter; and
- 15 (6) The applicant has the bond required by section -10.
- 16 (b) The applicant or, in the case of an applicant that is
- 17 not an individual, each of the applicant's control persons,
- 18 executive officers, directors, general partners, and managing
- 19 members, shall submit authorization to the commissioner for the
- 20 commissioner to conduct background checks to determine or verify
- 21 the information in subsection (a) in each state where the person



1 has conducted the digital currency business activity.
2 Authorization pursuant to this subsection shall include consent
3 to provide additional fingerprints, if necessary, to law
4 enforcement or regulatory bodies in other states.

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

- 6 (1) Whose license to conduct business under this chapter,
7 or any similar statute in any other jurisdiction, has
8 been suspended or revoked within five years of the
9 filing of the present application;
- 10 (2) Whose license to conduct digital currency business
11 activity has been revoked by an administrative order
12 issued by the commissioner or the commissioner's
13 designee, or the licensing authority of another state
14 or jurisdiction, for the period specified in the
15 administrative order;
- 16 (3) Who has advertised directly and purposefully to Hawaii
17 consumers or conducted transactions in violation of
18 this chapter; or
- 19 (4) Who has failed to complete an application for
20 licensure.



1 (d) A license issued in accordance with this chapter shall
2 remain in force and effect until surrendered, suspended, or
3 revoked, or until the license expires because of nonpayment of
4 the annual license renewal fee as required by this chapter.

5 § -8 Anti-money laundering program. (a) Each licensee
6 shall conduct an initial risk assessment that will consider
7 legal, compliance, financial, and reputational risks associated
8 with the licensee's activities, services, customers,
9 counterparties, and geographic location and shall establish,
10 maintain, and enforce an anti-money laundering program based
11 thereon. The licensee shall conduct additional assessments on
12 an annual basis, or more frequently as risks change, and shall
13 modify its anti-money laundering program as appropriate to
14 reflect any such changes.

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

16 (1) Establish an effective anti-money laundering
17 compliance program in accordance with the federal
18 Anti-Money Laundering Act of 2020;

19 (2) Establish an effective customer due diligence system
20 and monitoring program;



- 1 (3) Screen against the Office of Foreign Assets Control
2 and other government lists;
- 3 (4) Maintain records of cash purchases or cash
4 transactions and report to the appropriate federal
5 regulatory agency, as required by the federal
6 Anti-Money Laundering Act of 2020;
- 7 (5) Establish an effective suspicious activity monitoring
8 and reporting process; and
- 9 (6) Develop a risk-based anti-money laundering program.
- 10 (c) Each licensee shall have in place appropriate policies
11 and procedures to block or reject specific or impermissible
12 transactions that violate federal or state laws, rules, or
13 regulations.
- 14 § -9 **Cyber security program.** (a) Each licensee shall
15 establish and maintain an effective cyber security program to
16 ensure the availability and functionality of the licensee's
17 electronic systems and to protect those systems and any
18 sensitive data stored on those systems from unauthorized access,
19 use, or tampering. The cyber security program shall be designed
20 to perform the following five core cyber security functions:



- 1 (1) Identify internal and external cyber risks by, at a
2 minimum, identifying the information stored on the
3 licensee's systems, the sensitivity of such
4 information, and how and by whom such information may
5 be accessed;
- 6 (2) Protect the licensee's electronic systems, and the
7 information stored on those systems, from unauthorized
8 access, use, or other malicious acts through the use
9 of defensive infrastructure and the implementation of
10 policies and procedures;
- 11 (3) Detect systems intrusions, data breaches, unauthorized
12 access to systems or information, malware, and other
13 cyber security events;
- 14 (4) Respond to detected cyber security events to mitigate
15 any negative effects; and
- 16 (5) Recover from cyber security events and restore normal
17 operations and services.
- 18 (b) Each licensee shall implement a written cyber security
19 policy setting forth the licensee's policies and procedures for
20 the protection of its electronic systems and customer and
21 counterparty data stored on those systems, which shall be



1 reviewed and approved by the licensee's board of directors or
2 equivalent governing body at least annually. The cyber security
3 policy shall:

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

12 § -10 Fees; bond. (a) A special purpose digital
13 currency company shall pay the following fees to the division
14 through NMLS to obtain and maintain a valid license under this
15 chapter:

- 16 (1) Initial nonrefundable application fee of \$9,000;
- 17 (2) Nonrefundable renewal application fee of \$1,000; and
- 18 (3) Fees collected by NMLS for the processing of the
19 application, including:
 - 20 (A) Applicable fees charged by the entities
21 conducting the criminal history background check



1 of each of the applicant's control persons,
2 executive officers, directors, general partners,
3 and managing members for submission to the
4 Federal Bureau of Investigation or any
5 governmental agency or entity authorized to
6 receive the fingerprints for a state, national,
7 and international criminal history background
8 check; and

9 (B) Applicable fees charged by the entities
10 conducting an independent credit report obtained
11 from a consumer reporting agency described in
12 section 603(p) of the Fair Credit Reporting Act,
13 title 15 United States Code section 1681a(p).

14 (b) The applicant shall file and maintain a surety bond,
15 approved by the commissioner, executed by the applicant as
16 obligor and by a surety company authorized to operate as a
17 surety in the State, whose liability as a surety does not
18 exceed, in the aggregate, the penal sum of the bond. The penal
19 sum of the bond shall be a minimum of \$500,000 and not more than
20 \$1,000,000, based upon the annual U.S. dollar equivalent of
21 digital currency as reported in the annual renewal report.



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

6 (1) The licensee as obligor shall faithfully conform to
 7 and abide by this chapter and all the rules adopted
 8 under this chapter; and

9 (2) The bond shall pay to the State and any person or
 10 persons having a cause of action against the licensee
 11 as obligor all moneys that may become due and owing to
 12 the State and those persons under and by virtue of
 13 this chapter.

14 § -11 **Renewal of license; annual report.** (a) Every
 15 licensee shall be assessed an annual fee, paid quarterly based
 16 on the Hawaii total value of transactions in U.S. dollar
 17 equivalent of digital currency activity as reported in the
 18 quarterly reports. The quarterly fees shall be assessed the
 19 quarter after the applicant is licensed in accordance with the
 20 following:



- 1 (1) For licensees with a total value of transactions in
2 U.S. dollar equivalent of digital currency under
3 \$10,000.00, the quarterly assessment shall be \$2,500;
- 4 (2) For licensees with a total value of transactions in
5 U.S. dollar equivalent of digital currency between
6 \$10,000.01 and \$15,000.00, the quarterly assessment
7 shall be \$3,750;
- 8 (3) For licensees with a total value of transactions in
9 U.S. dollar equivalent of digital currency between
10 \$15,000.01 and \$25,000.00, the quarterly assessment
11 shall be \$6,250;
- 12 (4) For licensees with a total value of transactions in
13 U.S. dollar equivalent of digital currency between
14 \$25,000.01 and \$35,000.00, the quarterly assessment
15 shall be \$8,750; and
- 16 (5) For licensees with a total value of transactions in
17 U.S. dollar equivalent of digital currency over
18 \$35,000.01, the quarterly assessment shall be \$12,500.
- 19 (b) The assessments shall be paid quarterly on
20 February 15, May 15, August 15, and November 15 of each year



1 based on the licensee's quarterly reports as of the previous
2 December 31, March 31, June 30, and September 30, respectively.

3 (c) The digital assets shall be based on the U.S. dollar
4 value of cryptocurrency assets held on behalf of customers,
5 calculated on U.S. dollars from the company's quarterly report
6 based on the trading price of the asset on the licensee's
7 platform as of 4:30 p.m. Hawaii standard time.

8 (d) The annual audited financial statement report shall be
9 filed in accordance with NMLS policy. The annual audited
10 financial report shall include balance sheets, a statement of
11 income or loss, a statement of changes in shareholders' equity,
12 and a statement of cash flows or, if a licensee is a wholly
13 owned subsidiary of another corporation, the consolidated
14 audited annual financial statement of the parent corporation in
15 lieu of the licensee's audited annual financial statement.

16 (e) The quarterly reports shall be filed in a form
17 prescribed by the commissioner, that shall include:

18 (1) A report detailing the special purpose digital
19 currency company's activities in the State since the
20 prior reporting period, including:

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



- 1 (B) The number of transactions processed;
- 2 (C) The total value of transactions in U.S. dollar
3 equivalent of digital currency;
- 4 (D) A chart of accounts, including a description of
5 each account; and
- 6 (E) Any other information that the commissioner may
7 require related to performance metrics;
- 8 (2) Any material changes to any of the information
9 submitted by the licensee on its original application
10 that have not previously been reported to the
11 commissioner on any other report required to be filed
12 under this chapter;
- 13 (3) Disclosure of any pending or final suspension,
14 revocation, or other enforcement action by any state
15 or governmental authority; and
- 16 (4) Any other information the commissioner may require.
- 17 (f) A license may be renewed by continuing to meet the
18 licensing requirements of sections -6, -7, and -8,
19 filing a completed renewal statement on a form prescribed by
20 NMLS or by the commissioner, paying a renewal fee, and meeting
21 the requirements of this section.



1 (g) A licensee that has not filed an annual financial
2 statement or quarterly reports, deemed complete by the
3 commissioner, or paid the quarterly assessments, and the
4 licensee has not been granted an extension of time to do so by
5 the commissioner, shall have its license suspended on the
6 renewal date. The licensee shall have thirty days after its
7 license is suspended to file the annual financial statement or
8 quarterly reports or pay the quarterly assessments, plus a late
9 filing fee of \$250 for each day after suspension that the
10 commissioner does not receive the annual financial report,
11 quarterly reports, and the quarterly fee. The commissioner, for
12 good cause, may reduce or suspend the \$250 per day late filing
13 fee.

14 § -12 Authorized places of business; principal office;
15 branch offices; relocation; closure. (a) Every special purpose
16 digital currency company licensed under this chapter shall have
17 and maintain a principal place of business in the United States,
18 regardless of whether the special purpose digital currency
19 company maintains its principal office outside of the United
20 States.



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

3 **§ -13 Sale or transfer of license; change of control.**

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

6 (b) A person or group of persons requesting approval of a
7 proposed change of control of a licensee shall submit to the
8 commissioner an application requesting approval of a proposed
9 change of control of the licensee, accompanied by a
10 nonrefundable application fee of \$10,000.

11 (c) After review of a request for approval under
12 subsection (b), the commissioner may require the licensee or
13 person or group of persons requesting approval of a proposed
14 change of control of the licensee, or both, to provide
15 additional information concerning the persons who shall assume
16 control of the licensee. The additional information shall be
17 limited to similar information required of the licensee or
18 persons in control of the licensee as part of its original
19 license or renewal application. The information shall include,
20 for the five-year period prior to the date of the application
21 for change of control of the licensee, a history of material



1 litigation and criminal convictions of each person who, upon
2 approval of the application for change of control, will be a
3 principal of the licensee. Authorization shall also be given to
4 conduct criminal history record checks of those persons,
5 accompanied by the appropriate payment of the applicable fee for
6 each record check.

7 (d) The commissioner shall approve a request for change of
8 control under subsection (b) if, after investigation, the
9 commissioner determines that the person or group of persons
10 requesting approval has the competence, experience, character,
11 and general fitness to control the licensee or person in control
12 of the licensee in a lawful and proper manner, and that the
13 interests of the public will not be jeopardized by the change of
14 control.

15 (e) The following persons shall be exempt from the
16 requirements of subsection (b), but the licensee regardless
17 shall notify the commissioner when a change of control results
18 in the following:

19 (1) A person who acts as a proxy for the sole purpose of
20 voting at a designated meeting of the security holders



1 or holders of voting interests of a licensee or person
2 in control of a licensee;

3 (2) A person who acquires control of a licensee by devise
4 or descent;

5 (3) A person who acquires control as a personal
6 representative, custodian, guardian, conservator,
7 trustee, or as an officer appointed by a court of
8 competent jurisdiction or by operation of law; or

9 (4) A person whom the commissioner, by rule or order,
10 exempts in the public interest.

11 (f) Before filing a request for approval for a change of
12 control, a person may request, in writing, a determination from
13 the commissioner as to whether the person would be considered a
14 person in control of a licensee upon consummation of a proposed
15 transaction. If the commissioner determines that the person
16 would not be a person in control of a licensee, the commissioner
17 shall enter an order to that effect and the proposed person and
18 transaction shall not be subject to subsections (b) through (d).

19 (g) Subsection (b) shall not apply to public offerings of
20 securities.



1 § -14 Ownership and control of digital currency. (a) A
2 licensee that has control of digital currency for one or more
3 persons shall maintain control of digital currency in each type
4 of digital currency sufficient to satisfy the aggregate
5 entitlements of the persons to the type of digital currency.

6 (b) If a licensee violates subsection (a), the property
7 interests of the persons in the digital currency shall be pro
8 rata property interests in the type of digital currency to which
9 the persons are entitled, without regard to the time the persons
10 became entitled to the digital currency or the licensee obtained
11 control of the digital currency.

12 (c) This section shall apply to digital currency that is:

13 (1) Held for the persons entitled to the digital currency;

14 (2) Not property of the licensee; and

15 (3) Not subject to the claims of creditors of the

16 licensee.

17 (d) To the extent a licensee stores, holds, or maintains
18 custody or control of digital currency on behalf of another
19 person, the licensee shall hold digital currency of the same
20 type and amount as that which is owed or obligated to that other
21 person.



1 (e) Each licensee shall not sell, transfer, assign, lend,
2 hypothecate, pledge, or otherwise use or encumber assets,
3 including digital currency, stored, held, or maintained by, or
4 under the custody or control of, the licensee on behalf of
5 another person except for the sale, transfer, or assignment of
6 the assets at the direction of that other person.

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

8 **§ -15 Required disclosures.** (a) A licensee that
9 engages in digital currency business activity shall provide to a
10 person who uses the licensee's products or services the
11 disclosures required by subsection (b) and any additional
12 disclosure the commissioner determines reasonably necessary for
13 the protection of persons. The commissioner shall determine the
14 time and form required for disclosure. A disclosure required by
15 this section shall be made separately from any other information
16 provided by the licensee and in a clear and conspicuous manner
17 in a record the person may keep. A licensee may propose for the
18 commissioner's approval alternate disclosures as more
19 appropriate for its digital currency business activity.

20 (b) Before establishing a relationship with a person, a
21 licensee shall disclose, to the extent applicable to the digital



1 currency business activity the licensee will undertake with the
2 person:

- 3 (1) A schedule of fees and charges the licensee may
4 assess, how fees and charges will be calculated if
5 they are not set in advance and disclosed, and the
6 timing of the fees and charges;
- 7 (2) That the product or service provided by the licensee
8 is not covered by a form of insurance or is otherwise
9 guaranteed against loss by an agency of the United
10 States, including the Federal Deposit Insurance
11 Corporation, the Securities Investor Protection
12 Corporation; or the full U.S. dollar equivalent of
13 digital currency purchased from the licensee or for
14 control of digital currency by the licensee; or
15 private insurance against theft or loss, including
16 cyber theft or theft by other means;
- 17 (3) The irrevocability of a transfer or exchange;
- 18 (4) The method for the person to update the person's
19 contact information with the licensee;
- 20 (5) That the date or time when the transfer or exchange is
21 made and the person's account is debited may differ



1 from the date or time when the person initiates the
2 instruction to make the transfer or exchange;

3 (6) The person's right to receive a receipt or other
4 evidence of the transfer or exchange;

5 (7) The person's right to notice of the licensee's fee
6 schedule prior to execution of transactions and at
7 least thirty days' prior notice of a change in the
8 licensee's other terms and conditions of operating its
9 digital currency business activity with the person and
10 the policies applicable to the person's account; and

11 (8) That digital currency is not money.

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

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

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



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

4 § -16 Records, tangible net worth requirement. (a) A
5 licensee engaged in digital currency business activities may
6 include in its calculation of tangible net worth digital
7 currency, measured by the average value of the digital currency
8 in U.S. dollar equivalent over the prior six months, excluding
9 control of digital currency for a person entitled to the
10 protections pursuant to section -14.

11 (b) Each licensee shall make, keep, preserve, and make
12 available for inspection by the commissioner the books,
13 accounts, and other records required in subsection (c) in a form
14 that enables the commissioner to determine whether the licensee
15 is in compliance with this chapter, any court order, and law of
16 this State other than this chapter.

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



- 1 (1) Each transaction of the licensee with or on behalf of
2 the person or for the licensee's account in the State,
3 including:
4 (A) The identity of the person;
5 (B) The form of the transaction;
6 (C) The amount, date, and payment instructions given
7 by the person; and
8 (D) The account number, name, and United States
9 Postal Service or foreign address of the
10 resident, and, to the extent feasible, other
11 parties to the transaction;
- 12 (2) The aggregate number of transactions and aggregate
13 value of transactions by the licensee with or on
14 behalf of the person and for the licensee's account in
15 the State, expressed in U.S. dollar equivalent of
16 digital currency for the previous twelve calendar
17 months;
- 18 (3) Each transaction in which the licensee exchanges one
19 form of digital currency for money or another form of
20 digital currency with or on behalf of the person;



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

18 § -17 Advertising and marketing. (a) Each licensee

19 engaged in digital currency business activity shall not

20 advertise its products, services, or activities in Hawaii or to

21 Hawaii consumers without including the name of the licensee and



1 statement that the licensee is "Licensed to engage in Digital
2 Currency Business Activity by the Hawaii Division of Financial
3 Institutions."

4 (b) Each licensee shall maintain, for examination by the
5 commissioner, all advertising and marketing materials for a
6 period of at least five years from the date of their creation,
7 including but not limited to print media, internet media
8 (including websites), radio and television advertising, road
9 show materials, presentations, and brochures. Each licensee
10 shall maintain hard copy, website captures of material changes
11 to internet advertising and marketing, and audio and video
12 scripts of its advertising and marketing materials, as
13 applicable.

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

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



1 § -18 Confidentiality. (a) Except as otherwise
2 provided in title 12 U.S.C. section 5111, the requirements under
3 any federal or state law regarding the privacy or
4 confidentiality of any information or material provided to NMLS,
5 and any privilege arising under federal or state law, including
6 the rules of any federal or state court, with respect to the
7 information or material shall continue to apply to the
8 information or material after the information or material has
9 been disclosed to NMLS. The information and material may be
10 shared with all state and federal regulatory officials with
11 oversight authority over transactions subject to this chapter,
12 without the loss of privilege or the loss of confidentiality
13 protections provided by federal or state law.

14 (b) For the purposes of this section, the commissioner
15 shall be authorized to enter into agreements or sharing
16 arrangements with other governmental agencies, the Conference of
17 State Bank Supervisors, or other associations representing
18 governmental agencies as established by rule or order of the
19 commissioner.

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



1 § -19 **Enforcement authority; violations; penalties.** (a)

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

6 (1) The applicant or licensee has violated this chapter,
7 or any rule or order lawfully made pursuant to this
8 chapter;

9 (2) The applicant has failed to disclose facts or
10 conditions that would clearly have justified the
11 commissioner in denying an application for licensure,
12 had these facts or conditions been known to exist at
13 the time the application was made;

14 (3) The applicant or licensee has failed to provide
15 information required by the commissioner within a
16 reasonable time, as specified by the commissioner;

17 (4) The applicant or licensee has failed to provide or
18 maintain proof of financial responsibility;

19 (5) The applicant or licensee is insolvent;

20 (6) The applicant or licensee has made, in any document or
21 statement filed with the commissioner, a false



- 1 representation of a material fact or has omitted to
2 state a material fact;
- 3 (7) The applicant, licensee, or, if an applicant or
4 licensee is not an individual, any of the applicant's
5 or licensee's control persons, executive officers,
6 directors, general partners, and managing members,
7 have been convicted of or entered a plea of guilty or
8 nolo contendere to a crime involving fraud or deceit,
9 or to any similar crime under the jurisdiction of any
10 federal court or court of another state;
- 11 (8) The applicant or licensee has failed to make,
12 maintain, or produce records that comply with
13 section -20 or any rule adopted by the commissioner
14 pursuant to chapter 91;
- 15 (9) The applicant or licensee has been the subject of any
16 disciplinary action by any state or federal agency
17 that resulted in revocation of a license;
- 18 (10) A final judgment has been entered against the
19 applicant or licensee for violations of this chapter,
20 any state or federal law concerning a digital currency
21 license or money transmitters, or any state or federal



1 law prohibiting unfair or deceptive acts or practices;
2 or

3 (11) The applicant or licensee has failed, in a timely
4 manner as specified by the commissioner, to take or
5 provide proof of the corrective action required by the
6 commissioner after an investigation or examination
7 pursuant to section -3.

8 (b) After a finding of one or more of the conditions under
9 subsection (a), the commissioner may take any or all of the
10 following actions:

- 11 (1) Deny an application for licensure, including an
12 application for a branch office license;
- 13 (2) Revoke the license;
- 14 (3) Suspend or condition the license in accordance
15 with -23;
- 16 (4) Issue an order to the licensee to cease and desist
17 from engaging in any act specified under subsection
18 (a) or in accordance with section -24;
- 19 (5) Order the licensee to make refunds to consumers of
20 excess charges under this chapter; or



1 (6) Impose penalties of up to \$10,000 for each violation
2 in accordance with section -26.

3 (c) The commissioner may issue a temporary cease and
4 desist order if the commissioner makes a finding that the
5 licensee, applicant, or person is engaging, has engaged, or is
6 about to engage in an illegal, unauthorized, unsafe, or unsound
7 practice in violation of this chapter. Whenever the
8 commissioner denies a license application or takes disciplinary
9 action pursuant to this subsection, the commissioner shall enter
10 an order to that effect and notify the licensee, applicant, or
11 person of the denial or disciplinary action. The notification
12 required by this subsection shall be given by personal service
13 or by certified mail to the last known address of the licensee
14 or applicant as shown on the application, license, or as
15 subsequently furnished in writing to the commissioner.

16 (d) The revocation, suspension, expiration, or surrender
17 of a license shall not affect the licensee's liability for acts
18 previously committed or impair the commissioner's ability to
19 issue a final agency order or take disciplinary action against
20 the licensee.



1 (e) No revocation, suspension, consent order, or surrender
2 of a license shall impair or affect the obligation of any
3 preexisting lawful contract between the licensee and any
4 consumer.

5 (f) The commissioner may reinstate a license, terminate a
6 suspension, or grant a new license to a person whose license has
7 been revoked or suspended if no fact or condition then exists
8 that clearly would justify the commissioner in revoking,
9 suspending, or refusing to grant a license.

10 (g) The commissioner may impose an administrative fine on
11 a licensee or person subject to this chapter if the commissioner
12 finds on the record after notice and opportunity for hearing
13 that the licensee or person subject to this chapter has violated
14 or failed to comply with any requirement of this chapter or any
15 rule prescribed by the commissioner under this chapter or order
16 issued under the authority of this chapter.

17 (h) Each violation or failure to comply with any directive
18 or order of the commissioner shall be a separate and distinct
19 violation.

20 (i) Any violation of this chapter that is directed toward,
21 targets, or injures a person who is sixty-two years of age or



1 older may be subject to an additional civil penalty not to
2 exceed \$10,000 for each violation in addition to any other fines
3 or penalties assessed for the violation.

4 § -20 Investigation and examination authority. (a) In
5 addition to the authority granted under section -3, the
6 commissioner may conduct investigations and examinations in
7 accordance with this section. The commissioner may access,
8 receive, and use any books, accounts, records, files, documents,
9 information, or evidence that the commissioner deems relevant to
10 the investigation or examination, regardless of the location,
11 possession, control, or custody of the documents, information,
12 or evidence.

13 (b) For the purposes of investigating violations or
14 complaints arising under this chapter, or for the purposes of
15 examination, the commissioner may review, investigate, or
16 examine any licensee or person subject to this chapter as often
17 as necessary to carry out the purposes of this chapter. The
18 commissioner may direct, subpoena, or order the attendance of,
19 and examine under oath, all persons whose testimony may be
20 required about digital currency transactions or the business or
21 subject matter of any investigation or examination and may



1 direct, subpoena, or order the person to produce books,
2 accounts, records, files, and any other documents the
3 commissioner deems relevant to the inquiry.

4 (c) Each licensee or person subject to this chapter shall
5 provide to the commissioner, upon request, the books and records
6 relating to the operations of the licensee or person subject to
7 this chapter. The commissioner shall have access to the books
8 and records and shall be permitted to interview the control
9 persons, executive officers, directors, general partners,
10 managing members, principals, managers, employees, independent
11 contractors, agents, and consumers of the licensee or person
12 subject to this chapter concerning their business.

13 (d) Each licensee or person subject to this chapter shall
14 make or compile reports or prepare other information, as
15 directed by the commissioner, to carry out the purposes of this
16 section, including:

- 17 (1) Accounting compilations;
- 18 (2) Information lists and data concerning digital currency
19 transactions in a format prescribed by the
20 commissioner; or



1 (3) Other information that the commissioner deems
2 necessary.

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

19 (f) The authority of this section shall remain in effect,
20 whether a licensee or person subject to this chapter acts or



1 claims to act under any licensing or registration law of the
2 State or claims to act without such authority.

3 (g) No licensee or person subject to investigation or
4 examination under this section may knowingly withhold, abstract,
5 remove, mutilate, destroy, or secrete any books, records,
6 computer records, or other information.

7 (h) The commissioner may charge an investigation or
8 examination fee, payable to the commissioner, based upon the
9 cost per hour per examiner for all licensees and persons subject
10 to this chapter investigated or examined by the commissioner or
11 the commissioner's staff. The hourly fee shall be \$60 or an
12 amount as the commissioner shall establish by rule pursuant to
13 chapter 91. In addition to the investigation or examination
14 fee, the commissioner may charge any person who is investigated
15 or examined by the commissioner or the commissioner's staff
16 pursuant to this section additional amounts for travel, per
17 diem, mileage, and other reasonable expenses incurred in
18 connection with the investigation or examination, payable to the
19 commissioner.

20 (i) Any person having reason to believe that this chapter
21 or the rules adopted under this chapter have been violated, or



1 that a license issued under this chapter should be suspended or
2 revoked, may file a written complaint with the commissioner,
3 setting forth the details of the alleged violation or grounds
4 for suspension or revocation.

5 § -21 **Prohibited practices.** (a) It shall be a
6 violation of this chapter for a licensee, its control persons,
7 executive officers, directors, general partners, managing
8 members, employees, or independent contractors, or any other
9 person subject to this chapter to:

- 10 (1) Engage in any act that limits or restricts the
11 application of this chapter;
- 12 (2) Use a customer's digital currency account number to
13 prepare, issue, or create a digital currency
14 transaction on behalf of the consumer without the
15 customer's authorization;
- 16 (3) Charge, collect, or receive, directly or indirectly,
17 charges for negotiating digital currency transactions
18 except those explicitly authorized in this chapter;
- 19 (4) Fail to make disclosures as required by this chapter
20 and any other applicable state or federal law,



- 1 including rules or regulations adopted pursuant to
- 2 state or federal law;
- 3 (5) Directly or indirectly employ any scheme, device, or
- 4 artifice to defraud or mislead any consumer, or any
- 5 person;
- 6 (6) Directly or indirectly obtain digital currency by
- 7 fraud or misrepresentation;
- 8 (7) Conduct digital currency business activity to any
- 9 person physically located in the State through the use
- 10 of the Internet, facsimile, telephone, kiosk, or other
- 11 means without first obtaining a license under this
- 12 chapter;
- 13 (8) Make, in any manner, any false or deceptive statement
- 14 or representation, including with regard to the rates,
- 15 fees, or other financing terms or conditions for
- 16 digital currency activity, or engage in bait and
- 17 switch advertising;
- 18 (9) Make any false statement or knowingly make any
- 19 omission of material fact in connection with any
- 20 reports filed with the division by a licensee or in



1 connection with any investigation conducted by the
2 division;

3 (10) Conduct digital currency business activity from any
4 unlicensed location;

5 (11) Draft funds from any depository financial institution
6 without written approval of the consumer; provided
7 that nothing in this paragraph shall prohibit the
8 conversion of a negotiable instrument into an
9 electronic form for processing through the Automated
10 Clearing House or similar system;

11 (12) Fail to comply with all applicable state and federal
12 laws relating to the activities governed by this
13 chapter; or

14 (13) Fail to pay any fee, assessment, or moneys due to the
15 department.

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

19 § -22 **Voluntary surrender of license.** (a) A licensee
20 may voluntarily cease business and surrender its license by
21 giving written notice through NMLS to the commissioner of its



1 intent to surrender its license. Prior to the surrender date of
2 a license, the licensee shall have either completed all pending
3 digital currency transactions or assigned each pending digital
4 currency transaction to another licensee.

5 (b) Notice pursuant to this section shall be provided at
6 least thirty days before the surrender of the license and shall
7 include:

- 8 (1) The date of surrender;
- 9 (2) The name, address, telephone number, facsimile number,
10 and electronic mail address of a contact individual
11 with knowledge and authority sufficient to communicate
12 with the commissioner regarding all matters relating
13 to the licensee during the period that it was licensed
14 pursuant to this chapter;
- 15 (3) The reason or reasons for surrender;
- 16 (4) Total dollar amount of the licensee's outstanding
17 digital currency transactions in Hawaii and the
18 individual amounts of each outstanding digital
19 currency transaction, and the name, address, and
20 contact telephone number of the licensee to whom each
21 outstanding digital currency transaction was assigned;



- 1 (5) A list of the licensee's Hawaii authorized branch
2 offices, if any, as of the date of surrender;
- 3 (6) Confirmation that the licensee has notified each of
4 its Hawaii authorized branch offices, if any, that the
5 branch offices may no longer conduct digital currency
6 business activity on the licensee's behalf; and
- 7 (7) Confirmation that the licensee has notified each of
8 its digital currency accounts, if any, that the
9 digital currency account is being transferred and the
10 name, address, telephone number, and any other contact
11 information of the licensee or entity described in
12 section -13 to whom the digital currency was
13 assigned.
- 14 (c) Voluntary surrender of a license shall be effective
15 upon the date of surrender specified on the written notice to
16 the commissioner as required by this section; provided that the
17 licensee has met all the requirements of voluntary surrender.
- 18 § -23 **Suspension or revocation of licenses.** The
19 commissioner may suspend or revoke a license if the commissioner
20 finds that:



- 1 (1) Any fact or condition exists that, if it had existed
2 at the time when the licensee applied for its license,
3 would have been grounds for denying the licensee's
4 application;
- 5 (2) The licensee's tangible net worth becomes inadequate
6 and the licensee, after ten days written notice from
7 the commissioner, fails to take steps as the
8 commissioner deems necessary to remedy a deficiency;
- 9 (3) The licensee knowingly violates any material provision
10 of this chapter or any rule or order validly adopted
11 by the commissioner under authority of this chapter;
- 12 (4) The licensee is conducting its business in an unsafe
13 or unsound manner;
- 14 (5) The licensee is insolvent;
- 15 (6) The licensee has suspended payment of its obligations,
16 has made an assignment for the benefit of its
17 creditors, or has admitted, in writing, its inability
18 to pay its debts as they become due;
- 19 (7) The licensee has filed for bankruptcy, reorganization,
20 arrangement, or other relief under any bankruptcy law;



1 (8) The licensee refuses to permit the commissioner to
2 make any investigation authorized by this chapter; or

3 (9) The competence, experience, character, or general
4 fitness of the licensee indicates that it is not in
5 the public interest to allow the licensee to have a
6 license.

7 § -24 Orders to cease and desist. (a) If the
8 commissioner determines a violation of this chapter or a rule
9 adopted or an order issued under this chapter by a licensee or
10 authorized delegate is:

11 (1) Likely to cause immediate and irreparable harm to the
12 licensee, the licensee's customers, or the public as a
13 result of the violation; or

14 (2) Cause insolvency or significant dissipation of assets
15 of the licensee, the commissioner may issue an order
16 requiring the licensee to cease and desist from the
17 violation. The order becomes effective upon service
18 of the order upon the licensee.

19 (b) An order to cease and desist remains effective and
20 enforceable pending the completion of an administrative
21 proceeding pursuant to chapter 91.



1 (c) A licensee that is served with an order to cease and
2 desist may petition the circuit court for a judicial order
3 setting aside, limiting, or suspending the enforcement,
4 operation, or effectiveness of the order pending the completion
5 of an administrative proceeding or hearing pursuant to
6 sections -29 or -30, respectively.

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

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

12 § -25 **Consent orders.** The commissioner may enter into a
13 consent order at any time with a person to resolve a matter
14 arising under this chapter. A consent order shall be signed by
15 the person to whom the order is issued or by the person's
16 authorized representative, and shall indicate agreement with the
17 terms contained in the order. A consent order may provide that
18 it does not constitute an admission by a person that this
19 chapter or a rule adopted or an order issued under this chapter
20 has been violated.



1 § -26 **Civil penalties.** The commissioner may assess a
2 fine against a person who violates this chapter or a rule
3 adopted or an order issued under this chapter in an amount not
4 to exceed \$10,000 per violation, plus the State's costs and
5 expenses for the investigation and prosecution of the matter,
6 including reasonable attorneys' fees.

7 § -27 **Criminal penalties.** (a) A person who
8 intentionally makes a false statement, misrepresentation, or
9 false certification in a record filed or required to be
10 maintained under this chapter, who intentionally makes a false
11 entry, or who omits a material entry in a record shall be guilty
12 of a class C felony, and be subject to a fine in an amount not
13 to exceed \$10,000.

14 (b) An individual or person who knowingly engages in any
15 activity for which a license is required under this chapter,
16 without being licensed under this chapter, shall be guilty of a
17 misdemeanor, and be subject to a fine in an amount not to exceed
18 \$1,000, imprisonment of not more than one year, or both, and
19 each day a violation exists shall be deemed a separate offense.

20 § -28 **Unlicensed persons.** (a) If the commissioner has
21 reason to believe that a person has violated or is violating



1 section -4, the commissioner may issue an order to show cause
2 why an order to cease and desist should not issue requiring that
3 the person cease and desist from the violation of section -4.

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

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

11 (d) An order to cease and desist remains effective and
12 enforceable pending the completion of an administrative
13 proceeding pursuant to section -29.

14 (e) A person who is served with an order to cease and
15 desist for violating section -4 may petition the circuit
16 court for a judicial order setting aside, limiting, or
17 suspending the enforcement, operation, or effectiveness of the
18 order to cease and desist pending the completion of an
19 administrative proceeding pursuant to section -29.



1 (f) The commissioner shall commence an administrative
2 proceeding within twenty days after issuing an order to cease
3 and desist.

4 § -29 **Administrative procedures.** All administrative
5 proceedings under this chapter shall be conducted in accordance
6 with chapter 91.

7 § -30 **Hearings.** Except as otherwise provided in
8 sections -11(g) and -23, the commissioner shall not
9 suspend or revoke a license, issue an order to cease and desist,
10 suspend or revoke the designation of a licensee, or assess a
11 civil penalty without notice and an opportunity to be heard.

12 § -31 **Division functions.** (a) The division shall
13 exercise all administrative functions of the State in relation
14 to the regulation, supervision, and licensing of money
15 transmitters.

16 (b) The division shall interpret and carry out the
17 provisions of this chapter."

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



1 "Monetary value" means a medium of exchange, whether or
2 not redeemable in money[-] except as defined as digital currency
3 under chapter _____."

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

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

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



- 1 volunteers, and all adults, except adults in care, at
2 healthcare facilities as defined in section 321-15.2;
- 3 (4) The department of education on employees, prospective
4 employees, and teacher trainees in any public school
5 in positions that necessitate close proximity to
6 children as provided by section 302A-601.5;
- 7 (5) The counties on employees and prospective employees
8 who may be in positions that place them in close
9 proximity to children in recreation or child care
10 programs and services;
- 11 (6) The county liquor commissions on applicants for liquor
12 licenses as provided by section 281-53.5;
- 13 (7) The county liquor commissions on employees and
14 prospective employees involved in liquor
15 administration, law enforcement, and liquor control
16 investigations;
- 17 (8) The department of human services on operators and
18 employees of child caring institutions, child placing
19 organizations, and foster boarding homes as provided
20 by section 346-17;



- 1 (9) The department of human services on prospective
2 adoptive parents as established under section
3 346-19.7;
- 4 (10) The department of human services or its designee on
5 applicants to operate child care facilities, household
6 members of the applicant, prospective employees of the
7 applicant, and new employees and household members of
8 the provider after registration or licensure as
9 provided by section 346-154, and persons subject to
10 section 346-152.5;
- 11 (11) The department of human services on persons exempt
12 pursuant to section 346-152 to be eligible to provide
13 child care and receive child care subsidies as
14 provided by section 346-152.5;
- 15 (12) The department of health on operators and employees of
16 home and community-based case management agencies and
17 operators and other adults, except for adults in care,
18 residing in community care foster family homes as
19 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 section
17 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 section
11 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 section
11 346-97;

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 community-
15 based services under section 1915(c) of the Social
16 Security Act, title 42 United States Code section
17 1396n(c), or under any other applicable section or
18 sections of the Social Security Act for the purposes
19 of providing home and community-based services, as
20 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 section
13 412:10-103;
- 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 sections
18 457-7, 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 section
21 28-17;



1 [+] (50) [+] The department of commerce and consumer affairs on
2 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 prospective
7 employees and contractors whose duties include
8 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. The department of commerce and consumer affairs
20 may employ necessary personnel without regard to chapter 76,
21 Hawaii Revised Statutes, including three full-time examiners, to



1 assist with the implementation and continuing function of this
2 Act.

3 SECTION 6. There is appropriated out of the compliance
4 resolution fund established pursuant to section 26-9(o), Hawaii
5 Revised Statutes, the sum of \$500,000 or so much thereof as may
6 be necessary for fiscal year 2023-2024 and the same sum or so
7 much thereof as may be necessary for fiscal year 2024-2025 to
8 implement the licensing program established by this Act.

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

11 SECTION 7. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 8. This Act shall take effect on July 1, 2023;
14 provided that:

15 (1) The special purpose digital currency licensing
16 requirements established by section 2 of this Act
17 shall take effect on January 1, 2025;

18 (2) The participating companies in the digital currency
19 innovation lab shall be allowed to continue operations
20 until their applications are acted upon by the
21 division of financial institutions if the complete



1 application is submitted to the division of financial
2 institutions by March 1, 2025; and
3 (3) A company authorized to participate in the digital
4 currency innovation lab as of June 30, 2023, and whose
5 application for licensure under chapter has been
6 submitted to the division of financial institutions on
7 or before March 1, 2025, shall be exempt from the
8 requirements of section -4 in section 2 of this Act
9 for a period of six months from the date the
10 application is deemed complete or until the
11 commissioner approves or denies the application,
12 whichever occurs first. The commissioner of financial
13 institutions, for good cause, may reduce or extend the
14 six-month period. Submission of an application for
15 licensure shall be evidenced through NMLS to the
16 commissioner.

17

INTRODUCED BY: _____



S.B. NO. 945

Report Title:

Digital Currency Companies; Licensure; Division of Financial Institutions

Description:

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

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