

AMENDED IN ASSEMBLY MAY 04, 2020

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL**NO. 2150****Introduced by Assembly Member Calderon**

February 10, 2020

An act to amend Section ~~2003 of the Financial Code, relating to money transmission~~, *25019 of the Corporations Code, relating to corporate securities*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2150, as amended, Calderon. ~~Money transmission: Virtual currency. Corporate securities: exception: digital assets.~~

Existing law, the Corporate Securities Law of 1968, provides for the regulation of the issuance of corporate securities, requires the qualification of an offer or sale of securities, and provides for exemptions from qualification with the Commissioner of Business Oversight. Existing law defines a “security” to mean a note, stock, and, among other things, an investment contract.

This bill would create an exception from the above definition by providing that a digital asset meeting specified criteria is presumptively not an investment contract within the meaning of a “security.” The bill would allow that presumption to be rebutted upon good cause shown by clear and convincing evidence by the Commissioner of Business Oversight, as specified.

~~The Money Transmission Act generally prohibits a person from engaging in the business of money transmission, as defined, without a license from the Commissioner of Business Oversight. The act makes it a felony to knowingly engage in an activity for which a license is required under the act without being licensed or exempt from licensure.~~

~~This bill would provide that issuing, transferring, or storing a virtual currency, as defined, on behalf of a consumer is money transmission. By expanding the scope of the crime of engaging in the business of money transmission without a license, this bill would create a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Digest Key

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: ~~yes~~*no*

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25019 of the Corporations Code is amended to read:

~~25019. "Security" means any note; stock; treasury stock; membership in an incorporated or unincorporated association; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement contract or a fractionalized or pooled interest therein; life settlement contract or a fractionalized or pooled interest therein; voting trust certificate; certificate of deposit for a security; interest in a limited liability company and any class or series of those interests (including any fractional or other interest in that interest), except a membership interest in a limited liability company in which the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company; provided that evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under that title or lease; put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof); or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; any beneficial interest or other security issued in connection with a funded employees' pension, profit sharing, stock bonus, or similar benefit plan; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. All of the foregoing are securities whether or not evidenced by a written document.~~

25019. (a) (1) "Security" means any of the following:

(A) Note.

(B) Stock.

(C) Treasury stock.

(D) Membership in an incorporated or unincorporated association.

(E) Bond.

(F) Debenture.

(G) Evidence of indebtedness.

(H) Certificate of interest or participation in any profit-sharing agreement.

(I) Collateral trust certificate.

(J) Preorganization certificate or subscription.

(K) Transferable share.

(L) Investment contract, except any digital asset that meets one of the following criteria is presumptively not an investment contract (the presumption of which may be rebutted upon good cause shown by clear and convincing evidence by the Commissioner):

(i) The asset is not acquired by the holder in exchange for the payment of fiat currency or another digital asset.

(ii) The asset is used on a fully operational network and the purpose of the asset is for a consumptive purpose, such as the access or consumption of goods, services, data, or the performance of useful functions other than as a medium of exchange or store of value.

(iii) The asset does not rely on the managerial efforts of others for its success, with the lack of managerial efforts of others evidenced by the absence of any identifiable person, project team, or management entity that is responsible for the development, improvement, oversight, or promotion of the asset or the related network, and either:

(I) Any changes to the software code underlying that asset may be made by network participants.

(II) Voting rights over the functioning of the network are conferred to each holder of the asset.

(M) Viatical settlement contract or a fractionalized or pooled interest therein.

(N) Voting trust certificate.

(O) Certificate of deposit for a security.

(P) Interest in a limited liability company and any class or series of those interests (including any fractional or other interest in that interest), except a membership interest in a limited liability company in which the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company; provided that evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company.

(Q) Certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under that title or lease.

(R) Put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof).

(S) Put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency.

(T) Any beneficial interest or other security issued in connection with a funded employees' pension, profit sharing, stock bonus, or similar benefit plan.

(U) In general, any interest or instrument commonly known as a "security."

(V) Any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(2) All of the foregoing are securities whether or not evidenced by a written document.

“Security”

(b) “Security” does not ~~(1) any beneficial~~ include any of the following:

(1) Any *beneficial* interest in any voluntary inter vivos trust ~~which that~~ is not created for the purpose of carrying on any business or solely for the purpose of ~~voting, or~~ (2) any *beneficial voting*.

(2) Any *beneficial* interest in any testamentary ~~trust, or~~ (3) any *insurance trust*.

(3) Any *insurance* or endowment policy or annuity contract under which an insurance company admitted in this state promises to pay a sum of money (whether or not based upon the investment performance of a segregated fund) either in a lump sum or periodically for life or some other specified ~~period, or~~ (4) any *franchise period*.

(4) Any *franchise* subject to registration under the Franchise Investment Law (Division 5 (commencing with Section 31000)), or exempted from registration by Section 31100 or 31101.

~~SECTION 1. Section 2003 of the Financial Code is amended to read:~~

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

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

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

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

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

~~(e) "Branch office" means any office in this state of a licensee or agent at which the licensee receives money or monetary value to provide money transmission, either directly or through an agent.~~

~~(f) "Business day" means one of the following:~~

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

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

~~(g) "Commissioner" means the Commissioner of Business Oversight.~~

~~(h) "Control" has the meaning set forth in Section 1250.~~

~~(i) "Day" means calendar day.~~

~~(j) "E-commerce" means any transaction where the payment for goods or services is initiated via a mobile application or an internet website.~~

~~(k) "In California" or "in this state" means physically located in California, or with, to, or from persons located in California.~~

(+) "Issue" and "issuer" mean, with regard to a payment instrument, the entity that is the maker or drawer of the instrument in accordance with the California Commercial Code and is liable for payment. With regard to stored value, "issue" and "issuer" mean the entity that is liable to the holder of stored value and has undertaken or is obligated to pay the stored value. Only a licensee may issue stored value or payment instruments.

(m) "Licensee" means a corporation or limited liability company licensed under this division.

(n) "Material litigation" means litigation that according to United States generally accepted accounting principles is significant to an applicant's or a licensee's financial health and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders, or similar records.

(o) "Monetary value" means a medium of exchange, whether or not redeemable in money.

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

(q) "Money transmission" means any of the following:

(1) Selling or issuing payment instruments.

(2) Selling or issuing stored value.

(3) Receiving money for transmission.

(4) Issuing, transferring, or storing a virtual currency on behalf of a consumer.

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

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

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

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

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

(w) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

~~(y) "Traveler's check" means an instrument that meets all of the following:~~

~~(1) Is designated on its face by the term "traveler's check" or by any substantially similar term or is commonly known and marketed as a traveler's check.~~

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

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

~~(z)(1) "Virtual currency" means a digital representation of value that is used as a medium of exchange, unit of account, or store of value and that is not legal tender, whether or not denominated in legal tender.~~

~~(2) "Virtual currency" does not include any of the following:~~

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

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

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

~~SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~