Legislative Analysis

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VIRTUAL CURRENCY KIOSKS

House Bill 5469 as introduced
Sponsor: Rep. Joseph A. Aragona

House Bill 5470 as introduced
Sponsor: Rep. Mike McFall

Committee: Regulatory Reform
Complete to 3-4-26

SUMMARY:

House Bills 5469 and 5470 would respectively create a new act and amend existing law to regulate virtual currency kiosks in Michigan.

House Bill 5469 would create a new act, the Virtual Currency Kiosk Consumer Protection Act, to establish various requirements for the operators of ***virtual currency kiosks***.

Virtual currency kiosk would mean an electronic terminal that enables a virtual currency kiosk operator to facilitate the exchange of ***fiat currency*** for ***virtual currency*** or of virtual currency for fiat currency or another virtual currency by doing either of the following:

- Connecting directly to a separate virtual currency exchange that performs the actual virtual currency transmission.
- Drawing on the virtual currency in the possession of the operator of the electronic terminal

Virtual currency would mean any type of digital unit that is used as a medium of exchange or a form of digitally stored value or that is incorporated into payment system technology, including at least all of the following:

- A digital unit of exchange that has a centralized repository or administrator.
- A digital unit of exchange that is decentralized and has no centralized repository or administrator.
- A digital unit of exchange that may be created or obtained by computing or manufacturing effort.

Virtual currency would not include either of the following:

- A digital unit of exchange that is used solely within an online gaming platform with no market or application outside of the gaming platform.
- A digital unit of exchange that is used exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for a purchase with the issuer or other designated merchant but cannot be converted into or redeemed for fiat currency.

Fiat currency would mean a medium of exchange authorized or adopted by the U.S. government as part of the government's currency and not backed by a commodity.

Disclosures

Under the bill, before entering into an initial transaction for, on behalf of, or with an individual, virtual currency kiosk operators would have to disclose all of the following regarding their products, services, and activities, and virtual currency generally, in a clear, conspicuous, and legible manner:

- All material risks, including all of the following:
  - Virtual currency is not legal tender, is not backed by the U.S. government, and accounts and value balances are not subject to protections that are received by a ***federal deposit insurance corporation or securities investor protection corporation***.
  - State, federal, and international legislative and regulatory changes or actions may adversely affect the use, transfer, exchange, and value of virtual currency.
  - Transactions in virtual currency may be irreversible, and losses due to fraudulent or accidental transactions may not be recoverable.
  - Some transactions are considered made when recorded on a public ledger, which may not be the date or time the individual initiates the transaction.
  - The value of virtual currency may be derived from the continued willingness of market participants to exchange fiat currency for virtual currency. The disappearance of the market for a particular virtual currency may result in the permanent and total loss of the currency's value.
  - A person that accepts virtual currency as payment today is not required to do so in the future.
  - The volatility and unpredictability of the price of virtual currency relative to fiat currency may result in significant loss over a short period of time.
  - Virtual currency may be subject to an increased risk of fraud or cyber-attack.
  - Technological difficulties experienced by the kiosk operator may prevent the access to or use of an individual's virtual currency.
  - Any bond or trust account maintained by the kiosk operator for the benefit of an individual may not cover all losses an individual incurs.
- All relevant terms and conditions, including all of the following:
  - The individual's liability for an unauthorized transaction.
  - The circumstances in which the kiosk operator will disclose an individual's account information to a third party without a court or government order.
  - The individual's right to receive periodic account statements and valuations from the kiosk operator.
  - The individual's right to receive a receipt, trade ticket, or other evidence of a transaction.
  - The individual's right to prior notice of a change in the kiosk operator's rules or policies.
  - Any other disclosures customarily provided when an individual opens a registration account.

In addition, before entering into any transaction for, on behalf of, or with an individual, a virtual currency kiosk operator would have to provide a warning to the individual that includes including the following statement:

> "Customer Notice. Please Read Carefully.
>
> Did you receive a phone call from your bank, software provider, the police, or were you directed to make a payment for social security, utility bill, investment, warrants, or bail money at this kiosk? STOP
>
> Is anyone on the phone pressuring you to make a payment of any kind? STOP
>
> I understand that the purchase and sale of cryptocurrency is a final irreversible and non-refundable transaction.
>
> I confirm I am sending funds to a wallet I own or directly have control over. I confirm that I am using funds gained from my own initiative to make my transaction."

Finally, after completing a transaction, virtual currency kiosk operators would have to provide the individual participating in the transaction with a physical receipt, or a virtual receipt delivered to the individual's phone number, containing all of the following:

- The kiosk operator's name and contact information, including a phone number to answer questions and register complaints.
- The type, value, date, and precise time of the transaction in the local time zone.
- The fee charged.
- The exchange rate.
- A statement of the kiosk operator's liability for nondelivery or delayed delivery.
- A statement of the kiosk operator's refund policy.

> ***Federal deposit insurance corporation or securities investor protection corporation*** would mean a bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company organized under the laws of the United States or any state of the United States, if the bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company has federally insured deposits.

Blockchain analytics

The bill would require virtual currency kiosk operators to use ***blockchain analytics*** to assist in preventing purchased virtual currency from being sent to a ***virtual wallet*** that is known to be affiliated with fraudulent activity at the time of a virtual currency kiosk transaction. The Department of Insurance and Financial Services (DIFS) could request evidence of an operator's current use of blockchain analytics from the operator.

> ***Blockchain analytics*** would mean a software service that uses data from various virtual currencies and applicable ***blockchains*** to provide a risk rating specific to a ***virtual wallet address*** from a user of a virtual currency kiosk.

Blockchain would mean a distributed digital ledger or database that is chronological, consensus-based, decentralized, and mathematically verified in nature.

Virtual wallet would mean a hardware or software application that enables an individual to store and use virtual currency.

Virtual wallet address would mean an alphanumeric identifier representing a destination on a blockchain for a virtual currency transfer associated with a virtual wallet.

Customer service number

The bill would require virtual currency kiosk operators to provide live, toll-free customer service by phone, at a minimum on Monday through Friday between 8 a.m. and 10 p.m. The customer service number would have to be displayed on the exterior or screen of the operator's virtual currency kiosks.

Antifraud policy

The bill would require virtual currency kiosk operators to take reasonable steps to detect and prevent fraud, including by establishing and maintaining a written antifraud policy that includes at least all of the following:

- The identification and assessment of fraud related risk areas.
- Procedures and controls to protect against identified risks.
- Allocation of responsibility for monitoring risks.
- Procedures for the periodic evaluation and revision of the antifraud procedures, controls, and monitoring mechanisms.

Operators also would be required to maintain, implement, and enforce both of the following:

- A written enhanced due diligence policy that identifies, at a minimum, any individuals who are at risk of fraud based on their age or mental capacity.
- Written compliance policies and procedures.

The kiosk operator's board of directors or an equivalent governing body would have to review both of the above policies.

Required officers

The bill would require virtual currency kiosk operators to designate both a compliance officer and a consumer protection officer that meets all of the following:

- They are qualified to coordinate and monitor compliance with the bill and all other applicable laws, rules, and regulations.
- They are employed full-time by the kiosk operator.
- They do not own more than 20% of the kiosk operator employing them.

Quarterly report

The bill would require virtual currency kiosk operators to submit a report within 45 days of the end of each calendar quarter that includes, at a minimum, all of the following:

- The legal name of the operator.
- Any fictitious or trade names of the operator.
- The physical address of each virtual currency kiosk.

- The start date of the operation of each virtual currency kiosk at the location.
- If applicable, the end date of the operation of each virtual currency kiosk at each location.

DIFS would have to formulate a system for the submission of these reports.

Local preemption
The bill would prohibit any county, city, township, or village from enacting or enforcing an ordinance restricting the use of a virtual currency kiosk in Michigan.

DIFS oversight
DIFS could request evidence that demonstrates a virtual currency kiosk operator's compliance with the bill as reasonably necessary or appropriate to administer and enforce it, and the kiosk operator would have to comply with those requests. Any information obtained by the DIFS or contained in or related to a report prepared by, on behalf of, or for the use of DIFS under the bill would be confidential and not subject to the Freedom of Information Act (FOIA), except all of the following:

- The name, business address, phone number, and unique identifier of a kiosk operator.
- The business address of a kiosk operator's registered agent for service.
- Any copies of a DIFS final order relating to a violation of the bill.

The above, nonconfidential information would have to be made available to the public on the DIFS website, on written request to DIFS, or in the Nationwide Multistate Licensing System and Registry.

Penalty
A virtual currency kiosk operator that knowingly and willfully violates the bill would be subject to a civil fine of up to $1,000 per violation.

House Bill 5470 would amend the Money Transmission Services Act to include owning, operating, facilitating, soliciting, marketing, or advertising a virtual currency kiosk as a money transmission service subject to the act's provisions.

The act requires money transmission services to meet certain requirements, including obtaining surety bonds, and to obtain a license to operate in Michigan.

The bill cannot take effect unless House Bill 5469 is also enacted.

MCL 487.1003

FISCAL IMPACT:

House Bill 5469 would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, a virtual currency kiosk operator that knowingly and willfully violates provisions of the bill would be subject to a civil fine of not more than $1,000 for each violation. Any increase in civil fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. Also, under section 8827(4) of the Revised Judicature Act, $10 of the civil fine would be required to be

deposited into the state's Justice System Fund (JSF), which supports various justice-related endeavors in the judicial branch and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Because there is no practical way to determine the number of civil fines that would be ordered, an estimate of the amount of additional civil fine revenues, additional revenue for the JSF, or costs to local courts cannot be made.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.