

2017 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2100

2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

SB 2100

1/4/2017

Job Number 26534

Subcommittee

Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

North Dakota Money Transmitter Act

Minutes:

Attachment 1

Chairman Klein: Called the meeting to order.

Robert J Entringer, Commissioner: Written Testimony Attached, #1. (:15-3:35)

Senator Casper: Asked if he was selling products in bit coin, if would it expose him to regulation under his department.

Robert J Entringer: No it would not. Overstock.com will accept bit coin for sale of their merchandise and we would not require licensure. That would be no different than if you used a credit card or pay pal account.

Senator Casper: Asked who it would currently apply to in North Dakota.

Robert J Entringer: They had inquiries from an individual who wanted to place bit coins in ATM's in North Dakota but he also offered a wallet service. So just the sale of the bit coin wouldn't necessarily require licensure but if you are hosting a wallet for someone that would require licensure because you are maintaining control of that consumers bit coin.

Senator Casper: How many states have changed their code to reflect similar departments, that regulate financial institutions, that would be holding bit coins. Is that accounted for in their codes?

Robert J Entringer: I don't know. Some have interpreted their statute to already include that, for an example in our definition we have stored value. We looked at that but didn't want to make that leap so we decided to amend the statute. He explained more of the process of how a bit coin is created.

Senator Campbell: The bit coin is all electronic?

Robert J Entringer: All electronic, completely digital.

Chairman Klein: Asked if there was a demand already or if they were just getting ahead of the curve.

Robert J. Entringer: We have taken inquires about whether or not an individual company needs a license and they weren't sure, so they told them at this time they don't need a license because they don't know that the statutes specifically apply.

Chairman Klein: Providing this change in the law will require that or they will more clearly know if they need one or not?

Robert J. Entringer: They will more clearly know if a license is needed. A lot of them are simply an exchange.

Senator Roers: Asked who he sees using this bit coin today.

Robert J. Entringer: Said that there are a lot of people out there who don't want the government involved in their business and that is where crypto currency comes from. It isn't based on a governmental currency and it isn't backed by the government like the dollar is.

Chairman Klein: Said that the consumer should be aware and that it seems like a virtual stretch to believe it's an easy way to do business or a safe way. It's coming around and do you see it as being an issue?

Robert J. Entringer: The reason we introduced the bill was so that these companies are licensed and the consumer is protected.

Senator Burckhard: Asked if this a modern version of digital bartering.

Robert J. Entringer: That is a very good way to put it. There are exchanges and you can go on the internet and google the value of a bit coin. Right now it is a \$1093. It was stated that it changes by the hour, just like the stock market.

Senator Casper: Essentially it is a safe haven asset. There is silver, gold and bit coin. It is like having digital silver in your safety deposit box and they do it because they don't want government interference in their assets that they hold. Or if you have a situation like Greece where they come and sweep away your assets. It's a standalone entity, there is this bit coin world. He then asked if by changing this in the code they were essentially applying the regulatory structure of his department to bit coin transactions in North Dakota and if they are only talking about transactions between institutions like banks or money lenders of some sort.

Robert J. Entringer: That is correct. This would take a basically unregulated industry and bring it under the regulation of the State of North Dakota.

Senator Casper: If I am a bit coin holder and worried about the government having any control in my assets by passing this legislation your department would not have regulatory control over me but over the 3rd party that is holding my assets for me and trying to transfer it to another 3rd party, is that how they conduct business with one another?

Robert J. Entringer: That is exactly correct.

Senator Marcellais: Stated that in the testimony it was stated that it requires a license for the bit coin and asked where the license is obtained.

Robert J. Entringer: From us.

Senator Campbell: Asked if the IRS could track or trace the bit coin if it is used to avoid government interference.

Robert J. Entringer: It is an open source technology and you can follow every transaction.

Senator Campbell: How can you avoid government interference because your purchase would be a money order or credit card or from a personal checking account.

Robert J. Entringer: The IRS came out with a publication where they deemed it property so it is potentially taxable.

Chairman Klein: Asked if anyone else was in support.

Marilyn Foss, North Dakota Bankers Association: In Support.

Chairman Klein: Asked for support or opposition. He closed the hearing. The committee would like more time.

2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2100
1/10/2017
Job Number 26717

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

North Dakota Money Transmitter Act

Minutes:

Amendment Attached #1

Chairman Klein: Reopened the meeting on SB 2100.

Senator Casper: Said as far as he could tell the premise of bit coin is to avoid any governmental involvement and discussions had been vehemently negative as far as the part of financial institutions having any regulatory involvement with bit coin or with electronic currency. This is a new thing and something worth studying. He brought in an amendment, see attachment #1. The amendment would turn this into a study resolution and if the department of financial institutions wants to deal with that on the House side, in the interim, they can try to fix it up but from our perspective based on our discussion here it would make a lot of sense to look this over the next two years and if there is a legitimate reason why we should be doing this and the banks think we should be doing this and our state, then we can have that discussion with more knowledge.

Chairman Klein: We are going to Hog House this thing.

Senator Casper moved to adopt the amendment.

Senator Burckhard seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Casper: Said that Senator Klein was correct and it is a Hog House and it essentially allows legislative management to choose to study the topic in the 2017 – 2018 interim. They would assign it to economic impact or one of the legislative committees. It gives an opportunity for the bankers and the regulators and the bit coin folk, virtual currency folks to have a more in-depth discussion about what the roles the state should have in regulating this currency.

Chairman Klein: Said that amongst the regulating community, they were kind of saying, if it's good for them then it's going to be okay for us and we like the new ,being techy and moving forward. I don't think anyone had a really could handle on that from the industry.

Senator Casper: Said he would agree with that and because something was built for the purpose of being non-regulated or having non-government involvement, that alone does not justify something being regulated. He did feel there is an at risk nature to virtual currency. Someone using the currency needs to go into that situation eyes wide open and also not being put into a situation where they are being forced to use the currency.

Chairman Klein: The clerk will call the roll on the amendment.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Casper moved for a do pass as amended.

Senator Burckhard seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Casper will carry the bill.

January 9, 2017

ET
1-10-17
Pg 1 of 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2100

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of virtual currency."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - VIRTUAL CURRENCY.

During the 2017-18 interim, the legislative management shall consider studying the feasibility and desirability of regulating virtual currency, such as bitcoin. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2100**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 17.8028.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Casper Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2100**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 17.8028.01001

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 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Senator Casper Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Casper

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2100: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2100 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of virtual currency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - VIRTUAL CURRENCY. During the 2017-18 interim, the legislative management shall consider studying the feasibility and desirability of regulating virtual currency, such as bitcoin. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

2017 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2100

2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2100
2/14/2017
28327

- Subcommittee
 Conference Committee

Eden Letang

Explanation or reason for introduction of bill/resolution:

Legislative management study of virtual currency.

Minutes:

Attachment 1

Chairman Keiser: Opens the hearing of SB 2100.

Aaron Webb~Assistant Commissioner: Attachment 1.

2:50

Rep Ruby: Do you support the new version of the bill? What are we going to accomplish with the study?

Webb: The desirability is up for the legislature is to decide whether they want to regulate. Under the existing statute, we could have been the states that interpret our statute to include our virtual currency. Instead, we brought to you to determine whether you want to or not.

Rep Lefor: How big a deal is virtual currency at this point in time?

Webb: It's not that it's becoming problematic, it is very used right now. Bit coin is worth \$1,000 right now in US. Looking at the value, people are using it because it's the only way bit coin is valued is you trust & usage in the system. It's gone from \$400 to about \$1,000.

Rep Lefor: What is going to happen if we don't do anything for 2 years?

Webb: It would continue as it is right now. We've have some in the industry call us & ask if they need a license. Second of all, can they get a licensed.

Rep Lefor: As you talk to other state regulators, will we be behind in regulation of virtual currency if we don't do something now?

Webb: There are a lot of states that currently do regulate & there are federal regulators that are looking at these products as well. We wouldn't be in the front of the pack, but there will be more states that will probably be regulating.

Rep Kasper: What was the reason for the invention of bit coin?

Webb: Initially it was started that it wasn't regulated, it's cheap to move internationally, some people do it for investment, there are a lot of reasons people have invested.

Rep Kasper: How does a bit coin receives its value?

Webb: It's built on trust; it's what people are willing to pay for it. When Japan accepted bit coin currency, the value goes up. It's not based on anything supportive & doesn't have the backing, so it's worth what people think it's worth & willing to pay for in an open market.

Rep Becker: When someone calls for a license & your answer is?

Webb: At this point, we have not determined that it is necessary but if they do any other business relating to US currency transmission, they require a license. We've indicated that we are bringing this to legislature for direction.

Rep Becker: If they are asking for a license, are you on the fence? Are you telling them no for that part you don't need a license in ND?

Webb: We are telling them that they do not need it if that's all they do, if they don't do US currency transmission.

Chairman Keiser: What were the concerns of the senate, why did they convert it to a study?

Webb: That's a good question, I don't know. That happened after we left the hearing.

Rep Kasper: It appears that bit coin is avoiding taxation, like sales tax or other taxes that might be imposed on a transaction.

Webb: The IRS a couple years ago a letter ruling that indicates it is considered property for IRS purposes. It is taxed in that respect. If it is used to purchase, there is a middle man, they will convert it to US currency & go to the merchant & would tax the sale based on US currency. There are ways it is taxed.

Rep Ruby: Being this is an international virtual product, if the bill is passed in its current form, how would that change for you as far as regulation?

Webb: Are you talking the updated Senate or the original version.

Rep Ruby: Original version. How would you regulate something so virtual?

Webb: We would regulate them as we do for regular money transfer. The ledgers are open records for everybody to see. The companies, they are going to advertise their ability to exchange or transfer money, so they are not hard to find.

Rep Louser: We are talking about a function that seem to be of the federal government. The language of the study doesn't make sense to me, we are actually looking to study, potentially, licensing money transmitters that are using virtual currency, not regulating virtual currency, correct?

Webb: Correct, we are not looking to regulate.

Rep Louser: This would make sense then, the language in this study resolution is not our prerogative. If this were to pass, we need to change the language, correct?

Webb: That is completely up to you.

Rep Kasper: If I have a thousand bit coins in my account & I would want it converted to cash at a \$1,000. What is the medium that gets my cash?

Webb: You could go to an exchange where they would arrange for that exchange. Some exchanges will hold their own bit coin or you could go there & sell it to them. Some exchanges will set you up with another party & facilitate that trade.

Rep Kasper: It has some ability to convert to cash.

Webb: Yes, for a bit coin. There are some virtual currencies that don't, like gaming tokens but that's not transferrable to US dollars. Bit coin would be.

Rep Kasper: Someone decided to start a bit coin out of nothing. They say the value is a dollar. Now, the value is a \$1,000, so you started with nothing, it's used for transactions, now someone is willing to give you cash for something that was nothing. Isn't there somewhere down the road where this is going to have to implode. Where does the value of bit coin comes from?

Webb: The value in the bit coin comes trust but also the fact that it's a finite amount. Bit coins are only minted; they are mined is what they call it. In order to mine bit coins, you have to solve a complex mathematical equation that has the settles the ledger 10-minute increment. Companies are out there, they have to solve this big algorithm & as soon as they do that, they are able to write the next block in the block chain. When they do that, they are issued a certain amount of bit coins. So that's the only way they are created. That will continue to happen until it reaches a maximum of 21 million bit coins, approximately in the year 2140.

It is created & there is work product that goes into the minting of those bit coins. It's not just somebody come on & say I'm going issue a 100,000 more.

Chairman Keiser: Further questions? Anyone else here to testify in support of SB 2100, opposition, neutral? Closes the hearing, what are the wishes of the committee?

Rep Becker: Moves a Do Not Pass.

Rep Kasper: Second.

Chairman Keiser: Further discussion.

Rep Becker: The study of the new language is completely off, maybe in 2 years this may be appropriate & we can hear it then.

Roll call was taken for a Do Not Pass on SB 2100 with 14 yes, 0 no, 0 absent & Rep Dobervich is the carrier.

Date: Feb 14, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 2100

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or
Description: _____

Recommendation

- Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions

- Reconsider _____

Motion Made By Rep Becker

Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	X		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee	X	
Rep Kasper	X		Rep Dobervich	X	

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep Dobervich

REPORT OF STANDING COMMITTEE

SB 2100, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2100 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

SB 2100

MEMORANDUM

DATE: January 4, 2017
TO: Senate Industry, Business and Labor Committee
FROM: Robert J. Entringer, Commissioner
SUBJECT: Testimony in Support of Senate Bill No. 2100

Chairman Klein and members of the Senate Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Senate Bill No. 2100

Mr. Chairman and members of the Committee, Senate Bill No. 2100 includes amendments to Chapter 13-09 of the North Dakota Century Code relating to money transmission. Over the past few years, the financial payments industry has undergone a technological transformation. With these new technologies have come new payment innovations. One such area of innovation has been virtual currencies (also known as digital or crypto currencies). Most states now regulate virtual currencies in some form; some do so under their interpretation of existing laws, while others have either

passed new virtual currency statutes (New York) or have amended money transmitter statutes to reference virtual currency. The purpose of this Bill is to update definitions under the North Dakota money transmitter statute to expressly reference virtual currency. The language in this Bill is modeled after 2015 legislation enacted by the State of North Carolina.

Section 1 of the Bill amends section 13-09-02 of the money transmitter act relating to two definitions. First, a new definition of "virtual currency" is added to the statute. This definition was taken from a model regulatory framework issued by the Conference of State Bank Supervisors Emerging Payments Taskforce. Virtual currency is defined as including a "...digital representation of value used as a medium of exchange, a unit of account, or a store of value, which does not have a legal tender status as recognized by the United State government." As such, virtual currencies share similar characteristics of fiat currency, but are not tangible or backed by any central bank or governmental authority. The term excludes the software or protocols used to transfer digital currencies, and does not include defined merchant products such as rewards programs. Examples of virtual currencies include Bitcoin, Litecoin, Peercoin, and Darkcoin.

Second, the Bill amends the definition of "money transmission" to include "...maintaining control of virtual currency on behalf of others".

Therefore, it is the exercise of control over the virtual currency of others that would require licensure. For example, if a company maintains a wallet which stores a consumer's Bitcoins, this would require a license. Likewise, if a company receives a consumer's Bitcoins and transmits them to a third party, this would also require a license. However, if a company merely completes a sale of its own inventory of Bitcoins, or sells Bitcoin wallet software, no license would be necessary.

Mr. Chairman, thank you for the opportunity to provide this testimony, and I would be happy to answer any questions the Committee may have.

For additional background on virtual currencies:

United States Government Accountability Office – Virtual Currencies – Emerging Regulatory, Law Enforcement, and Consumer Protection Challenges (May 2014):

<http://www.gao.gov/assets/670/663678.pdf>

Department of the Treasury Financial Crimes Enforcement Network (FinCEN) - Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies (March 2013):

<https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf>

European Central Bank – Virtual Currency Schemes (October 2012) -

<http://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemes201210en.pdf>

17.8028.01001
Title.

Prepared by the Legislative Council staff for
Senator Casper

January 9, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2100

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of virtual currency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - VIRTUAL CURRENCY.

During the 2017-18 interim, the legislative management shall consider studying the feasibility and desirability of regulating virtual currency, such as bitcoin. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

MEMORANDUM

DATE: February 14, 2017
TO: House Industry, Business and Labor Committee
FROM: Aaron Webb, Assistant Commissioner
SUBJECT: Testimony in Support of Senate Bill No. 2100

Chairman Keiser and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Senate Bill No. 2100.

Mr. Chairman and members of the Committee, the department introduced this Bill as a means of addressing a changing and evolving financial payments industry. Specifically, it was designed to update the North Dakota Money Transmitter Act relating to virtual currencies.

Many states now regulate virtual currencies in some form; some accomplish it through the passage of new virtual currency statutes (New York), while the majority of states do so by amending or interpreting existing money transmitter statutes.

As originally introduced, SB 2100 included two definitional changes to the Money Transmitter Act, found under North Dakota Century Code Ch. 13-09.

First, a new definition of “virtual currency” was added to the statute. This definition was taken from a model regulatory framework issued by the Conference of State Bank Supervisors Emerging Payments Taskforce. “Virtual currency” was defined as: “...a digital representation of value used as a medium of exchange, a unit of account, or a store of value, which does not have a legal tender status as recognized by the United State government.” This definition contains the two distinguishing features of virtual currencies: (1) they are digital in nature with no physical form, and (2) they are not denominated in legal tender recognized by the US Government (ie. not backed by any central bank or governmental authority). The term excludes the software or protocols used to transfer digital currencies, and does not include defined merchant products such as rewards programs. Examples of virtual currencies include Bitcoin, Litecoin, Peercoin, Darkcoin.

Second, the Bill amended the definition of “money transmission” to include “...maintaining control of virtual currency on behalf of others”. Therefore, it is the exercise of control over the virtual currency of others that would require licensure. In application, this definition would require a license

if an entity stores virtual currency belonging to others. For example, if an entity maintains a wallet which stores another person's Bitcoins. Likewise, if an entity receives virtual currency belonging to others for the purpose of transmitting it to a third party, this would also require a license. The Bill was not intended to regulate users of virtual currency or ultimate recipients (eg. Merchants).

As for the current version of SB 2100, the Senate IBL Committee replaced the original language in the Bill with a Legislative Management Study to review the feasibility and desirability of regulating virtual currency.

Mr. Chairman, this concludes my testimony, I would be happy to answer any questions the Committee may have.