

SENATE BILL NO. 333—SENATOR NEAL

MARCH 20, 2023

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to virtual currency.
(BDR 57-18)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to virtual currency; requiring a virtual currency business to register with the Commissioner of Financial Institutions before engaging in virtual currency business activity with or on behalf of a resident of this State; creating the Virtual Currency Recovery Account; authorizing the Commissioner to impose a civil penalty on a virtual currency business that engages in certain conduct; authorizing the Commissioner to award payments of restitution to certain residents who are victims of fraud committed by a virtual currency business; requiring a virtual currency business to provide certain disclosures to a resident before engaging in virtual currency business activity with or on behalf of the resident; prohibiting a person from engaging in certain conduct relating to the solicitation of virtual currency business activity; prohibiting a virtual currency business from engaging in certain advertisements or promotions; prohibiting a domestic life insurer from investing money allocated to certain accounts in virtual currency; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 This bill, sets forth various requirements and restrictions concerning virtual
2 currency and virtual currency business activity. **Section 9** of this bill defines
3 “virtual currency business activity” to mean, in general: (1) receiving virtual
4 currency for transmission or transmitting virtual currency; (2) storing, holding or
5 maintaining custody or control of virtual currency on behalf of others; (3) buying
6 and selling virtual currency as a business; (4) performing exchange services as a



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business; or (5) controlling or issuing virtual currency. **Section 8** of this bill designates a person who engages in virtual currency business activity as a "virtual currency business." **Sections 3-7 and 9.5** of this bill define additional words and terms for the purposes of **sections 2-17.5** of this bill. **Section 10** of this bill exempts a broker-dealer registered with the Securities and Exchange Commission and certain financial institutions from the provisions of **sections 2-17.5**.

Section 11 of this bill requires a virtual currency business, before engaging in virtual currency business activity with or on behalf of a resident of this State, to register with the Commissioner of Financial Institutions by submitting a form containing certain information. **Section 12** of this bill provides that if the Commissioner determines that a virtual currency business has committed an act constituting fraud against an older person, vulnerable person or a person under 21 years of age, the Commissioner is authorized to impose a civil penalty against the virtual currency business in an amount not to exceed 5 percent of the gross revenue of the virtual currency business in the immediately preceding year that was derived from engaging in virtual currency business activities. **Section 12** requires the money collected from the civil penalty to be deposited in the Virtual Currency Recovery Account, which is created by **section 13** of this bill.

Section 14 of this bill authorizes the Commissioner to award payments of restitution from the Account to eligible residents. Under **section 14**, a resident is eligible for a grant from the Account if: (1) the resident is a victim of fraud committed by a virtual currency business; (2) at the time the fraud was committed, the resident was an older person, a vulnerable person or a person under 21 years of age; and (3) the resident meets any other criteria for eligibility established by the Commissioner by regulation.

Section 15 of this bill requires a virtual currency business, before engaging in virtual currency business activity with or on behalf of a resident, to provide to the resident a written disclosure containing the material risks involved in the activity and certain other information. **Section 15.5** of this bill prohibits a person from engaging in any act or practice for the purpose of soliciting virtual currency business activity with a resident of this State that is intended to produce an erroneous belief by the resident that the person wishes to pursue a romantic or sexual relationship. **Section 16** of this bill prohibits a virtual currency business from engaging in advertising or promotions which target any person or group of persons who, for certain specified reasons, is particularly vulnerable to financial exploitation. **Section 17** of this bill authorizes the Commissioner to adopt regulations to carry out the provisions of **sections 2-17**.

Existing law authorizes a domestic life insurer to establish separate accounts and allocate to those accounts amounts to provide for life insurance or annuities payable in fixed or variable amounts, or both. Existing law authorizes any amounts allocated to a separate account to be invested without regard to any requirements or limitations set forth under existing law governing the investments of life insurance companies. (NRS 688A.390) **Section 17.5** of this bill prohibits a domestic life insurer from investing any amount allocated to a separate account to provide for life insurance in virtual currency.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 57 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 17, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 9.5, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Commissioner” means the Commissioner of Financial Institutions.*

Sec. 4. *“Exchange service” means:*

1. The conversion or exchange of government currency or other value into virtual currency;

2. The conversion or exchange of virtual currency into government currency or other value; or

3. The conversion or exchange of one form of virtual currency into another form of virtual currency.

Sec. 5. *“Government currency” means currency which has been issued by a government and has been designated as legal tender in its country of issuance through law, regulation or government decree.*

Sec. 5.5. *“Older person” has the meaning ascribed to it in NRS 200.5092.*

Sec. 6. *“Resident” means a person whose information on record with or available to a virtual currency business indicates that the person has:*

1. A home address in this State;

2. A mailing address in this State; or

3. An Internet protocol address connected with a location in this State.

Sec. 7. 1. *“Virtual currency” means a digital representation of value that is used as a medium of exchange or a form of digitally stored value.*

2. The term includes a digital representation of value that:

(a) Has a centralized repository or administrator;

(b) Is decentralized and does not have a centralized repository or administrator; or

(c) May be created or obtained by computing or manufacturing effort.

3. The term does not include a digital representation of value that is used exclusively:

(a) Within one or more online game platforms and which does not have a market or application outside of those gaming



platforms and cannot be converted to or redeemed for government currency; or

(b) As part of a consumer affinity or rewards program which can be applied solely as payment for purchases with the issuer of the digital representation of value or other designated merchant but cannot be converted to or redeemed for government currency.

Sec. 8. “Virtual currency business” means a person who engages in virtual currency business activity.

Sec. 9. “Virtual currency business activity” means:

1. Receiving virtual currency for transmission or transmitting virtual currency, except where the transaction is undertaken for nonfinancial purposes and does not involve the transfer of more than a nominal amount of virtual currency;

2. Storing, holding or maintaining custody or control of virtual currency on behalf of others;

3. Buying and selling virtual currency as a business;

4. Performing exchange services as a business; or

5. Controlling or issuing virtual currency.

Sec. 9.5. “Vulnerable person” has the meaning ascribed to it in NRS 200.5092.

Sec. 10. The provisions of this chapter do not apply to a:

1. Bank, trust company, bank holding company, credit union, building and loan association, savings and loan association, savings bank or mutual savings bank organized under the laws of any state or the United States.

2. Broker-dealer registered with the Securities and Exchange Commission.

Sec. 11. 1. Before engaging in any virtual currency business activity with or on behalf of any resident, a virtual currency business shall register with the Commissioner by submitting to the Commissioner a form prescribed by the Commissioner that contains, without limitation:

(a) The name and address of the virtual currency business;

(b) Any affiliate or subsidiary of the virtual currency business; and

(c) Any other virtual currency business in which the virtual currency business holds an ownership interest.

2. A virtual currency business that has registered pursuant to subsection 1 shall thereafter promptly notify the Commissioner of every material change in the information provided in the form submitted pursuant to subsection 1.

Sec. 12. 1. If the Commissioner determines that a virtual currency business has committed any act constituting fraud against a resident who is an older person, vulnerable person or under 21 years of age, the Commissioner may, after notice and a



1 *hearing, impose a civil penalty against the virtual currency*
2 *business in an amount not to exceed 5 percent of the gross*
3 *revenue of the virtual currency business in the immediately*
4 *preceding year that was derived from engaging in virtual currency*
5 *business activities.*

6 2. *The money collected by the Commissioner from the civil*
7 *penalty imposed pursuant to subsection 1 must be deposited in the*
8 *Virtual Currency Recovery Account created by section 13 of this*
9 *act.*

10 **Sec. 13. 1. The Virtual Currency Recovery Account is**
11 **hereby created in the State General Fund.**

12 2. *The Commissioner shall administer the Account. The*
13 *money in the Account must be expended to award payments of*
14 *restitution to eligible residents in accordance with section 14 of*
15 *this act.*

16 3. *The Commissioner may apply for and accept any gift,*
17 *donation, bequest, grant, transfer or other source of money for*
18 *deposit in the Account.*

19 4. *The interest and income earned on the money in the*
20 *Account, after deducting applicable charges, must be credited to*
21 *the Account.*

22 5. *The money in the Account must remain in the Account and*
23 *does not revert to the State General Fund at the end of any fiscal*
24 *year.*

25 **Sec. 14. 1. To the extent that money is available in the**
26 **Virtual Currency Recovery Account created by section 13 of this**
27 **act, the Commissioner may award payments of restitution from the**
28 **Account to eligible residents who submit an application to the**
29 **Commissioner in the form and manner prescribed by the**
30 **Commissioner.**

31 2. *Except as otherwise provided in subsection 3, a resident is*
32 *eligible for a payment of restitution from the Account if:*

33 (a) *The resident is a victim of fraud committed by a virtual*
34 *currency business;*

35 (b) *At the time the fraud was committed by the virtual currency*
36 *business, the resident was:*

37 (1) *An older person;*

38 (2) *A vulnerable person; or*

39 (3) *Under 21 years of age; and*

40 (c) *The resident meets any other criteria for eligibility*
41 *established by the Commissioner by regulation.*

42 3. *The amount of money from the Account that may be*
43 *awarded to a resident based upon any number of applications*
44 *submitted by the resident involving a single virtual currency*
45 *business must not exceed \$10,000.*



4. The Commissioner shall adopt regulations to carry out the provisions of this section. The regulations must include, without limitation:

(a) The procedure by which a person may apply for a payment of restitution from the Account;

(b) Any additional criteria that a person must meet to be eligible for a payment of restitution from the Account; and

(c) Procedures to distribute the money in the Account in a fair and equitable manner.

Sec. 15. A virtual currency business shall, before engaging in virtual currency business activity with or on behalf of a resident, provide to the resident a written disclosure, which includes, without limitation, all material risks that, to the best of the virtual currency business's knowledge, the virtual currency business activity may pose and the following statements:

1. That virtual currency is not legal tender and is not backed by the United States government;

2. That the virtual currency held by the virtual currency business on behalf of the resident is not insured by the Federal Deposit Insurance Corporation;

3. That transactions in virtual currency held by the virtual currency business on behalf of the resident may be irreversible and losses due to fraudulent or accidental transactions may not be recoverable;

4. That laws determining the rights and obligations of virtual currency users are not fully developed and a court may find that the elements of the transaction, including, without limitation, the timing, amount, identity or location of the parties may not be the same as if the transaction had occurred with government currency; and

5. That the value of the virtual currency held by the virtual currency business on behalf of the resident may change more quickly and unexpectedly than that of government currency and may in fact become zero.

Sec. 15.5. A person shall not engage in any act or practice for the purpose of soliciting virtual currency business activity with a resident that is intended to produce an erroneous belief by the resident that the person wishes to pursue a romantic or sexual relationship with the resident.

Sec. 16. A virtual currency business shall not engage in advertising or promotions which target any person or group of persons who, by reason of age, health, economic status, infirmity, impaired understanding or disability, is particularly vulnerable to financial exploitation.



Sec. 17. *The Commissioner may adopt such regulations as are necessary to carry out the provisions of this chapter.*

Sec. 17.5. NRS 688A.390 is hereby amended to read as follows:

688A.390 1. A domestic life insurer may establish one or more separate accounts, and may allocate thereto amounts (including without limitation proceeds applied under optional modes of settlement or under dividend options) to provide for life insurance or annuities (and benefits incidental thereto), payable in fixed or variable amounts or both, subject to the following:

(a) The income, gains and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains or losses of the company.

(b) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in paragraph (c):

(1) Amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies ~~H~~, ***except that no amounts allocated to any separate account or any accumulations thereon to provide for life insurance may be invested in virtual currency, as defined in section 7 of this act;*** and

(2) The investments in such separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

(c) Except with the approval of the Commissioner and under such conditions as to investments and other matters as the Commissioner may prescribe, which shall recognize the guaranteed nature of the benefits provided, reserves for:

(1) Benefits guaranteed as to dollar amount and duration; and

(2) Funds guaranteed as to principal amount or stated rate of interest,

➤ shall not be maintained in a separate account.

(d) Unless otherwise approved by the Commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; but unless otherwise approved by the Commissioner, the portion if any of the assets of such separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in paragraph (c) shall be valued in accordance with the rules otherwise applicable to the company's assets.



(e) Amounts allocated to a separate account in the exercise of the power granted by this section shall be owned by the company, and the company shall not be, nor hold itself out to be, a trustee with respect to such amounts. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

(f) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account pursuant to subsection 6 or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made:

(1) By a transfer of cash; or

(2) By a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the Commissioner.

➤ The Commissioner may approve other transfers among such accounts if, in the opinion of the Commissioner, such transfers would not be inequitable.

(g) To the extent such company deems it necessary to comply with any applicable federal or state laws, such company, with respect to any separate account, including without limitation any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of such account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account.

2. Any contract providing benefits payable in variable amounts delivered or issued for delivery in this state, including a group contract and any certificate issued thereunder, shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of such variable benefits. Any such contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its



1 first page a statement to the effect that the benefits thereunder are on
2 a variable basis.

3 3. No company shall deliver or issue for delivery within this
4 state variable contracts unless it is licensed or organized to do a life
5 insurance or annuity business in this state, and the Commissioner is
6 satisfied that its condition or method of operation in connection with
7 the issuance of such contracts will not render its operation
8 hazardous to the public or its policyholders in this state. In this
9 connection, the Commissioner shall consider among other things:

10 (a) The history and financial condition of the company;

11 (b) The character, responsibility and fitness of the officers and
12 directors of the company; and

13 (c) The law and regulations under which the company is
14 authorized in the state of domicile to issue variable contracts.

15 ➔ If the company is a subsidiary of an admitted life insurance
16 company, or affiliated with such company through common
17 management or ownership, it may be deemed by the Commissioner
18 to have met the provisions of this subsection if either it or the parent
19 or the affiliated company meets the requirements hereof.

20 4. Notwithstanding any other provision of law, the
21 Commissioner has sole authority to regulate the issuance and sale of
22 variable contracts, and to issue such reasonable rules and regulations
23 as may be appropriate to carry out the purposes and provisions of
24 this section.

25 5. Except for NRS 688A.190, 688A.240 and 688A.250 in the
26 case of a variable annuity contract and NRS 688A.060, 688A.110,
27 688A.120, 688A.130, 688A.290 to 688A.360, inclusive, and
28 688B.050 in the case of a variable life insurance policy and except
29 as otherwise provided in this Code, all pertinent provisions of this
30 Code shall apply to separate accounts and contracts relating thereto.
31 Any individual variable life insurance contract, delivered or issued
32 for delivery in this state, shall contain grace, reinstatement and
33 nonforfeiture provisions appropriate to such a contract. Any
34 individual variable annuity contract, delivered or issued for delivery
35 in this state, shall contain grace and reinstatement provisions
36 appropriate to such a contract. The reserve liability for variable
37 contracts shall be established in accordance with actuarial
38 procedures that recognize the variable nature of the benefits
39 provided and any mortality guarantees.

40 6. A domestic life insurer which establishes one or more
41 separate accounts pursuant to this section may participate therein by
42 allocating and contributing to such separate account funds which
43 otherwise might be invested pursuant to NRS 682A.410 and
44 682A.514. The insurer shall have a proportionate interest in any
45 such account, along with all other participating contract holders, to



the extent of its participation therein. The aggregate amount so allocated or contributed by such an insurer to one or more separate accounts shall not, without the consent of the Commissioner, exceed the greater of:

(a) One hundred thousand dollars;

(b) One percent of its admitted assets as of December 31 next preceding; or

(c) Five percent of its surplus as to policyholders as of December 31 next preceding.

➤ All funds allocated or contributed by the insurer to a separate account for the purpose of participation therein shall be included in applying the limitations upon investments otherwise specified in this Code. The insurer shall be entitled to withdraw at any time in whole or in part its participation in any separate account to which funds have been allocated or contributed and to receive upon withdrawal its proportional share of the value of the assets of the separate account at the time of withdrawal.

Sec. 18. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 17.5, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2024, for all other purposes.

