



State of New Hampshire

GENERAL COURT

CONCORD

MEMORANDUM

DATE: October 14, 2020

TO: Honorable Christopher Sununu, Governor
Honorable Stephen J. Shurtleff, Speaker of the House
Honorable Donna M. Soucy, President of the Senate
Honorable Paul C. Smith, House Clerk
Honorable Tammy L. Wright, Senate Clerk
Michael York, State Librarian

FROM: Representative Susan W. Almy

SUBJECT: Final Report on RSA 399-G:25, HB 356
Chapter 205, Laws of 2016

Pursuant to RSA 399-G: 25, HB 356, Chapter 205, Laws of 2016, as amended by HB 1245, Chapter 37:28, Laws of 2020, enclosed please find the Final Report of the Commission to Study Cryptocurrency.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

Enclosure

Cc: committee members

FINAL REPORT

Commission to Study Cryptocurrency

HB 356, Chapter 205, Laws of 2016

October 14, 2020

Members:

Rep. Susan W. Almy, Chair
Rep. Greg Indruk
Rep. John B. Hunt
Maryam Torben-Desfosses, Banking Department
Kevin Moquin, Division of Securities Regulation, Department of State
Jeremy Kauffman, representative of the cryptocurrency industry

Commission Charge

This commission was established effective on June 6, 2016. It was charged to study whether regulation of the cryptocurrency industry is necessary in New Hampshire and to annually report its findings and any recommendations for proposed legislation. The original repeal date of November 1, 2021, was changed to November 1, 2020, with the adoption of HB 1245, Chapter 37 in 2020.

Background on Commission

Two bills that addressed the cryptocurrency industry were introduced and referred to the House Commerce and Consumer Affairs Committee in January 2015. HB 666 was adopted with an amendment in 2015 while HB 356 was retained for further work and ultimately amended in 2016 to create a study commission on cryptocurrency.

HB 666, Chapter 258, Laws of 2015; effective January 1, 2016 ***Regulating money transmitters***

This bill repealed and reenacted RSA 399-G. It was filed at the request of the Bank Department with the primary goal of revising the chapter regulating money transmitters to make it easier to understand and more consistent with other state banking regulations. The bill was amended in the House to add a definition of ‘convertible virtual currency’ and to explicitly require the regulation of people who receive convertible virtual currency for transmission.

Provisions of the final version of the bill addressing convertible virtual currency:

1. Added a definition of ‘convertible virtual currency’ to RSA 399-G:1

VII. “Convertible virtual currency” means a digital representation of value that:

- (a) Can be a medium of exchange, a unit of account, and/or a store of value;
- (b) Has an equivalent value in real currency or acts as a substitute for real currency;
- (c) May be centralized or decentralized; and
- (d) Can be exchanged for currency or other convertible virtual currency.

2. Added ‘convertible virtual currency’ to the definition of ‘monetary value’.

XV. "Monetary value" means a medium of exchange, whether or not redeemable in currency, and includes convertible virtual currency.

Money transmitters are defined in this law as persons engaged in the business of selling or issuing payment instruments or stored value or receiving currency or *monetary value* for transmission to another location.

HB 356 (2015-2016), Chapter 205, Laws of 2016; effective June 6, 2016
Establishing Cryptocurrency Commission

As introduced, HB 356 exempted persons using private virtual currencies for internet commerce from the licensing requirements for money transmitters outlined in RSA 399-G. The bill was retained for further work by the House Commerce Committee in 2015.

After working on the bill over the summer and fall, the committee issued a report noting that “Due to ongoing conflicting and evolving classifications of cryptocurrency from several federal agencies, it was deemed necessary to study the industry on an ongoing basis over the next 5 years.” The bill was amended to establish a Commission to Study Cryptocurrency composed of three members of the House, and members representing the NH Banking Department, the NH Bureau of Securities Regulation and the cryptocurrency industry.

Meetings and Discussion, 2016

The commission received input from a number of people interested in encouraging the use of virtual currencies, such as bitcoin, in New Hampshire. Participants in the commission’s discussions included Rep. Keith Ammon, Rep. Joe Hannon, Darryl Perry (Liberty Lobby), Jeremy Kaufman, Michael Demopoulos (CXO, Poloniex, Inc.), Ian Freeman (NH Liberty Party), Robert Call, Christopher Waid, (ThinkPenguin), Jason Brett (Director of Operations, Chamber of Digital Commerce), James Gardner, and Vincent Moore.

Noting the similarities between the cryptocurrency industry and the traditional money transmitter industry, the representative of the Banking Department advocated for maintaining the current level of limited regulation of the cryptocurrency industry by the department to ensure a degree of consumer protection. Other members of the commission pointed out that some people who are using cryptocurrency do not support traditional banking oversight over this industry. There was also some concern that the adoption of a very narrow area of regulation could cause the same problems that the Banking Department had with FRM and the NH auto dealers, which resulted in confusion over precisely which state agency, the Banking Department or the Attorney General, had jurisdiction over a specific consumer transaction. There was concern that such confusion could result in a delayed response and could harm, rather than help, consumers who have been aggrieved by a money transmitter.

Exemption Adopted, 2017

Rep. Biggie (then a member of the Commission) and Rep. Ammon sponsored HB 436, exempting persons using virtual currency from registering as money transmitters, in 2017. This bill added an exemption to RSA 399-G exempting “persons who engage in the business of selling or issuing payment instruments or stored value solely in the form of convertible virtual currency or receive convertible virtual currency for transmission to another location” from the licensure requirements applied to money transmitters. It also explicitly stated that such persons are subject to RSA 358-A, the NH Consumer Protection Act.

HB 436 was signed by the Governor on June 2, 2017 and became Chapter 70, Laws of 2017. It took effect on August 1, 2017.

Bank Department Notice Posted 2017

The NH Banking Department posted the following notice on its website relative to HB 436:

“With Governor Sununu’s signing of House Bill 436 into law, the New Hampshire Banking Department will no longer license or supervise money transmitters “who engage in the business of selling or issuing payment instruments or stored value solely (emphasis added) in the form of convertible virtual currency or receive convertible virtual currency for transmission to another location.” This change is effective on August 1, 2017. Bitcoin is one well-known example of “convertible virtual currency”.

“Note the emphasized language above. Money transmitters who conduct business in traditional fiat currency, for example U.S. dollars, and those who transmit money in fiat and cryptocurrency are still required to be licensed with the New Hampshire Banking Department. Please call us at 603-271-3561 if you have questions.

“As a result of passage of HB 436, NH RSA 399-G:3 will also include language stating that cryptocurrency transactions will now be “subject to the provisions of RSA 358-A”, also known as the Consumer Protection Act. Consumers who believe they may have been harmed by a cryptocurrency transmitter should contact the Consumer Protection Bureau of the New Hampshire Department of Justice at (603) 271-3641.”

Current State of the Cryptocurrency Industry in NH

The Banking Department representative noted late in 2017, that all of the money transmitters that were licensed prior to the adoption of this new exemption continued to maintain their licenses. The department continues to audit these businesses on a regular basis using a standard checklist to ensure compliance with applicable laws. Neither the Banking Department nor the Bureau of Securities Regulation reported any complaints filed against businesses engaged in virtual currency transactions in any commission meetings.

It was noted during Commission discussions that the adoption of the licensure exemption had provided good publicity for the state of New Hampshire. The cryptocurrency-friendly environment created by the adoption of the law attracted a new app business to Portsmouth and the Free State Blockchain Digital Assets Conference to Durham in 2019.

Conclusion

Throughout the course of its work, commission members discussed and monitored the New Hampshire cryptocurrency industry and the application of the exemption adopted in 2017 and recommended no further changes to the laws.

In 2019, the Study Committee on Outdated Non-regulatory Boards, Commissions, Councils, and Advisory Bodies (HB 4, Chapter 346:73, Laws of 2019) recommended that the prospective repeal of the Commission to Study Cryptocurrency be amended to take effect on November 1, 2020. This change was adopted by HB 1245, Chapter 37, Laws of 2020.

Respectfully submitted on behalf of the commission,

Rep. Susan W. Almy, Chair