Date of Hearing: January 21, 2014

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Roger Dickinson, Chair
AB 129 (Dickinson) – As Amended: January 7, 2014

SUBJECT: Lawful money: Alternative currency.

SUMMARY: Specifies that current law which bans the issuance or circulation of anything but lawful money of the United States does not prohibit the issuance and use of alternative currency.

EXISTING STATE LAW provides under Corporations Code section 107 that no corporation, flexible purpose corporation, association, or individual shall not issue or put in circulation, as money, anything but the lawful money of the United States.

EXISTING FEDERAL LAW provides that manufacturing counterfeit United States currency or altering genuine currency to increase its value is a violation of Title 18, Section 471 of the United States Code (U.S.C.) and is punishable by a fine of up to $5,000, or 15 years imprisonment, or both.

Possession of counterfeit United States obligations with fraudulent intent is a violation of Title 18, Section 472 of the U.S.C. and is punishable by a fine of up to $15,000, or 15 years imprisonment, or both.

Anyone who manufactures a counterfeit U.S. coin in any denomination above five cents is subject to the same penalties as all other counterfeiters. Anyone who alters a genuine coin to increase its numismatic value is in violation of Title 18, Section 331 of the U.S.C., which is punishable by a fine of up to $2,000, or imprisonment for up to 5 years, or both.

Forging, altering, or trafficking United States Government checks, bonds, or other obligations is a violation of Title 18, Section 510 of the U.S.C. and is punishable by a fine of up to $10,000, or ten years imprisonment, or both.

Printed reproductions, including photographs of paper currency, checks, bonds, postage stamps, revenue stamps, and securities of the United States and foreign governments (except under the conditions previously listed) are violations of Title 18, Section 474 of the U.S.C. Violations are punishable by fines of up to $5,000, or 15 years imprisonment, or both.

Section 31 U.S.C. 5103. Declares that United States coins and currency (including Federal Reserve Notes and circulating notes of Federal Reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues.

FISCAL EFFECT: None

COMMENTS:

This bill makes clarifying changes to current law to ensure that various forms of alternative currency such as digital currency, points, coupons, or other objects of monetary value do not violate the law when those methods are used for the purchase of goods and services or the transmission of payments. Modern methods of payment have expanded beyond the typical cash or credit card transactions.

Bitcoin, a digital currency (Also called cryptocurrency), has gained massive media attention recently as the number of businesses has expanded to accept Bitcoins for payment. Long before the introduction of digital currencies, various businesses have created points models that reward consumers with points for completion of various tasks such as spending a certain dollar amount, or even by purchasing points with dollars. These point systems effectively operate as currency allowing the consumers to buy a retail item or pay for some type of service. Many communities across the United States and in California have created "community currencies" that are created by members of a community in conjunction with merchants who agree to accept the alternative currency. These "community currencies" are created for a variety of reasons, some of which include encouraging consumers to shop at small businesses within the community or increasing neighborhood cohesiveness. "Community currency" has also become a form of political protest as some communities that use such currency do so in protest of US monetary policies, or large financial institutions. The following is a list of "community currencies" in California:

- Barter Bucks- Concord, California
- Bay Bucks San Francisco, California
- Berkeley Barter Network Berkeley, California
- Berkeley Bread Berkeley, California
- Central Pound Clovis, California
- Davis Dollars Davis, California
- Escondido Dollars Escondido, California
- Fairbuck Fairfax, California
- Humboldt Hours Eureka, California and Arcata, California
- Mendocino SEED Fort Bragg, California
- North Fork Shares North Fork, California
- San Luis Obispo Hours San Luis Obispo, California
- Sand Dollars Bolinas, California
- Santa Barbara Hours Santa Barbara, California
- Santa Monica Hours Santa Monica, California
- Sequoia Hours Garberville, California
- Sonoma County Community Cash Santa Rosa, California
- TradeMarket Nevada City, California
- Ukiah Hours Ukiah, California

The following is a list of the largest digital currencies (cryptocurrencies) that are in use:

- Bitcoin
- Ripple
- Litecoin
- Peercoin
- Namecoin
- Dogecoin
- Primecoin

Recently, a new digital currency attempted to emerge, known as COINYE (Originally called COINYE West) which was modeled after Bitcoin and implied a connection to rapper Kanye West via a cartoon picture of Kanye West as the currency's logo. A lawsuit filed in a Manhattan federal court sought to stop COINYE on the grounds that it used the rapper's image to cash in on his popularity without his consent, damaging his reputation and confusing consumers about the source of the cryptocurrency.

Facing legal action, creators of COINY have ended the project and COINYE is now *Lost in the World*, but may have been nothing more than a *Dark Fantasy*.

Bitcoin

Bitcoin has garnered the most attention of any other digital currency, but even for its increasing awareness in the marketplace, many people do not completely understand what it is or how it works. Bitcoin has been called the world's "first decentralized digital currency" and was created in 2009 by a programmer using the alias, Satoshi Nakomoto. The idea behind Bitcoin is that it doesn't have a central clearinghouse or any singular authority and it is not pegged to any real tangible currency. Its value arises from the value that people assign to it. It works via peer-to-peer network where tasks are shared amongst multiple interconnected peers who each make a portion of their resources (computing power) directly available to other network participants, without the need for centralized coordination by servers. The network depends on users who provide their computing power to reconcile transactions and keep the block chain. These users in the system are called "minors" because they can potentially be rewarded for their participation in the network with the creation of Bitcoins. Bitcoins are created (mined) as thousands of dispersed computers solve complex math problems. With the solving of the complete math problem Bitcoins are created. Bitcoin was designed to be a finite resources such as gold or silver, thus the total number that can ever be created is capped at 21 million Bitcoins. It has been estimated that the last .00000001 of a Bitcoin will be "mined" in 2140.

Transactions occur via public key encryption which generates two mathematically related keys. One key, the private key is retained by the individual and the other key is made public. The intended recipients public key is used to encode payments, which can only be retrieved by the associated private key. The payer in the transaction uses his or her own private key to approve the transfer to the recipient. Every Bitcoin transaction is registered in a public, distributed ledger called the block chain. New transactions are checked against the block chain to ensure that the same Bitcoins have not already been spent.

Is Bitcoin completely anonymous? No, it has been described as pseudonymous as it is somewhat like cash in that once Bitcoins have been received by one party no third party exists between the parties that knows their identities. However, the transaction information is recorded in the block chain as has every Bitcoin transaction that has occurred in history. Additionally, a person's identity, such as IP address, is recoded when the person makes a Bitcoin transaction at a website or uses one of the numerous services to exchange dollars from Bitcoins. One study, "Evaluating User Privacy in Bitcoin" by Elli Androulaki found that using behavior based analytical techniques could reveal the identities of 40% of Bitcoin users.

Emergence of New Payment Systems Under Old Statutory Regimes.

In 2013, this committee held several oversight hearings examining the growth of technological innovation in the payments industry and the lack of modernity in some of California's statutes that address the movement of money. The most recent hearing, The Technology of Consumer Financial Transactions, occurred on November 21, 2013 and highlighted the growing trends and changes within the payments world (Background paper available at http://abnk.assembly.ca.gov/sites/abnk.assembly.ca.gov/files/The%20Technology%20of%20Consumer%20Financial%20Transactions%20background%20document.pdf). What emerged from that hearing is that California has a growing and innovative payments market, but a stagnant regulatory regime. The majority of all hearing participants agreed that for most payment transactions a law already exist, but technology has confused the manner in which that law may apply and ultimately who may have the various legal responsibilities in the event of loss.

AB 129 is a continuation of efforts began last year to update, California's codes concerning payment systems. AB 129 amends Corporations Code 107, a largely outdated prohibition on the issuance and use of "anything but the lawful money of the United States." According to the literal meaning of the statute anyone that issues or uses digital currency, community currency, or perhaps even reward points is in violation of the law. However, staff is unaware of any prosecutions, arrest or enforcement actions relating to this statute. Section 107 can actually be traced back to the first state constitution of California, established in 1849, which contained a provision prohibiting the creation and issuance of paper to be used as money by any bank. This was a common prohibition across the states during the 19th century as the risk of states, or even non-state entities creating their own money was a real concern. In 1972, during a series of revisions to the California Constitution the currency provision was removed from the Constitution and placed in the Corporations Code.

Section 107 may not be necessary at all, but until further research is conducted staff recommends simply amending Section 107 until it is clear that its elimination will not create unintended consequences. In the intervening time the following technical amendments are suggested:

1) Eliminate references to "corporation, flexible purpose corporation, association, or individual" and instead replace with "person." The Corporations code already defines "person" to mean "corporation" and "individual" is never defined as a term, but is typically included in the "person" definition.

2) Insert "of the United States" after "money" on page 3, line 5.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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