Date of Hearing: July 10, 2023

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Timothy Grayson, Chair
SB 401 (Limón) – As Amended June 19, 2023

SENATE VOTE: 32-6

SUBJECT: Digital financial asset transaction kiosks

SUMMARY: Provides for the regulation of digital financial asset transaction kiosks, including limits on the total amount of transactions in a day, fee limitations, and a requirement to provide a receipt for every transaction. Specifically, **this bill**:

1) Defines the following terms, among others:

   a) "Digital financial asset" means a digital representation of value that is used as a medium of exchange, unit of account, or store of value and that is not legal tender, whether or not denominated in legal tender.

   b) "Digital financial asset transaction kiosk" means an electronic information processing device that accepts or dispenses cash in exchange for a digital financial asset.

2) Prohibits an operator of a digital financial asset transaction kiosk from the following:

   a) Accepting or dispensing more than $1,000 in a day from or to a resident.

   b) Collecting charges, whether direct or indirect, related to a single digital financial asset transaction that exceed the greater of the following:

      i) Five dollars ($5).

      ii) 10% of the United States dollar equivalent of digital financial assets involved in the transaction.

3) Requires an operator to do the following:

   a) Provide an option for a resident to exchange any amount of a digital financial asset for fiat currency.

   b) Provide a receipt with specified information for any transaction made at a kiosk.

   c) Provide a list of all kiosk locations to DFPI, which DFPI shall make publicly available on its website.

EXISTING LAW:

1) Establishes the Department of Financial Protection and Innovation (DFPI) as the state agency responsible for licensing, regulating, and supervising a range of financial services companies that provide products or services to California consumers, including but not limited to, securities issuers, broker-dealers, investment advisers, and investment advisers

representatives; persons offering or selling off-exchange commodities; persons holding securities as custodians on behalf of securities owners; money transmitters; and persons offering or providing consumer financial products or services. (Financial Code Section 300)

2) Provides the California Consumer Financial Protection Law (CCFPL), which authorizes DFPI to take enforcement action against a person that engages in an unlawful, unfair, deceptive, or abusive act or practice with respect to consumer financial products or services. (Division 24 of the Financial Code, commencing with section 90000)

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

1) Purpose.

According to the author:

> SB 401 establishes consumer protections for crypto kiosks to reduce fraud and other criminal activity and rein-in high mark-ups on crypto transactions. The bill mitigates the risk of transactions related to fraud and other criminal activity by limiting the amount of transactions to no more than $1,000 per customer per day. The bill also requires an operator of a crypto kiosk to provide a detailed receipt to a consumer with specified information about the transaction and caps the transaction fees that operators can charge to no more than $5 or 10% of the value of the transaction, whichever is greater.

2) Background

A digital financial asset (also referred to as "crypto," "cryptocurrency," a "crypto asset," or "virtual currency," terms used interchangeably in this analysis) is a digital representation of value that is not issued or backed by a government or central bank. Unlike the dollar, cryptocurrency is not considered legal tender, but private parties may agree to it to facilitate an economic exchange. Bitcoin, the most well-known virtual currency, and many other virtual currencies are created and tracked via a decentralized protocol, rather than the centralized issuance model that prevails in the world of fiat money.

The most commonly used technology that produces and supports virtual currency is distributed ledger technology, which is a decentralized database managed by multiple parties within a network. Blockchain is the most well-known type of distributed ledger technology and supports Bitcoin and many other types of virtual currencies on the market today. Blockchain also enables decentralized finance (DeFi), which is an effort to replicate traditional finance systems through the use of blockchain-enabled contracts. DeFi is built on one of a dozen or so blockchains, including Ethereum, and DeFi applications allow cryptocurrency holders to lend or borrow from other users and engage in other financial activities, such as entering into derivative markets.

Cryptocurrency and DeFi proponents believe that these products and systems are viable alternatives to those found in the traditional financial system. They argue that cryptocurrency is beneficial because it is decentralized, allows peer-to-peer transactions, makes transactions easy and fast, diversifies portfolios, acts as an inflation hedge, encourages cross-border payments, promotes financial inclusion, and provides transactional freedom.

3) <u>Is cryptocurrency money?</u>

As cryptocurrency has grown from a small group of early adopters and hobbyists into a trillion dollar market, a lingering question has been: how should policymakers classify cryptocurrency and regulate it?

There is doubt that cryptocurrency, as it works today, could work well as money. First, as a matter of definition, cryptocurrency is not issued by a central government, and there is no obligation for the government to accept it. Moreover, as a practical matter, it remains doubtful that cryptocurrency could be a viable privately-issued legal tender or facilitate everyday payments. Cryptocurrency can function as a unit of account, a store of value, and a medium of exchange, three necessary features of money. But, unlike most fiat currencies, cryptocurrency also appears to be highly vulnerable to confidence shocks, fraud, and price instability, and consumers must navigate a host of technological and practical obstacles when using it. These are not desirable features of money.

Moreover, many buyers of cryptocurrencies use these digital assets to engage in speculative investment activities or other types of financial services activities rather than facilitating payments and conducting everyday transactions. Most cryptocurrency trading happening today treats it as an asset class – a group of investments with particular characteristics – owned for purposes <u>other than</u> payments for goods and services.

4) <u>Crypto kiosks</u>

A crypto kiosk, sometimes called a "crypto ATM," is a physical machine that looks similar to a traditional ATM and allows customers to purchase cryptocurrencies such as bitcoin. Crypto kiosks are usually "unidirectional," meaning they allow only for the purchase of crypto assets, while a small number are bidirectional, which allow for both the sale and purchase of crypto.

Example of a crypto kiosk[1]

[1] Source: https://kiosk.com/applications/bitcoin-atm/.

Kiosks can operate in different ways, and there is significant variety within the industry. Most often, the kiosk company will hold reserves of the available crypto and sell it directly to the consumer, and their revenues rely on transaction fees and charging higher-than-market prices. According to industry stakeholders, fees can reach as high as 30%, a rate that is much higher than mainstream online crypto exchanges.

The number of crypto kiosks has also grown considerably in recent years. According to data provided by the author's office, there are around 3,400 kiosks in California alone. Industry stakeholders report that consumers use these kiosks for a number of purposes, including for remittances and investments.

5) What are the problems with crypto kiosks?

Since crypto kiosks first appeared in stores, their presence in restaurants, gas stations, and convenience stores has sparked a debate about their purpose and the potential for consumer harm. A June 2022 Politico report summarizes the concerns from federal and state regulators as follows:

> The regulators worry that crypto ATMs can too neatly serve the interests of money launderers and fraudsters, or could hide payments to sex and drug traffickers; even for honest brokers, their fees are considerably higher than normal bank transactions. They also market themselves, sometimes aggressively, to low-income people who may not understand the risks of moving their money into cryptocurrency, which is currently in the midst of one of its intermittent crashes.[2]

Crypto kiosks are commonly associated with criminal activity and fraud, but industry stakeholders push back against accusations that these machines primary act as a conduit for these types of transactions. The Blockchain Advocacy Coalition states in its letter that these machines "have the lowest case of fraud – amounting to only 1% of all fraudulent activities in the [crypto] sector," citing a 2023 Chainanalysis report of crypto-related crime. Moreover, opposition groups argue the industry itself has taken significant strides in addressing these issues, including introducing new protections and controls.

Nevertheless, law enforcement agencies continue to warn consumers about the emerging risks associated with crypto kiosks. For example, in 2022 the Federal Bureau of Investigation (FBI) issued an alert related to so-called "pig butchering" scams, where scammers pose as a friend or romantic partner to steal money from a victim, and in the alert the FBI acknowledges these scams most often occur through wire transfers and prepaid cards. However, the Bureau notes "the use of cryptocurrency and cryptocurrency ATMs is also an emerging method of payment. Individual losses related to these schemes ranged from tens of thousands of to millions of dollars."[3]

Kiosks can also cause financial harm by making it easier for lower-information consumers to buy a risky, expensive, and volatile product that is under-regulated and heavily marketed. This concern is more fundamental to crypto itself: the industry has often been accused of taking advantage of retail traders or everyday people, whether it be through aggressive and

[2] https://www.politico.com/news/magazine/2022/07/06/bitcoin-atms-regulations-00035083
[3] https://cointelegraph.com/news/crypto-atms-emerging-as-popular-method-for-crypto-scam-payments-fbi

misleading advertising, insider trading, or pump-and-dump or rug pull scams. Kiosks, which are typically located in stores and gas stations and look like a traditional ATM, may attract curious consumers who may not fully be aware of the risks. Given the typical kiosk's high fees and unidirectional design, it is possible unprepared consumers are paying up to 30% in fees on an investment that they may not fully understand or even know how to get out of.

There is a very good reason to be concerned about who all is purchasing crypto from kiosks. Crypto is often marketed as a path toward financial inclusion through the democratization of finance, but some scholars argue that crypto is yet another form of "predatory inclusion." Predatory inclusion occurs when marginalized communities gain access to goods they were historically excluded from, but this new access comes with conditions that actually worsen financial insecurity. As the Brookings Institution's Tonantzin Carmona explains, new financial products are often advertised as serving the unserved, such as when payday loans were once described as a way to "democratize" credit. Carmona makes a thorough case that crypto, and crypto kiosks, are a part of that legacy, as she writes:

> Indeed, just as we see check cashing and payday lender storefronts concentrated in Black, Latino or Hispanic, and immigrant communities, we are soon likely to see bitcoin ATMs in Latino or Hispanic grocery stores, according to recent crypto industry announcements. In major metropolitan areas such as Miami, Dallas-Fort Worth, and Los Angeles, bitcoin ATMs are already clustering in Salvadoran, Colombian, and Mexican neighborhoods. These ATMs are notorious for charging high fees, ranging from 7% to 20% per transaction.[4]

In response to these concerns, industry stakeholders argue these machines mostly serve high-information customers who understand the risks. They point to the relatively low volume of transaction activity for each machine as an indication that rather than hoovering up the limited discretionary income of vulnerable consumers walking in the door, these machines instead cater to a smaller number of informed consumers who seek the convenience and personal independence granted by kiosks.

6) <u>What this bill does</u>

SB 401 proposes a number of new rules around crypto kiosks located in California. These rules are meant to address issues around high costs, fraud, and criminal activity. Key provisions include:

- <u>Fee cap</u>. The author proposes a 10% cap on direct and indirect fees per transaction. The author recently amended the bill to increase the cap from 2%.

- <u>Transaction limit.</u> SB 401 puts in place a $1,000 transaction limit per day. The goal of this cap is to mitigate harm from fraud or to otherwise deter criminal activity.

- <u>Disclosures.</u> This bill includes new disclosure requirements related to fees and "spread," which is the difference between what the kiosk user is paying for a crypto saset compared to the price listed on a major crypto exchange.

[4] https://www.brookings.edu/research/debunking-the-narratives-about-cryptocurrency-and-financial-inclusion/

- Location database. Under the bill, operators must provide DPFI a list of all kiosk locations, which DFPI will then make publicly available. According to the author, this is to help law enforcement take action against unregistered kiosks used for criminal activity.

7) Interaction with AB 39

AB 39 (Grayson), of the 2023-24 Legislative Session, which is currently pending in the Senate Committee on Banking and Financial Institutions, would establish a licensure program for crypto companies, including kiosk companies, that are buying, selling, and exchanging crypto on behalf of California residents. Given this overlap, the authors may want to review the proposals and consider combining them or otherwise more closely aligning them.

8) Support

Consumer Federation of California and Older Women's League (OWL) Sacramento Capitol write in support:

> Proper regulation and consumer protections are vitally important when it comes to the arena of cryptocurrency, an extremely volatile area of financial mechanisms where a consumer's wellbeing can be on the line…crypto ATMs not only charge an enormous transaction fee for the purchase or sale of crypto assets, with fees typically adding 12%-25% to the purchase price of a crypto asset, but they also serve as hotbeds to cover up illicit activity…SB 401 seeks to reduce Californian's exposure to financial harm associated with crypto kiosks and for that reason we respectfully ask for your support and aye vote on this bill.

9) Opposition

A coalition of kiosk companies oppose SB 401. These companies argue the proposed fee cap and transaction limit will make the business model unworkable. Their letter states:

> However, SB 401 also sets up an arbitrary fee cap and transaction limit amount, which given the capital costs of owning, installing, maintaining, and operating a crypto kiosk, would drive these machines out of our communities and out of the state.
>
> The most considerable expense of owning and operating a crypto kiosk is the rent an operator pays to house the machine at a local retail business. The monthly rent can be anywhere between $300-$700 per month, a significant income to many small, frequently minority-owned retail businesses across California. This income equates to over $21 million in rent payments to small business retailers alone. In addition to the direct benefit of rental income to retailers, the kiosks generate increased foot traffic and purchases while the customer visits the location.

The Blockchain Advocacy Coalition opposes SB 401 unless amended. Like other opposition groups, the coalition is requesting the fee cap and transaction limits be removed.

10) Further discussion of the fee cap and transaction limit.

As noted above, opponents argue the 10% fee cap (which the author recently increased from 2%) and the $1,000 transaction limit will make the kiosk business model unworkable and will result in the kiosk industry leaving California.

The discussion around fee caps is challenging because the fees charged by some operators are difficult to defend. Fees can be as high as 30%, which means that a customer pays $300 for a $1,000 transaction. Industry stakeholders argue these fees reflect the costs of running the business, and business costs are high because the industry is still in its infancy. As the industry matures and the infrastructure is further developed, the argument goes, costs will come down, allowing for lower fees for kiosk customers. There may be merit to this argument, but it is also worth noting the first kiosk was deployed nearly 10 years ago, and at a certain point the industry can no longer reasonably describe itself as "nascent." It is unclear just how much longer the Legislature should wait before applying warranted regulations, especially given concerns of where these machines are placed and the consumers targeted. Nevertheless, the fee cap will undoubtedly require changes within the kiosk industry, and the author may wish to consider delaying the 10% fee cap or phasing it in over a period of time to give companies time to adjust.

The transaction limit is also a source of frustration for kiosk companies. This limit is intended to mitigate fraud, but opponents contend fraud is relatively rare and kiosk companies must follow strict policies related to the Bank Secrecy Act and Anti-Money Laundering (AML). The author may wish to consider modifying the transaction limit to allow for a higher limit for long-established customers, thereby allowing these kiosks to serve those repeat customers who tend to make large but legitimate transactions.

11) Amendments

The committee recommends the following amendments to clarify definitions and bolster disclosures to kiosk customers.

- **Amend Section 3901(c) as follows:**

  (c) (1) "Digital financial asset transaction kiosk" means an electronic information processing device that ~~accepts or dispenses~~ is capable of accepting or dispensing cash in exchange for a digital financial asset.

  (2) As used in this section, "cash" means physical United States currency, both coins and paper currency

- **Amend Section 3905 by inserting a new (a) and reordering the section as necessary**:

  3905. (a) Before a digital financial asset transaction, an operator shall provide a written disclosure in English and in the same language principally used by the operator to advertise, solicit, or negotiate with a resident containing the terms and conditions of the transaction, which shall include, at a minimum, all of the following:

  (1) The amount of a digital financial asset involved in the transaction.

(2) The amount, in United States dollars, of any fees, expenses, and charges collected by the operator.

(3) The United States dollar price of the digital financial asset that is charged to the customer and the United States dollar price of the digital financial asset as listed by a major digital financial asset platform.

(4) If an operator does not provide any method to reverse or refund a transaction, then a warning that all transactions are final and cannot be undone.

(b) An operator shall provide a resident with a receipt for any transaction made at the operator's digital financial asset transaction kiosk…

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Federation of California
Older Women's League Sacramento Capitol

Oppose

American Petroleum and Convenience Store Association
Athena Bitcoin
ATM Industry Association
Bitcoindepot
BitMachina
Bitstop
Budget Coinz
Cal Asian Chamber of Commerce
California Black Chamber of Commerce
California Fuels and Convenience Alliance
California Grocers Association
California Hispanic Chamber of Commerce
Cash2Bitcoin
Coin Time
CoinFlip
General Bytes
Genesis Coin
InstaBitaATM
Kiosk Manufacturer Association
National Bitcoin ATM
PowerCoin
RockitCoin

Oppose Unless Amended

Blockchain Advocacy Coalition
Just Digital

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