

SENATE No. 690

The Commonwealth of Massachusetts

PRESENTED BY:

Susan L. Moran

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting consumers in cryptocurrency exchanges.

PETITION OF:

NAME:

Susan L. Moran

DISTRICT/ADDRESS:

Plymouth and Barnstable

SENATE No. 690

By Ms. Moran, a petition (accompanied by bill, Senate, No. 690) of Susan L. Moran for legislation to protect consumers in cryptocurrency exchanges. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act protecting consumers in cryptocurrency exchanges.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting, after chapter 167J, the
2 following chapter:-

3 CHAPTER 167K. LICENSING OF VIRTUAL CURRENCY EXCHANGES

4 Section 1. Definitions

5 For the purposes of this chapter, the following words shall have the following meanings:

6 “Commissioner”, the commissioner of banks.

7 “Division”, the division of banks.

8 “Virtual Currency Platform”, a person or entity that operates a digital platform that offers
9 any of the following services to consumers:

10 (a) the conversion or exchange of government currency into virtual currency;

11 (b) the conversion or exchange of virtual currency into government currency; or
12 (c) the conversion or exchange of one form of virtual currency into another form of
13 virtual currency.

14 A virtual currency platform shall not be construed to mean any person or entity that
15 accepts virtual currency as a form of payment for any type of goods not defined as virtual
16 currency or government currency.

17 “Government currency”, government-issued currency that is designated as legal tender in
18 its country of issuance through government decree, regulation or law.

19 “Massachusetts customer”, a person who uses a virtual currency exchange service whose
20 information on record with or available to said exchange service indicates a Massachusetts home
21 address, a Massachusetts mailing address, or an internet protocol address connected with a
22 Massachusetts location.

23 “Principal beneficiary”, any person entitled to ten per cent or more of the benefits of a
24 trust.

25 “Principal officer”, an executive officer of an entity, including the chief executive,
26 financial, operating, and compliance officers, president, managing partner, general partner,
27 controlling partner and trustee, as applicable.

28 “Principal stockholder”, any person that directly or indirectly owns, controls or holds
29 with power to vote ten per cent or more of any class of outstanding capital stock of a corporate
30 entity or possesses the power to direct or cause the direction of the management or policies of the
31 entity.

32 “Qualified trust company”, a bank, trust company, bank holding company, credit union,
33 building or loan association, savings or loan association, savings bank or mutual bank organized
34 under the laws of any state or the United States, provided such bank, trust company, bank
35 holding company, credit union, building or loan association, savings or loan association, savings
36 bank or mutual bank organized under the laws of any state or the United States does not issue or
37 sell any payment instrument through an authorized delegate who is not a bank, trust company,
38 bank holding company, credit union, building or loan association, savings or loan association,
39 savings bank or mutual bank.

40 “Virtual currency,” any type of digital unit that is used as a medium of exchange or a
41 form of digitally stored value or that is incorporated into payment system technology. Virtual
42 currency shall be construed to include digital units of exchange that (a) have a centralized
43 repository or administrator; (b) are decentralized and have no centralized repository or
44 administrator; or (c) may be created or obtained by computing or manufacturing effort. Virtual
45 currency shall not be construed to include digital units that are used (a) solely within online
46 gaming platforms with no market or application outside such gaming platforms, or (b)
47 exclusively as part of a consumer affinity or rewards program, and can be applied solely as
48 payment for purchases with the issuer or other designated merchants, but cannot be converted
49 into or redeemed for fiat currency.

50 “Virtual currency business activity”, any one of the following activities:

51 Storing, holding, or maintaining custody or control of virtual currency on behalf of
52 others;

53 Buying or selling virtual currency as a customer business;

54 Performing exchange services as a customer business; and

55 Controlling or issuing virtual currency.

56 Section 2. Licensing Process and Requirements

57 A virtual currency platform engaging with Massachusetts customers shall register with
58 the division of banks:

59 (a) Such registration shall be in writing, under oath, and completed in a form prescribed
60 by the commissioner. The registration shall include the following:

61 (1) The name of the registrant, including any business name, the form of organization,
62 and the jurisdiction where the registrant is organized or incorporated;

63 (2) A list of the registrant's affiliates and an organizational chart illustrating the
64 relationship between and among the registrant and its affiliates;

65 (3) An organizational chart of the registrant and its management structure, including its
66 principal officers or senior management, indicating lines of authority and the allocation of duties
67 among its principal officers or senior management;

68 (4) A business plan, including a description of the proposed, current and historical
69 business of the registrant, details on the products and services provided and to be provided, all
70 associated Internet web site addresses, the jurisdictions in which the registrant is engaged in
71 business, the principal place of business, the primary markets of operation, the projected
72 customer base, any specific marketing targets and the physical address of any place of operation
73 in the state; and

74 (5) A registration fee as described in section 3.

75 Section 3. Registration fee

76 A virtual currency platform engaging with Massachusetts customers shall pay annually
77 an assessment equal to 5 per cent of such platform's gross annual revenues derived from
78 engaging in virtual currency business activity with Massachusetts customers.

79 All monies generated from the assessment described in this section shall be credited to
80 the Virtual Currency Insurance Fund, as established by section 2RRRRR of chapter 29.

81 Section 4. Change of information

82 In the event of any material change in the registration information submitted in
83 accordance with section 2 of this chapter, the registrant shall, within seven days of the change,
84 supplement or amend such registration by completing and submitting a form as prescribed by the
85 commissioner.

86 Section 5. Compliance policies

87 Each registrant shall maintain and enforce confidential, written compliance policies,
88 including policies with respect to anti-fraud, anti-money laundering, cyber security, privacy and
89 information security, that shall be reviewed and approved by the registrant's board of directors or
90 an equivalent governing body.

91 Section 6. Advertising requirements

92 (a) No registrant shall advertise its products, services or activities in the state or to any
93 person without including the legal name of the registrant and a legend stating that the registrant
94 is registered to engage in virtual currency business activity in the commonwealth.

95 (b) Each registrant shall maintain, for examination by the commissioner, all advertising
96 and marketing materials for a period of not less than seven years from the date of their creation,
97 including, but not limited to, print media, Internet media, including Internet web sites, radio and
98 television advertising, road show materials, presentations and brochures. Each registrant shall
99 maintain a hard copy, Internet web site captures of material changes to Internet web site
100 advertising and marketing and audio and video scripts of such advertising and marketing
101 materials, as applicable.

102 Section 7. Compliance review

103 Each registrant shall permit the commissioner to examine the registrant whenever the
104 commissioner determines such examination to be necessary or advisable, including, but not
105 limited to, to determine compliance with the requirements set forth in sections 1 to 9, inclusive,
106 of this act, and shall assist the commissioner in any such examination. The examination may
107 include, but shall not be limited to, the premises, books, records and any other pertinent material
108 of the registrant or its affiliates.

109 Section 8. Risk disclosure

110 (a) (1) Each registrant shall, prior to engaging in virtual currency business activity with
111 any person, disclose in clear, conspicuous writing all material risks to the person associated with
112 the particular virtual currency business activities in which it engages. Such risks may include, but
113 shall not be limited to:

114 (A) Virtual currency is not legal tender, is not backed by the United States government
115 and the virtual currency held by the registrant on behalf of the person is not subject to Federal
116 Deposit Insurance Corporation protections;

117 (B) Transactions in the virtual currency held by the registrant on behalf of the person may
118 be irreversible, and, accordingly, losses due to fraudulent or accidental transactions may not be
119 recoverable;

120 (C) Laws determining the rights and obligations of virtual currency users are not fully
121 developed, and a court of law may find that the elements of the transaction, including, but not
122 limited to, the timing, amount, identity or location of the parties, may not be the same as if the
123 transaction had occurred with government currency;

124 (D) The value of the virtual currency held by the registrant on behalf of the person may
125 change more quickly and unexpectedly than that of government currency, and may in fact
126 become zero; and

127 (E) Technological difficulties experienced by the registrant may prevent the person from
128 accessing the virtual currency held by the registrant on behalf of the person.

129 (2) The commissioner shall post on the department's Internet web site information
130 substantially similar to the information required to be disclosed pursuant to this subsection,
131 including information about the material risks described in this subsection.

132 (b) Each registrant shall, prior to engaging in virtual currency business activity with any
133 person, disclose in clear, conspicuous writing all relevant terms and conditions associated with

134 the registrant's virtual currency business activity. Such disclosures may include, but need not be
135 limited to:

136 (1) the person's liability for unauthorized transactions;

137 (2) the person's right to interrupt or prevent any transaction and the procedure to initiate
138 an interruption or prevention;

139 (3) the circumstances under which the registrant will, absent a court or government order,
140 disclose information concerning the person's account to third parties;

141 (4) the person's right to receive periodic account statements and valuations from the
142 registrant;

143 (5) the person's right to receive a receipt, trade ticket or other evidence of a transaction;
144 and

145 (6) the person's right to prior notice of a change in the registrant's rules or policies.

146 (c) Each registrant shall, prior to engaging in virtual currency business activity with any
147 person, disclose in clear, conspicuous writing the terms and conditions of the transaction. The
148 disclosures may include, but need not be limited to:

149 (1) The amount of the transaction;

150 (2) any fees, expenses and charges borne by the person, including applicable exchange
151 rates;

152 (3) the type and nature of the transaction; and

153 (4) a warning that once executed the transaction may not be undone.

154 (d) Each registrant shall ensure that all disclosures required in this section are
155 acknowledged in writing as received by persons.

156 (e) Each registrant shall, upon completion of any transaction, provide to any person
157 initiating the transaction, a receipt containing the following information:

158 (1) The name and contact information of the registrant, including a telephone number
159 established by the registrant to answer questions and register complaints;

160 (2) the type, value, date and precise time of the transaction;

161 (3) any fee charged; and

162 (4) any exchange rate applied.

163 Section 9. Customer complaint policies

164 (a) Each registrant shall establish and maintain written policies and procedures to fairly
165 and timely resolve customer complaints.

166 (b) Each registrant shall provide, in a clear and conspicuous manner, on such registrant's
167 Internet web site or web sites, and in all physical locations the following disclosures:

168 (1) The registrant's mailing address, electronic mail address and telephone number for the
169 receipt of complaints;

170 (2) a statement that the complainant may also bring a complaint to the attention of the
171 division; and

172 (3) the division's mailing address, Internet web site address and telephone number.

173 Section 10. Violation of this chapter

174 (a) If it appears to the commissioner that any person has committed or is about to commit
175 a violation of any provision of this act or of any rule or order of the commissioner, the
176 commissioner may apply to any superior court in the commonwealth for an order temporarily or
177 permanently restraining and enjoining that person from violating or continuing to violate this act
178 or any rule, regulation or order of the commissioner and for injunctive or other relief as the
179 nature of the case may require.

180 (b) If, after notice and hearing, the commissioner finds that a person has violated any
181 provision of this chapter or a rule adopted under this chapter, the commissioner may order the
182 person to pay the commissioner a civil penalty in an amount specified by the commissioner not
183 exceeding 5 thousand dollars for each violation. Each violation shall constitute a separate offense
184 and the penalty under this subsection shall be in addition to a suspension or revocation of a
185 registration. No proceeding shall be initiated and no penalty shall be assessed pursuant to this
186 subsection until such person is notified in writing of the nature of the violation and is afforded a
187 reasonable period of time, as set forth in the notice, to correct the violation and fails to do so.

188 (c) The commissioner may compromise, settle and collect civil penalties for violations of
189 any provision of this chapter, or of any rule, regulation or order issued or promulgated pursuant
190 to this chapter.

191 Section 11. Each registrant may accept credit cards and debit cards for the purchase of
192 virtual currency.

193 SECTION 2. Chapter 29 of the General Laws is hereby amended by inserting, after
194 section 2QQQQQ, the following section:-

195 Section 2RRRRR. Virtual Currency Insurance Fund

196 (a) There shall be a virtual currency insurance fund administered by the office of the
197 treasurer. Notwithstanding any general or special law to the contrary, there shall be credited to
198 the fund any revenue generated pursuant to section 3 of chapter 167K, or other money authorized
199 by the general court and specifically designated to be credited to the fund, and any gifts, grants,
200 private contributions, investment income earned by the fund's assets and any designated funds
201 from other sources. No expenditures from the fund shall cause the fund to be in deficiency at the
202 close of the fiscal year. Any money in the fund at the end of the fiscal year shall not revert to the
203 General Fund.

204 (b) The fund shall be used, without further appropriation, for a grant program to be
205 administered by the division of banks.

206 (c) Eligible grantees shall be Massachusetts customers that have deposited government
207 currency for the purchase of virtual currency, or have exchanged government currency for virtual
208 currency in a virtual currency exchange service that is unable to meet any monetary obligations
209 to any of its customers at the time of submission of the grant application.

210 (d) Grant funding distributed pursuant to this section shall be distributed amongst all
211 eligible grantees until the amount in the fund is exhausted. Grant funding shall not exceed 10
212 thousand dollars per grantee, per virtual currency exchange service.

213 (e) The division shall promulgate any regulations necessary for the distribution of
214 funding pursuant to this section.