

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1043

2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB1043
1/8/2019
30539

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang by Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Exemption of open blockchain token from specified securities transactions & dealings.

Minutes:

--

Rep Toman-District 34-Mandan: Introduces HB 1043. I wanted blockchain defined in century code. It exempts utility tokens from being regulated under Securities Commission and banking.

Rep Kasper: What are you trying to accomplish?

Rep Toman: I want to bring the technology to North Dakota and not out of state.

Rep Kasper: What is the problem, why do you need legislation? Why don't they just come?

Rep Toman: I want them to put it on paper so that it's legal.

Rep Kasper: Why can't they do it now?

Rep Toman: This bill is to exempt these tokens from securities oversight. These are not by definition according to the Securities Commissioner already regulating these because they aren't securities. If we can define them somewhere in century code, it will provide surety for those companies creating the apps.

Chairman Keiser: We will hold this bill until next week.

2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB1043
1/8/2019
30556

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Exemption of open blockchain token from specified securities transactions & dealings.

Minutes:

Attachment 1 & 2

Chairman Keiser: Reopens the hearing on HB 1043.

Rep Toman~District 34, Mandan: I talked with the ND Securities Commissioner & the Attorney General's office about what currency versus utility tokens. They have no desired to regulate that because that is not a security & the Attorney General doesn't want to regulate, unless is fraudulent. My request is a do no pass.

Chairman Keiser: Questions for Rep Toman?

Karen Tyler~Securities Commissioner: Attachment 1. I support Rep Toman's request for a do not pass.

Chairman Keiser: Questions from the committee? What are the wishes of the committee?

Rep Adams: Make a motion for a Do Not Pass.

Rep Ruby: Second.

Roll Call was taken for a Do Not Pass on HB 1043 with 14 yes, 0 no, 0 absent & Rep Bosch is the carrier.

Attachment 2: For the record~Lise Kruse, Commissioner-Department of Financial Institutions.

Date: Jan 8, 2019Roll Call Vote #: 12019 HOUSE STANDING COMMITTEE
ROLL CALL VOTESBILL/RESOLUTION NO. 1043

House _____ Industry, Business and Labor _____ Committee

☐ SubcommitteeAmendment LC# or
Description: _____

Recommendation

- ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions

- ☐ Reconsider ☐ _____

Motion Made by Rep Adams Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	X	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Schauer	X	
Rep Kasper	X		Rep Adams	X	
Rep Laning	X		Rep P Anderson	X	
Rep Louser	X		Rep M Nelson	X	

Total (Yes) 14 No 0Absent 0Floor
Assignment Rep Bosch

REPORT OF STANDING COMMITTEE

HB 1043: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1043 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1043

Testimony in Opposition to HB 1043
North Dakota Securities Commissioner Karen Tyler
House Industry, Business and Labor Committee
January 8, 2019

There have been a lot of fast moving developments related to blockchain and blockchain applications, including cryptocurrency and other digital assets. Given the pace of innovation in this ecosystem, it is understandable that there have been periods of uncertainty around certain aspects of regulation. Regarding the blockchain tokens that are the subject of the amendments to the Securities Act in HB 1043, the uncertainty around the status of blockchain tokens as an instrument of capital formation has been clarified. In almost every case, they are securities. As a result, this legislation is unnecessary.

As utilized for start-up capital formation by legitimate blockchain/crypto centric companies, these digital financial instruments – identified as open blockchain tokens in HB 1043 - are investment contracts and therefore defined as securities under the North Dakota Securities Act and federal securities law, and subject to securities regulation.

As utilized by financial criminals to commit investment fraud, these digital financial instruments – real or fictional - are investment contracts and therefore defined as

securities under the North Dakota Securities Act and federal securities law, and subject to the investigative and enforcement authority of securities regulators.

An investment contract (security) exists when you have:

1. An investment of money or something of value (bitcoin, ether)
2. In a common enterprise
3. With the expectation of profit
4. From the efforts of other

This investment contract analysis has been in effect since the 1946 Supreme Court decision in SEC v. W.J. Howey Co.

The Securities and Exchange Commission has clarified the investment contract status of these blockchain tokens. While there was uncertainty at an earlier stage, it has been rectified.

Defining a “utility only” token – describing an instrument that is NOT as security - in the Securities Act is unnecessary. If an instrument is not a security, the Act does not apply.

ICO Name	Agency	Action	Status Change
1pool LTD aka 1Broker	U.S. Securities and Exchange Commission	Charged with Registration Violations	
Adosia LLC	North Carolina Secretary of State – Securities Division	Consent Order	
Advertiza Holdings (Pty) Ltd	North Dakota Securities Department	Cease & Desist Order	
Antivolatility Coin/ZZZ Coin	Autorité des marchés financiers (AMF) – QUEBEC (CANADA)	Cease & Desist Order	
AriseBank	U.S. Securities and Exchange Commission	Charged with Fraudulent ICO	
AWS Mining Pty Ltd.	Texas State Securities Board	Emergency Cease & Desist Order	
Baltic Fund	Office of Missouri Secretary of State Securities Division	Order to Cease & Desist and Order to Show Cause	
BC Holdings and Investments LLC	Texas State Securities Board	Cease & Desist Order	
Binance Limited	The Investor Protection Bureau of the Office of the New York State Attorney General	Information Demand Letter	
BIOK	Nova Scotia Securities Commission	Investor Alert	
Bionic	Indiana Office of the Secretary of State, Securities Division	Cease & Desist Order	
Bionic Coin	Colorado Division of Securities	Cease & Desist Order	
Bitcoin Trading & Cloud Mining Limited	Texas State Securities Board	Emergency Cease & Desist Order	
BitConnect	Texas State Securities Board	Emergency Cease & Desist Order	
BitConnect and BitConnectX	Office of the Georgia Secretary of State – Securities and Charities Division	Emergency Cease & Desist Order	
BitConnect LTD and BitConnect International PLC	North Dakota Securities Department	Cease & Desist Order	
bitFlyer USA, Inc.	The Investor Protection Bureau of the Office of the New York State Attorney General	Information Demand Letter	
Bitstamp USA Inc	The Investor Protection Bureau of the Office of the New York State Attorney General	Information Demand Letter	
Bittrex, Inc.	The Investor Protection Bureau of the Office of the New York State Attorney General	Information Demand Letter	
Blockvest LLC	U.S. Securities and Exchange Commission	Emergency Cease & Desist Order	
Blue Vase Mining	Massachusetts Securities Division	Consent Order	
Broad Investments, LLC	Colorado Division of Securities	Order to Cease & Desist and Order to Show Cause	
Browsers Lab, LLC	Maryland Office of the Attorney General, Securities Division	Summary Order to Cease & Desist and Order to Show Cause	
Bullcoin Foundation aka Bullcoin Gold	New Jersey Bureau of Securities, Office of the New Jersey Attorney General	Summary Cease & Desist Order	
CacheCoin	North Dakota Securities Department	Cease & Desist Order	
CarrierEQ, Inc., dba Airfox	U.S. Securities and Exchange Commission	Cease & Desist Order	Settled Charges
Centra Tech., Inc	U.S. Securities and Exchange Commission	Charged with Fraudulent ICO	
Chain Group Escrow Service	Alabama Securities Commission	Cease & Desist Order	
Circle Internet Financial Limited	The Investor Protection Bureau of the Office of the New York State Attorney General	Information Demand Letter	
CoinAlpha Advisors LLC	U.S. Securities and Exchange Commission	Cease & Desist Order	
Coinbase, Inc.	The Investor Protection Bureau of the Office of the New York State Attorney General	Information Demand Letter	
Coins Miner Investment Ltd Credits, LLC	Texas State Securities Board Colorado Division of Securities	Emergency Cease & Desist Order Cease & Desist Order	

ICO Name	Agency	Action	Attachment 1
Crowdshare Mining	Colorado Division of Securities	Cease & Desist Order	
Crypto Asset Management, LP	U.S. Securities and Exchange Commission	Charged with Registration Violations	
Cryptocashback c/o Kapsus Technologies Ltd.	British Columbia Securities Commission	Cease & Desist Letter	
Crystal Token	North Dakota Securities Department	Cease & Desist Order	
CyberSmart Coin Invest	Colorado Division of Securities	Cease & Desist Order	
DasCoin	British Columbia Securities Commission	Cease & Desist Letter	
DavorCoin	Texas State Securities Board	Cease & Desist Order	
Deedcoin	North Dakota Securities Department	Information Request Letter	
DGBK Ltd., aka DigitalBank	Texas State Securities Board	Emergency Cease & Desist Order	
Digitalticks	British Columbia Securities Commission	Cease & Desist Letter	
Disciplina	British Columbia Securities Commission	Cease & Desist Letter	Resolved
Doctailor	British Columbia Securities Commission	Cease & Desist Letter	
Elite Way Developments LLP	The Investor Protection Bureau of the Office of the New York State Attorney General	Information Demand Letter	
EstateX	Colorado Division of Securities	Cease & Desist Order	
Extrabit Ltd	Alabama Securities Commission	Cease & Desist Order	
EXY Crypto	Texas State Securities Board	Emergency Cease & Desist Order	
Foneex	North Dakota Securities Department	Cease & Desist Order	
Forex EA & Bitcoin Investment LLC	Texas State Securities Board	Emergency Cease & Desist Order	
Forex EA & Bitcoin Investment LLC	Office of the Georgia Secretary of State – Securities and Charities Division	Emergency Cease & Desist Order	
Gate Technology Incorporated	The Investor Protection Bureau of the Office of the New York State Attorney General	Information Demand Letter	
Gemini Trust Company	The Investor Protection Bureau of the Office of the New York State Attorney General	Information Demand Letter	
Global Pay Net, aka GLPN Coin, CPN Token	Colorado Division of Securities	Cease & Desist Order	
Hashkon Inc.	Alabama Securities Commission	Cease & Desist Order	
Huobi Global Limited	The Investor Protection Bureau of the Office of the New York State Attorney General	Information Demand Letter	
iFinex Inc. (Bitfinex)	The Investor Protection Bureau of the Office of the New York State Attorney General	Information Demand Letter	
itBit Trust Company	The Investor Protection Bureau of the Office of the New York State Attorney General	Information Demand Letter	
Krios	British Columbia Securities Commission	Cease & Desist Letter	
LevelNet	Vermont Department of Financial Regulation	Cease & Desist Order	
Leverage	Alabama Securities Commission	Cease & Desist Order	
Life Cross Coin	North Dakota Securities Department	Cease & Desist Order	
Linda Healthcare Corporation Co.	Colorado Division of Securities	Cease & Desist Order and Order to Show Cause	
Magma Foundation, aka Magma Coin	North Dakota Securities Department	Cease & Desist Order	
Mintage Mining	Texas State Securities Board	Cease & Desist Order	
Munchee, Inc	U.S. Securities and Exchange Commission	Cease and Desist Order	
My Crypto Mine	Texas State Securities Board	Emergency Cease & Desist Order	

ICO Name	Agency	Action	Status Change
NUI Social	Texas State Securities Board	Cease & Desist Order	Attachment 1
Okeocoin	North Dakota Securities Department	Cease & Desist Order	
Orca Alliance	Nova Scotia Securities Commission	Investor Alert	
Paragon Coin, Inc.	U.S. Securities and Exchange Commission	Cease & Desist Order	Settled Charges
Payward, Inc. (Kraken)	The Investor Protection Bureau of the Office of the New York State Attorney General	Information Demand Letter	
Pension Rewards Platform	North Dakota Securities Department	Cease & Desist Order	
Platinum Coin	Alabama Securities Commission	Cease & Desist Order	
Plexcoin	Autorité des marchés financiers (AMF) – QUEBEC (CANADA)	Cease & Desist Order	
Pooltrade	Alabama Securities Commission	Cease & Desist Order	
Power Mining Pool	North Carolina Secretary of State – Securities Division	Permanent Cease & Desist Order	
R2B Coin	Texas State Securities Board	Cease & Desist Order	
REcoin Group Foundation, LLC	U.S. Securities and Exchange Commission	Charged with Fraudulent ICO	
Roaring Investments	Pennsylvania Department of Banking and Securities	Cease & Desist Order	
ShipChain, Inc.	Office of the South Carolina Attorney General, Securities Division	Administrative Cease & Desist Order	Withdrawn
Sigil Platform	British Columbia Securities Commission	Cease & Desist Letter	Resolved
Social Membership Network Holding LLC	Texas State Securities Board	Cease & Desist Order	
Springcryptoinvest	New Jersey Bureau of Securities, Office of the New Jersey Attorney General	Summary Cease & Desist Order	
Sybrellabs Ltd. (aka CryptoARB)	Colorado Division of Securities	Cease & Desist Order	
Symatri LLC	Texas State Securities Board	Cease & Desist Order	
Taklimakan Network	British Columbia Securities Commission	Cease & Desist Letter	
ThinkCoin	British Columbia Securities Commission	Cease & Desist Letter	Resolved
Titanium Blockchain Infrastructure Services Inc.	U.S. Securities and Exchange Commission	Emergency Cease & Desist Order and Asset Freeze	
TokenLot LLC	U.S. Securities and Exchange Commission	Charged with Registration Violations	
Tomahawk Exploration LLC	U.S. Securities and Exchange Commission	Charged with Fraudulent ICO	
Trident d/b/a Trident Crypto Index Fund	New Jersey Bureau of Securities, Office of the New Jersey Attorney General	Summary Cease & Desist Order	
Tripbit	British Columbia Securities Commission	Cease & Desist Letter	Resolved
Ubcoin	British Columbia Securities Commission	Cease & Desist Letter	Resolved
Ultimate Assets LLC	Texas State Securities Board	Emergency Cease & Desist Order	
Union Bank Payment Coin	North Dakota Securities Department	Cease & Desist Order	
USI-Tech	Ohio Department of Commerce – Division of Securities	Administrative Cease & Desist Order	
Wind Wide Coin Inc. aka WWC Inc	Texas State Securities Board	Emergency Cease & Desist Order	
Zanfau Ltd.	Alabama Securities Commission	Cease & Desist Order	



MEMORANDUM

DATE: January 8, 2019

TO: House – Industry, Business and Labor Committee

FROM: Lise Kruse, Commissioner
Department of Financial Institutions

SUBJECT: Testimony in Opposition to HB 1043

Chairman Keiser and members of the Industry, Business and Labor Committee, please accept the Department of Financial Institution's testimony regarding HB 1043 as it relates to virtual currency and money transmission.

In the 2017-2019 session, the Department introduced a bill (HB 2100) seeking to include virtual currency in our Money Transmitter Act (North Dakota Century Code Ch.13-09). Although this Bill was not approved, consistent with the Department's earlier position on this issue, the Department opposes the language proposed in HB 1043 that would exclude virtual currency from regulation.

The technology and uses for virtual currency are continually evolving. The implementation of virtual currency within the financial services industry is still in its infancy. The Federal Financial Enforcement Network (FinCEN) in 2014 clarified with FIN-2014-R011 that a company that facilitates the transfer of value, both real and virtual, between third parties meets the definition of money transmission. The Department questions whether excluding virtual currency from any regulation is in the best interest of the North Dakota citizen. For North Dakota to abandon its ability to regulate any person facilitating the transmission of virtual currency could also be contrary to federal interpretation. Regulation is in place to protect citizens but that does not mean that regulation is an impediment to innovation. Frequently, virtual currency companies request licensing since many of these companies believe that having a state license provides legitimacy and can help the firm in efforts to secure financing.

Many states regulate transmission of virtual currency along with traditional money transmission. Since North Dakota money transmitter law was adopted from a uniform law, the Department would again prefer uniformity with other states. Many of these companies operate in multiple states, so 50 different versions of similar law create confusion and unnecessary regulatory burden. This is why maintaining as much consistency with uniform standards is important. For the same reason, since the law was a uniform act, the Department opposes the numerous minor edits proposed in HB 1043.