

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend title 31, United States Code, to prevent fraudulent transactions at virtual currency kiosks.

IN THE SENATE OF THE UNITED STATES—119th Cong., 2d Sess.

S. 1383

To establish the Veterans Advisory Committee on Equal Access, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. DURBIN

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . CRYPTO ATM FRAUD PREVENTION.**

3 (a) REGISTRATION WITH THE SECRETARY OF THE
4 TREASURY.—Section 5330 of title 31, United States
5 Code, is amended—

6 (1) in subsection (d)—

7 (A) in paragraph (1)(A), by inserting “,
8 any person who owns, operates, or manages a
9 virtual currency kiosk in the United States or
10 its territories,” after “similar instruments”; and

11 (B) by adding at the end the following:

1 “(3) VIRTUAL CURRENCY; VIRTUAL CURRENCY
2 ADDRESS; VIRTUAL CURRENCY KIOSK; VIRTUAL CUR-
3 RENCY KIOSK OPERATOR.—The terms ‘virtual cur-
4 rency’, ‘virtual currency address’, ‘virtual currency
5 kiosk’, and ‘virtual currency kiosk operator’ have the
6 meanings given those terms, respectively, in section
7 5337.”; and

8 (2) by adding at the end the following:

9 “(f) REGISTRATION OF VIRTUAL CURRENCY KIOSK
10 LOCATIONS.—

11 “(1) IN GENERAL.—Not later than 90 days
12 after the effective date of this subsection, and not
13 less than once every 90 days thereafter, the Sec-
14 retary of the Treasury shall require virtual currency
15 kiosk operators to submit an updated list containing
16 the physical address of each virtual currency kiosk
17 owned or operated by the virtual currency kiosk op-
18 erator.

19 “(2) FORM AND MANNER OF REGISTRATION.—
20 Each submission by a virtual currency kiosk oper-
21 ator pursuant to paragraph (1) shall include—

22 “(A) the legal name of the virtual currency
23 kiosk operator;

24 “(B) any fictitious or trade name of the
25 virtual currency kiosk operator;

1 “(C) the physical address of each virtual
2 currency kiosk owned, operated, or managed by
3 the virtual currency kiosk operator that is lo-
4 cated in the United States or the territories of
5 the United States;

6 “(D) the start date of operation of each
7 virtual currency kiosk;

8 “(E) the end date of operation of each vir-
9 tual currency kiosk, if applicable; and

10 “(F) each virtual currency address used by
11 the virtual currency kiosk operator.

12 “(3) FALSE AND INCOMPLETE INFORMATION.—
13 The filing of false or materially incomplete informa-
14 tion in a submission required under paragraph (1)
15 shall be deemed a failure to comply with the require-
16 ments of this subsection.”.

17 (b) PREVENTING FRAUDULENT TRANSACTIONS AT
18 VIRTUAL CURRENCY KIOSKS.—

19 (1) IN GENERAL.—Subchapter II of Chapter 53
20 of Title 31, United States Code, is amended by add-
21 ing at the end the following:

22 **“§ 5337. Virtual currency kiosk fraud prevention**

23 “(a) DEFINITIONS.—In this section:

24 “(1) BLOCKCHAIN ANALYTICS.—The term
25 ‘blockchain analytics’ means the analysis of data

1 from blockchains or public distributed ledgers, and
2 associated transaction information, to provide risk-
3 specific information about virtual currency trans-
4 actions and virtual currency addresses.

5 “(2) CUSTOMER.—The term ‘customer’ means
6 any person that purchases or sells virtual currency
7 through a virtual currency kiosk.

8 “(3) EXISTING CUSTOMER.—The term ‘existing
9 customer’ means a customer other than a new cus-
10 tomer.

11 “(4) FINCEN.—The term ‘FinCEN’ means the
12 Financial Crimes Enforcement Network of the De-
13 partment of the Treasury.

14 “(5) NEW CUSTOMER.—The term ‘new cus-
15 tomer’, with respect to a virtual currency kiosk oper-
16 ator, means a customer during the 14-day period be-
17 ginning on the date of the first virtual currency
18 kiosk transaction of the customer with the virtual
19 currency kiosk operator.

20 “(6) TRANSACTION HASH.—The term ‘trans-
21 action hash’ means a unique identifier made up of
22 a string of characters that act as a record of and
23 provide proof that a transaction was verified and
24 added to the blockchain.

1 “(7) VIRTUAL CURRENCY.—The term ‘virtual
2 currency’ means any digital representation of value
3 that is recorded on a cryptographically secured dis-
4 tributed ledger or any similar technology or another
5 implementation, which was designed and built as
6 part of a system to leverage or replace blockchain,
7 distributed ledger technology, or their derivatives.

8 “(8) VIRTUAL CURRENCY ADDRESS.—The term
9 ‘virtual currency address’ means an alphanumeric
10 identifier associated with a virtual currency wallet
11 identifying the location to which virtual currency
12 purchased through a virtual currency kiosk can be
13 sent or from which virtual currency sold through a
14 virtual currency kiosk can be accessed.

15 “(9) VIRTUAL CURRENCY KIOSK.—The term
16 ‘virtual currency kiosk’ means a stand-alone ma-
17 chine—

18 “(A) that is capable of accepting or dis-
19 pensing legal tender in exchange for virtual cur-
20 rency; or

21 “(B) through which a person acting on the
22 behalf of, or a mechanical agent of, the virtual
23 currency kiosk operator of the machine may en-
24 able the virtual currency kiosk operator to fa-

1 facilitate the exchange of legal tender for virtual
2 currency, including by—

3 “(i) connecting directly to a separate
4 virtual currency exchange that performs a
5 virtual currency kiosk transaction; or

6 “(ii) drawing upon the virtual cur-
7 rency in the possession of the virtual cur-
8 rency kiosk operator.

9 “(10) VIRTUAL CURRENCY KIOSK OPERATOR.—

10 The term ‘virtual currency kiosk operator’ means a
11 person who owns, operates, or manages a virtual
12 currency kiosk located in the United States or its
13 territories.

14 “(11) VIRTUAL CURRENCY KIOSK TRANS-
15 ACTION.—The term ‘virtual currency kiosk trans-
16 action’ means the purchase or sale of virtual cur-
17 rency via a virtual currency kiosk.

18 “(12) VIRTUAL CURRENCY WALLET.—The term
19 ‘virtual currency wallet’ means a software applica-
20 tion or other mechanism providing a means for hold-
21 ing, storing, and transferring virtual currency.

22 “(b) DISCLOSURES.—Before entering into a virtual
23 currency transaction with a customer, a virtual currency
24 kiosk operator shall disclose in a clear, conspicuous, and
25 easily readable manner—

1 “(1) all relevant terms and conditions of the
2 virtual currency kiosk transaction, including—

3 “(A) the amount of the virtual currency
4 kiosk transaction;

5 “(B) the type and nature of the virtual
6 currency kiosk transaction;

7 “(C) a warning that the virtual currency
8 kiosk transaction is final, is not refundable, and
9 may not be reversed;

10 “(D) the type and amount of any fees or
11 other expenses paid by the customer; and

12 “(E) the exchange rates of—

13 “(i) the virtual currency to United
14 States dollars, with respect to the virtual
15 currency kiosk transaction; and

16 “(ii) the virtual currency to United
17 States dollars on the global marketplace;

18 “(2) a warning relating to consumer fraud in-
19 cluding—

20 “(A) a warning that consumer fraud often
21 starts with contact from a stranger, and that
22 the customer should never send money to some-
23 one they do not know;

1 “(B) a warning about the most common
2 types of fraudulent schemes involving virtual
3 currency kiosks, such as—

4 “(i) impersonation of a government
5 official or a bank representative;

6 “(ii) threats of jail time or financial
7 penalties;

8 “(iii) offers of a job or reward in ex-
9 change for payment, or offers of deals that
10 seem too good to be true;

11 “(iv) claims of a frozen bank account
12 or credit card; or

13 “(v) requests for donations to charity
14 or disaster relief; and

15 “(C) a statement that the customer should
16 contact the virtual currency kiosk operator’s
17 customer service helpline or State or local law
18 enforcement if they suspect fraudulent activity;
19 and

20 “(3) a disclosure relating to the material risks
21 associated with virtual currency and virtual currency
22 transactions, including disclosures to the effect of—

23 “(A) virtual currency is not issued or
24 backed by the United States Government and is
25 not legal tender;

1 “(B) a virtual currency is not subject to
2 protections by the Federal Deposit Insurance
3 Corporation, National Credit Union Adminis-
4 tration, or Securities Investor Protection Cor-
5 poration;

6 “(C) virtual currency transactions involve
7 risk as the value of virtual currencies is derived
8 from supply and demand in the global market-
9 place and virtual currencies may lose value; and

10 “(D) a person or business that accepts vir-
11 tual currency as payment today may not accept
12 virtual currency as payment in the future.

13 “(c) ACKNOWLEDGMENT OF DISCLOSURES.—

14 “(1) IN GENERAL.—Each time a customer uses
15 a virtual currency kiosk, the virtual currency kiosk
16 operator shall ensure acknowledgment of all disclo-
17 sures required under subsection (b) via confirmation
18 of consent of the customer at the virtual currency
19 kiosk.

20 “(2) REFUND ELIGIBILITY.—Many disclosures
21 under this section are intended to serve as warnings
22 to customers who may be conducting a virtual cur-
23 rency kiosk transaction as a result of a scam. The
24 acknowledgment of the disclosures required under

1 this section shall not affect eligibility or prevent a
2 fraud victim from being eligible for a refund.

3 “(d) RECEIPTS.—Upon completion of each virtual
4 currency kiosk transaction, the virtual currency kiosk op-
5 erator shall provide the customer with a receipt, which
6 shall include the following information:

7 “(1) The name and contact information of the
8 virtual currency kiosk operator, including a tele-
9 phone number for a customer service helpline.

10 “(2) The name of the customer.

11 “(3) The type, value, date, and precise time of
12 the virtual currency kiosk transaction, transaction
13 hash, and each applicable virtual currency address.

14 “(4) The amount of the virtual currency kiosk
15 transaction expressed in United States dollars.

16 “(5) All fees charged.

17 “(6) A statement that the customer may be en-
18 titled by law to a refund if the customer reports
19 fraudulent activity in conjunction with the virtual
20 currency kiosk transaction not later than 30 days
21 after the date of the virtual currency kiosk trans-
22 action.

23 “(7) The refund policy of the virtual currency
24 kiosk operator or a Uniform Resource Locator where

1 the refund policy of the virtual currency kiosk oper-
2 ator can be found.

3 “(8) A statement that the customer should con-
4 tact law enforcement if they suspect fraudulent ac-
5 tivity, such as scams, including contact information
6 for a relevant law enforcement or government agen-
7 cy.

8 “(9) Any additional information the virtual cur-
9 rency kiosk operator determines appropriate.

10 “(e) PHYSICAL RECEIPTS REQUIRED.—Not later
11 than 1 year after the effective date of this section, each
12 receipt required under subsection (d) shall be issued to
13 the customer as a physical receipt at the virtual currency
14 kiosk at the time of the virtual currency kiosk transaction,
15 but such receipt may also be provided in additional forms
16 or communications.

17 “(f) ANTI-FRAUD POLICY.—

18 “(1) IN GENERAL.—Each virtual currency kiosk
19 operator shall take reasonable steps to detect and
20 prevent fraud, including establishing and maintain-
21 ing a written anti-fraud policy that includes—

22 “(A) the identification and assessment of
23 fraud-related risk areas;

1 “(B) procedures and controls to protect
2 against risks identified under subparagraph
3 (A);

4 “(C) allocation of responsibility for moni-
5 toring the risks identified under subparagraph
6 (A); and

7 “(D) procedures for the periodic evaluation
8 and revision of the anti-fraud procedures, con-
9 trols, and monitoring mechanisms under sub-
10 paragraphs (B) and (C).

11 “(2) SUBMISSION OF ANTI-FRAUD POLICY TO
12 FINCEN.—Each virtual currency kiosk operator shall
13 submit to FinCEN the anti-fraud policy required
14 under paragraph (1) not later than 90 days after
15 the later of—

16 “(A) the effective date of this section; or

17 “(B) the date on which the virtual cur-
18 rency kiosk operator begins operating.

19 “(g) APPOINTMENT OF COMPLIANCE OFFICER.—
20 Each virtual currency kiosk operator shall designate and
21 employ a compliance officer who—

22 “(1) is qualified to coordinate and monitor com-
23 pliance with this section and all other applicable
24 Federal and State laws, rules, and regulations;

1 “(2) is employed full-time by the virtual cur-
2 rency kiosk operator;

3 “(3) is not the chief executive officer of the vir-
4 tual currency kiosk operator; and

5 “(4) does not own or control more than 20 per-
6 cent of any interest in the virtual currency kiosk op-
7 erator.

8 “(h) USE OF BLOCKCHAIN ANALYTICS.—

9 “(1) IN GENERAL.—Each virtual currency kiosk
10 operator shall use blockchain analytics to prevent
11 sending virtual currency to a virtual currency wallet
12 known to be affiliated with fraudulent activity at the
13 time of a virtual currency kiosk transaction and to
14 detect transaction patterns indicative of fraud or
15 other illicit activities.

16 “(2) COMPLIANCE.—The Director of FinCEN
17 may request evidence from any virtual currency
18 kiosk operator to confirm compliance with this sub-
19 section.

20 “(i) VERBAL CONFIRMATION REQUIRED BEFORE
21 NEW CUSTOMER TRANSACTIONS.—

22 “(1) IN GENERAL.—Before entering into a vir-
23 tual currency kiosk transaction valued at 300 dollars
24 or more with a new customer, a virtual currency

1 kiosk operator shall obtain verbal confirmation from
2 the new customer that—

3 “(A) the new customer wishes to proceed
4 with the virtual currency kiosk transaction;

5 “(B) the new customer understands the
6 nature of the virtual currency kiosk transaction;

7 and

8 “(C) the new customer is not being fraudu-
9 lently induced to engage in the transaction.

10 “(2) REASONABLE EFFORT.—A virtual cur-
11 rency kiosk operator shall make a reasonable effort
12 to determine whether the customer is being fraudu-
13 lently induced to engage in the virtual currency
14 kiosk transaction.

15 “(3) METHOD OF CONFIRMATION.—Each verbal
16 confirmation required under paragraph (1) shall be
17 given by way of a live telephone or video call to a
18 person employed by, or on behalf of, the virtual cur-
19 rency kiosk operator.

20 “(j) REFUNDS.—

21 “(1) IN GENERAL.—

22 “(A) NEW CUSTOMERS.—Not later than
23 30 days after receiving an application under
24 paragraph (2), a virtual currency kiosk operator
25 shall issue a refund to a customer for the full

1 amount of each virtual currency kiosk trans-
2 action, including the dollar value of virtual cur-
3 rency exchanged and all transaction fees, made
4 during the period in which the customer was a
5 new customer and for which the customer was
6 fraudulently induced to engage in the virtual
7 currency kiosk transaction.

8 “(B) EXISTING CUSTOMERS.—Not later
9 than 30 days after receiving an application
10 under paragraph (2), a virtual currency kiosk
11 operator shall issue a refund to a customer for
12 the full amount of all transaction fees associ-
13 ated with each virtual currency kiosk trans-
14 action made during the period in which the cus-
15 tomer was an existing customer and for which
16 the customer was fraudulently induced to en-
17 gage in the virtual currency kiosk transaction.

18 “(2) APPLICATION.—A customer seeking a re-
19 fund under paragraph (1) shall, not later than 90
20 days after the date of the virtual currency kiosk
21 transaction, submit an application to the virtual cur-
22 rency kiosk operator that includes the following:

23 “(A) The name, address, and phone num-
24 ber of the customer.

1 “(B) The transaction hash of the virtual
2 currency kiosk transaction or information suffi-
3 cient to determine the type, value, date, and
4 time of the virtual currency kiosk transaction.

5 “(C) A copy of a report to a State or local
6 law enforcement or government agency, made
7 not later than 90 days after the virtual cur-
8 rency kiosk transaction, that includes a sworn
9 affidavit attesting that the customer was fraud-
10 ulently induced to engage in the virtual cur-
11 rency kiosk transaction.

12 “(3) ENHANCED DAMAGES.—Any person who
13 knowingly denies a refund to a customer who is enti-
14 tled to a refund pursuant to paragraph (1) shall be
15 liable to the customer for 3 times the amount of the
16 refund owed under that paragraph or \$10,000,
17 whichever is greater. A penalty under this paragraph
18 shall be in addition to any penalty under subsection
19 (o).

20 “(k) TRANSACTION LIMITS.—

21 “(1) IN A 24-HOUR PERIOD.—During any 24-
22 hour period, a virtual currency kiosk operator shall
23 not accept more than—

24 “(A) \$1,000, or the equivalent amount in
25 virtual currency, from any new customer; or

1 “(B) \$2,000, or the equivalent amount in
2 virtual currency, from any existing customer.

3 “(2) TOTAL.—A virtual currency kiosk operator
4 shall not accept a total of more than \$5,000, or the
5 equivalent amount in virtual currency, from any new
6 customer.

7 “(1) TRANSACTION FREEZES WITH RESPECT TO
8 NEW CUSTOMERS.—

9 “(1) IN GENERAL.—Each virtual currency kiosk
10 operator shall place a 48-hour transaction freeze for
11 new customer for each transaction made during 14-
12 day period during which a customer is a new cus-
13 tomer.

14 “(2) LIFTING OF THE TRANSACTION FREEZE.—
15 A virtual currency kiosk operator may automatically
16 lift a transaction freeze under paragraph (1) after
17 the 48-hours freeze period unless the customer con-
18 tacts the virtual currency kiosk operator before the
19 end of the 48-hour freeze period to report fraudulent
20 activity.

21 “(m) CUSTOMER SERVICE HELPLINE.—Each virtual
22 currency kiosk operator shall provide live customer service
23 during all hours that the virtual currency kiosk operator
24 accepts virtual currency kiosk transactions, the phone
25 number for which is regularly monitored and displayed in

1 a clear, conspicuous, and easily readable manner upon
2 each virtual currency kiosk.

3 “(n) COMMUNICATIONS WITH LAW ENFORCE-
4 MENT.—

5 “(1) IN GENERAL.—Each virtual currency kiosk
6 operator shall provide a dedicated and frequently
7 monitored phone number and email address for rel-
8 evant law enforcement and government agencies to
9 facilitate communication with the virtual currency
10 kiosk operator in the event of reported or suspected
11 fraudulent activity.

12 “(2) SUBMISSION.—Not later than 90 days
13 after the effective date of this section, each virtual
14 currency kiosk operator shall submit the phone num-
15 ber and email address described in paragraph (1) to
16 FinCEN and all other relevant law enforcement and
17 government agencies.

18 “(o) CIVIL PENALTIES.—

19 “(1) IN GENERAL.—Any person who fails to
20 comply with any requirement of this section, or any
21 regulation prescribed under this section, shall be lia-
22 ble to the United States for a civil monetary penalty
23 of \$10,000 for each such violation.

24 “(2) CONTINUING VIOLATION.—Each day that
25 a violation described in paragraph (1) continues

1 shall constitute a separate violation for purposes of
2 such paragraph.

3 “(3) ASSESSMENTS.—Any penalty imposed
4 under this section shall be assessed and collected by
5 the Secretary of the Treasury as provided in section
6 5321 and any such assessment shall be subject to
7 the provisions of that section.

8 “(p) RELATIONSHIP TO STATE LAWS.—The provi-
9 sions of this section shall preempt any State law, rule, or
10 regulation only to the extent that such State law, rule,
11 or regulation conflicts with a provision of this section.
12 Nothing in this section shall be construed to prohibit a
13 State from enacting a law, rule, or regulation that pro-
14 vides greater protection to customers than the protection
15 provided by the provisions of this section.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions for chapter 53 of title 31, United States Code,
18 is amended by inserting after the item relating to
19 section 5336 the following:

“5337. Virtual currency kiosk fraud prevention.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect 90 days after the date of en-
22 actment of this Act.