

2019 Regular Session

HOUSE BILL NO. 532

BY REPRESENTATIVE WRIGHT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

COMMERCE: Provides relative to the licensing and regulation of virtual currency

1 AN ACT

2 To enact Chapter 21 of Title 6 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 6:1381 through 1386, relative to the licensing and regulation of virtual
4 currency; to provide for definitions; to provide for licensure; to provide for forms;
5 to provide for bond requirements; to provide for examinations; to provide reporting
6 requirements; to provide for records; to provide for enforcement; to provide for
7 authority of the commissioner; to provide for fees; to provide for disclosure; to
8 provide for receipts; to provide for exemptions; to provide for an effective date; and
9 to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 21 of Title 6 of the Louisiana Revised Statutes of 1950, comprised
12 of R.S. 6:1381 through 1386, is hereby enacted to read as follows:

13 CHAPTER 21. VIRTUAL CURRENCY

14 §1381. Definitions

15 For purposes of this Chapter, the following definitions shall apply:

16 (1) "Commissioner" means the Commissioner of the Office of Financial
17 Institutions

18 (2)(a) "Virtual currency" means any type of digital unit that is used as a
19 medium of exchange or a form of digitally stored value.

20 (b) Virtual currency shall not include any of the following:

1 (i) Digital units that are used solely within online gaming platforms with no
2 market or application outside of those gaming platforms.

3 (ii) Digital units that are used exclusively as part of a consumer affinity or
4 rewards program.

5 (iii) Digital units that can be redeemed for goods, services, or for purchases
6 with the issuer or other designated merchants, but cannot be converted into, or
7 redeemed for, fiat currency.

8 (3) "Virtual currency business" means exchanging, transferring, or storing
9 virtual currency.

10 (4) "Fiat currency" means government-issued currency that is designated as
11 legal tender through government decree, regulation, or law, that customarily refers
12 to paper money and coin and is circulated, used, and accepted as money.

13 §1382. Licenses

14 A. A person shall not engage in any virtual currency business in this state
15 unless the person is licensed or exempt from licensure under this Chapter.

16 B. The following are exempt from the licensing requirement described in this
17 Section:

18 (1) The United States or a department, agency, or instrumentality thereof,
19 including any federal reserve bank and any federal home loan bank.

20 (2) Money transmission by the United States Postal Service or by a contractor
21 on behalf of the United States Postal Service.

22 (3) A state, city, county, city and county, or any other governmental agency
23 or governmental subdivision of a state.

24 (4) A commercial bank or industrial bank, the deposits of which are insured
25 by the Federal Deposit Insurance Corporation or its successor, or any foreign (other
26 nation) bank that is authorized under federal law to maintain a federal agency or
27 federal branch office in this state; a national association authorized under federal law
28 to engage in a trust banking business; the deposits of which are insured by the

1 Federal Deposit Insurance Corporation or its successor; and any federally or state
2 chartered credit union, with an office in this state.

3 (5) A merchant or consumer that utilizes virtual currency solely for the
4 purchase or sale of goods or services.

5 (6) A transaction in which the recipient of virtual currency is an agent of the
6 payee pursuant to a preexisting written contract and delivery of the virtual currency
7 to the agent satisfies the payor's obligation to the payee.

8 (7) A person or entity contributing software, connectivity, or computing
9 power to a virtual currency network.

10 (8) A person or entity providing data storage or cyber security services for
11 a licensed virtual currency business.

12 C. For purposes of this Section, the following shall apply:

13 (1) "Agent" means an authorized person who acts on behalf of or at the
14 direction of another person or entity.

15 (2) "Payee" means the provider of goods or services, who is owed payment
16 of money or other monetary value from the payor for the goods or services.

17 (3) "Payor" means the recipient of goods or services, who owes payment of
18 money or monetary value to the payee for the goods or services.

19 D.(1) An applicant for licensure pursuant to this Section shall pay to the
20 commissioner a non-refundable application fee of one thousand dollars.

21 (2) An applicant for a license shall do so in a form and in a medium
22 prescribed by the commissioner by order or regulation, and the application shall state
23 or contain all of the following:

24 (a) The legal name and residential business address of the applicant and any
25 fictitious or trade name used by the applicant in conducting its business.

26 (b) A list of any criminal convictions of the applicant and any material
27 litigation in which the applicant has been involved in the ten year period next
28 preceding the submission of the application.

1 (c) A description of any virtual currency services previously provided by the
2 applicant and the virtual currency services that the applicant seeks to provide in this
3 state.

4 (d) A list of other states in which the applicant is licensed to engage in the
5 business of virtual currency and any license revocations, suspensions, or other
6 disciplinary action taken against the applicant in another state.

7 (e) Information concerning any bankruptcy or receivership proceedings
8 affecting the licensee.

9 (f) A sample form of receipt for transactions that involve money received for
10 the business of virtual currency.

11 (g) The name and address of any bank through which the applicant's business
12 will be conducted.

13 (h) A description of the source of money and credit to be used by the
14 applicant to provide virtual currency services.

15 (i) The date of the applicant's incorporation or formation and the state or
16 country of incorporation or formation.

17 (j) A certificate of good standing from the state or country in which the
18 applicant is incorporated or formed.

19 (k) A description of the structure or organization of the applicant, including
20 any parent or subsidiary of the applicant, and whether any parent or subsidiary is
21 publicly traded.

22 (l) The legal name, any fictitious or trade name, all business and residential
23 addresses, and the employment, in the ten year period next preceding the submission
24 of the application, of each executive officer, manager, director, or person that has
25 control, of the applicant, and the educational background for each person.

26 (m) A list of any criminal convictions and material litigation in which any
27 executive officer, manager, director, or person in control, of the applicant has been
28 involved in the ten year period next preceding the submission of the application.

1 (n) A copy of the applicant's audited financial statements for the most recent
2 fiscal year and, if available, for the two-year period next preceding the submission
3 of the application.

4 (o) A copy of the applicant's unconsolidated financial statements for the
5 current fiscal year, whether audited or not, and, if available, for the two-year period
6 next preceding the submission of the application.

7 (p) If the applicant is publicly traded, a copy of the most recent report filed
8 with the United States Securities and Exchange Commission under Section 13 of the
9 federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m).

10 (q) If the applicant is a wholly owned subsidiary of:

11 (i) A corporation publicly traded in the United States, a copy of audited
12 financial statements for the parent corporation for the most recent fiscal year or a
13 copy of the parent corporation's most recent report filed under Section 13 of the
14 federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m) and, if available, for
15 the two-year period next preceding the submission of the application.

16 (ii) A corporation publicly traded outside the United States, a copy of similar
17 documentation filed with the regulator of the parent corporation's domicile outside
18 the United States.

19 (r) Any other information the commissioner requires with respect to the
20 applicant.

21 (3) The commissioner may waive any of the information required pursuant
22 to Paragraph (2) of this Subsection or permit an applicant to submit other
23 information instead of the required information.

24 (4) The initial fee to acquire control of an approved license is five hundred
25 dollars.

26 (5) A licensee, including a licensee described in Paragraph (2) of this
27 Subsection, shall pay annually on or before July 1, a license renewal fee of one
28 hundred dollars.

1 (6) Each fee for filing an application shall be paid at the time the application
2 is filed with the commissioner. No fee for filing an application shall be refundable,
3 regardless of whether the application is approved, denied, or withdrawn.

4 (7) Each licensee shall maintain at all times such capital as the commissioner
5 determines is sufficient to ensure the safety and soundness of the licensee and
6 maintain consumer protection and its ongoing operations. In determining the
7 minimum amount of capital that must be maintained by a licensee, the commissioner
8 shall consider a variety of factors, including, but not limited to:

9 (a) The composition of the licensee's total assets, including the position, size,
10 liquidity, risk exposure, and price volatility of each type of asset.

11 (b) The composition of the licensee's total liabilities, including the size and
12 repayment timing of each type of liability.

13 (c) The actual and expected volume of the licensee's virtual currency
14 business activity.

15 (d) Whether the licensee is already licensed or regulated by a state or federal
16 entity, and whether the licensee is in good standing in such capacity.

17 (e) The amount of leverage employed by the licensee.

18 (f) The liquidity position of the licensee.

19 (8) Each licensee shall maintain a bond or trust account in United States
20 dollars in the amount of ten thousand dollars for the benefit of its consumers in the
21 form specified by the commissioner.

22 (9) Each licensee shall be authorized to do business in the state.

23 §1383. Examinations; reports; records

24 A. The commissioner may at any time and from time to time examine the
25 business and any branch office, within or outside this state, of any licensee in order
26 to ascertain whether that business is being conducted in a lawful manner and whether
27 all virtual currency held or exchanged is properly accounted for.

28 B. The directors, officers, and employees of any licensee being examined by
29 the commissioner shall exhibit to the commissioner, on request, any or all of the

1 licensee's accounts, books, correspondence, memoranda, papers, and other records
2 and shall otherwise facilitate the examination so far as it may be in their power to do
3 so.

4 C. The commissioner may consult and cooperate with other state or federal
5 regulators in enforcing and administering this Chapter. They may jointly pursue
6 examinations and take other official action that they are otherwise empowered to
7 take.

8 D. A licensee shall file a report with the commissioner within five business
9 days after the licensee has reason to know of the occurrence any of the following
10 events:

11 (1) The filing of a petition by or against the licensee under the United States
12 Bankruptcy Code (11 U.S.C. Secs. 101 to 110, inclusive) for bankruptcy or
13 reorganization.

14 (2) The filing of a petition by or against the licensee for receivership, the
15 commencement of any other judicial or administrative proceeding for its dissolution
16 or reorganization, or the making of a general assignment for the benefit of its
17 creditors.

18 (3) The commencement of a proceeding to revoke or suspend its virtual
19 currency business license in a state or country in which the licensee engages in such
20 business or is licensed to engage in such business.

21 (4) The cancellation or other impairment of the licensee's bond or trust
22 account.

23 (5) A charge or conviction of the licensee or of an executive officer, manager,
24 director, or person in control of the licensee for a felony.

25 E. A licensee shall maintain any records as required by the commissioner for
26 determining its compliance with this Chapter for at least three years.

27 F. A licensee shall, within ninety days after the end of each fiscal year, or
28 within any extended time as the commissioner may prescribe, file with the

1 commissioner an audit report for the fiscal year that shall comply with all of the
2 following provisions:

3 (1) The audit report shall contain audited financial statements of the licensee
4 for or as of the end of the fiscal year prepared in accordance with United States
5 generally accepted accounting principles and any other information as the
6 commissioner may require.

7 (2) The audit report shall be based upon an audit of the licensee conducted
8 in accordance with United States generally accepted auditing standards and any other
9 requirements as the commissioner may prescribe.

10 (3) The audit report shall be prepared by an independent certified public
11 accountant or independent public accountant who is not unsatisfactory to the
12 commissioner.

13 (4) The audit report shall include or be accompanied by a certificate of
14 opinion of the independent certified public accountant or independent public
15 accountant that is satisfactory in form and content to the commissioner. If the
16 certificate or opinion is qualified, the commissioner may order the licensee to take
17 any action as the commissioner may find necessary to enable the independent or
18 certified public accountant or independent public accountant to remove the
19 qualification.

20 G. Each licensee shall, not more than forty-five days after the end of each
21 calendar year quarter, or within a longer period as the commissioner may by
22 regulation or order specify, file with the commissioner a report containing all of the
23 following:

24 (1) Financial statements, including balance sheet, income statement,
25 statement of changes in shareholders' equity, and statement of cash-flows, for, or as
26 of the end of, that calendar year quarter, verified by two of the licensee's principal
27 officers. The verification shall state that each of the officers making the verification
28 has a personal knowledge of the matters in the report and that each of them believes
29 that each statement in the report is true.

1 (2) Other information as the commissioner may by regulation or order
2 require.

3 §1384. Enforcement

4 A. Any licensee may surrender its license by filing with the commissioner the
5 license and a report with any information as the commissioner requires. The
6 voluntary surrender of the license shall become effective at the time and upon the
7 conditions as the commissioner specifies by order.

8 B. The commissioner may prepare written decisions, opinion letters, and
9 other formal written guidance to be issued to persons seeking clarification regarding
10 the requirements of this Chapter.

11 C. The commissioner shall make public on the commissioner's internet
12 website all written decisions, opinion letters, and other formal written guidance
13 issued to persons seeking clarification regarding the requirements of this Chapter.

14 D. The commissioner may, at his discretion, or upon request by an applicant,
15 or licensee, redact proprietary or other confidential information regarding an
16 applicant or licensee from any decision, letter, or other written guidance issued in
17 connection with an applicant or licensee.

18 E. The commissioner may offer informal guidance to any prospective
19 applicant for a license pursuant to this Chapter, regarding the conditions of licensure
20 that may be applied to that person.

21 F. The commissioner shall inform any applicant that requests that guidance
22 of the licensing requirements that will be required of that applicant, based on the
23 information provided by the applicant concerning its plan to conduct business
24 pursuant to this Chapter, and the factors used to make that determination.

25 G. At any time, if the commissioner deems it necessary for the general
26 welfare of the public, he may exercise any power set forth in this Chapter with
27 respect to a virtual currency business, regardless of whether an application for a
28 license has been filed with the commissioner, a license has been issued, or, if issued,
29 the license has been surrendered, suspended, or revoked.

1 H. If it appears to the commissioner that a licensee is violating or failing to
2 comply with this Chapter, the commissioner may direct the licensee to comply with
3 the law by an order issued under the commissioner's official seal, or if it appears to
4 the commissioner that any licensee is conducting its business in an unsafe or
5 injurious manner, the commissioner may in like manner direct it to discontinue the
6 unsafe or injurious practices. The order shall require the licensee to show cause
7 before the commissioner, at a time and place to be fixed by the commissioner, as to
8 why the order should not be observed.

9 I. If, upon any hearing held pursuant to this Section, the commissioner finds
10 that the licensee is violating or failing to comply with any law of this state or is
11 conducting its business in an unsafe or injurious manner, the commissioner may
12 make a final order directing it to comply with the law or to discontinue the unsafe
13 or injurious practices. A licensee shall comply with the final order unless, within ten
14 days after the issuance of the order, its enforcement is restrained in a proceeding
15 brought by the licensee.

16 J. The commissioner may issue an order suspending or revoking a license, or
17 taking possession of and placing a licensee in receivership, if after notice and an
18 opportunity for hearing, the commissioner finds any of the following:

19 (1) The licensee is violating this Chapter or a regulation adopted or an order
20 issued pursuant to this Chapter, or a condition of approval issued pursuant to this
21 Chapter.

22 (2) The licensee does not cooperate with an examination or investigation by
23 the commissioner.

24 (3) The licensee engages in fraud, intentional misrepresentation, or gross
25 negligence.

26 (4) The competence, experience, character, or general fitness of the licensee,
27 or any director, officer, employee, or person in control of a licensee, indicates that
28 it is not in the public interest to permit the person to provide virtual currency
29 services.

1 (5) The licensee engages in an unsafe or unsound practice.

2 (6) The licensee is insolvent, suspends payment of its obligations, or makes
3 a general assignment for the benefit of its creditors.

4 (7) The licensee has applied for an adjudication of bankruptcy,
5 reorganization, arrangement, or other relief under any bankruptcy, reorganization,
6 insolvency, or moratorium law, or any person has applied for any such relief under
7 that law against the licensee and the licensee has by any affirmative act approved of
8 or consented to the action or the relief has been granted.

9 (8) Any fact or condition exists that, if it had existed at the time when the
10 licensee applied for its license, would have been grounds for denying the application.

11 K. In determining whether a licensee is engaging in an unsafe or unsound
12 practice, the commissioner may consider the size and condition of the licensee's
13 provision of virtual currency services, the magnitude of the loss, the gravity of the
14 violation of this , and the previous conduct of the person involved.

15 L. Every order, decision, or other official act of the commissioner is subject
16 to review in accordance with law.

17 M. Whenever the commissioner has taken possession of the property and
18 business of any licensee, the licensee, within ten days after that taking, if it deems
19 itself aggrieved thereby, may apply to the superior court in the county in which the
20 head office of the licensee is located to enjoin further proceedings. The court, after
21 citing the commissioner to show cause why further proceedings should not be
22 enjoined and after a hearing and a determination of the facts upon the merits, may
23 dismiss the application or enjoin the commissioner from further proceedings and
24 direct the commissioner to surrender the property and business to the licensee.

25 N.(1) If the commissioner finds that any of the factors set forth this Section
26 is true with respect to any licensee and that it is necessary for the protection of the
27 public interest, the commissioner may issue an order immediately suspending or
28 revoking the licensee's license.

1 (2) Within thirty days after the license is suspended or revoked pursuant to
2 Paragraph (1) of this Subsection, the licensee may file with the commissioner an
3 application for a hearing on the suspension or revocation.

4 (3) If the commissioner fails to commence a hearing within fifteen business
5 days after the application is filed with the commissioner pursuant to Paragraph (2)
6 of this Subsection, or within a longer period of time agreed to by the licensee, the
7 suspension or revocation shall be deemed rescinded.

8 (4) Within thirty days after the hearing, the commissioner shall affirm,
9 modify, or rescind the suspension or revocation. Otherwise, the suspension or
10 revocation shall be deemed rescinded.

11 (5) The right of the licensee to petition for judicial review of the suspension
12 or revocation shall not be affected by the failure of the licensee to apply to the
13 commissioner for a hearing on the suspension or revocation pursuant to Paragraph
14 (2) of this Subsection.

15 O. The commissioner may assess a civil penalty against a person that violates
16 this Chapter or a regulation adopted or an order issued pursuant to this Chapter in an
17 amount not to exceed one thousand dollars for each violation or, in the case of a
18 continuing violation, one thousand dollars for each day or part thereof during which
19 the violation continues, plus this state's costs and expenses for the investigation and
20 prosecution of the matter, including reasonable attorney's fees.

21 P. The enforcement provisions of this Section are in addition to any other
22 enforcement powers that the commissioner may have under law.

23 Q. The commissioner may by order or regulation grant exemptions from this
24 Section in cases where the commissioner finds that the requirements of this Section
25 are not necessary or may be duplicative.

26 §1385. Fees

27 In addition to the fees provided in Section 1382, the commissioner shall levy
28 an assessment each fiscal year, on a pro rata basis, on those licensees that at any time
29 during the preceding calendar year engaged in this state in the virtual currency

1 business in an amount that is, in his or her judgment, sufficient to meet the
2 commissioner's expenses in administering the provisions of this Chapter and to
3 provide a reasonable reserve for contingencies.

4 §1386. Miscellaneous Provisions

5 A. A licensee shall disclose to consumers the following disclosure in a form
6 and manner prescribed by the commissioner:

7 "The risk of loss in trading or holding virtual currency can be substantial.
8 You should therefore carefully consider whether trading or holding virtual currency
9 is suitable for you in light of your financial condition. In considering whether to
10 trade or hold virtual currency, you should be aware that the price or value of virtual
11 currency can change rapidly, decrease, and potentially even fall to zero. (Insert
12 company name) is licensed by the Office of Financial Institutions to do business in
13 Louisiana. If you have complaints with respect to any aspect of the virtual currency
14 business conducted by (company name), you may contact the Office of Financial
15 Institutes at (insert contact info here)".

16 B.(1) Upon completion of a transaction subject to this Chapter, the licensee
17 shall provide to the consumer a receipt containing the following information:

18 (a) The name and contact information of the licensee including a telephone
19 number of the licensee where consumers can contact the licensee for questions or to
20 register complaints.

21 (b) The type, value, date, and time of the transaction.

22 (c) The type and amount of any fees charged or the exchange rate.

23 (d) A statement of the refund policy of the licensee or notice that all sales are
24 final.

25 (2) The receipt required by this Section shall be made in English and in the
26 language principally used by that licensee to advertise, solicit, or negotiate, either
27 orally or in writing, if other than English.

1 (3) The receipt required by this Section may be provided electronically for
2 transactions that are initiated electronically or in which a consumer agrees to receive
3 an electronic receipt.

4 C. The commissioner may, by regulation or order, either unconditionally or
5 upon specified terms and conditions or for specified periods, exempt from all or part
6 of this Chapter any person or transaction or class of persons or transactions, if the
7 commissioner finds such action to be in the public interest and that the regulation of
8 such persons or transactions is not necessary for the purposes of this Chapter. The
9 commissioner shall post on the commissioner’s internet website a list of all persons,
10 transactions, or classes of person or transactions exempt pursuant to this Section, and
11 the provision or provisions of this Chapter from which they are exempt.

12 D. A licensee who is engaged in the exchange of virtual currency shall be
13 exempt from and not subject to the provisions of The Sale of Checks and Money
14 Transmission Act, R.S. 6:1031, et seq.

15 Section 2. This Act shall become effective on July 1, 2019.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 532 Original 2019 Regular Session Wright

Abstract: Creates a licensing and regulatory structure for virtual currency in the state of La.

Proposed law defines "commissioner", "virtual currency", "virtual currency business", "fiat currency", "agent", "payee", and "payor"

Proposed law requires a person to obtain a license prior to engaging in any virtual currency business.

Proposed law provides a listing of persons exempt from the licensing requirement.

Proposed law requires an applicant for licensure to pay an application fee of \$1,000.

Proposed law requires the applicant for licensure to apply in a form and in a medium prescribed by the commissioner and specifies information which must be included.

Proposed law allows the commissioner to conduct examinations in compliance with proposed law.

Proposed law requires the licensee to file certain reports with the commissioner in compliance with proposed law.

Proposed law provides for enforcement of proposed law.

Proposed law allows the commissioner to levy fees sufficient to meet expenses in administering the provisions of proposed law.

Proposed law requires a licensee to disclose certain information to consumers.

Proposed law requires the licensee to provide the customer with a receipt in a manner prescribed by proposed law.

Eff. July 1, 2019.

(Adds R.S. 6:1381-1386)