

2020 Regular Session

HOUSE BILL NO. 701

BY REPRESENTATIVE WRIGHT

COMMERCE: Provides for the licensing and regulation of virtual currency businesses

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 1394, relative to virtual currency businesses; to define key
4 terms; to provide for applicability; to require licensure of virtual currency businesses;
5 to establish requirements to apply for licensure; to authorize reciprocity of licensure;
6 to require security deposits from applicants for licensure; to provide for the issuance,
7 denial, and renewal of licenses; to authorize registration in lieu of licensure; to
8 provide for enforcement; to establish penalties for violations; to require rulemaking;
9 and 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 1394, is hereby enacted to read as follows:

13 CHAPTER 21. VIRTUAL CURRENCY BUSINESSES

14 §1381. Short title

15 This Chapter shall be known and may be cited as the "Virtual Currency
16 Businesses Act".

17 §1382. Definitions

18 For the purposes of this Chapter:

19 (1) "Applicant" means a person that applies for a license pursuant to this
20 Chapter.

1 (2)(a) "Bank" means a federally chartered or state-chartered depository
2 institution or holder of a charter granted by the Office of the Comptroller of the
3 Currency to a person engaged in the business of banking other than deposit taking.

4 (b) "Bank" shall not include either of the following:

5 (i) An industrial loan company, state-chartered trust company, or a
6 limited-purpose trust company, unless incorporated as a bank or the department has
7 authorized the company to engage in virtual currency business activity.

8 (ii) A trust company or limited-purpose trust company chartered by a state
9 with which this state does not have a reciprocity agreement governing trust-company
10 activities.

11 (3) "Control" means both of the following:

12 (a) When used in reference to a transaction or relationship involving virtual
13 currency, power to execute unilaterally or prevent indefinitely a virtual currency
14 transaction.

15 (b) When used in reference to a person, the direct or indirect power to direct
16 the management, operations, or policies of the person through legal or beneficial
17 ownership of voting power in the person or under a contract, arrangement, or
18 understanding.

19 (4) "Department" means the office of financial institutions.

20 (5) "Exchange", when used as a verb, means to assume control of virtual
21 currency from, or on behalf of, a resident, at least momentarily, to sell, trade, or
22 convert either of the following:

23 (a) Virtual currency for legal tender, bank credit, or one or more forms of
24 virtual currency.

25 (b) Legal tender or bank credit for one or more forms of virtual currency.

26 (6) "Executive officer" means an individual who is a director, officer,
27 manager, managing member, partner, or trustee of a person that is not an individual.

28 (7) "Insolvent" means any of the following:

1 (a) Having generally ceased to pay debts in the ordinary course of business
2 other than as a result of a bona fide dispute.

3 (b) Being unable to pay debts as they become due.

4 (c) Being insolvent within the meaning of federal bankruptcy law.

5 (8) "Legal tender" means a medium of exchange or unit of value, including
6 the coin or paper money of the United States, issued by the United States or by
7 another government.

8 (9) "Licensee" means a person licensed pursuant to this Chapter.

9 (10) "Person" means an individual, partnership, estate, business or nonprofit
10 entity, or other legal entity. The term shall not include a public corporation,
11 government, or governmental subdivision, agency, or instrumentality.

12 (11) "Reciprocity agreement" means an arrangement between the department
13 and the appropriate licensing agency of another state which permits a licensee
14 operating under a license granted by the other state to engage in virtual currency
15 business activity with or on behalf of a resident.

16 (12) "Registrant" means a person that registers with this state pursuant to
17 R.S. 6:1390 to conduct virtual currency business activity.

18 (13) "Registration" means the ability pursuant to R.S. 6:1390 to conduct
19 virtual currency business activity.

20 (14)(a) "Resident" means any of the following:

21 (i) A person who is domiciled in this state.

22 (ii) A person who is physically located in this state for more than one
23 hundred eighty-three days of the previous three hundred sixty-five days.

24 (iii) A person who has a place of business in this state.

25 (b) Resident shall include a legal representative of a person that meets one
26 of the criteria provided for in Subparagraph (a) of this Paragraph.

27 (15) "Responsible individual" means an individual who has managerial
28 authority with respect to a licensee's or registrant's virtual currency business activity
29 with, or on behalf of, a resident.

1 (16) "State" means a state of the United States, the District of Columbia,
2 Puerto Rico, the United States Virgin Islands, or any territory or insular possession
3 subject to the jurisdiction of the United States.

4 (17) "Store", except in the phrase store of value, means to maintain control
5 of virtual currency on behalf of a resident by a person other than the resident. Storage
6 and storing have corresponding meanings.

7 (18) "Transfer" means to assume control of virtual currency from, or on
8 behalf of, a resident and do any of the following:

9 (a) Credit the virtual currency to the account of another person.

10 (b) Move the virtual currency from one account of a resident to another
11 account of the same resident.

12 (c) Relinquish control of virtual currency to another person.

13 (19) "United States dollar equivalent of virtual currency" means the
14 equivalent value of a particular virtual currency in United States dollars shown on
15 a virtual currency exchange based in the United States for a particular date or period
16 specified in this Chapter.

17 (20)(a) "Virtual currency" means a digital representation of value that is used
18 as a medium of exchange, unit of account, or store of value, and that is not legal
19 tender, whether or not denominated in legal tender.

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

21 (i) A transaction in which a merchant grants, as part of an affinity or rewards
22 program, value that cannot be taken from or exchanged with the merchant for legal
23 tender, bank credit, or virtual currency.

24 (ii) A digital representation of value issued by or on behalf of a publisher and
25 used solely within an online game, game platform, or family of games sold by the
26 same publisher or offered on the same game platform.

27 (21) "Virtual currency administration" means issuing virtual currency with
28 the authority to redeem the currency for legal tender, bank credit, or other virtual
29 currency.

1 (22) "Virtual currency business activity" means any of the following:

2 (a) Exchanging, transferring, or storing virtual currency or engaging in
3 virtual currency administration, whether directly or through an agreement with a
4 virtual currency control services vendor.

5 (b) Holding electronic precious metals or electronic certificates representing
6 interests in precious metals on behalf of another person or issuing shares or
7 electronic certificates representing interests in precious metals.

8 (c) Exchanging one or more digital representations of value used within one
9 or more online games, game platforms, or family of games for either of the
10 following:

11 (i) Virtual currency offered by or on behalf of the same publisher from which
12 the original digital representation of value was received.

13 (ii) Legal tender or bank credit outside the online game, game platform, or
14 family of games offered by or on behalf of the same publisher from which the
15 original digital representation of value was received.

16 (23) "Virtual currency control services vendor" means a person that has
17 control of virtual currency solely under an agreement with a person that, on behalf
18 of another person, assumes control of virtual currency.

19 §1383. Applicability

20 A. Except as otherwise provided in Subsection B or C of this Section, the
21 provisions of this Chapter govern the virtual currency business activity of a person,
22 wherever located, who engages in or holds itself out as engaging in the activity with,
23 or on behalf of, a resident.

24 B. This Chapter shall not apply to the exchange, transfer, or storage of
25 virtual currency or to virtual currency administration to the extent the activity is
26 governed by any of the following federal laws:

27 (1) The Electronic Fund Transfer Act of 1978.

28 (2) The Securities Exchange Act of 1934.

29 (3) The Commodities Exchange Act of 1936.

1 (4) The Corporate Securities Law of 1968.

2 C. This Chapter shall not apply to activity by any of the following:

3 (1) The United States, a state, political subdivision of a state, agency, or
4 instrumentality of federal, state, or local government, or a foreign government or a
5 subdivision, department, agency, or instrumentality of a foreign government.

6 (2) A bank, including a trust company that is incorporated as a bank.

7 (3) A person whose participation in a payment system is limited to providing
8 processing, clearing, or performing settlement services solely for transactions
9 between or among persons that are exempt from the licensing or registration
10 requirements of this Chapter.

11 (4) A person engaged in the business of dealing in foreign exchange to the
12 extent the person's activity meets the definition in 31 CFR 1010.605(f)(1)(iv).

13 (5) A person who does any of the following:

14 (a) Contributes only connectivity software or computing power to a
15 decentralized virtual currency or to a protocol governing transfer of the digital
16 representation of value.

17 (b) Provides only data storage or security services for a business engaged in
18 virtual currency business activity and does not otherwise engage in virtual currency
19 business activity on behalf of another person.

20 (c) Provides only to a person otherwise exempt from the provisions of this
21 Chapter virtual currency as one or more enterprise solutions used solely among each
22 other and that has no agreement or relationship with a resident that is an end-user of
23 virtual currency.

24 (6) A person using virtual currency, including creating, investing, buying or
25 selling, or obtaining virtual currency as payment for the purchase or sale of goods
26 or services, solely on the person's own behalf for personal, family, or household
27 purposes or for academic purposes.

28 (7) A person whose virtual currency business activity with, or on behalf of,
29 residents is reasonably expected to be valued, in the aggregate, on an annual basis

1 at five thousand dollars or less, measured by the United States dollar equivalent of
2 virtual currency.

3 (8) An attorney to the extent of providing escrow services to a resident.

4 (9) A title insurance company to the extent of providing escrow services to
5 a resident.

6 (10) A securities intermediary, as defined in 8 U.C.C. 102, or a commodity
7 intermediary, as defined in 9 U.C.C 102, that does not engage in the ordinary course
8 of business in virtual currency business activity with, or on behalf of, a resident, in
9 addition to maintaining securities accounts or commodities accounts and is regulated
10 as a securities intermediary or commodity intermediary pursuant to federal law, law
11 of this state other than the provisions of this Chapter, or law of another state, and
12 affords a resident protections comparable to those provided in 8 U.C.C. 8701 et seq.

13 (11) A secured creditor pursuant to 9 U.C.C. or a creditor with a judicial
14 lien, or lien arising by operation of law, on collateral that is virtual currency, if the
15 virtual currency business activity of the creditor is limited to enforcement of the
16 security interest in compliance with 9 U.C.C. 9101 et seq. or lien in compliance with
17 the law applicable to the lien.

18 (12) A virtual currency control services vendor.

19 (13) A person who does not receive compensation from a resident for
20 providing virtual currency products or services or for conducting virtual currency
21 business activity, or that is engaged in testing products or services with the person's
22 own funds.

23 D. The department may determine that a person or class of persons, given
24 facts particular to the person or class, are exempt from the provisions of this Chapter,
25 whether the person or class is covered by requirements imposed pursuant to federal
26 law on a money-service business.

1 §1384. Licensure; general

2 A person shall not engage in virtual currency business activity, or hold itself
3 out as being able to engage in virtual currency business activity, with or on behalf
4 of a resident unless the person is one of the following:

5 (1) Licensed in this state by the department pursuant to R.S. 6:1385.

6 (2) Licensed in another state to conduct virtual currency business activity by
7 a state with which this state has a reciprocity agreement and has qualified pursuant
8 to R.S. 6:1386.

9 (3) Registered with the department and operating pursuant to R.S. 6:1390.

10 (4) Exempt from licensure or registration pursuant to R.S. 6:1383.

11 §1385. Requirements

12 A. Except as otherwise provided in R.S. 6:1386, an application for a license
13 pursuant to the provisions of this Chapter shall satisfy all of the following:

14 (1) Be in a form and medium prescribed by the department.

15 (2) Except as otherwise provided in Subsection B of this Section, provide all
16 of the following information relevant to the applicant's proposed virtual currency
17 business activity:

18 (a) The legal name of the applicant, each current or proposed business
19 United States Postal Service address of the applicant, and any fictitious or trade name
20 the applicant uses or plans to use in conducting its virtual currency business activity
21 with or on behalf of a resident.

22 (b) The legal name, any former or fictitious name, and the residential and
23 business United States Postal Service address of each executive officer and
24 responsible individual of the applicant, and each person that has control of the
25 applicant.

26 (c) A description of the current and former business of the applicant for the
27 five years before the application is submitted or, if the business has operated for less
28 than five years, for the time the business has operated, including its products and

1 services, associated internet website addresses and social media pages, principal
2 place of business, projected user base, and specific marketing targets.

3 (d) The name, United States Postal Service address, and telephone number
4 of a person that manages each server the applicant expects to use in conducting its
5 virtual currency business activity with, or on behalf of, a resident and a copy of any
6 agreement with that person.

7 (e) A list of both of the following:

8 (i) Each money service or money transmitter license the applicant holds in
9 another state and the date the license expires.

10 (ii) Any license revocation, license suspension, or other disciplinary action
11 taken against the licensee in another state and any license applications rejected by
12 another state.

13 (f) A list of any criminal conviction, deferred prosecution agreement, or
14 pending criminal proceeding in any jurisdiction against all of the following:

15 (i) The applicant.

16 (ii) Each executive officer of the applicant.

17 (iii) Each responsible individual of the applicant.

18 (iv) Each person that has control over the applicant.

19 (v) Each person over which the applicant has control.

20 (g) A list of any litigation, arbitration, or administrative proceeding in any
21 jurisdiction in which the applicant, or an executive officer or a responsible individual
22 of the applicant, has been a party for the five years before the application is
23 submitted, determined to be material in accordance with generally accepted
24 accounting principles and to the extent the applicant would be required to disclose
25 the litigation, arbitration, or administrative proceeding in the applicant's audited
26 financial statements, reports to equity owners, and similar statements or reports.

27 (h) A list of any bankruptcy or receivership proceeding in any jurisdiction
28 for the ten years before the application is submitted in which any of the following
29 was a debtor:

- 1 (i) The applicant.
- 2 (ii) Each executive officer of the applicant.
- 3 (iii) Each responsible individual of the applicant.
- 4 (iv) Each person who has control over the applicant.
- 5 (v) Each person over which the applicant has control.
- 6 (i) The name and United States Postal Service address of each bank in which
7 the applicant plans to deposit funds obtained by its virtual currency business activity.
- 8 (j) The source of funds and credit to be used by the applicant to conduct
9 virtual currency business activity with, or on behalf of, a resident and documentation
10 demonstrating that the applicant has the net worth and reserves required pursuant to
11 R.S. 6:1387.
- 12 (k) The United States Postal Service address and electronic mail address to
13 which communications from the department may be sent.
- 14 (l) The name, United States Postal Service address, and electronic mail
15 address of the registered agent of the applicant in this state.
- 16 (m) A copy of the certificate, or a detailed summary acceptable to the
17 department, of coverage for each liability, casualty, business-interruption, or
18 cyber-security insurance policy maintained by the applicant for itself, an executive
19 officer, a responsible individual, or the applicant's users.
- 20 (n) If applicable, the date on which, and the state where, the applicant is
21 formed and a copy of a current certificate of good standing issued by that state.
- 22 (o) If a person has control of the applicant and the person's equity interests
23 are publicly traded in the United States, a copy of the audited financial statement of
24 the person for the most recent fiscal year or most recent report of the person filed
25 pursuant to 15 U.S.C. Section 78.
- 26 (p) If a person has control of the applicant and the person's equity interests
27 are publicly traded outside the United States, a copy of the audited financial
28 statement of the person for the most recent fiscal year of the person or a copy of the

1 most recent documentation similar to that required in Subparagraph (o) of this
2 Paragraph filed with the foreign regulator in the domicile of the person.

3 (q) If the applicant is a partnership or a member-managed limited liability
4 company, the names and United States Postal Service addresses of all general
5 partners or members.

6 (r) If the applicant is required to register with the Financial Crimes
7 Enforcement Network of the United States Department of the Treasury as a money
8 service business, evidence of the registration.

9 (s) A set of fingerprints for each executive officer and responsible individual
10 of the applicant.

11 (t) If available, for each executive officer and responsible individual of the
12 applicant, for the five years before the application is submitted, employment history
13 and history of any investigation of the individual or legal proceeding to which the
14 individual was a party.

15 (u) Other information the department reasonably requires by rule.

16 (3) Be accompanied by a nonrefundable fee in the amount determined by the
17 department to cover the reasonable costs of regulation.

18 B. For good cause, the department may waive the fee required pursuant to
19 Paragraph (A)(3) of this Section or permit the applicant to submit other information
20 instead of the required information.

21 C. An application for a license pursuant to this Section shall not be complete
22 until the department receives all information required by the provisions of this
23 Chapter and completes its investigation pursuant to Subparagraph (d) of this
24 Paragraph.

25 D.(1) On receipt of a completed application, the department shall investigate
26 all of the following:

27 (a) The financial condition and responsibility of the applicant.

28 (b) The relevant financial and business experience, character, and general
29 fitness of the applicant.

1 (c) The competence, experience, character, and general fitness of each
2 executive officer, each responsible individual, and any person that has control of the
3 applicant.

4 (2) At the option the department, it may investigate the business premises
5 of an applicant.

6 E.(1) Not later than thirty days after an application is complete, the
7 department shall send the applicant notice of its decision to approve, conditionally
8 approve, or deny the application.

9 (2) If the department does not send the applicant notice of its decision
10 within thirty-one days of completion of the application, the application shall be
11 deemed denied.

12 (3) If the department does not receive notice from the applicant that the
13 applicant accepts conditions specified by the department within thirty-one days
14 following the department's notice of the conditions, the application shall be deemed
15 denied.

16 F. A license shall be effective on the later of either of the following:

17 (1) The date on which the department issues the license.

18 (2) The date the licensee provides the security required pursuant to R.S.
19 6:1387.

20 G. An applicant shall pay the reasonable costs of the department's
21 investigation pursuant to this Section.

22 §1386. Reciprocity

23 A. A person licensed by another state to engage in virtual currency business
24 activity in that state may engage in virtual currency business activity with or on
25 behalf of a resident to the same extent as a licensee if all of the following conditions
26 are met:

27 (1) The department determines that the state in which the person is licensed
28 has in force laws regulating virtual currency business activity which are substantially
29 similar to, or more protective of rights of users than, the provisions of this Chapter.

1 (2) At least thirty days before the person commences virtual currency
2 business activity with, or on behalf of, a resident, the person submits to the
3 department all of the following:

4 (a) A notice containing a statement that the person will rely on reciprocal
5 licensing, a copy of the license to conduct virtual currency business activity issued
6 by the other state, and certification of license history from the agency responsible for
7 issuing the license to conduct virtual currency business activity in the other state.

8 (b) A nonrefundable reciprocal license fee in the amount specified by the
9 department, not to exceed the reasonable costs of regulation.

10 (c) Documentation demonstrating that the applicant complies with the
11 security and net worth reserve requirements pursuant to R.S. 6:1387.

12 (d) A certification signed by an executive officer of the applicant affirming
13 that the applicant will conduct its virtual currency business activity with, or on behalf
14 of, a resident in compliance with the provisions of this Chapter.

15 (3) Subject to Subsection B of this Section, the person has not received
16 notification from the department of a denial of the person's application not later than
17 fifteen days after receipt of the items submitted pursuant to Paragraph (2) of this
18 Subsection.

19 (4) Subject to Subsection B of this Section, the applicant does not commence
20 virtual currency business activity with, or on behalf of, a resident until at least thirty-
21 one days after complying with Paragraph (2) of this Subsection.

22 B. For good cause, the department may modify a period of time provided for
23 in this Section.

24 §1387. Required documents; securities

25 A.(1) Before a license is issued pursuant to the provisions of this Chapter,
26 an applicant shall deposit with the department funds or investment property, a letter
27 of credit, a surety bond, or other security satisfactory to the department that secures
28 the applicant's faithful performance of its duties pursuant to the provisions of this

1 Chapter and is in an amount the department specifies based on the nature and extent
2 of risks in the applicant's virtual currency business model.

3 (2) The department shall not require a surety bond as security pursuant to
4 Paragraph (1) of this Subsection unless a surety bond is generally available in the
5 state at a commercially reasonable cost.

6 (3) Security deposited pursuant to Subsection A of this Section shall be
7 payable to this state for the benefit of a claim against the licensee on account of the
8 licensee's virtual currency business activity with, or on behalf of, a resident.

9 (4) Security deposited pursuant to Subsection A of this Section shall cover
10 claims for the period the department specifies by rule and for an additional period
11 the department specifies after the licensee ceases to engage in virtual currency
12 business activity with or on behalf of a resident.

13 (5) For good cause, the department may require the licensee to increase the
14 amount of security deposited pursuant to Subsection A of this Section, and the
15 licensee shall deposit the additional security not later than fifteen days after the
16 licensee receives notice of the required increase.

17 (6) For good cause, the department may permit a licensee to substitute or
18 deposit an alternate form of security satisfactory to the department if the licensee at
19 all times complies with the provisions of this Section.

20 (7) A claimant shall not have a direct right to recover against security
21 deposited pursuant to Subsection A of this Section.

22 (8) Only the department may recover against the security, and the
23 department may retain the recovery for no longer than five years and may process
24 claims and distribute recoveries to claimants in accordance with rules adopted by the
25 department.

26 B. In addition to the security required pursuant to Subsection A of this
27 Section, a licensee and a registrant, at the time of the application for a license
28 pursuant to the provisions of this Chapter or filing of a registration, shall submit to
29 the department evidence of and maintain a minimum net worth of twenty-five

1 thousand dollars and sufficient unencumbered reserves for winding down the
2 licensee's or registrant's operations, as agreed to by the department considering the
3 nature and size of expected virtual currency business activity with, or on behalf of,
4 residents.

5 C. A licensee or registrant may include in its calculation of net worth virtual
6 currency, measured by the average value of the virtual currency in United States
7 dollar equivalent over the prior six months, other than the virtual currency over
8 which it has control for a resident entitled to the protections of 8 U.C.C. 8701.

9 D. For good cause, the department may require a licensee or registrant to
10 increase the net worth or reserves required under this Section. The licensee or
11 registrant shall submit to the department evidence that it has the additional net worth
12 or reserves not later than fifteen days after the licensee or registrant receives notice.

13 §1388. Issuance of license; appeal

14 A. Absent good cause, the department shall issue a license to an applicant
15 if the applicant complies with the provisions of this Chapter and pays the costs of the
16 investigation pursuant to R.S. 6:1385(G) and the initial licensee fee pursuant to R.S.
17 6:1385(A)(3) in an amount specified by the department.

18 B. An applicant may appeal a denial of its application pursuant to R.S.
19 6:1385 or 1386, in accordance with the Administrative Procedure Act, not later than
20 thirty days after the department notifies the applicant of the denial or the application
21 is deemed denied.

22 §1389. Renewal of license; procedure; denial

23 A. Subject to Subsection G of this Section, not later than fifteen days before
24 the anniversary date of issuance of a license pursuant to the provisions of this
25 Chapter, a licensee may apply for renewal of the license by paying a renewal fee
26 determined by the department, not to exceed the reasonable costs of regulation, and
27 submitting to the department a renewal report pursuant to Subsection B of this
28 Section.

1 B.(1) The renewal report required by Subsection A of this Section shall be
2 submitted in a form and medium prescribed by the department.

3 (2) The report shall contain all of the following:

4 (a) Either a copy of the licensee's most recent reviewed annual financial
5 statement, if the licensee's virtual currency business activity in this state was less
6 than an amount, to be determined by the department, for the fiscal year ending before
7 the anniversary date of issuance of its license under this Chapter, or audited annual
8 financial statement if the licensee's virtual currency business activity in this state
9 amounted to more than the amount determined by the department for the fiscal year
10 ending before the anniversary date.

11 (b) If a person other than an individual has control of the licensee, a copy of
12 either of the following:

13 (i) The person's most recent reviewed annual financial statement if the
14 person's gross revenue was less than an amount, to be determined by the department,
15 in the previous fiscal year, measured as of the anniversary date of issuance of its
16 license pursuant to the provisions of this Chapter.

17 (ii) The person's most recent audited consolidated annual financial statement
18 if the person's gross revenue was more than an amount, to be determined by the
19 department in the previous fiscal year, measured as of the anniversary date of
20 issuance of its license pursuant to the provisions of this Chapter.

21 (c) A description of any of the following:

22 (i) Material change in the financial condition of the licensee.

23 (ii) Material litigation involving the licensee or an executive officer or
24 responsible individual of the licensee.

25 (iii) License suspension or revocation proceeding commenced, or other
26 action taken, involving a license to conduct virtual currency business activity issued
27 by another state on which reciprocal licensing is based.

28 (iv) Federal or state investigation involving the licensee.

29 (v) Data security breach involving the licensee.

1 (d) The number of virtual currency business activity transactions with, or on
2 behalf of, residents for the period since, subject to Subsection G of this Section, the
3 later of the date the license was issued or the date the last renewal report was
4 submitted.

5 (e)(i) The amount of United States dollar equivalent of virtual currency in
6 the control of the licensee at, subject to Subsection G of this Section, the end of the
7 last month that ends not later than thirty days before the date of the renewal report.

8 (ii) The total number of residents for whom the licensee had control of
9 United States dollar equivalent of virtual currency on that date.

10 (f) Evidence that the licensee continues to satisfy the requirements provided
11 for in R.S. 6:1387.

12 (g) A list of each location where the licensee operates its virtual currency
13 business activity.

14 (h) The name, United States Postal Service address, and telephone number
15 of each person that manages a server used by the licensee in conducting its virtual
16 currency business activity with or on behalf of a resident.

17 C.(1) If a licensee does not timely comply with Subsection A of this Section,
18 the department may use any enforcement measure provided for in R.S. 6:1392.

19 (2) No notice or hearing shall be required for a suspension or revocation of
20 a license pursuant to the provisions of this Chapter for failure to pay a renewal fee
21 or file a renewal report.

22 D. If the department suspends or revokes a license pursuant to the provisions
23 of this Chapter for noncompliance with Subsection A of this Section, the department
24 may end the suspension or rescind the revocation and notify the licensee of the action
25 if, subject to Subsection G of this Subsection, not later than twenty days after the
26 license was suspended or revoked, the licensee files a renewal report and pays a
27 renewal fee and pays any penalty assessed by the department.

1 E. The department shall give prompt notice to a licensee of the lifting of a
2 suspension or rescission of a revocation after the licensee complies with Subsection
3 D of this Section.

4 F. Suspension or revocation of a license pursuant to the provisions of this
5 Section shall not invalidate a transfer or exchange of virtual currency for, or on
6 behalf of, a resident made during the suspension or revocation and shall not insulate
7 the licensee from liability pursuant to the provisions of this Chapter.

8 G. For good cause, the department may extend a period of time provided for
9 in this Section.

10 H. The department shall review the renewal of a license issued pursuant to
11 R.S. 6:1386 to ensure that the state that issued the original license has not suspended,
12 revoked, or limited the license.

13 I. A licensee that does not comply with the provisions of this Section shall
14 cease operations with, or on behalf of, a resident on or before the anniversary date
15 of issuance of its license pursuant to the provisions of this Chapter.

16 J. A licensee shall pay the reasonable and necessary costs of the department's
17 investigation under this Section.

18 §1390. Exceptions to licensure requirement; conditions

19 A. A person whose volume of virtual currency business activity in United
20 States dollar equivalent of virtual currency will not exceed thirty-five thousand
21 dollars annually may engage in virtual currency business activity with, or on behalf
22 of, a resident under a registration without first obtaining a license pursuant to the
23 provisions of this Chapter if the person does all of the following:

24 (1) Files with the department a notice in the form and medium prescribed by
25 the department of its intention to engage in virtual currency business activity with,
26 or on behalf of, a resident.

27 (2) Provides the information for an investigation pursuant to R.S. 6:1385.

28 (3) States the anticipated virtual currency business activity for its next fiscal
29 quarter.

1 (4) Pays the department a registration fee in an amount determined by the
2 department, not to exceed the reasonable costs of regulation.

3 (5) If required to register with the Financial Crimes Enforcement Network
4 of the United States Department of the Treasury as a money service business,
5 provides the department evidence of the registration.

6 (6) Provides evidence that the person has policies and procedures to comply
7 with the federal Bank Secrecy Act and other applicable laws.

8 (7) Describes the source of funds and credit to be used by the person to
9 conduct virtual currency business activity with, or on behalf of, a resident and
10 provides evidence of, and agrees to maintain, the minimum net worth and reserves
11 required pursuant to R.S. 6:1387 and sufficient unencumbered reserves for winding
12 down operations.

13 (8) Provides the department with evidence that the person has in place
14 policies and procedures to comply with the provisions of this Chapter.

15 (9) Provides the department with a copy of its most recent financial
16 statement, whether reviewed or audited.

17 B. Before the virtual currency business activity of a registrant with, or on
18 behalf of, residents exceeds thirty-five thousand dollars annually in United States
19 dollar equivalent of virtual currency, the registrant shall file an application for a
20 license pursuant to the provisions of this Chapter and may continue to operate after
21 the activity exceeds thirty-five thousand dollars annually while the application for
22 license is pending.

23 C. For good cause, the department may suspend or revoke a registration
24 without a prior hearing or opportunity to be heard.

25 D. A registrant shall cease all virtual currency business activity with, or on
26 behalf of, residents in the event of any of the following:

27 (1) If the department denies the registrant's application for a license pursuant
28 to the provisions of this Chapter, one day after the registrant receives notice that the
29 department has denied the application.

1 (2) If the department suspends or revokes the registration, one day after the
2 department sends notice of the suspension or revocation to the registrant by a means
3 reasonably selected for the notice to be received by the recipient in one day, to the
4 address provided for receiving communications from the department.

5 (3) If the virtual currency business activity of the registrant with, or on
6 behalf of, residents exceeds thirty-five thousand dollars annually in United States
7 dollar equivalent of virtual currency and the registrant has not filed an application
8 for a license pursuant to the provisions of this Chapter.

9 (4) On the second anniversary date of the registration.

10 §1391. Transferability

11 A license or registration pursuant to the provisions of this Chapter shall not
12 be transferable or assignable.

13 §1392. Enforcement

14 For purposes of this Chapter, "enforcement measure" means an action to do
15 any of the following:

16 (1) Suspend or revoke a license or a registration pursuant to the provisions
17 of this Chapter.

18 (2) Order a person to cease and desist from doing virtual currency business
19 activity with, or on behalf of, a resident.

20 (3) Request the court to appoint a receiver for the assets of a person doing
21 virtual currency business activity with, or on behalf of, a resident.

22 (4) Request the court to issue temporary, preliminary, or permanent
23 injunctive relief against a person doing virtual currency business activity with, or on
24 behalf of, a resident.

25 (5) Assess penalties.

26 (6) Recover on the security provided pursuant to R.S. 6:1387 and initiate a
27 plan to distribute the proceeds for the benefit of a resident injured by a violation of
28 any provision of this Chapter, or law of this state other than this Chapter, which
29 applies to virtual currency business activity with, or on behalf of, a resident.

1 (7) Impose necessary or appropriate conditions on the conduct of virtual
2 currency business activity with, or on behalf of, a resident.

3 §1393. Violations

4 The department may take an enforcement measure against a licensee,
5 registrant, or person that is neither a licensee nor registrant but is engaging in virtual
6 currency business activity with, or on behalf of, a resident in any of the following
7 instances:

8 (1) The licensee, registrant, or person materially violates any provision of
9 this Chapter, a rule adopted or order issued pursuant to any provision of this Chapter,
10 or law of this state other than this Chapter which applies to virtual currency business
11 activity of the violator with, or on behalf of, a resident.

12 (2) The licensee, registrant, or person does not cooperate substantially with
13 an investigation by the department, fails to pay a fee, or fails to submit a report or
14 documentation.

15 (3) The licensee, registrant, or person, in the conduct of its virtual currency
16 business activity with, or on behalf, of a resident, engages in any of the following:

17 (a) An unsafe or unsound act or practice.

18 (b) An unfair or deceptive act or practice.

19 (c) Fraud or intentional misrepresentation.

20 (d) Another dishonest act.

21 (e) Misappropriation of legal tender, virtual currency, or other value held by
22 a fiduciary.

23 (4) An agency of the United States or another state takes an action against
24 the licensee, registrant, or person, which would constitute an enforcement measure
25 if the department had taken the action.

26 (5) The licensee, registrant, or person is convicted of a crime related to its
27 virtual currency business activity with, or on behalf of, a resident or involving fraud
28 or felonious activity that, as determined by the department, makes the licensee,
29 registrant, or person unsuitable to engage in virtual currency business activity.

- 1 (6) Any of the following occurs:
- 2 (a) The licensee, registrant, or person becomes insolvent.
- 3 (b) The licensee, registrant, or person makes a general assignment for the
- 4 benefit of its creditors.
- 5 (c) The licensee, registrant, or person becomes the debtor, alleged debtor,
- 6 respondent, or person in a similar capacity in a case or other proceeding under any
- 7 bankruptcy, reorganization, arrangement, readjustment, insolvency, receivership,
- 8 dissolution, liquidation, or similar law, and does not obtain from the court, within a
- 9 reasonable time, confirmation of a plan or dismissal of the case or proceeding.
- 10 (d) The licensee, registrant, or person applies for, or permits the appointment
- 11 of, a receiver, trustee, or other agent of a court for itself or for a substantial part of
- 12 its assets.
- 13 (7) The licensee, registrant, or person makes a material misrepresentation to
- 14 the department.

§1394. Implementation

The department shall adopt rules, in accordance with the Administrative Procedure Act, to implement and enforce the provisions of this Chapter and issue guidance as appropriate.

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 701 Engrossed 2020 Regular Session Wright

Abstract: Enacts the Virtual Currency Businesses Act.

Proposed law defines "applicant", "bank", "control", "department", "exchange", "insolvent", "legal tender", "licensee", "person", "reciprocity agreement", "registrant", "registration", "resident", "responsible individual", "state", "store", "transfer", "United States dollar equivalent of virtual currency", "virtual currency", "virtual currency administration", "virtual currency business activity", and "virtual currency control services vendor".

Proposed law applies to the virtual currency business activity of a person who engages in or holds itself out as engaging in the activity with, or on behalf of, a resident.

Proposed law describes activities for which proposed law is not applicable.

In addition to the exempted activities described, proposed law allows the office of financial institutions (OFI) to determine that a person or class of persons, given facts particular to that person, shall also be exempt from the provisions of proposed law.

Proposed law requires a person engaging in virtual currency business activity, or holding itself out as being able to engage in virtual currency business activity, with or on behalf of a resident to be licensed by OFI and establishes the criteria for licensure.

Proposed law provides for the appeal of a denial of an application for licensure and the renewal of a license.

Proposed law provides for the reciprocity of a license issued by another governing authority and the transferability of a license issued pursuant to proposed law.

Proposed law requires a security deposit from applicants for licensure.

Proposed law authorizes a virtual currency business that meets certain criteria to engage in business pursuant to a registration with OFI in lieu of obtaining a license.

Proposed law authorizes OFI to enforce proposed law through certain actions and provides for penalties for the violation of proposed law.

Proposed law requires OFI to promulgate administrative rules to implement and enforce proposed law.

(Adds R.S. 6:1381-1394)