
DIGEST

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SB 185 Reengrossed

2023 Regular Session

Reese

Present law provides relative to the Virtual Currency Business Act and provides for the regulation of virtual currency business and defines certain terms.

Proposed law defines additional terms, including "acting in concert", "affiliate", "blockchain", "commissioner", "mining", "minting", "Nationwide Multistate Licensing System and Registry", "non-fungible token", "office", "tangible net worth", "unsafe or unsound act or practice", and "virtual currency network".

Present law provides for the licensure and regulation of a person who engages in or holds itself out as engaging in virtual currency business activity with, or on behalf of, a resident.

Present law describes activities for which present law is not applicable. Allows the office of financial institutions (OFI) to determine that a person or class of persons, given facts particular to that person, shall be exempt from the provisions of present law.

Proposed law retains present law and provides that activities of proposed law are applicable to a person who provides virtual currency to a person exempt under this Chapter that has no agreement or relationship with a resident that is an end user of virtual currency and a person whose virtual currency business activity, with or on behalf of a resident, is valued at \$5,000 or less on an annual basis. Further, proposed law deletes the requirement that allows the OFI to determine that a person or class of persons, given facts particular to that person, shall be exempt from the provisions of this Chapter.

Present 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 retains present law and adds as a requirement for licensure a copy of the applicant's business plan, which includes a three-year financial pro forma, the anticipated volume of virtual currency business activities in this state, the anticipated number of virtual currency locations, including kiosk machines, and evidence of the surety bond, and current and continued maintenance of the tangible net worth.

Proposed law adds as a requirement for licensure that a person who has resided outside of the United States at any time in the last 10 years to provide an investigative background report prepared by an independent search firm, which includes the person's criminal records, employment history, media history, and a financial service-related regulator history.

Present law provides for the acceptance or denial of an application for licensure within 30 days of completing an application.

Proposed law provides for the acceptance or denial of an application for licensure within 60 days of completing an application.

Proposed law provides that no license shall be issued unless the applicant provides a surety bond, evidence of tangible net worth, pay all cost and fees, and notice is issued by the commissioner of its decision to approve or conditionally approve the application.

Proposed law provides procedures, information, and notice when change of control of a licensee or an applicant is contemplated by any person or persons acting in concert.

Proposed law provides procedures for approval of an advanced change of responsible individual of a licensee or applicant.

Present law requires the licensee to submit a surety bond prior to the issuance of a license in the amount of \$100,000, tangible net worth of the greater of \$100,000, or 3% of total assets.

Proposed law retains present law and further adds that prior to issuance of a license a licensee shall submit a tangible net worth of greater of \$100,000 or 3% of total assets for the first \$100,000,000, 2% of additional assets for \$100,000,000 to \$1,000,000,000, and ½ percent of additional assets for over \$1,000,000,000.

Proposed law provides that the commissioner may use the following factors in determining additional tangible net worth:

- (1) The actual and projected volume of the licensee's virtual currency business activity in the state.
- (2) Whether the licensee is currently licensed or regulated by the commissioner in this state and is in good standing.
- (3) The amount of leverage employed by the licensee.
- (4) The liquidity position of the licensee.
- (5) The products or services offered by the licensee.

Proposed law requires that tangible net worth shall be clearly evidenced by filing or submitting a current audited financial statement to the commissioner. Provides that all license requirements relative to tangible net worth shall be evidenced at the time of initial application, maintained at all times during licensure, and reported annually to the commissioner.

Proposed law provides that a licensee who stores, holds, or maintains custody or control of virtual currency for a resident, such licensee shall hold virtual currency of the same type and of the same amount. Prohibits a licensee from selling, transferring, assigning, lending, hypothecating, pledging, using, or encumbering virtual currency except for the sale, transfer, or assignment of the virtual currency at the direction of the resident. Allows the licensee to commingle the resident virtual currency with the licensee's virtual currency, provided the licensee's assets are deemed resident assets and the licensee may only withdraw or assert a claim on that amount to the extent that the amount exceeds that amount of resident assets held by or for a resident.

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

Proposed law provides that no license shall be issued unless the commissioner has made a determination that an applicant has met licensing requirements. Provides that in a case of denial of an advanced change of control notice or denial of an advanced change of responsible individual notice, the applicant can appeal the denial not later than 30 days after the office notifies the applicant or licensee of the denial.

Proposed law provides that each person licensed as a virtual currency business activity licensee shall submit an annual license renewal application on or before December 31st of each year, accompanied by all fees. Further provides that any license renewal application submitted after December 31st and before March first of the following year, shall be charged an annual licensee renewal late fee. An annual licensee renewal application that is timely submitted on or before the expiration date shall remain in force and effect until approved or denied by the commissioner.

Present law requires quarterly financial reports.

Proposed law retains the requirements of quarterly financial reports.

Present law provides for the examination of books, records, and accounts of its virtual currency business activities as the commissioner may reasonably require in order to determine whether the person is complying with present law.

Proposed law retains present law and further provides that the examination can be conducted on-site, or concurrent with another state or federal agency.

Proposed law provides that a licensee engaging in virtual currency business activities shall maintain and preserve books, records, and accounts of its virtual currency business activities for a period of five years or longer, if required by the commissioner.

Proposed law provides that all books, records, and accounts that are maintained by the licensee shall have specific requirements.

Proposed law provides that licensees engaged in virtual currency business activity in the state shall adopt and implement compliance policies and procedures, in writing, with minimum standards in accordance with proposed law. Requires approval of policies and procedures by the licensee's board of directors or an equivalent governing body.

Present law authorizes the office to enforce the provisions of present law through certain actions and provides for penalties.

Proposed law retains present law and further provides that the enforcement actions may be supplemented by the exercise of any other enforcement power by the commissioner as authorized by present law.

Proposed law provides for suspension of a license for a person who fails to maintain a surety bond, commits a violation that demands emergency action be taken, submits a fee that is returned or not paid in full, convicted of a felony offense, or has his license to engage in virtual currency business activities suspended or revoked in another jurisdiction.

Proposed law requires a licensee engaged in virtual currency business activity in this state to provide certain accurate and appropriate disclosures, describing all material risks associated with the licensees virtual currency products, services, and activities and virtual currency in general, and a failure to do so shall result in a violation.

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

Proposed law retains present law and authorizes the commissioner to adopt emergency rules as necessary and appropriate to enforce the provisions of the Virtual Currency Business Act.

Effective August 1, 2023.

(Amends R.S. 6:1382, 1384-1388, 1390, and 1392-1394; adds R.S. 6:1385.1, 1385.2, 1386.1, 1386.2, 1388.1, 1391(D)-(G), 1391.1, 1391.2, and 1393.1; repeals R.S. 6:1383(C)(5)(c) and (7) and (D) and 1389)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Make technical changes.

Senate Floor Amendments to engrossed bill

1. Defines additional terms, including "blockchain", "coin", "mining", "token", and "virtual currency network".
2. Deletes the term "good cause".

3. Clarifies that virtual currency business activity does not include virtual currency mining.
4. Change the time for a licensee to file an advanced change of control notice from 15 days to 30 days, after the licensee learns of the change of control.
5. Change the time for a licensee to report additional tangible net worth, that may be required in the event of a violation of proposed law, from 15 days to 30 days.
6. Allows the licensee to commingle his assets with resident assets solely for the purpose of virtual currency business activities, provided that the licensee's assets are deemed resident assets and the licensee is subject to withdrawal limitations.
7. Requires a copy of the applicant's audited financial statement for the prior year.
8. Removes the provision that states an application is deemed denied if the office does not send the applicant notice of its decision within 61 days of completion of the application.
9. Make technical changes.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the reengrossed bill:

1. Delete the definitions of the terms "coin" and "token".
2. Amend the definition of the term "mining".
3. Define the terms "minting" and "non-fungible token".
4. Add that virtual currency business activity shall not include mining, minting non-fungible tokens, or certain blockchain activities.
5. Make technical changes.