

RÉSUMÉ DIGEST

ACT 331 (SB 185)

2023 Regular Session

Reese

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

New 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".

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

Existing law describes activities for which existing 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 existing law.

New law retains existing law and provides that activities of new law are applicable to a person who provides virtual currency to a person exempt under existing law 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, new law deletes the requirement that allows OFI to determine that a person or class of persons, given facts particular to that person, shall be exempt from the provisions of existing law.

Existing law requires a person engaging in virtual currency business activity, or holding himself out as being able to engage in virtual currency business activity, with or on behalf of a resident, to meet the licensing criteria and be licensed by OFI.

New law retains existing 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.

New 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: provides that the report include the person's criminal records, employment history, media history, and a financial service-related regulator history.

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

New law increases the time period for the acceptance or denial of an application for licensure from within 30 days to within 60 days of completing an application.

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

New 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.

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

Existing law requires the licensee to submit a surety bond prior to the issuance of a license in the amount of \$100,000, and submit evidence of, and maintain at all times, tangible net worth of the greater of \$100,000, or 3% of total assets.

New law retains existing 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.

New 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.

New 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.

New 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.

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

New 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.

New 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. Provides that any license renewal application submitted after December 31st and before March 1st of the following year, shall be charged an annual licensee renewal late fee. Provides that 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.

Existing law requires quarterly financial reports.

New law retains existing law requirement of quarterly financial reports.

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

New law retains existing law and provides that the examination can be conducted on-site or concurrent with another state or federal agency.

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

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

New 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 new law. Requires approval of policies and procedures by the licensee's board of directors or an equivalent governing body.

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

New law retains existing law and provides that the enforcement actions may be supplemented by the exercise of any other enforcement power by the commissioner.

New 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, is convicted of a felony offense, or has his license to engage in virtual currency business activities suspended or revoked in another jurisdiction.

New 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 licensee's virtual currency products, services, and activities, and failure to do so shall result in a violation.

Existing law requires OFI to adopt rules to implement and enforce the provisions of existing law.

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

New law provides that the commissioner shall submit biannual reports to the legislature.

New law terminates on July 1, 2025.

Effective June 13, 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)