

2023 Regular Session

SENATE BILL NO. 185

BY SENATOR REESE

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

COMMERCIAL REGULATIONS. Provides relative to the licensing and regulation of virtual businesses. (8/1/23)

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AN ACT

To amend and reenact R.S. 6:1382, 1384, 1385, 1386, 1387, 1388, 1390, 1392, 1393, and 1394, to enact R.S. 6:1385.1, 1385.2, 1386.1, 1386.2, 1388.1, 1391(D), (E), (F), and (G), 1391.1, 1391.2, and 1393.1, and to repeal R.S. 6:1383(C)(5)(c) and (7) and (D), and 1389, relative to the regulation and licensure of virtual currency businesses; to provide relative to the authority, functions, and duties of the office of financial institutions; to provide for definitions; to provide for applicability; to provide for licensure requirements; to authorize reciprocity of licensure; to provide for qualifications of licensure; to provide for the issuance, denial, and renewal of licenses; to provide enforcement; to establish penalties for violations; to provide for administrative rules; to provide for terms, conditions, and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 6:1382, 1384, 1385, 1386, 1387, 1388, 1390, 1392, 1393, and 1394 are hereby amended and reenacted and R.S. 6:1385.1, 1385.2, 1386.1, 1386.2, 1388.1, 1391(D), (E), (F), and (G), 1391.1, 1391.2, and 1393.1, are hereby enacted to read as follows:

1 §1382. Definitions

2 For the purposes of this Chapter ~~As used in this Chapter, unless the context~~
 3 otherwise requires, the following terms shall be defined as follows:

4 (1) "Acting in concert" means persons that knowingly act together with
 5 a common goal of jointly acquiring control of a licensee whether or not
 6 pursuant to an express agreement.

7 (2) "Applicant" means a person that applies for a license pursuant to this
 8 Chapter.

9 (3) "Affiliate" means any person who controls, is controlled by, or is
 10 under common control with another person.

11 (4) "Commissioner" means the commissioner of the office of financial
 12 institutions.

13 ~~(2)~~(5) "Control", when used in the context described, means both of the
 14 following:

15 (a) When used in reference to a transaction or relationship involving virtual
 16 currency, power to execute unilaterally or prevent indefinitely a virtual currency
 17 transaction.

18 (b) When used in reference to a person, any of the following:

19 (i) ~~the~~ The direct or indirect power to direct the management, operations, or
 20 policies of the person through legal or beneficial ownership of voting power in the
 21 person or under a contract, arrangement, or understanding.

22 (ii) The power to vote, directly or indirectly, at least twenty-five percent
 23 of outstanding voting shares or voting interests of a licensee or person in control
 24 of a licensee, including persons acting in concert in such instances.

25 (iii) The power to elect or appoint a majority of responsible individuals
 26 of a licensee.

27 (iv) The power to exercise directly or indirectly, a controlling influence
 28 over the management or policies of a licensee or person in control of a licensee.

29 (v) Any other set of facts and circumstances, as determined by the

1 **commissioner in his discretion, that may constitute control.**

2 ~~(3)~~ "Department" means the office of financial institutions.

3 ~~(4)~~**(6)** "Exchange", when used as a verb, means to assume control of virtual
4 currency from, or on behalf of, a resident, at least momentarily, to sell, trade, or
5 convert either of the following:

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

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

9 ~~(5)~~ "Executive officer" means ~~an individual who is a director, officer,~~
10 ~~manager, managing member, partner, or trustee of a person that is not an individual.~~

11 **(7) "Good cause" means to materially violate any provision of this**
12 **Chapter, or any rule or regulation promulgated, or any order issued by the**
13 **commissioner under this Chapter.**

14 ~~(6)~~**(8)** "Insolvent" means any of the following:

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

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

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

19 ~~(7)~~**(9)** "Legal tender" means a medium of exchange or unit of value, including
20 the coin or paper money of the United States, issued by the United States or by
21 another government, **provided the issuance by another government is not virtual**
22 **currency.**

23 ~~(8)~~**(10)** "Licensee" means a person licensed pursuant to this Chapter.

24 **(11) "Office" means the office of financial institutions.**

25 **(12) "Nationwide Multistate Licensing System and Registry" or**
26 **"NMLS" means the multistate system developed by the Conference of State**
27 **Bank Supervisors and the American Association of Residential Mortgage**
28 **Regulators and owned and operated by the State Regulatory Registry, LLC, or**
29 **any successor or affiliated entity, for the licensing and registration of persons**

1 in financial services industries or any other similar online multistate database.

2 ~~(9)(13)~~ "Person" means an individual, **general** partnership, ~~estate, business~~
3 ~~or nonprofit entity, or other legal entity~~ **limited partnership, limited liability**
4 **company, corporation, trust, association, joint stock corporation, or other legal**
5 **entity, or any individual or group of individuals, however organized.** The term
6 shall not include a public corporation, government, or governmental subdivision,
7 agency, or instrumentality.

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

12 (11) "Registrant" means a person that registers with this state pursuant to R.S.
13 6:1390 to conduct virtual currency business activity.

14 (12) "Registration" means the ability pursuant to R.S. 6:1389 to conduct
15 virtual currency business activity.

16 ~~(13)(a)~~**(14)(a)** "Regulated financial institution" means a federally chartered
17 ~~or state-chartered~~ **insured** depository institution and its wholly-owned subsidiaries
18 **chartered pursuant to the laws of this state, another state, or the United States,**
19 a Louisiana state-chartered trust company, a trust company chartered by another
20 state, or a federally chartered trust company.

21 (b) "Regulated financial institution" shall not include either of the following:

22 (i) An industrial loan company.

23 (ii) A trust company chartered by a state with which this state does not have
24 a reciprocity governing trust-company **virtual currency business** activities.

25 ~~(14)(a)~~**(15)(a)** "Resident" means any of the following:

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

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

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

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

3 ~~(15)~~**(16)** "Responsible individual" means ~~an individual who has managerial~~
4 ~~authority with respect to a licensee's or registrant's virtual currency business activity~~
5 ~~with, or on behalf of, a resident.~~ **any individual that is ultimately responsible for**
6 **establishing or directing policies and procedures of the licensee, including but**
7 **not limited to an executive officer, manager, director, or trustee.**

8 ~~(16)~~**(17)** "State" means a state of the United States, the District of Columbia,
9 Puerto Rico, the United States Virgin Islands, or any territory or insular possession
10 subject to the jurisdiction of the United States.

11 ~~(17)~~**(18)** "Store", except in the phrase "store of value", means to maintain
12 control of virtual currency on behalf of a resident by a person other than the resident.
13 "Storage" and "storing" have corresponding meanings.

14 **(19) "Tangible net worth" means all business assets minus liabilities,**
15 **minus intangible assets, including goodwill and other intangible assets. For the**
16 **purposes of this Paragraph, an intangible asset may include but is not limited**
17 **to favorable leasehold rights, trademarks, trade names, internet domain names,**
18 **and noncompete agreements.**

19 ~~(18)~~**(20)** "Transfer" means to assume control of virtual currency from, or on
20 behalf of, a resident and do any of the following:

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

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

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

25 ~~(19)~~**(21)** "United States dollar equivalent of virtual currency" means the
26 equivalent value of a particular virtual currency in United States dollars shown on
27 a virtual currency exchange based in the United States for a particular date or period
28 specified in this Chapter.

29 **(22) "Unsafe or unsound act or practice" means and includes but is not**

1 limited to a practice or conduct by a person licensed to engage in virtual
2 currency business activity in the state which creates the likelihood of material
3 loss, insolvency, dissipation of the licensee's assets that materially prejudices the
4 interests of residents, and any other set of facts and circumstances, as
5 determined by the commissioner in accordance with this Chapter and
6 applicable law.

7 ~~(20)(a)~~**(23)(a)** "Virtual currency" means a digital representation of value that
8 is used as a medium of exchange, unit of account, or store of value, and that is not
9 legal tender, whether or not denominated in legal tender.

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

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

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

17 ~~(21)~~**(24)** "Virtual currency administration" means issuing virtual currency
18 with the authority to redeem the currency for legal tender, bank credit, or other
19 virtual currency.

20 ~~(22)~~**(25)** "Virtual currency business activity" means any of the following:

21 (a) Exchanging, transferring, or storing virtual currency or engaging in virtual
22 currency administration, whether directly or through an agreement with a virtual
23 currency control services vendor.

24 (b) Holding electronic precious metals or electronic certificates representing
25 interests in precious metals on behalf of another person or issuing shares or
26 electronic certificates representing interests in precious metals.

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

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

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

6 ~~(23)~~(26) "Virtual currency control services vendor" means a person that has
7 control of virtual currency solely under an agreement with a person that, on behalf
8 of another person, assumes control of virtual currency.

9 * * *

10 §1384. Licensure; general

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

14 (1) Licensed in this state by the ~~department~~ **office** pursuant to R.S. 6:1385.

15 ~~(2) Registered with the department and operating pursuant to R.S. 6:1390.~~

16 ~~(3)~~(2) Exempt from licensure ~~or registration~~ pursuant to R.S. 6:1383.

17 §1385. Requirements

18 A. An applicant for a license pursuant to the provisions of this Chapter shall
19 submit the application through the Nationwide Multi-State Licensing System
20 (NMLS) and satisfy all of the following:

21 ~~(1) Except as otherwise provided in Subsection B of this Section, provide~~
22 **Provide** all of the following information relevant to the applicant's proposed virtual
23 currency business activity:

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

28 (b) The legal name, any former or fictitious name, and the residential and
29 business United States Postal Service address of each ~~executive officer and~~

1 responsible individual of the applicant, and each person that has control of the
2 applicant.

3 (c) A description of the current and former business of the applicant for the
4 five years before the application is submitted or, if the business has operated for less
5 than five years, for the time the business has operated, including its products and
6 services, associated internet website addresses and social media pages, principal
7 place of business, projected user base, and specific marketing targets.

8 (d) The name, United States Postal Service address, and telephone number
9 of a person that manages each server the applicant expects to use in conducting its
10 virtual currency business activity with, or on behalf of, a resident and a copy of any
11 agreement with that person. **A copy of the applicant's business plan, which shall**
12 **include a three-year financial pro forma, the anticipated volume of virtual**
13 **currency business activities in this state for the same period, the anticipated**
14 **number of virtual currency locations, including kiosk machines, in this state,**
15 **and evidence of the surety bond, and of the current and continued maintenance**
16 **of the tangible net worth required by R.S. 6:1386.**

17 (e) **The name, United States Postal Service address, telephone number**
18 **of each affiliate of the applicant, and a description of the control relationship.**

19 (f) A list of both of the following:

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

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

25 ~~(f)~~(g) A list of any criminal conviction, deferred prosecution agreement, or
26 pending criminal proceeding in any jurisdiction against all of the following:

27 (i) The applicant.

28 (ii) ~~Each executive officer of the applicant.~~

29 (iii) Each responsible individual of the applicant.

1 ~~(iv)~~**(iii)** Each person that has control over the applicant.

2 ~~(v)~~**(iv)** Each person over which the applicant has control.

3 ~~(g)~~**(h)** A list of any litigation, arbitration, or administrative proceeding in any
4 jurisdiction in which the applicant, ~~or an executive officer~~ or a responsible individual
5 of the applicant, has been a party for the five years before the application is
6 submitted, determined to be material in accordance with generally accepted
7 accounting principles and to the extent the applicant would be required to disclose
8 the litigation, arbitration, or administrative proceeding in the applicant's audited
9 financial statements, reports to equity owners, and similar statements or reports.

10 ~~(h)~~**(i)** A list of any bankruptcy or receivership proceeding in any jurisdiction
11 for the ten years before the application is submitted in which any of the following
12 was a debtor:

13 (i) The applicant.

14 (ii) ~~Each executive officer of the applicant.~~

15 ~~(iii)~~ Each responsible individual of the applicant.

16 ~~(iv)~~**(iii)** Each person who has control over the applicant.

17 ~~(v)~~**(iv)** Each person over which the applicant has control.

18 ~~(i)~~**(j)** The name and United States Postal Service address of each bank in
19 which the applicant plans to deposit funds obtained by its virtual currency business
20 activity.

21 ~~(j)~~**(k)** The source of funds and credit to be used by the applicant to conduct
22 virtual currency business activity with, or on behalf of, a resident and documentation
23 demonstrating that the applicant has the **tangible** net worth ~~and reserves~~ required
24 pursuant to R.S. 6:1386.

25 ~~(k)~~**(l)** The United States Postal Service address and electronic mail address
26 to which communications from the ~~department~~ **office** may be sent.

27 ~~(l)~~**(m)** The name, United States Postal Service address, and electronic mail
28 address of the registered agent of the applicant in this state.

29 ~~(m)~~**(n)** A copy of the certificate, ~~or a detailed summary acceptable to the~~

1 ~~department~~, of coverage for each liability, casualty, business-interruption, ~~or~~ **and**
2 cyber-security insurance policy maintained by the applicant for itself, ~~an executive~~
3 ~~officer, a~~ **or as to any** responsible individual, ~~or the applicant's users~~ **affiliate, agent,**
4 **or control person, of the applicant, with respect to the virtual currency business**
5 **activities of the applicant.**

6 ~~(n)~~**(o)** If applicable, the date on which, and the state where, the applicant is
7 formed and a copy of a current certificate of good standing issued by that state.

8 **(p) A copy of the applicant's audited financial statement for the current**
9 **year.**

10 ~~(o)~~**(q)** If a person has control of the applicant and the person's equity interests
11 are publicly traded in the United States, a copy of the audited financial statement of
12 the person for the most recent fiscal year or most recent report of the person filed
13 pursuant to 15 U.S.C. 78.

14 ~~(p)~~**(r)** If a person has control of the applicant and the person's equity interests
15 are publicly traded outside the United States, a copy of the audited financial
16 statement of the person for the most recent fiscal year of the person or a copy of the
17 most recent documentation similar to that required in Subparagraph ~~(o)~~ **(q)** of this
18 Paragraph filed with the foreign regulator in the domicile of the person.

19 ~~(q)~~**(s)** If the applicant is a partnership or a member-managed limited liability
20 company, the names and United States Postal Service addresses of all general
21 partners or members.

22 ~~(r)~~**(t)** If the applicant is required to register with the Financial Crimes
23 Enforcement Network of the United States Department of the Treasury as a money
24 service business, evidence of the registration.

25 ~~(s)~~**(u)** A set of fingerprints for each ~~executive officer and~~ responsible
26 individual **and person who has control** of the applicant. **If the person resided**
27 **outside of the United States at anytime in the last ten years, the person shall also**
28 **provide an investigative background report prepared by an independent search**
29 **firm that meets the following requirements:**

1 (i) At a minimum, the search firm shall satisfy both of the following:

2 (aa) Demonstrate that it has sufficient knowledge, resources, and
3 employs accepted and reasonable methodologies to conduct the research of the
4 background report.

5 (bb) Not be affiliated with or have an interest with the person it is
6 researching.

7 (ii) At a minimum, the investigative background report shall be written
8 in the English language and shall contain all of the following:

9 (aa) If available in the person's current jurisdiction of residency, a
10 comprehensive credit report, or any equivalent information obtained or
11 generated by the independent search firm to accomplish such report, including
12 a search of the court data in the countries, provinces, states, cities, towns, and
13 contiguous areas where the individual resided and worked.

14 (bb) Criminal records information for the past ten years, including but
15 not limited to felonies, misdemeanors, or similar convictions.

16 (cc) Employment history.

17 (dd) Media history, including an electronic search of national and local
18 publications, wire services, and business applications.

19 (ee) Financial services-related regulatory history, including but not
20 limited to money transmission, securities, banking, insurance, and mortgage
21 related industries.

22 ~~(v)~~ If available, for **For** each executive officer and responsible individual
23 **and person who has control** of the applicant, for the five years before the
24 application is submitted, employment history and history any investigation of **the**
25 **person who has control or the responsible** the individual or legal proceeding to
26 which the **person who has control or responsible** individual was a party.

27 ~~(w)~~ Other information the department **office** reasonably requires by rule.

28 (2) Be accompanied by a nonrefundable fee in the amount determined by the
29 department to cover the reasonable costs of regulation. **Provide through and in the**

1 manner prescribed by NMLS, a nonrefundable fee in an amount provided by
 2 rule, for the reasonable regulatory cost of the application and investigation
 3 process, and pursuant to this Section the applicant shall pay the reasonable
 4 costs of the investigation incurred by the office that are in excess of the amount
 5 of the nonrefundable fee amount, in the manner prescribed by the
 6 commissioner.

7 B. For good cause, the department may waive the fee required pursuant to
 8 Paragraph (A)(2) of this Section or permit the applicant to submit other information
 9 instead of the required information.

10 ~~C.~~ An application for a license pursuant to this Section shall not be complete
 11 until the department **office** receives all information required by the provisions of this
 12 Chapter and completes its investigation pursuant to Subsection ~~D~~ **C** of this Section.

13 ~~D.(1)~~ **C.(1)** On receipt of a completed application, the department **office** shall
 14 investigate all of the following:

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

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

18 (c) The competence, experience, character, and general fitness of ~~each~~
 19 ~~executive officer~~, each responsible individual; and any person that has control of the
 20 applicant, in order for the commissioner to reasonably determine that the
 21 applicant will conduct its virtual currency business activity honestly, carefully
 22 and efficiently, and in accordance with the requirements of this Chapter, and
 23 any other applicable state or federal laws or regulations.

24 (2) At the option of the department **office**, it may investigate the business
 25 premises of an applicant.

26 ~~E.(1)~~ **D.(1)** Not later than ~~thirty~~ **sixty** days after an application is complete,
 27 the department **office** shall send the applicant notice of its decision to approve,
 28 conditionally approve, or deny the application.

29 (2) If the department **office** does not send the applicant notice of its decision

1 within ~~thirty-one~~ **sixty-one** days of completion of the application, the application
2 shall be deemed denied.

3 (3) If the ~~department office~~ **department office** does not receive notice from the applicant that the
4 applicant accepts conditions specified by the ~~department office~~ **department office** within thirty-one
5 days ~~following the department's notice conditions~~ **after the date of the notice of the**
6 **conditional approval**, the application shall be deemed denied.

7 ~~F.E. A license shall be effective on the later of either of the following:~~

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

9 ~~(2) The date the licensee provides the security required pursuant to R.S.~~
10 ~~6:1386.~~

11 ~~G. An applicant shall pay the reasonable costs of the department's~~
12 ~~investigation pursuant to this Section.~~

13 **No license shall be issued pursuant to this Chapter unless:**

14 **(1) The applicant provides a surety bond and the commissioner accepts**
15 **the surety bond required pursuant to R.S. 6:1386.**

16 **(2) The applicant provides evidence acceptable to the commissioner of**
17 **the tangible net worth required pursuant to R.S. 6:1386.**

18 **(3) The applicant has paid all costs and fees required pursuant to this**
19 **Chapter in connection with a license application.**

20 **(4) The commissioner has issued notice of the decision to approve or**
21 **conditionally approve the application in accordance with Subsection D of this**
22 **Section.**

23 **§1385.1. Approval of advanced change of control notice**

24 **A. Whenever a change of control of a licensee or an applicant is**
25 **contemplated by any person, or persons acting in concert, the following**
26 **information shall be provided to the commissioner through the NMLS:**

27 **(1) A licensee or applicant shall do all of the following:**

28 **(a) File an advanced change of control notice within fifteen days after**
29 **learning of the change of control and at least forty-five days prior to the date**

1 the proposed transaction is to be consummated.

2 (b) Provide such information as required pursuant to R.S. 6:1385(A).

3 (2) After review of an advanced change of control notice filed pursuant
4 to Paragraph (1) of this Subsection, the commissioner may require the licensee
5 or applicant to provide additional information concerning the proposed person,
6 or persons acting in concert, to cause a change of control. The additional
7 information shall be limited to the same types required of the licensee or
8 applicant as part of its original application filed pursuant to R.S. 6:1385(A).

9 B. The commissioner shall approve an advanced change of control notice
10 filed under Paragraph (1) of this Subsection if, after investigation, he
11 determines that the person, or persons acting in concert, to cause a change of
12 control shall not adversely affect the ability of the licensee or applicant to
13 conduct its virtual currency business activity honestly, carefully, and efficiently,
14 and in accordance with the requirements of this Chapter, and any other
15 applicable state and federal laws and regulations.

16 C. If the commissioner determines that the proposed person, or persons
17 acting in concert, to cause a change of control fails to meet the qualifications,
18 standards, and requirements pursuant to this Chapter, he shall inform the
19 licensee, applicant, proposed person, or persons acting in concert, to cause the
20 change of control in writing that the advanced change of control request is
21 denied and state the reasons for such denial. The licensee, applicant, proposed
22 person, or persons acting in concert, to cause the change of control may appeal
23 the denial in accordance with R.S. 6:1387(C).

24 D. The provisions of Paragraph (A)(1) of this Section shall not apply to
25 a public offering of securities under the laws of the United States.

26 E. Before filing an advanced change of control notice, any person, or
27 persons acting in concert, may request in writing a determination from the
28 commissioner as to whether the person, or persons acting in concert, would be
29 considered to be in control of a licensee or applicant upon consummation of a

1 proposed transaction. If the commissioner determines that the person, or
2 persons acting in concert, would not be in control of the licensee or applicant,
3 the commissioner shall respond in writing that the proposed transaction is not
4 subject to the requirements of Subsection A of this Section.

5 §1385.2. Approval of advanced change of responsible individual notice

6 A. Whenever a change is contemplated with respect to a reasonable
7 individual of a licensee or applicant, the following information shall be provided
8 to the commissioner through the NMLS:

9 (1) The legal name, any former or fictitious name, and the residential
10 and business United States Postal Service address of the proposed responsible
11 individual.

12 (2) A list of any criminal conviction, deferred prosecution agreement, or
13 pending criminal proceeding in any jurisdiction against the proposed
14 responsible individual.

15 (3) A list of any bankruptcy or receivership proceeding in any
16 jurisdiction for the prior ten years involving the proposed responsible
17 individual.

18 (4) A list of any litigation, arbitration, or administrative proceeding in
19 any jurisdiction in which the proposed responsible individual was a party for
20 the prior five years.

21 (5) A set of fingerprints for the proposed responsible individual for
22 submission to the Federal Bureau of Investigation and the commissioner for
23 purposes of a national and state criminal background check. If the individual
24 resided outside of the United States at any time in the last ten years, he shall
25 also provide an investigative background report prepared by an independent
26 search firm pursuant to the requirements of R.S. 6:1385(A)(1)(u).

27 (6) The employment history of the proposed responsible individual for
28 the prior five years.

29 (7) A history of any investigation or legal proceeding to which the

1 proposed responsible individual was a party for the prior five years.

2 B. After review of an advanced change of responsible individual notice
 3 filed pursuant to Subsection A of this Section, the commissioner may require
 4 the licensee or applicant to provide additional information concerning the
 5 proposed responsible individual. The additional information shall be limited to
 6 the same information required of a licensee or an applicant as part of his
 7 original application filed pursuant to R.S. 6:1385(A).

8 C. The commissioner shall approve an advanced change of responsible
 9 individual notice filed under Subsection A of this Section if, after investigation,
 10 he reasonably determines that the proposed responsible individual has the
 11 relevant competence, experience, character, and general fitness considered
 12 necessary to ensure that the licensee or applicant will continue to conduct its
 13 virtual currency business activity honestly, carefully, and efficiently, and in
 14 accordance with the requirements of this Chapter, and any other applicable
 15 state and federal laws and regulations.

16 D. If the commissioner determines that the proposed responsible
 17 individual fails to meet the qualifications, standards, and requirements of this
 18 Chapter, he shall inform the licensee, applicant, and proposed responsible
 19 individual, in writing that the advanced change of control request is denied and
 20 state the reasons for denial. The licensee, applicant, or proposed responsible
 21 individual, may appeal the denial in accordance with R.S. 6:1387(C).

22 §1386. Required documents; securities Surety bond; tangible net worth

23 A.(1) Before a license is issued pursuant to the provisions of this Chapter, an
 24 applicant shall submit a surety bond in the amount of one hundred thousand dollars
 25 to the department that secures the applicant's faithful performance of its duties
 26 pursuant to the provisions of this Chapter or in an amount the ~~department~~ office
 27 specifies based on the nature and extent of risks in the applicant's virtual currency
 28 business ~~model~~ plan.

29 (2)(a) The licensee shall maintain or increase the minimum amount of

1 ~~security~~ **the surety bond** to reflect the dollar amount of all licensed ~~money~~
 2 ~~transmission~~ **virtual currency business** activity in this state in the preceding
 3 calendar year in accordance with the provisions of this Paragraph. ~~A licensee may~~
 4 ~~decrease its security in accordance with the provisions of this Paragraph if the~~
 5 ~~security required is less than the amount of security on file with the department.~~

Dollar Amount of Virtual Currency <u>Business</u> Activity	Security <u>Minimum Surety</u> <u>Bond Amount</u> Required
\$0 to \$5,000,000	\$ 100,000
\$5,000,000.01 to \$10,000,000	\$ 200,000
\$10,000,000.01 to \$15,000,000	\$ 300,000
\$15,000,000.01 to \$20,000,000	\$ 400,000
\$20,000,000.01 to \$25,000,000	\$ 500,000
\$25,000,000.01 to \$30,000,000	\$ 600,000
\$30,000,000.01 to \$35,000,000	\$ 700,000
\$35,000,000.01 to \$40,000,000	\$ 800,000
\$40,000,000.01 to \$45,000,000	\$ 900,000
Over \$45,000,000	\$1,000,000

18 ~~(b) Security shall be in a form satisfactory to the department and payable to~~
 19 ~~the state for the benefit of any claimant against the licensee to secure the faithful~~
 20 ~~performance of the obligations of the licensee with respect to money transmission.~~

21 ~~(c) The aggregate liability on a surety bond may not exceed the principal sum~~
 22 ~~of the bond. A claimant against a licensee may maintain an action on the bond, or the~~
 23 ~~department may maintain an action on behalf of the claimant.~~

24 ~~(d) A surety bond shall cover claims for as long as the department specifies,~~
 25 ~~but for at least five years after the licensee ceases to provide money services in this~~
 26 ~~state. However, the department may permit the amount of security to be reduced or~~
 27 ~~eliminated before the expiration of that time to the extent the amount of the licensee's~~
 28 ~~obligations outstanding in this state is reduced. The department may permit a~~
 29 ~~licensee to substitute another form of security acceptable to the department for the~~

1 security effective at the time the licensee ceases to provide money services in this
2 state.

3 (e) The ~~department~~ **office** may increase the amount of security ~~the surety~~
4 **bond** required to a maximum of seven million dollars.

5 **(c) The surety bond shall be issued by an entity authorized to sell**
6 **insurance in the state in a form satisfactory to the commissioner and payable**
7 **to the office, for the benefit of any claimant against the licensee to secure the**
8 **faithful performance of the obligations and duties of the licensee with respect**
9 **to virtual currency business activities, with, or on behalf of, residents of this**
10 **state, and the payment of required but unpaid fee amounts due to the office, and**
11 **assessed but unpaid civil money penalties.**

12 **(d) The aggregate liability on a surety bond shall not exceed the principal**
13 **sum of the bond. A claimant against a licensee may maintain an action on the**
14 **bond.**

15 (e) A surety bond shall cover claims for as long as the office specifies, but for
16 at least five years after the licensee ceases to engage in virtual currency business
17 activities in this state. However, the commissioner may permit the amount of the
18 surety bond to be reduced or eliminated before the expiration of that time to the
19 extent the amount of the licensee's obligations outstanding in this state is reduced.

20 ~~(3) Security deposited pursuant to this Subsection shall cover claims for the~~
21 ~~period the department specifies by rule and for an additional period the department~~
22 ~~specifies after the licensee ceases to engage in virtual currency business activity with~~
23 ~~or on behalf of a resident.~~

24 B.**(1)**In addition to the security **surety bond** required pursuant to Subsection
25 A of this Section, a licensee ~~and a registrant~~, at the time of the application for a
26 license pursuant to the provisions of this Chapter ~~or filing of a registration~~, shall
27 submit to the ~~department~~ **office** evidence of and maintain at all times a tangible net
28 worth of the greater of one hundred thousand dollars or three percent of total assets
29 **for the first one hundred million dollars, two percent of additional assets for one**

1 hundred million to one billion dollars, and one-half percent of additional assets
 2 for over one billion dollars.

3 (2) For good cause, the commissioner may, at any time, require a licensee
 4 to increase its tangible net worth required to be maintained pursuant to this
 5 Section. The licensee shall submit to the commissioner evidence that it has the
 6 required additional tangible net worth not later than fifteen days after the
 7 licensee is notified in writing of the required increase.

8 (3) In determining the required additional tangible net worth, the
 9 commissioner may consider a variety of factors, including but not limited to the
 10 following:

11 (a) The actual and projected volume of the licensee's virtual currency
 12 business activity in this state.

13 (b) Whether the licensee is currently licensed or regulated by the
 14 commissioner under the Sale of Checks and Money Transmission Act, R.S.
 15 6:1031 et seq. and whether the licensee is in good standing in that capacity.

16 (c) The amount of leverage employed by the licensee.

17 (d) The liquidity position of the licensee.

18 (e) The products or services offered by the licensee.

19 ~~C. A licensee or registrant may include in its calculation of net worth virtual~~
 20 ~~currency, measured by the average value of the virtual currency in United States~~
 21 ~~dollar equivalent over the prior six months, other than the virtual currency over~~
 22 ~~which it has control for a resident entitled to the protections provided in R.S. 10:8-~~
 23 ~~501 et seq.~~

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

28 **§1386.1. Meeting tangible net worth requirements**

29 **A. In satisfying the licensure and renewal requirements provided in this**

1 Chapter, tangible net worth shall be clearly evidenced by filing or submitting
2 a current, audited financial statement to the commissioner through the NMLS
3 that is prepared in accordance with the general acceptable accounting
4 principles standards (GAAP) or consistent with the Public Company
5 Accounting Oversight Board (PCAOB) standards.

6 B. All licensing requirements, including renewals, relative to tangible net
7 worth shall be evidenced at the time of initial application for licensure and
8 renewal, maintained at all times during licensure and renewal, and reported
9 annually to the commissioner in compliance with Subsection A of this Section
10 and in accordance with R.S. 6:1388.

11 §1386.2. Protection of resident assets

12 A. To the extent a licensee stores, holds, or maintains custody or control
13 of virtual currency on behalf of a resident, the licensee shall hold virtual
14 currency of the same type and amount as that which is owed or obligated to the
15 resident.

16 B. Each licensee is prohibited from selling, transferring, assigning,
17 lending, hypothecating, pledging, or otherwise using or encumbering assets,
18 including virtual currency, stored, held, or maintained by, or under the custody
19 or control of such licensee on behalf of a resident, except for the sale, transfer,
20 or assignment of such assets at the direction of the resident.

21 C. Each licensee is prohibited from commingling assets belonging to a
22 resident with assets belonging to a licensee, using the resident's assets to secure
23 or guarantee a transaction other than a transaction involving, or on behalf of,
24 the resident's contributing assets, maintaining the resident's assets in such a
25 manner that the resident may be unable to fully withdraw their assets, and
26 investing in such a manner that would not allow for sufficient assets, including
27 virtual currency, to fulfill all outstanding obligations to the resident.

28 §1387. Issuance of license; appeal

29 ~~A. Absent good cause, the department shall issue a license to an applicant if~~

1 the applicant complies with the provisions of this Chapter and pays the costs of the
2 investigation pursuant to R.S. 6:1385(G) and the initial licensee fee pursuant to R.S.
3 6:1385(A)(2) in an amount specified by the department.

4 No license shall be issued unless the commissioner has made a
5 determination that the applicant has met the licensing requirements pursuant
6 to this Chapter, including all requirements of R.S. 6:1385 and 1386.

7 B. An applicant may appeal a denial of its application pursuant to R.S.
8 6:1385, in accordance with the Administrative Procedure Act, not later than thirty
9 days after the department office notifies the applicant of the denial or the application
10 is deemed denied.

11 C. In the case of a denial of an advanced change of control notice, or
12 denial of an advanced change of responsible individual notice, pursuant to
13 either R.S. 6:1385.1 or 1385.2, in accordance with the Administrative Procedure
14 Act, the applicant or licensee, may appeal the denial not later than thirty days
15 after the office notifies the applicant or licensee of the denial of the advanced
16 change of control notice, or the denial of an advanced change of responsible
17 individual notice, or in either case, the change is deemed denied.

18 §1388. Renewal of license; procedure; denial

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

25 (1) Each person licensed as a virtual currency business activity licensee
26 shall submit an annual license renewal application on or before December
27 thirty-first of each year in a manner and form prescribed by the commissioner
28 and submit to the commissioner a renewal report pursuant to Subsection C of
29 this Section, provided the person is not issued a new license from November

1 first to December thirty-first of that year. A virtual currency business activity
2 license issued during this time period will expire on December thirty-first of the
3 following calendar year.

4 (2) An annual renewal application shall be accompanied by the required
5 annual license renewal and investigation fees, pursuant to the rules and
6 regulations promulgated by the commissioner, as required pursuant to
7 Subsection F of this Section. An annual license renewal application submitted
8 after December thirty-first and before March first of the following year shall be
9 charged an annual license renewal late fee pursuant to the rules and regulations
10 promulgated by the commissioner, in addition to the annual license renewal and
11 investigation fees.

12 B.(1) An annual licensee renewal application that is timely submitted on
13 or before the license expiration date shall remain in force and effect until such
14 application is approved or denied by the commissioner. Nothing in this Section
15 shall preclude the commissioner from implementing any administrative or
16 enforcement action authorized by pursuant to the Title for violations of this
17 Chapter or for material misrepresentation, that may have occurred prior to the
18 renewal date of a license.

19 (2) If the renewal application is submitted timely on or before December
20 thirty-first, the license shall remain in force and effect until the renewal
21 application is ether approved or denied by the commissioner. Nothing in this
22 Paragraph shall preclude the commissioner from implementing any
23 administrative or enforcement action authorized by pursuant to this Title for
24 violations of this Chapter or for any material representation that may have
25 occurred prior to the renewal date of a license.

26 (3) If the commissioner has not received the renewal fee and late fee
27 before March first, the license to engage in virtual currency business activities
28 shall expire without hearing or notification, and the license shall not be
29 reinstated. However, the person whose license has expired may apply for a new

1 licence, subject to all new license application requirements of this Chapter, and
 2 prior to such application being complete and eligible for approval
 3 consideration, shall be subject to and shall pay unlicensed activity civil money
 4 penalties in an amount determined by the commissioner.

5 C.(1) The renewal report required by Subsection A of this Section shall be
 6 submitted in a form and medium prescribed by the ~~department~~ office.

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

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

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

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

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

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

27 (ii) Material litigation involving the licensee ~~or an executive officer~~ or
 28 responsible individual of the licensee.

29 (iii) License suspension or revocation proceeding commenced, or other action

1 taken, involving a license to conduct virtual currency business activity issued by
2 another state ~~on which reciprocal licensing is based.~~

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

4 (v) Data security breach involving the licensee.

5 (d) The number of virtual currency business activity transactions with, or on
6 behalf of, residents ~~for the period since, subject to Subsection G of this Section, the~~
7 ~~later of the date the license was issued or the date the last renewal report was~~
8 ~~submitted~~ **as of December thirty-first of the preceding calendar year and as of**
9 **September thirtieth of the current year.**

10 (e)(i) The amount of United States dollar equivalent of virtual currency in the
11 control of the licensee at, ~~subject to Subsection G of this Section, the end of the last~~
12 ~~month that ends not later than thirty days before the date of the renewal report~~ **as of**
13 **December thirty-first of the preceding calendar year and as of September**
14 **thirtieth of the current year.**

15 (ii) The total number of residents for whom the licensee had control of United
16 States dollar equivalent of virtual currency ~~on that date~~ **as of December thirty-first**
17 **of the preceding calendar year and as of September thirtieth of the current**
18 **year.**

19 (f) Evidence that the licensee continues to satisfy the requirements provided
20 for in R.S. 6:1386.

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

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

26 ~~C.(1)D.~~ ~~¶~~ **In addition to the provisions of Paragraph (B)(2) of this**
27 **Section, if** a licensee does not timely comply with Subsection A of this Section, the
28 ~~department~~ **office** may use any enforcement ~~measure~~ **action** provided for in R.S.
29 6:1392.

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

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

10 ~~E. The department shall give prompt notice to a licensee of the lifting of a~~
11 ~~suspension or rescission of a revocation after the licensee complies with Subsection~~
12 ~~D of this Section.~~

13 ~~F. Suspension or revocation~~ **Expiration** of a license pursuant to the
14 provisions of this Section shall not invalidate a transfer or exchange of virtual
15 currency for, or on behalf of, a resident made during **the such expiration** suspension
16 ~~or revocation~~ and shall not insulate the licensee from liability pursuant to the
17 provisions of this Chapter, **nor from other enforcement action as provided for in**
18 **Subsection D of this Section.**

19 ~~G. For good cause, the department may extend a period of time provided for~~
20 ~~in this Section.~~

21 ~~H. A licensee that does not comply with the provisions of this Section shall~~
22 ~~cease operations with, or on behalf of, a resident on or before the anniversary date~~
23 ~~of issuance of its license pursuant to the provisions of this Chapter.~~

24 ~~I.F.~~ A licensee shall pay the reasonable and necessary costs of the
25 department's **office's** investigation under this Section.

26 **§1388.1. Quarterly financial reports**

27 **A. Each licensee shall submit, through the NMLS, quarterly financial**
28 **reports, including transactional information, within forty-five days following**
29 **the close of each calendar quarter, in the form and containing such information,**

1 as the commissioner shall prescribe, including both of the following:

2 (1) A statement of the financial condition of the licensee, including a
3 balance sheet and income sheet, along with transactional information, all in
4 United States currency, relating to virtual currency balances held on behalf of
5 residents, virtual currency balances not held on behalf of residents, and other
6 investments.

7 (2) A certification of the financial reports by an officer or member of the
8 board of directors, or an equivalent governing body of the licensee, attesting to
9 the truth and correctness of such reports.

10 B. In addition, each licensee shall submit special reports to the
11 commissioner, at such times and in such form, as the commissioner may
12 require.

13 * * *

14 §1390. Transferability

15 A license ~~or registration~~ **issued** pursuant to the provisions of this Chapter
16 shall not be transferable or assignable.

17 §1391. Examinations

18 * * *

19 D. The commissioner may do any of the following:

20 (1) Conduct on-site examination or investigation, participate in a joint
21 or concurrent examination or investigation with another state or federal agency
22 or agencies, or examine or investigate the books, records, and accounts used in
23 the business of every licensee.

24 (2) Accept and rely upon an examination report or investigative report
25 of any other state or federal agency.

26 E. Nothing in Subsection D of this Section shall preclude the
27 commissioner from conducting an examination or investigation under
28 applicable provisions of this Chapter, including but not limited to any of the
29 following:

1 (1) Participating in a joint examination or investigation.

2 (2) Participating in a concurrent examination or investigation.

3 (3) Accepting results of an examination or investigation report conducted
4 by any state or federal agency.

5 F. A joint report or concurrent report accepted by the commissioner
6 pursuant to this Section may be accepted as an official report of the office for
7 purposes of this Chapter.

8 G.(1) To efficiently and effectively enforce the provisions of this Chapter
9 and to minimize regulatory burdens, the commissioner may participate in a
10 multistate examination and investigation process for licensees that hold licenses
11 in this state and other states.

12 (2) As a participant in any multistate examination or investigation, the
13 commissioner may, to the extent provided by law, do all of the following:

14 (a) Cooperate, coordinate, and share information with other state
15 regulators of virtual currency business activities.

16 (b) Enter into written cooperation, coordination, or information sharing
17 contracts or agreements with organizations made up of other state
18 governmental regulators of virtual currency business activities.

19 (c) Cooperate, coordinate, and share information with organizations
20 made up of other state governmental regulators of virtual currency business
21 activities, provided that the organizations agree in writing to maintain
22 confidentiality and security of shared information.

23 (3) Nothing in this Section shall constitute a waiver of the commissioner's
24 authority to do any of the following:

25 (a) Conduct any examination or investigation authorized by law.

26 (b) Otherwise take any independent action authorized by law or any rule
27 promulgated in accordance with the Administrative Procedure Act.

28 (c) Enforce compliance of any order issued pursuant to this Chapter.

29 (4) The following shall not constitute a waiver of any examination fee

1 provided pursuant to this Chapter or any rule promulgated in accordance with
2 the Administrative Procedure Act:

3 (a) The commissioner's participation in any joint examination or
4 investigation.

5 (b) The commissioner's acceptance of an examination or investigative
6 report conducted and prepared by other state or federal regulators of virtual
7 currency business activity.

8 §1391.1. Books, records, and accounts

9 A. Any licensee engaging in virtual currency business activities in this
10 state shall maintain and preserve the books, records, and accounts of its virtual
11 currency business activities, pursuant to R.S. 6:1391, for a period of five years
12 or longer, if required by the commissioner to resolve any examination,
13 investigation, or complaint.

14 B. The books, records, and accounts to be maintained by each licensee
15 shall include all of the following:

16 (1) For each transaction:

17 (a) The amount, date, and precise time of the transaction.

18 (b) Any payment instructions for the transaction.

19 (c) The total amount of fees and charges received and paid to, by, or on
20 behalf of the licensee.

21 (d) The names, account numbers, and physical address of the parties to
22 the transactions, including any customers and account holders of the licensee,
23 who are residents.

24 (2) A general ledger containing all assets, liabilities, ownership equity,
25 income, and expense accounts.

26 (3) Bank statements and bank reconciliation records.

27 (4) Any statement and valuation provided to customers and account
28 holders.

29 (5) Records or minutes of meetings of the board or directors, or an

1 equivalent governing body.

2 (6) Records demonstrating compliance with applicable state and federal
3 anti-money laundering laws, rules, and regulations, including customer and
4 account holder identification and verification documents, records linking
5 customers and account holders to their respective accounts and balances, and
6 a record of any compliance breaches.

7 (7) Communications and documentation related to investigations of
8 customer and account holder complaints and transaction error resolutions.

9 (8) Any other books, records, and accounts as the commissioner may
10 require.

11 §1391.2. Compliance policies and procedures

12 A. Any licensees engaging in virtual currency business activity in this
13 state shall adopt and implement appropriate compliance policies and
14 procedures, as part of the required books, records, and accounts, as determined
15 by the commissioner by rule, or pursuant to this Chapter.

16 B. The policies and procedures shall be in writing and reviewed and
17 approved by the licensee's board of directors or an equivalent governing body,
18 and include, at a minimum, policies and procedures covering anti-fraud,
19 anti-money laundering, cyber security, privacy, and information security, and
20 such other policies and procedures as may be required by the commissioner by
21 rule, or pursuant to this Chapter.

22 C. Each licensee shall designate a qualified individual, or individuals,
23 that are responsible for coordinating and monitoring compliance with this
24 Section and all other applicable state and federal laws, rules, and regulations.

25 §1392. Enforcement power of the commissioner

26 A. For purposes of this Chapter, "enforcement ~~measure~~ **action**" means an
27 action ~~to do~~ **or actions by the commissioner to enforce the requirements of this**
28 **Chapter, including** any of the following:

29 (1) Suspend or revoke a license ~~or a registration~~ pursuant to the provisions

1 of this Chapter.

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

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

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

9 (5) Assess **civil money** penalties.

10 (6) Recover on the ~~security~~ **surety bond** provided pursuant to R.S. 6:1386
11 and initiate a plan to distribute the proceeds for the benefit of a resident injured by
12 a violation of any provision of this Chapter, ~~or law of this state other than this~~
13 ~~Chapter, which applies to virtual currency business activity with, or on behalf of, a~~
14 ~~resident.~~

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

17 **B. Any enforcement action pursuant to this Section may be**
18 **supplemented by the exercise of any other enforcement power by the**
19 **commissioner, as may be authorized by this Title or by any other Title of the**
20 **Louisiana Revised Statutes of 1950.**

21 §1393. Violations

22 **A.** The department **office** may take an enforcement ~~measure~~ **action** against
23 a licensee, ~~registrant~~, or person that is ~~neither a licensee nor registrant~~ **not a licensee**
24 but is engaging in virtual currency business activity with, or on behalf of, a resident
25 in any of the following instances:

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

1 provisions of this Chapter or any rule or regulation promulgated or any order,
2 including but not limited to a cease and desist order or subpoena, issued
3 pursuant to this Chapter.

4 (2) The licensee, ~~registrant~~, or person ~~does not cooperate substantially with~~
5 ~~an investigation by the department, fails to pay a fee, or fails to submit a report or~~
6 ~~documentation.~~ violates any provision of a voluntary consent or compliance
7 agreement that has been entered into with the commissioner.

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

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

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

12 (c) Fraud or intentional misrepresentation.

13 (d) Another dishonest act.

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

16 (4) ~~An agency of the United States or another state takes an action against the~~
17 ~~licensee, registrant, or person, which would constitute an enforcement measure if the~~
18 ~~department had taken the action.~~ The licensee or person does not cooperate
19 substantially with an investigation by the office, fails to pay a fee, or fails to
20 submit a report or documentation.

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

25 (6) Any of the following occurs:

26 (a) The licensee, ~~registrant~~, or person becomes insolvent.

27 (b) The licensee, ~~registrant~~, or person makes a general assignment for the
28 benefit of its creditors.

29 (c) The licensee, ~~registrant~~, or person becomes the debtor, alleged debtor,

1 respondent, or person in a similar capacity in a case or other proceeding under any
2 bankruptcy, reorganization, arrangement, readjustment, insolvency, receivership,
3 dissolution, liquidation, or similar law, and does not obtain from the court, within a
4 reasonable time, confirmation of a plan or dismissal of the case or proceeding.

5 (d) The licensee,~~registrant~~, or person applies for, or permits the appointment
6 of, a receiver, trustee, or other agent of a court for itself or for a substantial part of
7 its assets.

8 ~~(7)(6)~~ The licensee, ~~registrant~~, or person ~~makes~~ **has knowingly provided or**
9 **caused to be provided** a material misrepresentation to the ~~department~~
10 **commissioner, any false or fraudulent material fact or any false or fraudulent**
11 **financial statement, or has suppressed or withheld from the commissioner any**
12 **information which if submitted by the licensee would have resulted in a denial**
13 **of the license application.**

14 **(7) The licensee or person refuses to permit an examination by the**
15 **commissioner of the books and affairs, or has refused or failed within a**
16 **reasonable time to furnish any information, or make any report that may be**
17 **required by the commissioner pursuant to the provisions of this Chapter.**

18 **(8) The licensee or person fails to maintain records as required by the**
19 **commissioner after being given written notice to the last address of record and**
20 **thirty days within which to correct the failure. The commissioner may grant, on**
21 **good cause shown, up to two thirty-day extensions within which to correct the**
22 **recordkeeping violation.**

23 **(9) The licensee or person continues in office any individual with power**
24 **to direct the management or policies of a person regulated by this Chapter,**
25 **including but not limited to any officer, director, or manager, if such individual**
26 **is convicted of, pleads guilty to, or is found guilty after a plea of nolo contendere**
27 **of any felony and has been adjudicated guilty in any state, federal, foreign, or**
28 **military court.**

29 **(10) The licensee or person violates any provision of a regulatory or**

1 prohibitory statute by the government agency responsible for determining such
2 violations.

3 (11) The licensee or person misrepresents material facts or makes false
4 promises likely to influence, persuade, or induce a resident to engage in virtual
5 currency business activity.

6 (12) The licensee or person misrepresents or conceals material facts,
7 terms, or conditions of a transaction to which he is a party, pertinent to a
8 resident to engage in virtual currency business activity.

9 (13) The licensee or person knowingly engages in any transaction,
10 practice, or course of business, which perpetrates a fraud upon any person in
11 connection with engaging in virtual currency business activity.

12 (14) The licensee or person fails to exchange, transfer, or store, without
13 just cause, any funds in accordance with any agreement connected with a
14 virtual currency business activity transaction.

15 (15) The licensee or person fails to account for or deliver to any person
16 any assets obtained in connection with a virtual currency business activity
17 transaction, including but not limited to legal tender, virtual currency, precious
18 metals, and electronic certificates.

19 (16) The licensee or person fails to pay any fee, civil money penalty, cost
20 or assessment imposed pursuant to this Chapter or by any rule or regulation
21 promulgated in accordance with this Chapter.

22 (17) The licensee or person violates the written restrictions or conditions
23 under which the license was issued.

24 (18) The licensee or person fails, after notice and without lawful excuse,
25 to obey any order or subpoena issued by the commissioner.

26 (19) The commissioner discovers any fact or condition currently exists
27 that, if it had existed at the time of the original application for licensure, would
28 have warranted the denial of the application.

29 B.(1) Notwithstanding any other law to the contrary, and in addition to

1 any other authority conferred upon the commissioner by any other provision
2 of law, the commissioner may, upon discovery, order an immediate suspension
3 of the license of any person licensed pursuant to this Chapter who does any of
4 the following:

5 (a) Fails to maintain a surety bond or fails to meet the tangible net worth
6 requirements in any manner as provided for pursuant to R.S. 6:1386.

7 (b) Commits material violations pursuant to this Chapter such that, in
8 the opinion of the commissioner, the public safety and welfare demand that
9 emergency action be taken.

10 (c) Submits a payment of any fee for any application, notification,
11 examination, investigation, late fee, or penalty that is returned, declined, denied,
12 or otherwise not paid in full for any reason.

13 (d) Is convicted of a felony that would have prohibited the issuance or
14 renewal of the license.

15 (e) Has his license to engage in virtual currency business activities
16 suspended or revoked in another jurisdiction.

17 (2) A person whose license is suspended under this Subsection shall have
18 thirty days from the date of the order to request a hearing in accordance with
19 the Administrative Procedure Act. Failure to timely request a hearing shall
20 constitute a waiver of all hearing rights regarding the suspension.

21 C. In addition to any other authority conferred upon the commissioner
22 by this Chapter or this Title, the commissioner may issue a cease and desist
23 order, order refunds of any unauthorized portion of any fee, or charge any
24 person who collects in violation of this Chapter, and may impose a civil money
25 penalty as determined by the commissioner by rule upon any person who is
26 found to have violated any of the provisions of this Chapter or any rule or
27 regulation promulgated in accordance with this Chapter. Each separate
28 violation shall subject the person to a civil money penalty and each day the
29 person acts without complying with the provisions of this Chapter, or rules or

1 regulations promulgated in accordance with this Chapter, shall constitute a
2 separate violation.

3 D. The violations listed in this Subsection are nonexclusive, and are in
4 addition to and exist independent of, any violations set forth in other provisions
5 of this Chapter. Failure to comply with any provisions set forth in this Chapter
6 may serve as a basis for any enforcement or other action authorized to the
7 commissioner under this Title. It shall be a violation of this Chapter for a
8 person engaged in virtual currency business activity pursuant to this Chapter
9 to do any of the following:

10 (1) Directly or indirectly employ any scheme, device, or artifice to
11 defraud or mislead any resident, when such person knew or should have known
12 that such scheme, device, or artifice was defrauding or misleading.

13 (2) Engage in any unfair or deceptive practice toward any resident.

14 (3) Fail to comply with this Chapter, any rules or regulations
15 promulgated pursuant to this Chapter, the laws of this state, or federal law,
16 including the rules and regulations issued thereunder, applicable to any virtual
17 currency business activity.

18 (4) Negligently make any false statement, or knowingly and willfully
19 make any omission or material fact, in connection with any information or
20 reports filed with a state or federal government agency or the NMLS, or in
21 connection with any investigation conducted by the commissioner or any other
22 state or federal government agency.

23 (5) Fail to truthfully account for any assets in connection with any virtual
24 currency business activity with, or on behalf of, a resident.

25 E. The commissioner may report apparent violations to other
26 appropriate state and federal regulators, the NMLS, federal law enforcement
27 agencies, the attorney general, or to the district attorney of the appropriate
28 parish, who may institute any proceeding as they consider appropriate.

29 F. Advisory opinions and interpretations of the office shall not be

1 considered rules requiring compliance with the rulemaking process of the
2 Administrative Procedure Act. The commissioner and the employees of the
3 office shall have no liability to any person with respect to an advisory opinion
4 or interpretation issued in connection with this Chapter.

5 G. All of the grounds for enforcement action listed in Subsection A of
6 this Section are violations of this Chapter and may serve as the basis for any
7 other enforcement action provided to the commissioner by this Title.

8 H. The commissioner may share information about any person who is
9 licensed or required to be licensed pursuant to this Chapter with any state or
10 federal agency also having jurisdiction over the virtual currency business
11 activities of that person.

12 I. Any licensee whose license issued pursuant to this Chapter has been
13 revoked for any reason may not reapply for a license until at least five years
14 have elapsed from the date of the order of revocation, unless the commissioner,
15 in his sole discretion, prescribes an earlier or later date. For purposes of this
16 Subsection, the order shall be considered to be commissioner's notification of
17 revocation of the license. For the purpose of this Subsection, the term "licensee"
18 shall include the licensee, owners of ten percent or more, and its members if the
19 licensee is a limited liability company, its partners if the licensee is a
20 partnership, its officers and directors if the licensee is a corporation, and any
21 other person determined by the commissioner, in his sole discretion, to be
22 closely related to the licensee.

23 §1393.1. Required disclosures

24 A. Any licensee engaging in virtual currency business activity as defined
25 in R.S. 6:1382(25) in this state shall provide accurate and appropriate
26 disclosures to residents as it relates to the exchanging, transferring, or storing
27 of virtual currency through the licensee. Failure to provide the disclosures
28 required by this Section shall be a violation of this Chapter.

29 B. Disclosures shall be made separately from any other information

1 provided by the licensee to a resident and shall be clear, conspicuous, and in
2 legible writing in the English language.

3 C. Without limitation, the commissioner may require additional
4 disclosures by rule or regulation as considered necessary and appropriate.

5 D. The disclosures shall describe all material risks associated with the
6 licensee's virtual currency products, services, and activities, and virtual
7 currency generally, including but not limited to the following:

8 (1) Virtual currency is not legal tender in the United States, is not backed
9 by the United States government, and accounts and value balances are not
10 subject to Federal Deposit Insurance Corporation or Securities Investor
11 Protection Corporation protections.

12 (2) Legislative and regulatory changes or actions at the state, federal, or
13 international level may adversely affect the value of virtual currency.

14 (3) Transaction in virtual currency may be irreversible, and accordingly,
15 losses due to fraudulent or accidental transactions may not be recoverable.

16 (4) Some virtual currency transactions may be immediately effective
17 when recorded on a public ledger, which is not necessarily the date or time that
18 the resident initiates the transaction.

19 (5) The value of virtual currency may be derived from the continued
20 willingness of market participants to exchange legal tender for virtual currency,
21 which may result in the potential for permanent and total loss of value of a
22 particular virtual currency, should the market for the virtual currency decline
23 or collapse for an extended period of time.

24 (6) Any surety bond required by this Chapter for the benefit of residents
25 may not be sufficient to cover all losses incurred by the residents.

26 (7) The residents should perform research before purchasing or investing
27 in virtual currency.

28 (8) The circumstances under which the licensee will, in the ordinary
29 course of business, disclose the resident's financial and account information to

1 third parties.

2 E. When opening a new account, and prior to entering into an initial
3 transaction with, for, or on behalf of, a resident, each licensee shall disclose in
4 clear, conspicuous, and legible writing in the English language, all relevant
5 terms and conditions associated with its virtual currency products, services, and
6 activities and virtual currency generally, including but not limited to the
7 following:

8 (1) The resident's liability for unauthorized virtual currency
9 transactions.

10 (2) The resident's right to stop payment of a preauthorized virtual
11 currency transfer and the procedure to initiate the stop payment order.

12 (3) Under what circumstances the licensee will, absent a court or
13 government order, disclose information concerning the resident's account to
14 third parties.

15 (4) The resident's right to receive periodic account statements and
16 valuations from the licensee.

17 (5) The resident's right to receive a receipt, trade ticket, or other
18 evidence of a transaction.

19 (6) Any other disclosures as are customarily given in connection with the
20 opening of resident accounts.

21 F. Prior to each transaction in virtual currency with, for, or on behalf of,
22 a resident, each licensee shall furnish to each such customer or account holder
23 a written disclosure in clear, conspicuous, and legible writing in the English
24 language, containing the terms and conditions of the transaction, including but
25 not limited to the following:

26 (1) The amount of the transaction.

27 (2) Any fees, expenses, and charges borne by the resident, including
28 applicable exchange rates.

29 (3) The type of the virtual currency transaction.

1 **(4) A notice that once executed the transaction shall not be reversible.**

2 **G. Each licensee shall ensure that all disclosures required in this Section**
3 **are acknowledged as received by the resident.**

4 **H. Upon completion of any transaction, each licensee shall provide to the**
5 **resident a receipt containing all of the following information:**

6 **(1) The name and contact information of the licensee, to answer**
7 **questions and register complaints.**

8 **(2) The type, value, date, and precise time of the transaction.**

9 **(3) The fee charged.**

10 **(4) The exchange rate, if applicable.**

11 **(5) A statement of the liability of the licensee for nondelivery or delayed**
12 **delivery.**

13 **(6) A statement of the refund policy of the licensee.**

14 **(7) Any additional information the commissioner may require by rule.**

15 **I. Each licensee shall make available to the office, upon request, the form**
16 **of the receipts it is required to provide to a resident in accordance with**
17 **Subsection H of this Section.**

18 §1394. Implementation

19 **A.** The ~~department~~ **commissioner** shall adopt rules, in accordance with the
20 Administrative Procedure Act, to implement and enforce the provisions of this
21 Chapter and **may** issue guidance as appropriate.

22 **B. In addition to any other powers the commissioner may be authorized**
23 **to exercise pursuant to this Title, the commissioner may adopt and implement**
24 **emergency rules as he considers necessary and appropriate to prevent or**
25 **terminate any condition he reasonably considers to create an emergency relative**
26 **to a particular licensee or to licenses in general, including but not limited to**
27 **suspending the issuance or renewal of licenses, or suspending some or all virtual**
28 **currency business activities in this state.**

29 **C. In order to carry out the purposes of this Chapter, the commissioner**

1 may do all of the following:

2 (1) Enter into agreements or relationships with other government
 3 officials or federal and state regulatory agencies and regulatory associations in
 4 order to improve efficiencies and reduce regulatory burden by standardizing
 5 methods or procedures, and sharing records or related information obtained
 6 under this Chapter.

7 (2) Use, hire, contract, or employ analytical systems, methods, or
 8 software in examinations or investigations pursuant to this Chapter.

9 (3) Consider, accept, and rely upon licensing, examination, or
 10 investigative reports prepared by other government agencies or officials, within
 11 or outside the state.

12 (4) Consider, accept, and rely upon audit reports prepared by an
 13 independent certified public accountant or other qualified third-party auditor
 14 for any person subject to the provisions of this Chapter and incorporate all, or
 15 part of such audit reports, in the office's report of examination or investigation.

16 Section 2. R.S. 6:1383(C)(5)(c) and (7) and (D) and 1389 are hereby repealed.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Xavier I. Alexander.

DIGEST

SB 185 Engrossed

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", "commissioner", "good cause", "national multistate licensing system and registry", "office", "tangible net worth", and "unsafe or unsound act or practice".

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. Prohibits the licensee from commingling the virtual currency with the licensee's virtual currency.

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 1st 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 licensee's 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, 1385, 1386, 1387, 1388, 1390, 1392, 1393, 1394; adds R.S. 6:1385.1, 1385.2, 1386.1, 1386.2, 1388.1, 1391(D), (E), (F), and (G), 1391.1, 1391.2, 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.