

Alert | Blockchain & Digital Assets



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Florida Gov. Signs Bill that Defines ‘Virtual Currency’ and Eases Licensing Restrictions on Certain Virtual Currency Transactions in the State

On May 12, 2022, Gov. Ron DeSantis signed bill [CS/HB 273](#) (the Bill), amending Florida’s money services business (MSB) laws (i.e., Chapter 560 of the Florida Statutes) to, among other things, define “virtual currency” and address transactions involving “virtual currency.” The amendments to the Florida MSB laws take effect **Jan. 1, 2023**.

Part II of Chapter 560 requires licensure (unless an exemption from licensure applies) for any person who, for compensation, engages in “selling or issuing payment instruments” or engages in the activity of a “money transmitter.”¹ Currently, the term “virtual currency” is not found in Chapter 560, and Chapter 560 does not address whether a person engaged in transactions involving “virtual currency” should be considered “money transmitter[s]” or otherwise engaged in “selling or issuing payment instruments.”

Over the last seven years, the Florida Office of Financial Regulation (OFR), the state agency that licenses and regulates financial services firms doing business in Florida, including MSBs, received over 70 petitions for declaratory statements seeking clarity on Chapter 560 licensing treatment of virtual currency and other digital assets.² While the OFR has issued a number of declaratory statements discussing virtual

¹ Fla. Stat. § 560.204(1).

² [House of Representatives, Staff Final Bill Analysis](#).

currency activities, it did not take a clear position on licensing requirements until recently, when its declaratory statements began to align with a Florida Third District Court of Appeal ruling issued in January 2019 – *State v. Espinoza*.³

In *Espinoza*, the court held that selling Bitcoin directly to another person in Florida in a purely principal-to-principal, buy-sell transaction is subject to MSB licensing under Florida’s MSB law. Specifically, the court determined that Bitcoin is both “monetary value” and a “payment instrument” under Chapter 560, and that, by selling Bitcoin to another person, Mr. Espinoza acted as both a “money transmitter” and a “payment instrument seller,” subjecting Mr. Espinoza to licensing as an MSB. In addressing whether the definition of “money transmitter” covers only third-party intermediaries, the court held that “[t]he statute’s plain language clearly contains no third-party transmission requirement in order for an individual’s conduct to fall under the ‘money transmitter’ definition.” As such, the court declined to add any third-party or financial intermediary requirement to the money transmitter definition in Chapter 560.

When the OFR began citing *Espinoza* in recent declaratory statements, it was understood that the OFR began to align with the Third District Court and took the view that virtual currency is “monetary value” and that its sale or transmission is subject to licensing requirements under Chapter 560, irrespective of whether a “third party” is involved in the transaction.⁴

Effect of the Bill

The Bill loosens Florida’s position on licensing requirements for virtual currency activity by clarifying that ***a money transmitter license is only required for persons acting as intermediaries between two parties if the intermediary has the unilateral ability to execute or prevent a transaction. Persons involved in a principal-to-principal, bilateral transaction are not subject to licensing.***⁵ Therefore, Florida has departed from requiring MSB licensing for direct virtual currency purchase/sale transactions between two parties, and now requires MSB licensing for persons acting as financial intermediaries in connection with virtual currency transactions.

The Bill reflects this new licensing position by amending the definition of “money transmitter” in Chapter 560, to include the term “virtual currency” and to cover:

“a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in [Florida] which receives currency, monetary value, a payment instrument, or virtual currency ***for the purpose of acting as an intermediary*** to transmit currency, monetary value, a payment instrument, or virtual currency from one person to another location or person by any means...***The term includes only an intermediary that has the ability to unilaterally execute or indefinitely prevent a transaction.***”⁶

Furthermore, to ensure the exclusion of principal-to-principal virtual currency transactions from MSB licensing, the Bill amends critical terms within the Chapter 560 definition of “payment instrument”

³ See e.g., In Re: Petition for Declaratory Statement, Kalbas, Inc., OFR 2021-312 (July 29, 2021); In Re: Petition for Declaratory Statement, Pay Depot, LLC, OFR 2021-313 (July 29, 2021); In Re: Petition for Declaratory Statement, Foriz Dax, Inc., OFR 2021-325 (August 11, 2021); In Re: Petition for Declaratory Statement, Aspen Lakes, LLC, OFR 2021-308 (July 29, 2021); and In Re: Petition for Declaratory Statement, Evergreen ATM, LLC a/k/a Getcoins, OFR 2021-310 (July 29, 2021).

⁴ Id.

⁵ Staff Final Bill Analysis at Page 8.

⁶ Bill at Page 5 (emphasis added).

(which is defined to include “a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable”),⁷ as follows:

- Replaces the undefined term “money” with the defined term “currency”⁸ to clarify that the term “payment instrument” does not include virtual currency.⁹
- Revises the term “payment instrument” to clarify that it refers to an instrument that is used for the transmission, exchange, or payment of currency or monetary value, but a payment instrument is not the currency or monetary value itself.¹⁰
- Excludes virtual currency from the definition of “monetary value.”¹¹
- Amends the definition of “electronic instrument” to replace the term “money” with the defined term “currency,” to clarify that the term “electronic instrument” does not include virtual currency.¹²
- Amends the definition of “stored value” found within the definition of “electronic instrument” to replace the undefined term “funds” with the defined term “currency,” to clarify that the term “stored value” does not include virtual currency.¹³

Finally, the Bill broadly defines “*virtual currency*” as “a medium of exchange in electronic or digital format that is not currency.”¹⁴ The term excludes a medium of exchange in electronic or digital format that is:

- (a) Issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform; or
- (b) Used exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants but cannot be converted into or redeemed for currency or another medium of exchange.¹⁵

Other Amendments of the Bill

In addition to the above, the Bill amends the following:

I. Prohibition of Unlicensed Activity – Fla. Stat. § 560.125

The Bill amends the prohibition on unlicensed money transmitter activity and payment instrument selling in order to better align the wording with the definition of payment instrument

⁷ Fla. Stat. § 560.103(29).

⁸ Under Chapter 560, “[c]urrency” means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. Fla. Stat. § 560.103 (11).

⁹ Staff Final Bill Analysis at Page 8.

¹⁰ Id.

¹¹ The Bill defines “[m]onetary value” as a medium of exchange, *other than virtual currency*, regardless of whether it is redeemable in currency. Bill at Page 5 (emphasis added).

¹² The Bill defines “[e]lectronic instrument” as “a card, tangible object, or other form of electronic payment used for the transmission, payment or exchange of currency or monetary value, including a stored value card or device that contains a microprocessor chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon each use.” Bill at Page 4 and Staff Final Bill Analysis at Page 8.

¹³ The Bill defines “[s]tored value” as “currency or monetary value represented in digital electronic format, regardless of whether it is specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically.” Bill at Pages 4-5 and Staff Final Bill Analysis at Page 8.

¹⁴ Bill at Page 6.

¹⁵ Id.

seller. One element of the prohibition on unlicensed money transmitter activity is that a person must be doing such activity for compensation, and “compensation” includes profit or loss on the exchange of currency. The Bill adds that “compensation” includes profit or loss on the exchange of monetary value or virtual currency.¹⁶

II. Permissible Investments – Fla. Stat. § 560.210

The Bill amends the permissible investments statute in relation to virtual currency. Currently, a money transmitter must possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions. Without an amendment, the effect would be to require a money transmitter that transmits virtual currency to not only have control over the virtual currency being transmitted but also hold the equivalent value in cash or other enumerated assets. Instead, the Bill only requires that, during the period of transmission, the money transmitter must hold virtual currency of the same type and amount owed or obligated to the other location or person on the receiving end of the transmission.¹⁷

III. Required Records – Fla. Stat. § 560.211

Amends record retention requirements to include retention of records related to virtual currency transmitted and adds rulemaking authority for additional records related to virtual currency.¹⁸

IV. Conforming Changes – Fla. Stat. §§ 559.952, 560.204, 560.123, 560.208, 560.2085, 560.211, 560.212

The Bill conforms portions of the above-cited statutes to reflect the addition of the term “virtual currency” to money transmitter regulations.¹⁹

The Florida amendments to its MSB code should help provide licensing relief to digital assets firms that engage in peer-to-peer purchases and sales of digital assets. The Bill confirms Florida’s intent to position itself as a crypto-friendly state and may have wide-ranging impacts when it takes effect Jan. 1, 2023. As a result of the Bill, Florida could see increased virtual currency activity, transactions, and investment in the coming years.

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¹⁶ Bill at Pages 10-11 and Staff Final Bill Analysis at Page 8.

¹⁷ Bill at Page 14 and Staff Final Bill Analysis at Page 9.

¹⁸ Bill at Page 14.

¹⁹ Bill at Pages 2 - 4, 6, 11-12, 14 - 15.

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