

Alert | Blockchain & Digital Assets/ Financial Regulatory & Compliance



February 2024

Hawaii's Money Transmitters Modernization Act Will No Longer Apply to Cryptocurrency Activities

Go-To Guide:

- Hawaii announces that digital currency companies will no longer require a Hawaii-issued money transmitter license to conduct business within Hawaii.
- The Hawaii DFI makes clear, however, that crypto companies engaging in activity within Hawaii must still comply with any applicable federal and state laws.
- The Hawaii Digital Currency Innovation Lab, a regulatory sandbox created to explore the landscape
 of digital currency activity within Hawaii and assess the regulatory framework required for
 companies specializing in digital currency, will conclude as scheduled on June 30, 2024.

On Jan. 25, 2024, the Hawaii Department of Commerce and Consumer Affairs Division of Financial Institutions (DFI) and the Hawaii Technology Development Corporation (collectively, the "Agencies") jointly issued a press release summarizing their findings on the proper regulatory framework for companies specializing in digital currency activity (Crypto Companies)—concluding that the DFI will not apply the state's Money Transmitters Act to cryptocurrency activities. As such, Crypto Companies will no longer require a Hawaii-issued money transmitter license to conduct business within the state. Crypto Companies will be able to operate in Hawaii as unregulated businesses.



The press release underscores the DFI's expectation that digital currency companies operating in Hawaii comply with any applicable federal licensing or registration requirements, including those set forth by the U.S. Department of the Treasury's Financial Crimes Enforcement Network, U.S. Securities and Exchange Commission, and the Financial Industry Regulatory Authority, including any pertinent federal regulatory requirements involving consumer protection and anti-money laundering measures.

In issuing the press release, Hawaii joins states—such as Wyoming—that explicitly do not regulate cryptocurrency activity under pre-existing money transmission licensing regimes. It is also worth noting that Hawaii chose not to follow the lead of California, which recently joined New York and Louisiana in implementing a cryptocurrency specific regulatory regime.¹

The Agencies also reaffirmed the scheduled closure of Hawaii's regulatory sandbox program, the Digital Currency Innovation Lab (DCIL), set for June 30, 2024. Regulatory sandboxes allow certain companies to operate under temporary, experimental rules that aim to foster innovation while providing state regulators with data to inform regulatory developments. The Agencies' studies of the DCIL participants led to a determination that the activities conducted by Crypto Companies did not align with the concept of money transmission as outlined in Hawaii's Money Transmitters Modernization Act. Further, the press release notes that the Agencies, working with DCIL participants and the larger industry companies, were unable to devise a special digital currency licensing scheme that provided sufficient protections for Hawaii consumers.

This announcement is a welcome change for Crypto Companies wishing to operate in Hawaii. Prior to the press release, Crypto Companies largely avoided Hawaii, in part because it was the only state to require Crypto Companies wishing to obtain and maintain money transmission licensure to hold "permissible investments," as defined in Haw. Rev. Stat. § 489D-4, equal to the aggregate market value of not less than the aggregate amount of the Crypto Companies' outstanding transmission obligations, including digital currency transmission obligations. *See* Haw. Rev. Stat. § 489D-8. Hawaii took the view that digital currency does not constitute a permissible investment, thereby imposing a heavy burden on Crypto Companies, which tend to hold their assets, unsurprisingly, in cryptocurrencies.

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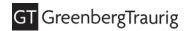
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¹ For further information on California's new cryptocurrency specific regulatory regime, see our Nov. 6 2023 GT Alert, California Enacts Digital Assets Licensing Law.

² Hawaii is one of eight states in the United States that has enacted a regulatory sandbox program for virtual currency, blockchain and other financial technology innovations more broadly. These states include Arizona, Florida, Nevada, North Carolina, Utah, West Virginia, and Wyoming, with other state legislatures proposing to adopt similar sandboxes (see, e.g., New Hampshire's bill, HB 1507, introduced Dec. 11, 2023, which proposes to create a financial services regulatory sandbox).



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