

Louisiana to Require Virtual Currency Business License

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The Louisiana Office of Financial Institutions (OFI) will require virtual currency businesses to hold a license, though the license application may not be available until 2021.[1]

The Louisiana Virtual Currency Businesses Act (Act), which requires—you guessed it—virtual currency businesses to hold a license became effective on August 1, 2020. However, the OFI will need to adopt an administrative rule governing the licensing process before it will begin accepting license applications.

The Act requires the OFI to adopt administrative rules to implement and enforce the new license requirement, though there is no specific timeline regarding when such rules must be enacted. As a result, the timing of the virtual currency business licensing requirement is still unclear.

Covered Entities and Exemptions

Covered “virtual currency business activity” that will trigger licensure includes any one of the following:

- (1) Exchanging, transferring, or storing** virtual currency or engaging in virtual currency administration, whether directly or through an agreement with a virtual currency control services vendor;
- (2) Holding electronic precious metals or electronic certificates** representing interests in precious metals on behalf of another person or issuing shares or electronic certificates representing interests in precious metals; or
- (3) Exchanging one or more digital representations of value** used within one or more online games, game platforms, or family of games for either of the following:
 - Virtual currency offered by or on behalf of the same publisher from which the original digital representation of value was received, or
 - Legal tender or bank credit outside the online game, game platform, or family of games offered by or on behalf of the same publisher from which the original digital representation of value was received.

The Act does not apply to a host of different entities, including regulated financial institutions (but excluding industrial loan companies and certain state-chartered trusts) and various intermediaries in the virtual currency exchange process. The Act also does not apply to virtual currency activity to the extent the activity is otherwise governed by certain laws, including the Electronic Funds Transfer Act. There is also a blanket *de minimus* monetary activity requirement: the Act will not apply to persons whose virtual currency business with or on behalf of Louisiana residents will not be valued at more than \$5,000 on an annual basis. As an alternative to the

license, persons whose virtual currency business will not exceed \$35,000 per year may obtain a less burdensome registration with the OFI.

A Reciprocal License Exemption?

According to bill headnotes, the Act will “authorize reciprocity of licensure.” Indeed, the term “reciprocity agreement” is defined by the Act as an arrangement between the OFI and the appropriate licensing agency of another state which permits a licensee operating under a license granted by the other state to engage in virtual currency business activity with or on behalf of a Louisiana resident. However, the Act itself does not actually grant any reciprocal exemption or otherwise utilize the defined term “reciprocity agreement.” This issue may be addressed by later rulemaking from the OFI.

Here’s the key takeaway: If you think you may be operating a virtual currency business with Louisiana residents, take a close look at potential licensing exemptions. If no exemption applies, be on the lookout for a new NMLS Virtual Currency License application in Louisiana in the coming months.

[1] H.B. 701, 2020 Reg. Sess. (La. 2020), codified at La. R.S. §§ 6:1381 to 6:1394 (eff. Aug 1, 2020). As of the date of this publication, the OFI has not published rulemaking outlining the fees and application for the virtual currency business license. At least ninety days’ notice is required prior to taking any action on such proposed rule and approval and the rulemaking process can take longer if a public hearing is requested. See generally La. R. S. § 49:953.