

Money Transmission Licenses Required for Virtual Currency Activities in Arkansas and Florida

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Recently Florida and Arkansas made it a requirement for those engaging in virtual currency activities to obtain money transmission licenses in their respective jurisdictions.

- In August, the Florida Office of Financial Regulation (OFR) [issued](#) an industry alert stating that a person engaged in the business of selling virtual currency in Florida must obtain a license under the state's money transmission law. The OFR cited a recent Florida state court decision holding that virtual currency fell within the definitions of "monetary value" and "payment instrument" for the purposes of being a "money transmitter" under Florida's money transmission statute. Consistent with this decision, the OFR stated that persons engaged in the business of selling virtual currency must obtain a license under the state's money transmission law. The OFR's industry alert notes "As of January 1, 2022, anyone conducting unlicensed money transmitter activity (including selling virtual currency) without having submitted an application to the OFR for a money services business license may be subject to administrative fines or penalties and possible criminal prosecution."
- Earlier this year, Arkansas [amended](#) the state's money transmission statute to expressly address virtual currency activities by, among other things, including "virtual currency" within the definition of "money transmission" activity and thereby making it subject to licensing under Arkansas's money transmission statute. The amended statute further extends certain reporting and recordkeeping requirements to virtual currency obligations of the licensee, by for example, requiring licensees to retain records for at least five years for each virtual currency obligation sold or paid.

Putting It Into Practice: With limited regulatory uniformity with respect to how companies are treated in their money transmission businesses among states, the added layer of offering virtual currencies brings with it more uncertainty and responsibility. In addition to the Florida and Arkansas actions noted above, California's DFPI released two recent opinion letters (see [here](#) and [here](#)) examining whether the sale and purchase of bitcoin through ATMs/kiosks is subject to licensure under the California Money Transmission Act (MTA). In each instance, because the companies'

activities were limited to selling bitcoin, DFPI determined that an MTA license was not required because the activities “do[] not involve the sale or issuance of a payment instrument, the sale or issuance of stored value, or receiving money for transmission.” Suffice it to say that companies operating in the virtual currency industry will need to keep abreast of changes in state laws and ensure that their compliance protocols take into account differing statutory constructs.

However, there’s also some optimism that additional uniformity may be on the horizon. On September 9, the Conference of State Bank Supervisors released the Uniform Money Transmission Modernization Act to, in part, replace 50 sets of state-specific money transmitter laws and rules with a single set of nationwide standards. Noticeably, the uniform act includes an article on virtual currency making it clear that virtual currency is included in money transmission when received for transmission.

Because enactment of a uniform law in each state could take time, companies will have to continue to wrestle with uncertainties in the near-term, which includes monitoring the money transmissions laws and regulatory guidance of each state in which they intend to conduct business

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