

Florida Governor Signs Legislation Easing Cryptocurrency Regulation

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On May 12, 2022, Florida Governor Ron DeSantis signed new legislation, [CS/HB 273](#), defining and deregulating cryptocurrency in the state. The legislation amends Florida's financial regulations targeting money service businesses (MSBs), creates a new definition for "virtual currency," and ultimately eases restrictions on Florida's crypto industry. The bill will become effective on January 1, 2023. Winston & Strawn LLP is actively following these developments, given the potential ramifications for our clients.

CS/HB 273 Deregulates and Defines Cryptocurrency

Generally, CS/HB 273 makes several amendments that define and deregulate cryptocurrency in Florida. The bill does so by easing MSB requirements for cryptocurrency users and clarifying definitions specific to cryptocurrency.

A. Defining Virtual Currency

CS/HB 273 takes the important step of defining "virtual currency" under Chapter 560 of the Florida Statutes (Ch. 560). Virtual currency is defined as "a medium of exchange in electronic or digital format that is not currency." However, the definition explicitly excludes virtual currency that is "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 "[u]sed 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."

This definition is fairly expansive and includes popular forms of cryptocurrency, such as Bitcoin, Ether, and Tether. However, it makes important exclusions for specific uses. For example, cryptocurrency rewards and incentives used in popular games, such as Axie Infinity and Decentraland, likely would be excluded. Additionally, popular rewards programs, such as credit card points, would seemingly be excluded as well. As discussed further below, these exclusions are important, as they limit the MSB compliance requirements for the parties offering these game rewards and rewards programs.

B. Easing MSB Requirements for Individuals

CS/HB 273 eases MSB licensing requirements to exclude virtual currency transactions if an intermediary is not involved.

Under Ch. 560, money transmitters are subject to extensive and restrictive licensing requirements as a type of MSB. Specifically, MSBs must file for a license, have a net worth of at least \$100,000, have corporate surety bonds, possess permissible investments, and be subject to extensive record-keeping and anti-money laundering laws.

With the passage of CS/HB 273, a money transmitter license is only required for a person acting as an intermediary “to transmit ... virtual currency from one person to another location or person,” and only if the intermediary “has the ability to unilaterally execute or indefinitely prevent a transaction.” If persons in a transaction fall outside this definition, they are not required to be licensed. This change clarifies and deregulates cryptocurrency transactions under Ch. 560. Prior to the passage of CS/HB 273, cryptocurrency was not expressly included in Ch. 560. This led to confusion about how cryptocurrency transactions would be treated and whether individuals trading cryptocurrency would be violating Florida’s financial regulations.

In that regard, CS/HB 273 addresses the industry backlash from a 2019 Florida Third District Court of Appeal opinion finding that a defendant engaged in two-party cryptocurrency transactions was required to be licensed as an MSB (*State v. Espinoza*, 264 So. 3d 1055, 1059-60 (Fla. 3d DCA 2019)). This opinion was inconsistent with the Florida Office of Financial Regulation’s prior view on that point, expressed by the regulatory agency in a Petition for Declaratory Statement that was known throughout the cryptocurrency community in Florida. With CS/HB 273, these two-party, individual transactions are no longer subject to MSB licensing. This greatly deregulates many private transactions that occur in Florida.

C. Easing Restrictions on Platforms and Intermediaries

Although individuals may be excluded from financial regulations, prominent cryptocurrency platforms, such as Coinbase or Voyager, will still require MSB licenses.

CS/HB 273 provides additional easing measures for these platforms. First, the statute amends the definition of “monetary value” to narrow the regulations for virtual currency to only MSB regulations for money transmitters, but not other licenses under Ch. 560. Similarly, the definition of “payment instrument” is amended to include instruments used for the transmission, exchange or payment of currency or monetary value, but the instrument is not the currency or monetary value itself. This would exclude most virtual currencies from its scope.

In addition, CS/HB 273 also allows licensees under Florida’s permissible-investments statutes to hold virtual currency in trust. Previously, money transmitters that transmit virtual currency would need to also hold the equivalent value in cash or other enumerated assets. Now, the money transmitter must only hold virtual currency of the same type and amount owed or obligated to the person or location receiving the transmissions.

CS/HB 273 does impose several requirements on virtual currency transmitters. For example, virtual currency transmitters under Ch. 560 must now ensure that the virtual currency is available to the designated recipient within 10 business days after receipt and confirm receipt. These transmitters must also keep additional records, including daily records of virtual currency transmitted. To note, these requirements were previously in place, but now explicitly include virtual currency transmitters in their scope.

Impacts of CS/HB 273

CS/HB 273 is set to have wide-ranging impacts when it becomes effective on January 1, 2023. As several experts have stated, the statute reconfirms Florida’s position as a crypto-friendly hub. This may lead to increased virtual currency transactions, activities, and investments in the state.

In its analysis of the bill, the Florida House of Representatives took a more measured approach. The House noted that the “bill’s overall impact on the private sector, while likely positive, is still indeterminate.” Although the bill provides further clarity, it seems unclear whether more businesses will now forgo MSB licenses or whether applications will increase.

CS/HB 273 is indicative of larger national trends and divides addressing cryptocurrency. Despite Florida's comparatively lenient policies, virtual currency businesses are still potentially subject to federal regulations and the regulations of other states in which they do business or service customers. These regulations may continue to expand, given recent actions by the federal government, including the issuance of President Biden's Executive Order and increased scrutiny over virtual currency given the ongoing Ukraine-Russian conflict.

Ultimately, CS/HB 273 provides further clarity and deregulation for the crypto industry in Florida. Winston & Strawn is closely monitoring these developments. We will provide our clients and friends of the firm with more information on this topic as it becomes available.

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