

Is Cryptocurrency Money? Depends on Your State

August 29, 2018

Is cryptocurrency money? In America, the question is largely decided by the regulators charged with overseeing their state's money transmitter rules.

There was a time when it made a lot of sense for states to regulate money transmission, or the business of transferring funds, currency, or other substitutes of money. In a pre-digital economy, almost all money transmitter businesses had to be physically located in the state where they offered payment or financial services for its residents, such as facilitating the payment of electric bills or exchanging currencies before a trip.

But in the crypto era, state-by-state money transmitter rules just make things more complicated. There is no clarity about whether a company issuing a token, operating a wallet or facilitating crypto to crypto or crypto to fiat transactions needs a license in every state in which it could theoretically operate. This type of uncertainty, and the fear of unknowingly falling on the wrong side of state regulators, stifles innovation.

Today money transmitter businesses often have to apply for separate licenses within the states they operate, in addition to registering as a "Money Service Business" with the federal government's Financial Crimes Enforcement Network (FinCEN).

This has made the cost of offering money transmission services across the country incredibly expensive and time-consuming. Though the cost and difficulty of obtaining a license varies by state, as of August 2018 every state except Montana requires at least some money service businesses to obtain a money transmitter license to lawfully operate.

This burden is impractical for most businesses that wish to offer nationwide services at launch. There are proposals by some, including the Conference of State Bank Supervisors, to implement license reciprocity among states. The Office of the Comptroller of the Currency, a government

bureau that regulates national banks in the US, also recently decided to accept national bank charter applications from fintech companies. However, these are not immediate solutions.

The digital age has also complicated the definition of "money," "transmission," and "custody." There is little consistency across different state regulators, and it's not always clear how decentralized payment networks or the issuances of digital assets implicate existing regulations. Some states, for better (Wyoming) or worse (New York), have explicitly amended legislation to address digital assets, but for every clear piece of legislative guidance, there are many jurisdictions that leave entrepreneurs -- and in some cases, digital currency users -- in the dark.

Justin Wales and Arnaldo Rego are lawyers at Carlton Fields.

The below map contains a summary of how each state (including Washington D.C. and Puerto Rico) applies its Money Transmission Laws (MTLs) or equivalent to the sale, transmission or transfer of digital assets, including cryptocurrencies. In the map below, we characterized each state's MTL and its applicability to the sale, transmission or transfer of cryptocurrencies as being:

- Applicable only to intermediaries that hold fiat currency
- Specific applicable virtual currency regulations
- Likely not applicable to cryptocurrencies
- Not applicable to cryptocurrencies
- Applicable to cryptocurrencies (requires a license)
- Unclear
- No regulation

Alabama	Requires a License	The applicable statute explicitly includes "virtual currency "as a form at monetary value and requires a license for anyone who that sells or issues monetary value evidenced by an electronic record.
Alaska	Likely Not Applicable	The applicable statute does not explicitly include the concept of "virtual currencies"; however, it does include the concept of "monetary value" as a medium of exchange whether or not redeemable in money. The statute requires a license for the transmission or sale of monetary value evidenced by an electronic record. The Alaska State Legislature introduced a bill to add "virtual currencies" to the statute, which appears to have failed.
Arizona	Likely Not Applicable	The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value." The statute requires a license for the the transmission and exchange of "money" or the sale and exchange of "payment instruments." Arizona has

		issued no public guidance on the statute's applicability to cryptocurrencies.
Arkansas	Unclear	The applicable statute does not explicitly include the concept of "virtual currencies"; however, it does include the concept of "monetary value" as a medium of exchange whether or not redeemable in money. The statute requires a license for the transmission or sale of monetary value evidenced by an electronic record.
California	Not Applicable	California has issued no public guidance on the applicability of its MTL statute to cryptocurrencies; however, it has consistently interpreted (albeit on a case-by-case basis) that transactions/ transfers involving cryptocurrencies are not subject to regulation under the State's MTL, even in certain cases where the transaction/transfer involves one party acting as a temporary custodian of fiat currency. Legislation has been re-introduced (Assembly Bill 1123) which proposes to create a Digital Currency Business Enrollment Program that

		<p>would require all companies that store, transmit, exchange, or issue digital currencies to qualify as a "digital currency business" and pay a non-refundable \$5,000 fee to participate in the program.</p>
<p>Colorado</p>	<p>Applicable only to Intermediaries that Hold Fiat Currency</p>	<p>The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value," The statute requires a license for the sale, transmission or exchange of money (which is not defined). The Colorado House of Representatives endorsed a bill that would subject people who buy, sell or exchange cryptocurrency to regulation under the law. Even though the bill is pending, the Legislature has suggested that under current law, persons who offer cryptocurrency "'wallets'," buy or sell cryptocurrencies, or exchange cryptocurrency with fiat currency are not clearly outside the scope of activity subject to the State's MTL.</p>
<p>Connecticut</p>	<p>Requires a License</p>	<p>The applicable statute explicitly includes virtual currency" as a form of</p>

		<p>medium of exchange or stored value, the issuance, sale and transmission of which requires a license under the law.</p>
<p>Delaware</p>	<p>Likely Not Applicable</p>	<p>The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value.". The statute requires a license for the transmission of money (which is not defined).</p>
<p>Florida</p>	<p>Unclear</p>	<p>The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value." The statute requires a license for the sale, transmission or exchange of money (which is not defined). The Colorado House of Representatives endorsed a bill that would subject people who buy, sell or exchange cryptocurrency to regulation under the law. Even though the bill is pending, the Legislature has suggested that under current law, persons who offer cryptocurrency "'wallets'," buy or sell cryptocurrencies, or exchange cryptocurrency with fiat currency are not clearly outside the scope of</p>

		activity subject to the State's MTL.
Georgia	Requires a License	The applicable statute explicitly includes "virtual currency" as a form of "monetary value." The statute requires a license for anyone who sells "payment instruments" (which is defined as any instrument, order, or device for the payment or transmission of money or monetary value, whether or not it is a negotiable instrument) and/or engages in the business of receiving monetary value for transmission or transmitting monetary value, among other things.
Hawaii	Requires a License	Hawaii has issued public guidance on the applicability of the State's MTL to cryptocurrency transactions, stating generally that "cryptocurrency transmission" requires a money transmission license under the State's MTL,
Idaho	Applicable only to Intermediaries that Hold Fiat Currency	Idaho issued several "Money Transmitter No-Action and Opinion Letters" providing public guidance on the applicability of the

		<p>State's MTL to cryptocurrency transactions. It states that an exchanger that sells its own inventory of virtual currency is generally not subject to the State's MTL; however, if an individual or entity acts as a virtual currency exchanger and accepts fiat currency for later delivery to a third party in association with the purchase of a virtual currency, then such person or entity must be licensed as a money transmitter.</p>
<p>Illinois</p>	<p>Applicable only to intermediaries that Hold Fiat Currency</p>	<p>The Illinois has Issued public guidance on the applicability of the State's MTL to cryptocurrency transactions, stating that decentralized cryptocurrencies are not considered "money" for the purpose of the statute; however, cryptocurrency transactions involving fiat currency may be subject to the State's MTL. Generally, cryptocurrency transactions involving two parties buying, selling or transferring their own supply of cryptocurrencies are not subject to the State's MTL. Transactions involving both digital currency and fiat currency</p>

		<p>through a third party exchanger are generally considered to be money transmission, except in cases where the third party is acting only as a "payment processor that accepts and transfers payments in connection with facilitating a purchase via an agreement with the seller of goods or services.</p>
<p>Indiana</p>	<p>Likely Not Applicable</p>	<p>The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value." The statute requires a license for the transmission of "money" and/or the sale or issuance of "payment instruments.".</p>
<p>Iowa</p>	<p>Unclear</p>	<p>The applicable statute does not explicitly include the concept of "virtual currencies"; however, it does include the concept of "monetary value" as a medium of exchange whether or not redeemable in money. The statute requires a license for the transmission or sale of monetary value evidenced by an electronic record.</p>
<p>Kansas</p>	<p>Applicable only to Intermediaries that Hold</p>	<p>The Kansas has issued public guidance on the</p>

Fiat Currency

applicability of the State's MTL to cryptocurrency transactions, stating that decentralized cryptocurrencies are not considered "money" for the purpose of the statute; however, cryptocurrency transactions involving fiat currency may be subject to the State's MTL. Generally, cryptocurrency transactions involving two parties buying, selling or transferring their own supply of cryptocurrencies are not subject to the State's MTL; however, transactions involving both digital currency and fiat currency through a third party exchanger is generally considered to be money transmission.

Kentucky

Unclear

The applicable statute does not explicitly include the concept of "virtual currencies"; however, it does include the concept of "monetary value" as a medium of exchange whether or not redeemable in money. The statute requires a license for the transmission or issuance of monetary value evidenced by an electronic record.

Louisiana	Requires a License	Louisiana has issued public guidance on the applicability of the State's MTL to cryptocurrency transactions, stating that a person identified as an "exchanger" under the FinCEN guidance is the only party who may be subject to licensure as a money transmitter in the State. FinCEN has characterized sellers of decentralized virtual currencies in exchange for another virtual currency or fiat currency, among others, as "exchangers."
Maine	Likely Not Applicable	The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value." The statute requires a license for the transmission of "money" or the sale or issuance of "payment instruments."
Maryland	Not Applicable	Maryland has issued public guidance on the applicability of the State's MTL to-cryptocurrency transactions, stating that Maryland currently does not regulate virtual currencies.

Massachusetts	Not Applicable	<p>Massachusetts has issued public guidance on the applicability of the State's MTL to cryptocurrency transactions, stating that the statute does not apply to the transmission of cryptocurrencies if they are not being transmitted to foreign countries.</p> <p>Therefore, the purchase and sale of cryptocurrencies does not implicate the requirement of obtaining a money transmission license in the state.</p>
Michigan	Unclear	<p>The applicable statute does not explicitly include the concept of "virtual currencies"; however, it does include the concept of "monetary value" (not defined). The statute requires a license for the transmission of monetary value.</p>
Minnesota	Likely Not Applicable	<p>The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value.". The statute requires a license for the transmission of "money" or the sale and issuance of "payment instruments."</p>

Mississippi	Unclear	The applicable statute does not explicitly include the concept of "virtual currencies"; however, it does include the concept of "monetary value" as a medium of exchange, whether or not redeemable in money. The statute requires a license for the transmission of monetary value.
Missouri	Likely Not Applicable	The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value," The statute requires a license for the issuance of checks, defined as any instrument for the transmission or payment of money and shall also include any electronic means of transmitting or paying money.
Montana	No Regulation	No Regulation.
Nebraska	Unclear	The applicable statute does not explicitly include the concept of "virtual currencies"; however, it does include the concept of "monetary value" as a medium of exchange whether or not redeemable in money. The statute requires a license for the

		transmission or sale of monetary value evidenced by an electronic record.
Nevada	Likely Not Applicable	The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value," The statute requires a license for the transmission of money and the sale of checks (both not defined}.
New Hampshire	Not Applicable	The applicable statute explicitly includes "convertible virtual currency" as a form of "stored value" and "monetary value.". The statute, however, exempts persons or entities who engage in the business of selling or issuing stored value solely in the form of convertible virtual currency or receive convertible virtual currency for transmission to another location from having to obtain a license.
New Jersey	Likely Not Applicable	The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value." The statute requires a license for the transmission of "money" or

		the sale and issuance of "payment instruments."
New Mexico	Unclear	<p>The applicable statute does not explicitly include the concept of "virtual currencies"; however, it does include the concept of "monetary value" as a medium of exchange whether or not redeemable in money. The statute requires a license for the transmission or sale of monetary value evidenced by an electronic record.</p> <p>MTL: The applicable MTL statute does not explicitly include the concept of "virtual currencies" or "monetary value.". The statute requires a license for the sale or issuance of "checks" or for any person or entity engaged in the business of receiving "money" for transmission.</p>
New York	<p>MTL Likely Not Applicable</p> <p>NY "Bitlicense" Requires a License</p>	<p>Bitlicense: New York's "Bitlicense" statute requires a licenses for any person or entity that conducts any one of the following types of activities involving New York or a New York resident:</p> <p>(a) receiving Virtual Currency for Transmission</p>

		<p>or Transmitting Virtual Currency, except where the transaction is undertaken for non-financial purposes and does not involve the transfer of more than a nominal amount of Virtual Currency;</p> <p>(b) storing, holding, or maintaining custody or control of Virtual Currency on behalf of others;</p> <p>(c) buying and selling Virtual Currency as a customer business;</p> <p>(d) performing Exchange Services as a customer business; or</p> <p>(e) controlling, administering, or issuing a Virtual Currency.</p>
North Carolina	Requires a License	The applicable statute explicitly Includes "virtual currency" as a form of "stored value." The statute requires a license for anyone that engages in the business of issuing or selling "stored value" or receiving and transmitting "stored value," including maintaining control of

		virtual currency on behalf of others.
North Dakota	Unclear	The applicable statute does not explicitly include the concept of "virtual currencies"; however, it does include the concept of "monetary value" as a medium-of exchange whether or not redeemable in money. The statute requires a license for the transmission or sale of monetary value evidenced by an electronic record.
Ohio	Unclear	The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value." The statute requires a license for the receipt of "money or its equivalent" for transmission.
Oklahoma	Likely Not Applicable.	The applicable statute does not* explicitly include the concept of "virtual currencies" or "monetary value.". The statute requires a license for the transmission of a medium of exchange that is authorized or adopted by the United States or a foreign government.

Oregon	Requires a License	The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value." The statute requires 3 license for the transmission of money or the selling or issuing of payment. Oregon has publicly stated that the definition of "money" was defined in the statute to cover the ever changing landscape of virtual currency, including Bitcoin.
Pennsylvania	Likely Not Applicable	The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value," The statute requires a license for the transmission of currency or legal tender or any other product that is generally recognized as a medium of exchange.
Puerto Rico	Likely Not Applicable	The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value," The statute requires a license for "money transmission" (defined as any order of payment, including, but not limited to bank drafts, checks, personal money orders, or any other means of

		transferring money, Including those carried out by electronic transfer, wire, telephone, or any other medium, processed in favor of a beneficiary).
Rhode Island	Likely Not Applicable	The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value,". The statute requires a license for "electronic money transfer" (defined as receiving money for transmission within the United States or to locations abroad by any means including, but not limited to, wire, facsimile, or other electronic transfer system).
South Carolina	Unclear	The applicable statute does not explicitly include the concept of "virtual currencies"; however, it does include the concept of "monetary value" as a medium of exchange whether or not redeemable in money. The statute requires a license for the transmission or sale of monetary value evidenced by an electronic record.
South Dakota	Unclear	The applicable statute does not explicitly include the

		<p>concept of "virtual currencies"; however, it does include the concept of "monetary value" as a medium of exchange whether or not redeemable in money. The statute requires a license for the transmission or sale of monetary value evidenced by art electronic record.</p>
Tennessee	Applicable only to Intermediaries that Hold Fiat Currency	<p>Tennessee has issued public guidance on the applicability of the State's MTL to cryptocurrency transactions, stating that cryptocurrencies are not considered "money" for the purpose of the statute; however, cryptocurrency transactions involving fiat currency may be subject to the State's MTL. Generally, cryptocurrency transactions involving two parties buying, selling or transferring their own supply of cryptocurrencies are not subject to the State's MTL; however, transactions involving both cryptocurrency and fiat currency through a third party exchanger is generally considered to be money transmission.</p>
Texas	Applicable only to Intermediaries that Hold	<p>Texas has issued public guidance on the</p>

Fiat Currency

applicability of the State's MTL to cryptocurrency transactions, stating that decentralized cryptocurrencies are not considered "money" for the purpose of the statute; however, cryptocurrency transactions involving fiat currency may be subject to the State's MTL. Generally, cryptocurrency transactions involving two parties buying, selling or transferring their own supply of cryptocurrencies are not subject to the State's MTL; however, transactions involving both virtual currencies and fiat currency through a third party exchanger is generally considered to be money transmission.

Utah

Likely Not Applicable

The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value." The statute requires a license for the transmission of "money" and/or the sale or issuance of "payment instruments."

Vermont

Requires a License

The applicable statute explicitly includes "virtual currency" as a form of "stored value." The statute requires a license for

		<p>anyone that sells or issues "stored value" among other things. Therefore, the sale or issuance of cryptocurrencies would be considered the sale of stored value and therefore, money transmission.</p>
Virginia	Applicable only to Intermediaries that Hold Fiat Currency	<p>Virginia has Issued public guidance on the applicability of the State's MTL to cryptocurrency transactions, stating that Virginia currently does not regulate virtual currencies; however, to the extent virtual currency transactions also involve the transfer of fiat Currency, they may be regulated under the State's MTL,</p>
Washington	Requires a License	<p>The applicable statute explicitly includes "virtual currency" as a form of "money or its equivalent value.". The statute requires a license for anyone that (i) sells "payment instruments" (which is defined as a check, draft, money order, or traveler's check for the transmission or payment of money or Its equivalent value, whether or not negotiable) and/or (if) receives money or its equivalent value to</p>

		transmit, deliver, or instruct to be delivered to another location, inside or outside the United States, by any means including but not limited to by wire, facsimile, or electronic transfer.
Washington D.C.	Likely Not Applicable	The applicable statute does not explicitly include the concept of "virtual currencies" or "monetary value," The statute requires a license for the transmission of "money" and/or the sale or issuance of "payment instruments.".
West Virginia	Likely Not Applicable	The applicable statute does not explicitly include the concept of "virtual currencies. "The statute requires a license for the sailing or issuing checks or the business of receiving other value that substitutes for money by any means for the purpose of transmitting, either prior to or after receipt, that other value that substitutes for money by wire, facsimile or other electronic means.
Wisconsin	Applicable only to Intermediaries that Hold Fiat Currency	Wisconsin has issued public guidance on the applicability of the State's MTL to cryptocurrency transactions, stating that

		<p>the statute does not currently give the Department the authority to regulate virtual or supervise companies whose business activities are limited to those involving virtual currency. However, should the transmission of virtual currency include the involvement of sovereign currency, it may be subject to licensure depending on how the transaction is structured.</p>
Wyoming	Not Applicable	<p>The applicable statute explicitly exempts any buying, selling, issuing, or taking custody of payment instruments or stored value in the form of virtual currency or receiving virtual currency for transmission to allocation within or outside the United States by any means from requiring a license.</p>

Related Practices

Blockchain and Digital Currency
Technology

Related Industries

Technology

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.