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Authors:

[Courtney Rogers Perrin](#)

[Miranda B. Roberts](#)

You Thought Federal Compliance Was Enough? Don't Forget the States

Most virtual asset providers are aware of federal-level guidance, such as the money services business regulations of the United States, the Virtual Asset Service Providers Act in the Cayman Islands, and the Markets in Crypto-Assets regulations pending in the European Union. However, many are less familiar with the state-level regulatory considerations, such as state money transmitter licenses in the United States.

As one example—realizing all states are different—the Kentucky Department of Financial Institutions (KDFI) has published guidance in the form of the [“Virtual Currency & the Kentucky Money Transmitter Act of 2006”](#) (the “Guidance”), which provides that virtual currency transactions may be subject to higher regulation than previously assumed. The Guidance attempts to clarify the applicability of the Kentucky Money Transmitter Act of 2006 (the “Act”) to virtual currency transactions and promote compliance with the same.

In general, the Act from 2006 sets forth the legal requirements governing money transmission activities, such as requiring Kentucky companies engaged in those activities to be licensed as “money transmitter” companies. The Guidance explicitly confirms that those activities include certain transactions involving virtual currency—such as digital currency, cryptocurrency, digital asset, assets represented by digital tokens or coins, assets captured through centralized or distributed ledger (i.e., blockchain) or other types of technology utilized to transmit value.

Specifically, the Guidance clarifies that the Act’s existing regulations apply to—and are thus enforceable against—virtual currency transactions involving the transmission or delivery (or the instruction of the same) of monetary value to another location by any means (wire, facsimile, electronic transfer, issuing stored value, etc.). For purposes of the Act, the foregoing represents a “money transmission”; persons engaged in the business of money transmissions are “money transmitters”; “monetary value” means a

medium of exchange, whether redeemable in money; and “stored value” is simply monetary value evidenced by an electronic record. KRS 286.11-003.

The Guidance also provides the relevant factors that the KDFI will purportedly consider in determining whether a virtual currency transaction is governed by the Act. These factors include:

- Whether monetary value is involved (i.e., Does the subject virtual currency meet the Act’s definition of monetary value?)
- Whether a money transmission is involved (i.e., Is a third party transmitting monetary value to another location?)
- Whether the third party qualifies as a money transmitter (i.e., Does the third party meet the KRS 286.11-003 definition of “money transmitter?”)

Additionally, while only briefly mentioned, the Guidance notes that certain money transmission activities involving virtual currency may also be subject to further regulatory requirements, either under alternate provisions of Kentucky’s Financial Services Code (KRS Chapter 286) or the Kentucky Securities Act (KRS Chapter 292).

If you have any questions about whether your business might be required to have a money transmitter license based in Kentucky or any other state, please contact the authors or any attorney with Frost Brown Todd’s [Blockchain Team](#).

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