

DIGITAL ASSET AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: _____

LONG TITLE

General Description:

This bill establishes a framework for the regulation of digital assets.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes a fee for the provision of custodial services of digital assets;
- ▶ establishes jurisdiction over banks providing custodial services of digital assets;
- ▶ classifies digital assets;
- ▶ describes the requirements for:
 - perfection of digital assets; and
 - financing statements for digital assets;
- ▶ authorizes banks to provide custodial services of digital assets;
- ▶ describes the conditions and terms under which a bank may provide custodial services for a digital asset;
- ▶ establishes the terms under which a person has rights in virtual currency; and
- ▶ describes the conditions required for a person to exercise control of virtual currency.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **7-1-401**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

31 **7-1-501**, as last amended by Laws of Utah 2016, Chapter 288

32 **7-3-10**, as last amended by Laws of Utah 2018, Chapter 281

33 ENACTS:

34 **7-27-101**, Utah Code Annotated 1953

35 **7-27-102**, Utah Code Annotated 1953

36 **7-27-103**, Utah Code Annotated 1953

37 **7-27-104**, Utah Code Annotated 1953

38 **7-27-201**, Utah Code Annotated 1953

39 **7-27-202**, Utah Code Annotated 1953

40 **7-27-203**, Utah Code Annotated 1953



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **7-1-401** is amended to read:

44 **7-1-401. Fees payable to commissioner.**

45 (1) Except for an out-of-state depository institution with a branch in Utah, a depository
46 institution under the jurisdiction of the department shall pay an annual fee:

47 (a) computed by averaging the total assets of the depository institution shown on each
48 quarterly report of condition for the depository institution for the calendar year immediately
49 preceding the date on which the annual fee is due under Section **7-1-402**; and

50 (b) at the following rates:

51 (i) on the first \$5,000,000 of these assets, the greater of:

52 (A) 65 cents per \$1,000; or

53 (B) \$500;

54 (ii) on the next \$10,000,000 of these assets, 35 cents per \$1,000;

55 (iii) on the next \$35,000,000 of these assets, 15 cents per \$1,000;

56 (iv) on the next \$50,000,000 of these assets, 12 cents per \$1,000;

57 (v) on the next \$200,000,000 of these assets, 10 cents per \$1,000;

58 (vi) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and

59 (vii) on all amounts over \$600,000,000 of these assets, 2 cents per \$1,000.

60 (2) A financial institution with a trust department shall pay a fee determined in
61 accordance with Subsection (7) for each examination of the trust department by a state
62 examiner.

63 (3) Notwithstanding Subsection (1), a credit union in [~~its~~] the credit union's first year of
64 operation shall pay a basic fee of \$25 instead of the fee required under Subsection (1).

65 (4) A trust company that is not a depository institution or a subsidiary of a depository
66 institution holding company shall pay:

67 (a) an annual fee of \$500; and

68 (b) an additional fee determined in accordance with Subsection (7) for each
69 examination by a state examiner.

70 (5) Any person or institution under the jurisdiction of the department that does not pay
71 a fee under Subsections (1) through (4) shall pay:

72 (a) an annual fee of \$200; and

73 (b) an additional fee determined in accordance with Subsection (7) for each
74 examination by a state examiner.

75 (6) A person filing an application or request under Section [7-1-503](#), [7-1-702](#), [7-1-703](#),
76 [7-1-704](#), [7-1-713](#), [7-5-3](#), or [7-18a-202](#) shall pay:

77 (a) (i) a filing fee of \$500 if on the day on which the application or request is filed the
78 person:

79 (A) is a person with authority to transact business as a depository institution, a trust
80 company, or any other person described in Section [7-1-501](#) as being subject to the jurisdiction
81 of the department; and

82 (B) has total assets in an amount less than \$5,000,000; or

83 (ii) a filing fee of \$2,500 for any person not described in Subsection (6)(a)(i); and

84 (b) all reasonable expenses incurred in processing the application.

85 (7) (a) Per diem assessments for an examination shall be calculated at the rate of \$55
86 per hour:

87 (i) for each examiner; and

88 (ii) per hour worked.

89 (b) For an examination of a branch or office of a financial institution located outside of

90 this state, in addition to the per diem assessment under this Subsection (7), the institution shall
91 pay all reasonable travel, lodging, and other expenses incurred by each examiner while
92 conducting the examination.

93 (8) In addition to a fee under Subsection (5), a person registering under Section
94 7-23-201 or 7-24-201 shall pay an original registration fee of \$300.

95 (9) In addition to a fee under Subsection (5), a person applying for licensure under
96 Chapter 25, Money Transmitter Act, shall pay an original license fee of \$300.

97 (10) A financial institution which provides custodial services under Chapter 27, Digital
98 Asset Management Act, shall pay:

99 (a) an annual fee of \$200; and

100 (b) an additional fee of 2 cents per \$1,000,000 of digital assets for which the financial
101 institution provides custodial services.

102 Section 2. Section **7-1-501** is amended to read:

103 **7-1-501. Institutions and persons subject to jurisdiction of department.**

104 (1) As provided in this title and the rules of the department, the persons and institutions
105 described in Subsection (2) are subject to:

- 106 (a) the jurisdiction of the department; and
- 107 (b) supervision and examination by the department.

108 (2) Subsection (1) applies to:

- 109 (a) a depository institution chartered under the laws of this state, including any
110 out-of-state branch of the depository institution;
- 111 (b) a Utah depository institution chartered by the federal government, but only to the
112 extent the application of this title is authorized by:
 - 113 (i) federal law; or
 - 114 (ii) the appropriate federal regulatory agency;
- 115 (c) a Utah branch of an out-of-state depository institution chartered under the laws of
116 another state;
- 117 (d) a Utah branch of an out-of-state depository institution chartered by the federal
118 government, but only to the extent the application of this title is authorized by:
 - 119 (i) federal law; or
 - 120 (ii) the appropriate federal regulatory agency;

- 121 (e) a service corporation or service organization, including a credit union service
 122 organization as defined in Section 7-9-3;
- 123 (f) a trust company;
- 124 (g) an escrow company;
- 125 (h) a person or institution engaged in this state in the business of:
- 126 (i) guaranteeing or insuring deposits, savings accounts, share accounts, or other
 127 accounts in depository institutions;
- 128 (ii) operating a loan production office for:
- 129 (A) a Utah depository institution;
- 130 (B) an out-of-state depository institution; or
- 131 (C) a foreign depository institution;
- 132 (iii) a check casher or deferred deposit lender, as defined in Section 7-23-102;
- 133 (iv) a title lender, as defined in Section 7-24-102; or
- 134 (v) money transmission, as defined in Section 7-25-102;
- 135 (i) a corporation or other business entity owning or controlling an institution subject to
 136 the jurisdiction of the department;
- 137 (j) subject to Subsection (3), a technology service provider that provides services to a
 138 depository institution subject to the jurisdiction of the department;
- 139 (k) a subsidiary or affiliate of an institution subject to the jurisdiction of the
 140 department; ~~and~~
- 141 (l) any person or institution that, with or without authority to do so, transacts business
 142 as, or holds itself out as being, a depository institution, trust company, or any other person or
 143 institution described in this section as being subject to the jurisdiction of the department[:]; ~~and~~
 144 (m) a financial institution providing custodial services, as defined in Section 7-27-101.
- 145 (3) A technology service provider is subject to regulation and examination by the
 146 commissioner to the same extent as if the service or activity of the technology service provider
 147 were being performed by the depository institution itself.
- 148 Section 3. Section 7-3-10 is amended to read:
- 149 **7-3-10. Organization -- Powers, rights, and privileges of banking corporation --**
 150 **Other business activities.**
- 151 (1) A bank chartered under this chapter shall be:

152 (a) a domestic corporation under Title 16, Chapter 10a, Utah Revised Business
153 Corporation Act; or

154 (b) subject to Section 7-1-810, including the requirement that the bank be an S
155 Corporation immediately before becoming a limited liability company, a limited liability
156 company created under Title 48, Chapter 3a, Utah Revised Uniform Limited Liability
157 Company Act.

158 (2) A bank has all the rights, privileges, and powers necessary or incidental to carrying
159 on the business of banking in addition to the powers granted:

160 (a) if the bank is a corporation, under Title 16, Chapter 10a, Utah Revised Business
161 Corporation Act; or

162 (b) subject to Section 7-1-810, if the bank is a limited liability company, under Title
163 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act.

164 (3) The commissioner may, by rule or order, determine that necessary or incidental
165 rights, privileges, and powers include:

166 (a) the rights, privileges, and powers held by national banks; or

167 (b) other business activities so long as the commissioner's determination is not
168 inconsistent with the rules, regulations, or other actions of the board of governors of the
169 Federal Reserve System under Section 4(c)(8) of the Bank Holding Company Act of 1956, 12
170 U.S.C. Sec. 1843(c)(8).

171 (4) The commissioner shall implement this section in a manner consistent with the
172 purposes set forth in Section 7-1-102.

173 (5) A bank may exercise the powers described in Chapter 27, Digital Asset
174 Management Act.

175 Section 4. Section 7-27-101 is enacted to read:

176 **CHAPTER 27. DIGITAL ASSET MANAGEMENT ACT**

177 **Part 1. General Provisions**

178 **7-27-101. Definitions.**

179 As used in this chapter:

180 (1) "Control," notwithstanding Section 7-1-103, and with respect to a digital consumer
181 asset or a digital security, means:

182 (a) a secured party, or an agent, custodian, fiduciary, or trustee of the secured party, has

183 the exclusive legal authority to conduct a transaction relating to the digital consumer asset or
184 the digital security, including by means of a private key or the use of a multi-signature
185 arrangement the secured party authorizes; or

186 (b) the secured party has created a smart contract which gives the secured party
187 exclusive legal authority to conduct a transaction relating to a digital consumer asset or the
188 digital security.

189 (2) (a) "Custodial services" means the safekeeping and management of customer digital
190 assets through the exercise of fiduciary and trust powers under this part.

191 (b) "Custodial services" includes fund administration and the execution of customer
192 instructions.

193 (3) "Debtor" means a person obligated on a digital asset.

194 (4) (a) "Digital asset" means a representation of economic, proprietary, or access rights
195 that is stored in a computer readable format.

196 (b) A "digital asset" is:

197 (i) a digital consumer asset;

198 (ii) a digital security; or

199 (iii) a virtual currency.

200 (5) (a) "Digital consumer asset" means a digital asset that is used or bought primarily
201 for consumptive, personal, or household purposes.

202 (b) "Digital consumer asset" includes an open blockchain token constituting intangible
203 personal property.

204 (c) "Digital consumer asset" does not include:

205 (i) a digital security; or

206 (ii) a virtual currency.

207 (6) (a) "Digital security" means a digital asset which constitutes a security, as that term
208 is defined in Section [70A-8-101](#).

209 (b) "Digital security" does not include:

210 (i) a digital consumer asset; or

211 (ii) a virtual currency.

212 (7) "Multi-signature arrangement" means a system of access control relating to a digital
213 asset for the purposes of preventing unauthorized transactions relating to the asset, in which

214 two or more private keys are required to conduct a transaction.

215 (8) (a) "Possession" means the ability to exclude others from the use of a digital asset.

216 (b) "Possession" includes:

217 (i) the use of:

218 (A) a private key;

219 (B) a multi-signature arrangement exclusive to the secured party; or

220 (C) a smart contract; and

221 (ii) delivery of certified digital securities.

222 (9) "Private key" means a unique element of cryptographic data, which is:

223 (a) held by a person;

224 (b) paired with a unique, publicly available element of cryptographic data; and

225 (c) associated with an algorithm that is necessary to carry out an encryption or

226 decryption required to execute a transaction.

227 (10) "Smart contract" means an automated transaction, as that term is defined in

228 Section [46-4-102](#), which is comprised of code, script, or programming language that executes

229 the terms of an agreement, and which may include taking custody of and transferring a digital

230 asset, or issuing executable instructions for these actions, based on the occurrence or

231 nonoccurrence of specified conditions.

232 (11) (a) "Virtual currency" means a digital asset that is:

233 (i) used as:

234 (A) a medium of exchange;

235 (B) a unit of account; or

236 (C) a store of value; and

237 (ii) not recognized as legal tender by the United States government.

238 (b) "Virtual currency" does not include:

239 (i) a transaction in which a merchant grants, as part of an affinity or rewards program,

240 value that cannot be taken from or exchanged with the merchant for legal tender or bank credit;

241 (ii) a digital representation of value that a publisher issues for use solely within an

242 online game, game platform, or family of games that the publisher sells or offers on the same

243 game platform;

244 (iii) a digital consumer asset; or

245 (iv) a digital security.

246 Section 5. Section **7-27-102** is enacted to read:

247 **7-27-102. Classification of digital assets.**

248 (1) Digital consumer assets are intangible personal property and shall be considered
249 general intangibles, as that term is defined in Section [70A-9a-102](#) for purposes of this chapter,
250 and Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions.

251 (2) Digital securities are intangible personal property and shall be considered securities
252 and investment property for purposes of this chapter, Title 70A, Chapter 8, Uniform
253 Commercial Code - Investment Securities, and Title 70A, Chapter 9a, Uniform Commercial
254 Code - Secured Transactions.

255 (3) Virtual currency is intangible personal property and, notwithstanding Subsection
256 [70A-1a-201](#)(2), shall be considered money for purposes of this chapter and Title 70A, Chapter
257 9a, Uniform Commercial Code - Secured Transactions.

258 (4) (a) A digital asset may be treated as a financial asset under Section [70A-8-101](#),
259 pursuant to a written agreement with the owner of the digital asset.

260 (b) If treated as a financial asset, a digital asset is intangible personal property.

261 (5) A bank providing custodial services under Section [7-27-104](#) shall be considered to
262 meet the requirements of a securities intermediary as that term is defined in Section [70A-8-101](#).

263 (6) Classification of digital assets under this section may not be construed to apply to
264 any other asset.

265 Section 6. Section **7-27-103** is enacted to read:

266 **7-27-103. Perfection of security interests in digital assets -- Financing statements.**

267 (1) (a) Notwithstanding Section [70A-9a-310](#), perfection of a security interest in a
268 digital asset may be achieved through control.

269 (b) A security interest held by a secured party that has control of the digital asset has
270 priority over a security interest held by a secured party that does not have control of the digital
271 asset.

272 (2) Before a secured party may take control of a digital asset, the secured party shall
273 enter into a control agreement with the debtor and all other necessary parties.

274 (3) A control agreement for a digital asset may:

275 (a) name the parties subject to the agreement;

276 (b) describe the digital asset subject to the agreement; and
277 (c) set the terms under which a secured party may pledge the secured party's security
278 interest in the digital asset as collateral for another transaction.

279 (4) If the debtor is located in Utah, the secured party may file a financing statement
280 with the Division of Corporations and Commercial Code, created in Section [13-1a-1](#), to perfect
281 the secured party's security interest in:

282 (a) the digital asset; or

283 (b) the proceeds from a digital asset if perfected in accordance with Section
284 [70A-9a-315](#).

285 (5) Notwithstanding any other provision of law, including Title 70A, Uniform
286 Commercial Code, a transferee takes a digital asset free of any security interest:

287 (a) if the transferee took the asset for value six or more months ago;

288 (b) the transferee never received notice of an adverse claim; and

289 (c) the transferee does not have actual notice of an adverse claim.

290 (6) Subsection (5) only applies to a security interest in a digital asset perfected by a
291 method other than control.

292 (7) Perfection by control creates a possessory security interest and does not require
293 physical possession.

294 (8) For purposes of Title 70A, Uniform Commercial Code, and this part, a digital asset
295 is located in the state if:

296 (a) a Utah custodian possesses or controls the digital asset;

297 (b) the debtor or secured party is physically located in the state; or

298 (c) the debtor or secured party is incorporated or organized in the state.

299 (9) Evidence of location in the state for purposes of Subsection (8) can be found in:

300 (a) a security agreement accompanying a possessory security interest or other secured
301 transaction that describes the possessory nature of the private key of a digital asset; and

302 (b) the choice of law in a security agreement.

303 Section 7. Section **7-27-104** is enacted to read:

304 **7-27-104. Custodial services of digital assets.**

305 (1) (a) A bank may provide custodial services consistent with this section upon
306 providing 60 days written notice to the commissioner.

307 (b) A bank that elects to provide custodial services under this section shall comply with
308 the provisions of this section.

309 (2) A bank may serve as a qualified custodian of a digital asset, as specified by the
310 United States Securities and Exchange Commission defined in 17 C.F.R. Sec. 275.206(4)-2.

311 (3) In performing custodial services for a digital asset, a bank shall:

312 (a) implement all accounting, account statement, internal control, notice, and other
313 standards specified by applicable state or federal law and rules for custodial services;

314 (b) maintain information technology best practices relating to digital assets held in
315 custody;

316 (c) fully comply with applicable federal and anti-money laundering, customer
317 identification, and beneficial ownership requirements; and

318 (d) take other actions necessary to carry out this section, which may include:

319 (i) exercising fiduciary powers similar to those permitted to national banks; and

320 (ii) ensuring compliance with federal law governing digital assets classified as
321 commodities.

322 (4) The commissioner may by rule made in accordance with Title 63G, Chapter 3, Utah
323 Administrative Rulemaking Act, specify required best practices described in Subsection (3)(b).

324 (5) (a) If a bank takes custody of a digital asset under this section, the digital asset is
325 not a depository liability or asset of the bank.

326 (b) A bank, or a bank's subsidiary, may register as an investment adviser, investment
327 company, or broker dealer as necessary.

328 (c) A bank shall maintain control over a digital asset while the bank has custody of that
329 digital asset.

330 (6) A customer shall elect, with respect to each of the digital assets of the customer
331 over which the bank maintains custody, a written agreement stating whether the bank's custody
332 is:

333 (a) under bailment as a nonfungible or fungible asset; or

334 (b) under bailment pursuant to Subsection (8).

335 (7) Digital assets held under bailment pursuant to Subsection (6)(a) shall be strictly
336 segregated from other assets.

337 (8) (a) A bank may undertake transactions with a customer's digital asset if:

338 (i) the customer elects for a bank to hold custody under bailment in Subsection (6)(b);
339 and

340 (ii) the customer provides instructions for the bank to undertake transactions with the
341 customer's digital asset.

342 (b) A bank maintains possession or control of a digital asset as described in Subsection
343 (6) if the bank enters into an agreement with the counterparty to a transaction which contains a
344 time for return of the asset.

345 (c) A bank shall not be liable for any loss suffered with respect to a transaction under
346 this subsection, except for liability consistent with fiduciary and trust powers as a custodian.

347 (9) A bank and a customer shall agree in writing to:

348 (a) the source code version the bank will use for each digital asset; and

349 (b) the treatment of each asset under Title 70A, Uniform Commercial Code.

350 (10) Any ambiguity in Subsection (9) shall be resolved in favor of the customer.

351 (11) A bank shall provide written notice to the customer, and require written
352 acknowledgment from the customer:

353 (a) of any non-emergency updates, including the material source code updates, relating
354 to any of the customer's digital assets of which the bank holds custody;

355 (b) of the heightened risk of loss from transactions under Subsection (8);

356 (c) that some risk of loss as a pro rata creditor exists as the result of custody as a
357 fungible asset or custody under Subsection (6)(b);

358 (d) that custody under Subsection (6)(b) may not result in the segregation of the
359 customer's digital assets from other customer assets; and

360 (e) that the bank is not liable for losses suffered under Subsection (8), except for
361 liability consistent with the bank's fiduciary and trust responsibilities.

362 (12) (a) A bank and a customer shall agree in writing to:

363 (i) a time period within which the bank must return to the customer a digital asset the
364 bank holds in custody; and

365 (ii) other material terms.

366 (b) If a customer makes an election under Subsection (6)(b), the bank and the customer
367 may also agree in writing to the form in which the bank shall return the digital asset.

368 (13) (a) All ancillary or subsidiary proceeds relating to digital assets held in custody

369 under this section shall accrue to the benefit of the customer, except as specified by a written
370 agreement with the customer, except as specified by a written agreement between the bank and
371 the customer.

372 (b) The bank may elect not to collect certain ancillary or subsidiary proceeds, as long
373 as the bank's election not to collect is disclosed in writing.

374 (c) A customer who makes an election under Subsection (6)(a) may withdraw the
375 digital asset in a form that permits the collection of the ancillary or subsidiary proceeds.

376 (14) (a) A bank may not authorize or permit rehypothecation of digital assets.

377 (b) A bank may not engage in any activity to use or exercise discretionary authority
378 relating to a digital asset except activity the bank engages in based on customer instructions.

379 (15) A bank may not take any action which would likely impair the solvency or the
380 safety and soundness of the bank.

381 (16) The commissioner shall make rules, in accordance with Title 63G, Chapter 3,
382 Administrative Rulemaking Act, and in consideration of the nature of customary banking
383 custodial services, to determine whether a bank's actions would impair the solvency or the
384 safety of the bank in violation of Subsection (15).

385 Section 8. Section 7-27-201 is enacted to read:

386 **Part 2. Virtual Currency**

387 **7-27-201. Definitions.**

388 (1) "Adverse claim" means a claim that a claimant has a property interest in a virtual
389 currency and that it is a violation of the rights of the claimant for another person to hold,
390 transfer, or deal with the virtual currency.

391 (2) "Qualifying purchaser" means a purchaser that obtains control of a virtual currency
392 for value and without notice of an adverse claim.

393 Section 9. Section 7-27-202 is enacted to read:

394 **7-27-202. Rights in virtual currency.**

395 (1) A purchaser of a virtual currency acquires all rights in the virtual currency that the
396 transferor had or had power to transfer.

397 (2) A purchaser of a limited interest in a virtual currency acquires rights only to the
398 extent of the interest purchased.

399 (3) In addition to acquiring the rights of a purchaser, a qualifying purchaser acquires

400 the purchaser's rights in a virtual currency free of any adverse claim.

401 (4) An action based on an adverse claim to a virtual currency, whether framed in
402 conversion, replevin, constructive trust, equitable lien, or another theory, may not be asserted
403 against a qualifying purchaser.

404 (5) A person has notice of an adverse claim if:

405 (a) the person has actual knowledge of the adverse claim; or

406 (b) the person is aware of facts sufficient to indicate that there is a significant
407 possibility that the adverse claim exists and deliberately avoids information that would
408 establish the existence of the adverse claim.

409 (6) The filing of a financing statement with the Division of Corporations and
410 Commercial Code, created in Section [13-1a-1](#), is not sufficient to serve as notice of an adverse
411 claim to a purchaser of a virtual currency.

412 Section 10. Section **7-27-203** is enacted to read:

413 **7-27-203. Control of virtual currency.**

414 (1) A person has control of a virtual currency if:

415 (a) the virtual currency, or the system in which the virtual currency is recorded, if any,
416 gives the person:

417 (i) the power to derive substantially all the benefit from the virtual currency;

418 (ii) subject to Subsection (2), the exclusive power to prevent others from deriving
419 substantially all the benefit from the virtual currency; and

420 (iii) subject to Subsection (2), the exclusive power to transfer control of the virtual
421 currency to another person or to cause another person to obtain control of a virtual currency
422 that derives from the virtual currency; and

423 (b) the virtual currency, a record attached to or logically associated with the virtual
424 currency, or the system in which the virtual currency is recorded, if any, enables the person to
425 readily identify the person as having the powers described in Subsection (1)(a).

426 (2) A power described in Subsection (1)(a)(ii) or (1)(a)(iii) is exclusive even if:

427 (a) the virtual currency or the system in which the virtual currency is recorded, if any,
428 limits the use to which the virtual currency may be put or has protocols to result in a transfer of
429 control; and

430 (b) the person has agreed to share the power with another person.

- 431 (3) For the purposes of Subsection (1)(b), a person may be identified through any
432 method, including:
- 433 (a) name;
 - 434 (b) identifying number;
 - 435 (c) cryptographic key;
 - 436 (d) office; or
 - 437 (e) account number.