Digital assets—existing law.

Sponsored by: Senator(s) Nethercott, Driskill, Perkins and Rothfuss and Representative(s) Harshman, Lindholm, Loucks, Olsen and Wilson

A BILL

for

AN ACT relating to property; classifying digital assets within existing laws; specifying that digital assets are property within the Uniform Commercial Code; authorizing security interests in digital assets; establishing an opt-in framework for banks to provide custodial services for digital asset property as directed custodians; specifying standards and procedures for custodial services under this act; clarifying the jurisdiction of Wyoming courts relating to digital assets; specifying applicability; authorizing the promulgation of rules; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 34-29-101 through 34-29-105 and 34.1-1-210 are created to read:
CHAPTER 29
DIGITAL ASSETS


(a) As used in this chapter:

(i) "Digital asset" means a representation of economic, proprietary or access rights that is stored in a computer readable format, and includes digital consumer assets, digital securities and virtual currency;

(ii) "Digital consumer asset" means a digital asset that is used or bought primarily for consumptive, personal or household purposes and includes:

(A) An open blockchain token constituting intangible personal property as otherwise provided by law;

(B) Any other digital asset which does not fall within paragraphs (iii) and (iv) of this subsection.
(iii) "Digital security" means a digital asset which constitutes a contract, transaction or arrangement where a person invests money in a common enterprise and is led to expect profits from the efforts of a promoter or a third party, and does not include any other asset within the meaning of security under W.S. 34.1-8-102(a)(xv);

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

(A) Used as a medium of exchange, unit of account or store of value; and

(B) Not recognized as legal tender by the United States government.

(b) The terms in paragraphs (a)(ii) through (iv) of this section are mutually exclusive.

34-29-102. Classification of digital assets as property; applicability to Uniform Commercial Code.
(a) Digital assets are classified in the following manner:

(i) Digital consumer assets are intangible personal property and shall be considered general intangibles, as defined in W.S. 34.1-9-102(a)(xlii), only for the purposes of article 9 of the Uniform Commercial Code, title 34.1, Wyoming statutes;

(ii) Digital securities are intangible personal property and shall be considered securities, as defined in W.S. 34.1-8-102(a)(xv), and investment property, as defined in W.S. 34.1-9-102(a)(xlix), only for the purposes of articles 8 and 9 of the Uniform Commercial Code, title 34.1, Wyoming statutes;

(iii) Virtual currency is intangible personal property and shall be considered money, notwithstanding W.S. 34.1-1-201(b)(xxiv), only for the purposes of article 9 of the Uniform Commercial Code, title 34.1, Wyoming statutes.

(b) Consistent with W.S. 34.1-8-102(a)(ix), a digital asset may be treated as a financial asset under that
paragraph, pursuant to a written agreement with the owner of
the digital asset. If treated as a financial asset, the
digital asset shall remain intangible personal property.

(c) A bank providing custodial services under W.S.
34-29-104 shall be considered to meet the requirements of
W.S. 34.1-8-102(a)(xiv).

(d) Classification of digital assets under this section
shall be construed in a manner to give the greatest effect to
this chapter, but shall not be construed to apply to any other
asset.

34-29-103. Perfection of security interests in digital
assets; financing statements.

(a) Notwithstanding the financing statement
requirement specified by W.S. 34.1-9-310(a) as otherwise
applied to general intangibles, perfection of a security
interest in a digital asset may be achieved through control,
as defined in paragraph (e)(i) of this section. A security
interest held by a secured party having control of a digital
asset has priority over a security interest held by a secured party that does not have control of the asset.

(b) Before a secured party may take control of a digital asset under this section, the secured party shall enter into a control agreement with the debtor. A control agreement may also set forth the terms under which a secured party may pledge its security interest in the digital asset as collateral for another transaction.

(c) A secured party may file a financing statement with the secretary of state, including to perfect a security interest in proceeds from a digital asset pursuant to W.S. 34.1-9-315(d).

(d) Notwithstanding any other provision of law, including article 9 of the Uniform Commercial Code, title 34.1, Wyoming statutes, a perfected security interest in a digital asset becomes unperfected two (2) years after a transferee takes the asset for value and does not have notice of an adverse claim.

(e) As used in this section:
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    (i) "Control" includes the term "possession",shall not require physical possession of an asset and means
2    the following:
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5    (A) A secured party, or an agent, custodian,
6    fiduciary or trustee of the party, has the exclusive authority
to conduct a transaction relating to a digital asset, including by means of a private key or the use of a
7    multi-signature arrangement;
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10    (B) A smart contract created by a secured
11    party which has the exclusive authority to conduct a
transaction relating to a digital asset. As used in this
12    subparagraph, "smart contract" means an automated
transaction, as defined in W.S. 40-21-102(a)(ii), or any
13    substantially similar analogue, which is comprised of code,
script or programming language that executes the terms of an
14    agreement, and which may include taking custody of and
15    transferring an asset, or issuing executable instructions for
these actions, based on the occurrence or nonoccurrence of
16    specified conditions.
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(ii) "Multi-signature arrangement" means a system of access control relating to a digital asset for the purposes of preventing unauthorized transactions relating to the asset, in which two (2) or more private keys are required to conduct a transaction, or any substantially similar analogue;

(iii) "Private key" means a unique element of cryptographic data:

(A) Held by a person;

(B) Paired with a unique, publicly available element of cryptographic data; and

(C) Associated with an algorithm that is necessary to carry out an encryption or decryption required to execute a transaction.

34-29-104. Digital asset custodial services.

(a) A bank may provide custodial services for digital assets consistent with this section upon providing sixty (60) days written notice to the commissioner. The provisions of
this section are cumulative and not exclusive as an optional framework for enhanced supervision of digital asset custody.

If a bank elects to provide custodial services for digital assets under this section, it shall comply with all provisions of this section.

(b) A bank may serve as a qualified custodian, as specified by the United States securities and exchange commission in 17 C.F.R. § 275.206(4)-2. In performing custodial services under this section, a bank shall:

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

(ii) Maintain information technology best practices relating to digital assets held in custody. The commissioner may specify required best practices by rule;

(iii) Fully comply with applicable federal anti-money laundering, customer identification and beneficial ownership requirements; and
(iv) Take other actions necessary to carry out this section, which may include exercising fiduciary powers similar to those permitted to national banks and ensuring compliance with federal law governing digital assets classified as commodities.

(c) A bank providing custodial services shall enter into an agreement with an independent public accountant to conduct an examination conforming to the requirements of 17 C.F.R. § 275.206(4)-2(a)(4) and (6), at the cost of the bank. The accountant shall transmit the results of the examination to the commissioner within one hundred twenty (120) days of the examination and may file the results with the United States securities and exchange commission as its rules may provide. Material discrepancies in an examination shall be reported to the commissioner within one (1) day. The commissioner shall review examination results upon receipt within a reasonable time and during any regular examination conducted under W.S. 13-3-702.

(d) Digital assets held in custody under this section are not depository liabilities or assets of the bank. A bank,
or a subsidiary, may register as an investment adviser, investment company or broker dealer as necessary. A bank shall maintain control over a digital asset while in custody. A customer shall elect, pursuant to a written agreement with the bank, one (1) of the following relationships for each digital asset held in custody:

(i) Custody under a bailment as a nonfungible or fungible asset. Assets held under this paragraph shall be strictly segregated from other assets; or

(ii) Custody under a bailment pursuant to subsection (e) of this section.

(e) If a customer makes an election under paragraph (d)(ii) of this section, the bank may, based only on customer instructions, undertake transactions with the digital asset. A bank maintains control pursuant to subsection (d) of this section by entering into an agreement with the counterparty to a transaction which contains a time for return of the asset. The bank shall not be liable for any loss suffered with respect to a transaction under this subsection, except
for liability consistent with fiduciary and trust powers as
a directed custodian under this section.

(f) A bank and a customer shall agree in writing
regarding the source code version the bank will use for each
digital asset, and the treatment of each asset under the
Uniform Commercial Code, title 34.1, Wyoming statutes if
necessary. Any ambiguity under this subsection shall be
resolved in favor of the customer.

(g) A bank shall provide clear, written notice to each
customer, and require written acknowledgement, of the
following:

(i) Prior to the implementation of any updates,
material source code updates relating to digital assets held
in custody, except in emergencies which may include security
vulnerabilities;

(ii) The heightened risk of loss from transactions
under subsection (e) of this section;
(iii) That some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset or custody under paragraph (d)(ii) of this section;

(iv) That custody under paragraph (d)(ii) of this section may not result in the digital assets of the customer being strictly segregated from other customer assets; and

(v) That the bank is not liable for losses suffered under subsection (e) of this section, except for liability consistent with fiduciary and trust powers as a directed custodian under this section.

(h) A bank and a customer shall agree in writing to a time period within which the bank must return a digital asset held in custody under this section. If a customer makes an election under paragraph (d)(ii) of this section, the bank and the customer may also agree in writing to the form in which the digital asset shall be returned.

(j) All ancillary or subsidiary proceeds relating to digital assets held in custody under this section shall accrue to the benefit of the customer, except as specified by a
written agreement with the customer. The bank may elect not to collect certain ancillary or subsidiary proceeds, as long as the election is disclosed in writing and a customer may withdraw the digital asset in a form that permits the collection of the ancillary or subsidiary proceeds.

(k) A bank shall not authorize or permit rehypothecation of digital assets under this section. The bank shall not engage in any activity to use or materially affect a digital asset except based on customer instructions.

(m) A bank shall not take any action under this section which would likely impair the solvency or the safety and soundness of the bank, as determined by the commissioner after considering the nature of custodial services customary in the banking industry.

(n) The commissioner may adopt rules to implement this section.

(o) As used in this section:
(i) "Bank" has the meaning ascribed to it in W.S. 13-1-101(a)(i);

(ii) "Commissioner" means the banking commissioner;

(iii) "Custodial services" means the safekeeping and management of customer currency and digital assets through the exercise of fiduciary and trust powers under this section as a directed custodian, and includes fund administration and the execution of customer instructions.

34-29-105. Jurisdiction of courts.

The courts of Wyoming shall have jurisdiction to hear claims in both law and equity relating to digital assets, including those arising from this chapter and the Uniform Commercial Code, title 34.1, Wyoming statutes.

34.1-1-210. Applicability of other sections.

Chapter 29, title 34, Wyoming statutes shall apply to this title.
Section 2. W.S. 13-2-101(a)(ix) is amended to read:


(a) Each bank may:

(ix) Operate a trust department and exercise all powers enumerated by W.S. 13-5-101(b) and 34-29-104;

Section 3. If 2019 House Bill 0074 is enacted into law, the entity created by 2019 House Bill 0074 may exercise all powers set forth in W.S. 34-29-104 as created by this act.

Section 4. This act is effective July 1, 2019.