

HOUSE BILL NO. HB0043

Digital assets-amendments.

Sponsored by: Select Committee on Blockchain, Financial
Technology and Digital Innovation Technology

A BILL

for

1 AN ACT relating to digital assets; amending the definition
2 of digital asset; amending provisions relating to the
3 nature of digital assets under commercial law; amending
4 security interest provisions relating to digital assets;
5 specifying the application of commercial law to specific
6 types of digital assets; clarifying provisions relating to
7 custody of digital assets by banks; establishing that
8 certain digital asset provisions are consumer protection
9 statutes for commercial law purposes; and providing for an
10 effective date.

11

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

13

14 **Section 1.** W.S. 34-29-101(a)(i), 34-29-102(b) and by
15 creating a new subsection (e), 34-29-103(a) through (d),

1 (e)(i)(intro), (iv), (g)(intro), (i) and (ii) and
2 34-29-104(d)(intro), (ii) and (e) are amended to read:

3

4 **34-29-101. Definitions.**

5

6 (a) As used in this chapter:

7

8 (i) "Digital asset" means a representation of
9 economic, proprietary or access rights that is stored in a
10 computer readable format, and ~~includes digital consumer~~
11 ~~assets, digital securities and virtual currency~~ is either a
12 digital consumer asset, digital security or virtual
13 currency;

14

15 **34-29-102. Classification of digital assets as**
16 **property; applicability to Uniform Commercial Code;**
17 **application of other law.**

18

19 (b) Consistent with W.S. 34.1-8-102(a)(ix), a digital
20 asset may be treated as a financial asset under that
21 paragraph, pursuant to ~~a written~~ an agreement with the
22 owner of the digital asset. If treated as a financial

1 asset, the digital asset shall remain intangible personal
2 property.

3

4 (e) This chapter shall be considered a consumer
5 protection statute for the purposes of W.S. 34.1-9-201(b).

6

7 **34-29-103. Perfection of security interests in**
8 **digital assets; control; possession; security agreements;**
9 **location.**

10

11 (a) Notwithstanding the financing statement
12 requirement specified by W.S. 34.1-9-310(a) as otherwise
13 applied to general intangibles or any other provision of
14 law, perfection of a security interest in virtual currency
15 ~~or digital securities~~ may be achieved through possession ~~or~~
16 ~~control, as applicable to the asset, consistent with W.S.~~
17 ~~34-29-102(a)~~ and perfection of a security interest in
18 digital securities may be achieved by control. A security
19 interest held by a secured party having possession or
20 control, as applicable, of virtual currency or digital
21 securities has priority over a security interest held by a
22 secured party that does not have possession or control, as
23 applicable. ~~of virtual currency or digital securities.~~

1 Other provisions of law relating to perfection and priority
2 of security interests, including W.S. 34.1-9-322(c) and
3 priority of control over delivery, shall ~~remain applicable~~
4 apply, except that W.S. 34.1-9-322(a)(i) and (b) shall not
5 apply. W.S. 34.1-9-207 shall apply to this section.

6

7 (b) Before a secured party may take possession or
8 control under this section, the secured party shall enter
9 into a security agreement with the debtor and, as
10 necessary, other parties. The security agreement may set
11 forth the terms under which a secured party may pledge its
12 security interest as collateral for another transaction.
13 Consistent with W.S. 34.1-9-201(a), the security agreement
14 shall be effective according to its terms between parties,
15 against purchasers of collateral and against creditors.

16

17 (c) If a debtor is located in Wyoming, a secured
18 party may file a financing statement with the secretary of
19 state to perfect a security interest in digital consumer
20 assets or digital securities, including to perfect a
21 security interest in proceeds ~~from a digital asset~~ pursuant
22 to W.S. 34.1-9-315(d).

23

1 (d) Notwithstanding any other provision of law,
2 including article 9 of the Uniform Commercial Code, title
3 34.1, Wyoming statutes, a transferee takes a digital asset
4 free of any security interest two (2) years after the
5 transferee takes the asset for value and does not have
6 actual notice of an adverse claim at any time during the
7 two (2) year period. This subsection only applies to a
8 security interest perfected by filing.

9
10 (e) As used in this section:

11
12 (i) "Control," when used in article 9, title
13 34.1, Wyoming statutes and this section, consistent with
14 W.S. 34.1-9-314, includes the following:

15
16 (iv) "Possession," when used in article 9, title
17 34.1, Wyoming statutes and this section, consistent with
18 34.1-9-313, means the ability to exclude others from the
19 use of property, and includes use of a private key, a
20 multi-signature arrangement exclusive to the secured party
21 or a smart contract, as defined in this subsection, or any
22 substantially similar analogue. "Possession" shall also

1 include delivery of certificated digital securities,
2 consistent with W.S. 34.1-8-301(a).

3

4 (g) For purposes of article 9, title 34.1 and this
5 section, if collateral is required to be "located in a
6 jurisdiction," a digital asset is located in Wyoming if the
7 asset is possessed, or controlled ~~or otherwise held~~ by a
8 Wyoming bank, trust company or other custodian, the debtor
9 or secured party is physically located in Wyoming or the
10 debtor or secured party is incorporated or organized in
11 Wyoming, based on the following factors:

12

13 (i) Whether a security agreement typically
14 ~~present in accompanying~~ a possessory security interest or
15 other secured transaction exists, consistent with W.S.
16 34.1-9-201(a), including an agreement describing the
17 possessory nature of a private key or any substantially
18 similar analogue;

19

20 (ii) ~~The~~ choice of law in a security agreement,
21 evidencing the intent and understanding of the parties
22 relating to ~~all potential aspects of~~ a transaction,
23 including waivers of litigation in jurisdictions other than

1 Wyoming, access to the Wyoming chancery court and judicial
2 economy; and

3

4 **34-29-104. Digital asset custodial services.**

5

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

15

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

18

19 (e) If a customer makes an election under paragraph
20 (d)(ii) of this section, the bank may, based only on
21 customer instructions, undertake transactions with the
22 digital asset. A bank ~~maintains~~ is deemed to maintain
23 possession or control pursuant to subsection (d) of this

1 section by entering into an agreement with the counterparty
2 to a transaction which contains a time for return of the
3 asset and other customary terms in securities or
4 commodities transactions. The bank shall not be liable for
5 any loss suffered with respect to a transaction under this
6 subsection, except for liability consistent with fiduciary
7 and trust powers.

8

9 **Section 2.** This act is effective July 1, 2021.

10

11

(END)