

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

SENATE FILE NO.

Disclosure of private cryptographic keys.

Sponsored by: Senator(s) Rothfuss

A BILL

for

1 AN ACT relating to digital assets; specifying disclosure
2 obligations applicable to private cryptographic keys; and
3 providing for an effective date.

4

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

6

7 **Section 1.** W.S. 34-29-107 is created to read:

8

9 **34-29-107. Production of private keys; prohibition.**

10

11 No person shall be compelled to produce a private key or
12 make a private key known to any other person in any civil,
13 criminal, administrative, legislative or other proceeding

1 in this state that relates to a digital asset, other
 2 interest or right to which the private key provides access
 3 unless a public key is unavailable or unable to disclose
 4 the requisite information with respect to the digital
 5 asset, other interest or right. This paragraph shall not be
 6 interpreted to prohibit any lawful proceeding that compels
 7 a person to produce or disclose a digital asset, other
 8 interest or right to which a private key provides access,
 9 or to disclose information about the digital asset, other
 10 interest or right, provided that the proceeding does not
 11 require production or disclosure of the private key

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 14 *****

15 STAFF COMMENT

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 17 In reviewing legal issues with this bill draft, no area of
 18 law stood out as a significant concern given the
 19 restrictive nature of the draft. The fourth amendment
 20 generally prohibits unlawful search and seizures, and while
 21 that may be implicated here if the bill required
 22 disclosure, the prohibition on compelled disclosure
 23 supports an individual's privacy.

24

25 With respect to fifth amendment concerns case law and
 26 legislation pertaining to this area of law is evolving and
 27 ongoing. In analogous areas such as mandating disclosure
 28 of passwords to decrypt hard drives or unlock cell phones
 29 courts have provided differing opinions and outcomes.
 30 Generally, the matter often turns on whether or not the
 31 disclosure would be "testimonial" and whether or not the
 32 information discovered was a "foregone conclusion". (See
 33 Commonwealth v. Jones, 481 Mass. 540, 117 N.E.3d 702

1 (2019)finding that requiring a defendant to enter a cell
 2 phone password would not violate his privilege against
 3 self-incrimination because his knowledge of the password
 4 was a foregone conclusion; Seo v. State, 148 N.E.3d 952
 5 (Ind. 2020) finding that requiring a defendant to unlock
 6 her smartphone would violate her right against self-
 7 incrimination because unlocking the phone would provide law
 8 enforcement with information it didn't already know; State
 9 v. Andrews, 243 N.J. 447, 234 A.3d 1254 (2020) finding that
 10 requiring a defendant to disclose the passcode to his
 11 cellphone did not violate his fifth amendment rights as it
 12 met the foregone conclusion exception; Commonwealth v.
 13 Davis, 220 A.3d 534 (Pa. 2019) finding the foregone
 14 conclusion exception inapplicable to compel the disclosure
 15 of a defendant's password to gain access to a computer.)
 16 The United States Supreme Court has yet to directly address
 17 the issue. There does not appear to be any Wyoming Supreme
 18 Court case that addresses this issue.

19
 20 Two law review articles provide additional information that
 21 may interest the Committee:

22
 23 Andrew W. Balthazor, *The Challenges of Cryptocurrency Asset*
 24 *Recovery*, 13 FIU L. Rev. 1207 (2019).
 25 DOI: <https://dx.doi.org/10.25148/lawrev.13.6.16>
 26 (Discussing generally the issues involved with recovering
 27 digital assets from a defendant.)

28
 29 Andrew M. Hinkes, *Throw away the key, or the key holder?*
 30 *Coercive contempt for lost or forgotten cryptocurrency*
 31 *private keys, or obstinate holders*, 16 Nw. J. Tech. &
 32 *Intell. Prop.* 225 (2019).
 33 [https://scholarlycommons.law.northwestern.edu/njtip/vol16/i](https://scholarlycommons.law.northwestern.edu/njtip/vol16/iss4/1)
 34 [ss4/1](https://scholarlycommons.law.northwestern.edu/njtip/vol16/iss4/1)
 35 (Discussing issues related to lost keys, refusal to
 36 disclose a key, and contempt of court.)

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 38 *****
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40 Section 2. W.S. 34-29-101(a) by creating a new
 41 paragraph (v) is amended to read:

42

1 **34-29-101. Definitions.**

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3 (a) As used in this chapter:

4

5 (v) "Private key" means as defined by W.S.
6 34-29-103(e)(iii).

7

8 **Section 3.** This act is effective July 1, 2021.

9

10 (END)