

SENATE FILE NO. SF0125

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

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

11

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

13

14 **Section 1.** W.S. 34-29-101 through 34-29-105 and
15 34.1-1-210 are created to read:

1

2

CHAPTER 29

3

DIGITAL ASSETS

4

5

34-29-101. Definitions.

6

7

(a) As used in this chapter:

8

9

(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;

13

14

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

17

18

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

20

21

(B) Any other digital asset which does not fall within paragraphs (iii) and (iv) of this subsection.

23

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

7

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

10

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

13

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

16

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

19

20 **34-29-102. Classification of digital assets as**
21 **property; applicability to Uniform Commercial Code.**

22

1 (a) Digital assets are classified in the following
2 manner:

3

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

9

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

16

17 (iii) Virtual currency is intangible personal
18 property and shall be considered money, notwithstanding W.S.
19 34.1-1-201(b)(xxiv), only for the purposes of article 9 of
20 the Uniform Commercial Code, title 34.1, Wyoming statutes.

21

22 (b) Consistent with W.S. 34.1-8-102(a)(ix), a digital
23 asset may be treated as a financial asset under that

1 paragraph, pursuant to a written agreement with the owner of
2 the digital asset. If treated as a financial asset, the
3 digital asset shall remain intangible personal property.

4

5 (c) A bank providing custodial services under W.S.
6 34-29-104 shall be considered to meet the requirements of
7 W.S. 34.1-8-102(a)(xiv).

8

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

13

14 **34-29-103. Perfection of security interests in digital**
15 **assets; financing statements.**

16

17 (a) Notwithstanding the financing statement
18 requirement specified by W.S. 34.1-9-310(a) as otherwise
19 applied to general intangibles, perfection of a security
20 interest in a digital asset may be achieved through control,
21 as defined in paragraph (e)(i) of this section. A security
22 interest held by a secured party having control of a digital

1 asset has priority over a security interest held by a secured
2 party that does not have control of the asset.

3

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

10

11 (c) A secured party may file a financing statement with
12 the secretary of state, including to perfect a security
13 interest in proceeds from a digital asset pursuant to W.S.
14 34.1-9-315(d).

15

16 (d) Notwithstanding any other provision of law,
17 including article 9 of the Uniform Commercial Code, title
18 34.1, Wyoming statutes, a perfected security interest in a
19 digital asset becomes unperfected two (2) years after a
20 transferee takes the asset for value and does not have notice
21 of an adverse claim.

22

23 (e) As used in this section:

1

2 (i) "Control" includes the term "possession",
3 shall not require physical possession of an asset and means
4 the following:

5

6 (A) A secured party, or an agent, custodian,
7 fiduciary or trustee of the party, has the exclusive authority
8 to conduct a transaction relating to a digital asset,
9 including by means of a private key or the use of a
10 multi-signature arrangement;

11

12 (B) A smart contract created by a secured
13 party which has the exclusive authority to conduct a
14 transaction relating to a digital asset. As used in this
15 subparagraph, "smart contract" means an automated
16 transaction, as defined in W.S. 40-21-102(a)(ii), or any
17 substantially similar analogue, which is comprised of code,
18 script or programming language that executes the terms of an
19 agreement, and which may include taking custody of and
20 transferring an asset, or issuing executable instructions for
21 these actions, based on the occurrence or nonoccurrence of
22 specified conditions.

23

1 (ii) "Multi-signature arrangement" means a system
2 of access control relating to a digital asset for the purposes
3 of preventing unauthorized transactions relating to the
4 asset, in which two (2) or more private keys are required to
5 conduct a transaction, or any substantially similar analogue;

6

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

9

10 (A) Held by a person;

11

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

14

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

18

19 **34-29-104. Digital asset custodial services.**

20

21 (a) A bank may provide custodial services for digital
22 assets consistent with this section upon providing sixty (60)
23 days written notice to the commissioner. The provisions of

1 this section are cumulative and not exclusive as an optional
2 framework for enhanced supervision of digital asset custody.
3 If a bank elects to provide custodial services for digital
4 assets under this section, it shall comply with all provisions
5 of this section.

6

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

11

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

16

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

20

21 (iii) Fully comply with applicable federal
22 anti-money laundering, customer identification and beneficial
23 ownership requirements; and

1

2 (iv) Take other actions necessary to carry out
3 this section, which may include exercising fiduciary powers
4 similar to those permitted to national banks and ensuring
5 compliance with federal law governing digital assets
6 classified as commodities.

7

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

21

22 (d) Digital assets held in custody under this section
23 are not depository liabilities or assets of the bank. A bank,

1 or a subsidiary, may register as an investment adviser,
2 investment company or broker dealer as necessary. A bank shall
3 maintain control over a digital asset while in custody. A
4 customer shall elect, pursuant to a written agreement with
5 the bank, one (1) of the following relationships for each
6 digital asset held in custody:

7

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

11

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

14

15 (e) If a customer makes an election under paragraph
16 (d)(ii) of this section, the bank may, based only on customer
17 instructions, undertake transactions with the digital asset.
18 A bank maintains control pursuant to subsection (d) of this
19 section by entering into an agreement with the counterparty
20 to a transaction which contains a time for return of the
21 asset. The bank shall not be liable for any loss suffered
22 with respect to a transaction under this subsection, except

1 for liability consistent with fiduciary and trust powers as
2 a directed custodian under this section.

3

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

10

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

14

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

19

20 (ii) The heightened risk of loss from transactions
21 under subsection (e) of this section;

22

1 (iii) That some risk of loss as a pro rata creditor
2 exists as the result of custody as a fungible asset or custody
3 under paragraph (d)(ii) of this section;

4

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

8

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

13

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

20

21 (j) All ancillary or subsidiary proceeds relating to
22 digital assets held in custody under this section shall accrue
23 to the benefit of the customer, except as specified by a

1 written agreement with the customer. The bank may elect not
2 to collect certain ancillary or subsidiary proceeds, as long
3 as the election is disclosed in writing and a customer may
4 withdraw the digital asset in a form that permits the
5 collection of the ancillary or subsidiary proceeds.

6

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

11

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

17

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

20

21 (o) As used in this section:

22

1 (i) "Bank" has the meaning ascribed to it in W.S.
2 13-1-101(a)(i);

3

4 (ii) "Commissioner" means the banking
5 commissioner;

6

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

12

13 **34-29-105. Jurisdiction of courts.**

14

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

19

20 **34.1-1-210. Applicability of other sections.**

21

22 Chapter 29, title 34, Wyoming statutes shall apply to this
23 title.

1

2 **Section 2.** W.S. 13-2-101(a)(ix) is amended to read:

3

4 **13-2-101. Generally.**

5

6 (a) Each bank may:

7

8 (ix) Operate a trust department and exercise all
9 powers enumerated by W.S. 13-2-104 and 13-5-101(b);

10

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

14

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

16

17

(END)