LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 648

Introduced by Flood, 19.
Read first time January 20, 2021
Committee: Banking, Commerce and Insurance

A BILL FOR AN ACT relating to banking and finance; to adopt the
Transactions in Digital Assets Act.
Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 7 of this act shall be known and may be cited as the Transactions in Digital Assets Act.

Sec. 2. (1) For purposes of the Transactions in Digital Assets Act:

(a) Bank has the same meaning as in section 8-101.03;

(b) Custodial services means the safekeeping and management of customer currency and digital assets through the exercise of fiduciary and trust powers under the act as a custodian, and includes fund administration and the execution of customer instructions;

(c) 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;

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

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

(ii) Any other digital asset which does not fall within subdivision (1)(c) or (d) of this subsection;

(e) Digital security means a digital asset which constitutes a security, as defined in section 8-1101, but shall exclude digital consumer assets and virtual currency;

(f) Director means the Director of Banking and Finance; and

(g) Virtual currency means a digital asset that is:

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

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

(2) The terms in subdivisions (1)(b) through (d) of this section are mutually exclusive.

Sec. 3. (1) Digital assets are classified in the following manner:

(a) Digital consumer assets are intangible personal property and
shall be considered general intangibles, as defined in section 9-102(a)(42), Uniform Commercial Code:

(b) Digital securities are intangible personal property and shall be considered securities, as defined in section 8-102(a)(15), Uniform Commercial Code, and investment property, as defined in section 9-102(a)(49), Uniform Commercial Code:

(c) Virtual currency is intangible personal property and shall be considered money, notwithstanding section 1-201(a)(24), Uniform Commercial Code.

(2) Consistent with section 8-102(a)(9), Uniform Commercial Code, a digital asset may be treated as a financial asset under that subdivision, 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.

(3) A bank providing custodial services under section 5 of this act shall be considered to meet the requirements of section 8-102(a)(14), Uniform Commercial Code.

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

Sec. 4. (1) Notwithstanding the financing statement requirement specified by section 9-310(a), Uniform Commercial Code, as otherwise applied to general intangibles or any other provision of law, perfection of a security interest in a digital asset may be achieved through control, as defined in subdivision (5)(a) 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.

(2) 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.

(3) 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 section 9-315(d), Uniform Commercial
Code.

(4) Notwithstanding any other provision of law, including article 9,
Uniform Commercial Code, a transferee takes a digital asset free of any
security interest two years after the transferee takes the asset for
value and does not have actual notice of an adverse claim. This
subsection only applies to a security interest perfected by a method
other than control.

(5) For purposes of this section:

(a) Consistent with subsection (6) of this section, control is
equivalent to the term possession when used in article 9, Uniform
Commercial Code, and means the following:

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

(ii) A smart contract created by a secured party which has the
exclusive legal authority to conduct a transaction relating to a digital
asset. For purposes of this subdivision, smart contract means a
transaction conducted or performed, in whole or in part, by electronic
means or electronic records, in which the acts or records of one or both
parties are not reviewed by an individual in the ordinary course in
forming a contract, performing under an existing contract, or fulfilling
an obligation required by the transaction or any substantially similar
analogue, which is comprised of code, script, or programming language
that executes the terms of an agreement, and which may include taking
custody of and transferring an asset, or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions;

(b) 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 or more private keys are required to conduct a transaction or any substantially similar analogue; and

(c) Private key means a unique element of cryptographic data, or any substantially similar analogue, which is:

(i) Held by a person;

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

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

(6) Perfection by control creates a possessory security interest and does not require physical possession. For purposes of this section, a digital asset is located in Nebraska if the asset is held by a Nebraska custodian, the debtor or secured party is physically located in Nebraska, or the debtor or secured party is incorporated or organized in Nebraska.

Sec. 5. (1) A bank may provide custodial services consistent with this section upon providing sixty days written notice to the director. 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 under this section, it shall comply with all provisions of this section.

(2) 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:

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

(b) Maintain information technology best practices relating to digital assets held in custody. The director may specify required best practices by rule and regulation;

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

(d) 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.

(3) 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 director within one hundred twenty 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 director within one day. The director shall review examination results upon receipt within a reasonable time and during any regular examination conducted under section 8-108.

(4) 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 of the following relationships for each digital asset held in custody:

(a) Custody under a bailment as a nonfungible or fungible asset.
other assets; or

(b) Custody under a bailment pursuant to subsection (5) of this section.

(5) If a customer makes an election under subdivision (4)(b) of this section, the bank may, based only on customer instructions, undertake transactions with the digital asset. A bank maintains control pursuant to subsection (4) 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 custodian under this section.

(6) 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, if necessary. Any ambiguity under this subsection shall be resolved in favor of the customer.

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

(a) 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;

(b) The heightened risk of loss from transactions under subsection (5) of this section;

(c) That some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset or custody under subdivision (4)(b) of this section;

(d) That custody under subdivision (4)(b) of this section may not result in the digital assets of the customer being strictly segregated from other customer assets; and

(e) That the bank is not liable for losses suffered under subsection (5) of this section, except for liability consistent with fiduciary and

-7-
trust powers as a custodian under this section.

(8) 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 subdivision (4)(b) of
this section, the bank and the customer may also agree in writing to the
form in which the digital asset shall be returned.

(9) 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. A customer who
makes an election under subdivision (4)(a) of this section may withdraw
the digital asset in a form that permits the collection of the ancillary
or subsidiary proceeds.

(10) A bank shall not authorize or permit rehypothecation of digital
assets under this section and shall not engage in any activity to use or
exercise discretionary authority relating to a digital asset except based
on customer instructions.

(11) 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 director after considering the nature of custodial
services customary in the banking industry.

(12) To offset the costs of supervision and administration of this
section, a bank which provides custodial services under this section
shall pay the assessment as provided for in sections 8-601 and 8-605 and
the costs of any examination or investigation as provided in sections
8-108 and 8-606.

Sec. 6. The director may adopt and promulgate rules and regulations
to implement the Transactions in Digital Assets Act.

Sec. 7. The courts of Nebraska shall have jurisdiction to hear
claims in both law and equity relating to digital assets, including those
1 arising under the Transactions in Digital Assets Act and the Uniform
2 Commercial Code.