

By: Capriglione, Harris of Anderson,
Longoria, Bucy, et al.

H.B. No. 1666

A BILL TO BE ENTITLED

AN ACT

relating to the commingling of funds by digital asset service providers; providing for an administrative penalty; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle E, Title 3, Finance Code, is amended by adding Chapter 160 to read as follows:

CHAPTER 160. DIGITAL ASSET SERVICE PROVIDERS

Sec. 160.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Finance Commission of Texas.

(2) "Customer funds" means the digital assets, fiat currency, or other property deposited by a digital asset customer.

(3) "Department" means the Texas Department of Banking.

(4) "Digital asset" means a natively electronic asset that confers economic, proprietary, or access rights and is recorded or stored in a blockchain, cryptographically secured distributed ledger, or similar technology, and includes:

(A) a digital asset that the laws of any country consider to be legal tender; or

(B) virtual currency as defined by Section 12.001, Business & Commerce Code.

(5) "Digital asset customer" means a person who

1 deposits fiat currency or a digital asset with a digital asset
2 service provider.

3 (6) "Digital asset service provider" means an
4 electronic platform that facilitates the trading of digital assets
5 on behalf of a digital asset customer and maintains custody of the
6 customer's digital assets.

7 Sec. 160.002. ADMINISTRATION. The department shall
8 administer this chapter.

9 Sec. 160.003. APPLICABILITY. (a) This chapter applies to a
10 digital asset service provider doing business in this state that:

11 (1) holds a money transmission license under
12 Subchapter D, Chapter 151; and

13 (2) either:

14 (A) serves more than 500 digital asset customers
15 in this state; or

16 (B) has at least \$10 million in customer funds.

17 (b) This chapter does not apply to:

18 (1) a bank, as defined by Section 31.002; or

19 (2) an entity excluded by commission rule or by order
20 of the banking commissioner based on a finding that the entity is:

21 (A) not required to hold a money transmission
22 license under Subchapter D, Chapter 151; or

23 (B) not subject to the requirements of this
24 chapter.

25 Sec. 160.004. DUTIES OF DIGITAL ASSET SERVICE PROVIDERS.

26 (a) Except as provided by this chapter, a digital asset service
27 provider may not:

1 (1) commingle customer funds with funds belonging to
2 the digital asset service provider, including the digital asset
3 service provider's:

4 (A) operating capital;

5 (B) proprietary accounts;

6 (C) digital assets;

7 (D) fiat currency; or

8 (E) other property that is not customer funds;

9 (2) use customer funds to secure or guarantee a
10 transaction other than a transaction for the customer contributing
11 the funds; or

12 (3) maintain customer funds in such a manner that a
13 digital asset customer may be unable to fully withdraw the
14 customer's funds.

15 (b) In addition to any other requirements under state law, a
16 digital asset service provider shall maintain customer funds not
17 subject to the requirements of Chapter 151:

18 (1) in separate accounts for obligations to each
19 digital asset customer; or

20 (2) in an omnibus account that only contains digital
21 assets of digital asset customers and in which digital assets of
22 digital asset customers are not strictly segregated from each
23 other.

24 (c) A digital asset service provider shall create a plan to
25 allow:

26 (1) each digital asset customer to view at least
27 quarterly an accounting of:

1 (A) any outstanding liabilities owed to the
2 digital asset customer; and

3 (B) the digital asset customer's digital assets
4 held in custody by the digital asset service provider; and

5 (2) an auditor to access and view at any time a
6 pseudonymized version of the information made available to each
7 digital asset customer under Subdivision (1).

8 (d) Not later than the 90th day after the end of each fiscal
9 year, a digital asset service provider shall file a report with the
10 department. The report must include the following information, as
11 of the end of the digital asset service provider's fiscal year:

12 (1) an attestation by the digital asset service
13 provider of outstanding liability to digital asset customers;

14 (2) evidence of customer assets held by the provider;

15 (3) a copy of the provider's plan under Subsection (c);

16 and

17 (4) an attestation by an auditor that the information
18 in the report is true and accurate.

19 (e) An auditor fulfilling the requirements of this section
20 must:

21 (1) be an independent certified public accountant
22 licensed in the United States; and

23 (2) apply attestation standards adopted by the
24 American Institute of Certified Public Accountants.

25 (f) A digital asset service provider may meet the
26 requirements of Subsections (c)(2), (d)(1), (d)(2), and (d)(4) by
27 filing with the department a copy of an audit performed in

1 accordance with the Securities Exchange Act of 1934 (15 U.S.C.
2 Section 78a et seq.), the Sarbanes-Oxley Act of 2002 (15 U.S.C.
3 Section 7201 et seq.), or regulations adopted under those Acts.

4 (g) A digital asset service provider may include an amount
5 of funds, assets, or property belonging to the digital asset
6 service provider with customer funds for the purpose of
7 facilitating trade and operational needs to provide digital asset
8 services. That amount of funds, assets, or other property
9 belonging to the digital asset service provider is considered and
10 shall be treated as customer funds. A digital asset service
11 provider may only withdraw or assert a claim on that amount to the
12 extent that amount exceeds the amount deposited with the digital
13 asset service provider by or for digital asset customers.

14 Sec. 160.005. REQUIREMENTS FOR MONEY TRANSMISSION LICENSE.

15 (a) In addition to any other requirements under Subchapter D,
16 Chapter 151, a digital asset service provider must comply with the
17 requirements of this chapter to obtain and maintain any money
18 transmission license under Subchapter D, Chapter 151. A digital
19 asset service provider applying for a new money transmission
20 license under Subchapter D, Chapter 151, must submit to the
21 department the report required by Section 160.004(d).

22 (b) The department may suspend and revoke a money
23 transmission license issued under Subchapter D, Chapter 151, to a
24 digital asset service provider if the provider violates the
25 requirements of this chapter.

26 (c) The department may impose any penalty under Subchapter
27 H, Chapter 151, that may be imposed on a person who violates that

1 chapter on a digital asset service provider who violates this
2 chapter.

3 Sec. 160.006. RULES. (a) The commission may adopt rules to
4 administer and enforce this chapter, including rules necessary and
5 appropriate to implement and clarify this chapter.

6 (b) Rules adopted under this section may allow the banking
7 commissioner to temporarily waive the requirements of Section
8 160.004(c), (d), or (e) for a digital asset service provider if the
9 commissioner finds that complying with those requirements is not
10 technically or commercially feasible for the digital asset service
11 provider.

12 SECTION 2. This Act takes effect September 1, 2023.