

1 AN ACT

2 relating to the commingling of funds by digital asset service
3 providers; providing an administrative penalty.

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

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

7 CHAPTER 160. DIGITAL ASSET SERVICE PROVIDERS

8 Sec. 160.001. DEFINITIONS. In this chapter:

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

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

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

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

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

21 (B) virtual currency as defined by Section
22 12.001, Business & Commerce Code.

23 (5) "Digital asset customer" means a person who
24 deposits fiat currency or a digital asset with a digital asset

1 service provider.

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

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

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

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

12 (2) either:

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

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

16 (b) This chapter does not apply to:

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

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

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

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

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

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

27 (1) commingle customer funds with funds belonging to

1 the digital asset service provider, including the digital asset
2 service provider's:

3 (A) operating capital;

4 (B) proprietary accounts;

5 (C) digital assets;

6 (D) fiat currency; or

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

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

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

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

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

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

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

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

27 (A) any outstanding liabilities owed to the

1 digital asset customer; and

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

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

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

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

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

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

15 and

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

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

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

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

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

27 (1) an audit of the digital asset service provider

1 performed in accordance with the Sarbanes-Oxley Act of 2002 (15
2 U.S.C. Section 7201 et seq.) or regulations adopted under that Act;
3 or

4 (2) an audit of the digital asset service provider's
5 parent company that includes an audit of the digital service
6 provider performed in accordance with the Sarbanes-Oxley Act of
7 2002 (15 U.S.C. Section 7201 et seq.) or regulations adopted under
8 that Act.

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

19 (h) The commissioner may waive a requirement of this section
20 or allow a digital asset service provider to submit alternative
21 information to satisfy a requirement of this section if the
22 commissioner determines that the waiver or alternative information
23 is consistent with the purposes of this chapter and in the best
24 interest of the public.

25 Sec. 160.005. REQUIREMENTS FOR MONEY TRANSMISSION LICENSE.

26 (a) In addition to any other requirements under Subchapter D,
27 Chapter 151, a digital asset service provider must comply with the

1 requirements of this chapter to obtain and maintain any money
2 transmission license under Subchapter D, Chapter 151. A digital
3 asset service provider applying for a new money transmission
4 license under Subchapter D, Chapter 151, must submit to the
5 department the report required by Section 160.004(d).

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

10 (c) The department may impose any penalty under Subchapter
11 H, Chapter 151, that the department may impose on a person who
12 violates that chapter on a digital asset service provider who
13 violates this chapter.

14 (d) The commissioner may examine a digital asset service
15 provider in the same manner as allowed under Subchapter G, Chapter
16 151. Information disclosed to the commissioner in connection with
17 an examination under this section is confidential information and
18 subject to the provisions regarding confidentiality under
19 Subchapter G, Chapter 151.

20 Sec. 160.006. RULES. The commission may adopt rules to
21 administer and enforce this chapter, including rules necessary and
22 appropriate to implement and clarify this chapter.

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

President of the Senate

Speaker of the House

I certify that H.B. No. 1666 was passed by the House on April 20, 2023, by the following vote: Yeas 148, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1666 on May 17, 2023, by the following vote: Yeas 145, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1666 was passed by the Senate, with amendments, on May 15, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor