

By: Capriglione, et al.

H.B. No. 1666

Substitute the following for H.B. No. 1666:

By: VanDeaver

C.S.H.B. No. 1666

A BILL TO BE ENTITLED

AN ACT

relating to the commingling of funds by digital asset service providers.

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 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) A digital asset service provider may not:

26 (1) commingle customer funds with funds belonging to
27 the digital asset service provider, including the digital asset

1 service provider's:

2 (A) operating capital;

3 (B) proprietary accounts;

4 (C) digital assets;

5 (D) fiat currency; or

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

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

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

13 (b) In addition to any other requirements under state law, a
14 digital asset service provider shall maintain reserves in an amount
15 sufficient to fulfill all obligations to digital asset customers.
16 These reserves may be held:

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

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; or

23 (3) in the digital asset corresponding to the digital
24 asset customer's obligations or obligations issued or guaranteed by
25 a governmental entity listed in Section 2256.009, Government Code,
26 as applicable.

27 (c) A digital asset service provider shall create a plan to

1 allow:

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

4 (A) any outstanding liabilities owed to the
5 digital asset customer; and

6 (B) the digital asset customer's digital assets
7 held in reserve by the digital asset service provider; and

8 (2) an auditor to access and view at any time the
9 information made available to each digital asset customer under
10 Subdivision (1).

11 (d) Not later than the 90th day after the end of each fiscal
12 year, a digital asset service provider shall file a report with the
13 department. The report must include:

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

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

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

18 and

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

21 (e) An auditor fulfilling the requirements of this section
22 must:

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

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

27 Sec. 160.005. REQUIREMENTS FOR MONEY TRANSMISSION LICENSE.

1 (a) In addition to any other requirements under Subchapter D,
2 Chapter 151, a digital asset service provider must comply with the
3 requirements of this chapter to obtain and maintain any money
4 transmission license under Subchapter D, Chapter 151.

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

9 Sec. 160.006. RULES. The commission may adopt rules to
10 administer and enforce this chapter, including rules necessary and
11 appropriate to implement and clarify this chapter.

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