

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1666
By: Capriglione et al. (Parker)
Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many Texans have invested in cryptocurrencies and other digital assets, the vast majority of which are held by third-party custodial account holders that facilitate trading and maintain custody of the digital assets. These companies are often referred to as digital asset service providers. Recently, multiple digital asset service providers betrayed the trust of their consumers by comingling investor funds with corporate assets, leading consumers to lose billions of dollars of investments. Currently, the state only regulates digital asset service providers as it relates to their usage of government-issued currencies and stablecoins, which requires them to obtain a money transmission license. H.B. 1666 seeks to regulate digital asset service providers' digital currency holdings to ensure consumer funds are secure and protected.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 1666 amends current law relating to the commingling of funds by digital asset service providers and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 160.006, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle E, Title 3, Finance Code, by adding Chapter 160, as follows:

CHAPTER 160. DIGITAL ASSET SERVICE PROVIDERS

Sec. 160.001. DEFINITIONS. Defines "commission," "customer funds," "department," "digital asset," "digital asset customer," and "digital asset service provider."

Sec. 160.002. ADMINISTRATION. Requires the Texas Department of Banking (TDB) to administer this chapter.

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

(1) holds a money transmission license under Subchapter D (Money Transmission License), Chapter 151; and

(2) either serves more than 500 digital asset customers in this state, or has at least \$10 million in customer funds.

(b) Provides that this chapter does not apply to:

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

(2) an entity excluded by Finance Commission of Texas (commission) rule or by order of the banking commissioner (commissioner) based on a finding that the entity is not required to hold a money transmission license

under Subchapter D, Chapter 151, or is not subject to the requirements of this chapter.

Sec. 160.004. DUTIES OF DIGITAL ASSET SERVICE PROVIDERS. (a) Prohibits a digital asset service provider, except as provided by this chapter, from:

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

(A) operating capital;

(B) proprietary accounts;

(C) digital assets;

(D) fiat currency; or

(E) other property that is not customer funds;

(2) using customer funds to secure or guarantee a transaction other than a transaction for the customer contributing the funds; or

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

(b) Requires a digital asset service provider, in addition to any other requirements under state law, to maintain customer funds not subject to the requirements of Chapter 151 (Regulation of Money Services Businesses):

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

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

(c) Requires a digital asset service provider to create a plan to allow:

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

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

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

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

(d) Requires a digital asset service provider, not later than the 90th day after the end of each fiscal year, to file a report with TDB. Requires that the report include, as of the end of the digital asset service provider's fiscal year, the following information:

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

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

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

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

(e) Requires an auditor fulfilling the requirements of this section to:

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

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

(f) Authorizes a digital asset service provider to meet the requirements of certain subsections by filing with TDB a copy of:

(1) an audit of the digital asset service provider performed in accordance with the Sarbanes-Oxley Act of 2002 (15 U.S.C. Section 7201 et seq.) or regulations adopted under that Act; or

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

(g) Authorizes a digital asset service provider to include an amount of funds, assets, or property belonging to the digital asset service provider with customer funds for the purpose of facilitating trade and operational needs to provide digital asset services. Provides that the amount of funds, assets, or other property belonging to the digital asset service provider is considered and is required to be treated as customer funds. Provides that a digital asset service provider is authorized only to withdraw or assert a claim on that amount to the extent that amount exceeds the amount deposited with the digital asset service provider by or for digital asset customers.

(h) Authorizes the commissioner to waive a requirement of this section or allow a digital asset service provider to submit alternative information to satisfy a requirement of this section if the commissioner determines that the waiver or alternative information is consistent with the purposes of this chapter and in the best interest of this state.

Sec. 160.005. REQUIREMENTS FOR MONEY TRANSMISSION LICENSE. (a) Requires a digital asset service provider, in addition to any other requirements under Subchapter D, Chapter 151, to comply with the requirements of this chapter to obtain and maintain any money transmission license under Subchapter D, Chapter 151. Requires a digital asset service provider applying for a new money transmission license under Subchapter D, Chapter 151, to submit to TDB the report required by Section 160.004(d).

(b) Authorizes TDB to suspend and revoke a money transmission license issued under Subchapter D, Chapter 151, to a digital asset provider if the provider violates the requirements of this chapter.

(c) Authorizes TDB to impose any penalty under Subchapter H (Enforcement), Chapter 151, that TDB is authorized to impose on a person who violates that chapter on a digital asset service provider who violates this chapter.

(d) Authorizes the commissioner to examine a digital asset service provider in the same manner as allowed under Subchapter G (Examinations, Reports, and Records), Chapter 151. Provides that the information disclosed to the commissioner in connection with an examination under this section is confidential

information and subject to the provisions regarding confidentiality under Subchapter G, Chapter 151.

Sec. 160.006. RULES. Authorizes the commission to adopt rules to administer and enforce this chapter, including rules necessary and appropriate to implement and clarify this chapter.

SECTION 2. Effective date: September 1, 2023.