

## **BILL ANALYSIS**

Senate Research Center  
88R10139 MLH-F

S.B. 770  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently there is not a direct statute that applies regulations to what is commonly referred to as digital asset service providers. There are new federal regulations for digital asset providers but Texas must to put into statute protections for the 8.5 million Texans who have invested in cryptocurrencies and other digital assets.

Recently, multiple digital asset service providers betrayed the trust of their consumers by comingling investor funds with corporate assets, leading consumers to lose billions in their investments. With regulations and technology providing easy access to these services, it is easy for these companies leave Texas citizens liable for the mismanagement of their funds.

S.B. 770 creates Chapter 160, Finance Code, and applies regulations to digital asset service providers in Texas to ensure consumer funds are secure and protected. The bill applies to digital asset service providers that serve more than 500 customers in the state or have at least ten million dollars in customer funds. Outlined in the bill language are provisions for storage of funds, use of funds, transparency, reporting, and empowering the Texas Department of Banking for the purpose of enforcement.

As proposed, S.B. 770 amends current law relating to the commingling of funds by digital asset service providers.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Banking in SECTION 1 (Section 160.005, 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 "customer funds," "department," "digital asset," "digital asset customer," and "digital asset service provider."

Sec. 160.002. APPLICABILITY. (a) Provides that this chapter applies to a digital asset service provider in this state that:

- (1) serves more than 500 digital asset customers in this state; or
- (2) 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);
- (2) an institutional trading division or accredited investor division of a digital asset service provider; or

(3) an institution excluded by rule from this chapter by the banking commissioner of Texas (commissioner).

Sec. 160.003. DUTIES OF DIGITAL ASSET SERVICE PROVIDERS. (a) Prohibits a digital asset service provider 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;

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

(4) investing in an obligation not listed under Subsection (b)(2).

(b) Requires a digital asset service provider, in addition to any other requirements under state law, to maintain reserves in an amount sufficient to fulfill all obligations to digital asset customers. Authorizes these reserves to be held:

(1) in a commingled account in which digital assets of digital asset customers are not strictly segregated from each other; or

(2) in the digital asset corresponding to the digital asset customer's obligations or obligations issued or guaranteed by a governmental entity listed in Section 2256.009 (Authorized Investments: Obligations of, or Guaranteed by Governmental Entities), Government Code, as applicable.

(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 reserve by the digital asset service provider; and

(2) an auditor to access and view at any time 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 the Texas Department of Banking (TDB). Requires that the report include:

(1) an attestation by the digital asset service provider of outstanding liability to digital asset customers, documented using zero-knowledge encryption or a similar industry standard;

(2) evidence of customer assets held by the person, documented using zero-knowledge encryption or a similar industry standard;

(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.

Sec. 160.004. REQUIREMENTS FOR MONEY TRANSMISSION LICENSE. (a) Requires a digital asset service provider, in addition to any other requirements under Subchapter D (Money Transmission License), Chapter 151, to comply with the requirements of this chapter to obtain and maintain any money transmission license under Subchapter D, Chapter 151.

(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.

Sec. 160.005. RULES. Authorizes TDB to adopt rules necessary to implement this chapter.

SECTION 2. Effective date: September 1, 2023.