

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

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

H.B. No. 1666

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the commingling of funds by digital asset service  
3 providers; providing for an administrative penalty; creating a  
4 criminal offense.

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

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

8 CHAPTER 160. DIGITAL ASSET SERVICE PROVIDERS

9 Sec. 160.001. DEFINITIONS. In this chapter:

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

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

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

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

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

22 (B) virtual currency as defined by Section  
23 12.001, Business & Commerce Code.

24 (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.

ADOPTED

MAY 15 2023

By: Tom Paska

H. Atty. Gen. Scott  
Secretary, No. 1666

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

By: Phil King

C.S. H.B. No. 1666

A BILL TO BE ENTITLED

AN ACT

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

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) 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 this state.

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.

**ADOPTED**

FLOOR AMENDMENT NO. 1

*VV*  
MAY 15 2023

BY:



*Latey Spaw*  
Secretary of the Senate

Amend C.S.H.B. No. 1666 (senate committee report) in SECTION 1 of the bill (page 3, line 21) by striking "this state" and substituting "the public".

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 16, 2023**

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB1666** by Capriglione (Relating to the commingling of funds by digital asset service providers; providing an administrative penalty.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

Based on the analysis of the Texas Department of Banking, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 451 Department of Banking

**LBB Staff:** JMc, SD, SZ, LBI, MOc, CMA, GDZ

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 10, 2023**

**TO:** Honorable Charles Schwertner, Chair, Senate Committee on Business & Commerce

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE:** **HB1666** by Capriglione (relating to the commingling of funds by digital asset service providers; providing an administrative penalty.), **Committee Report 2nd House, Substituted**

**No significant fiscal implication to the State is anticipated.**

Based on the analysis of the Texas Department of Banking, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 451 Department of Banking

**LBB Staff:** JMc, SZ, LBl, MOc, CMA, GDZ

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 8, 2023**

**TO:** Honorable Charles Schwertner, Chair, Senate Committee on Business & Commerce

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB1666** by Capriglione (Relating to the commingling of funds by digital asset service providers; providing for an administrative penalty; creating a criminal offense.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

Based on the analysis of the Texas Department of Banking, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 451 Department of Banking

**LBB Staff:** JMc, SZ, LBl, MOc, CMA, GDZ



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**March 21, 2023**

**TO:** Honorable Giovanni Capriglione, Chair, House Committee on Pensions, Investments & Financial Services

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB1666** by Capriglione (relating to the commingling of funds by digital asset service providers.),  
**Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

Based on the analysis of the Texas Department of Banking, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 451 Department of Banking

**LBB Staff:** JMc, MOc, LBI, CMA, GDZ

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**March 13, 2023**

**TO:** Honorable Giovanni Capriglione, Chair, House Committee on Pensions, Investments & Financial Services

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB1666** by Capriglione (Relating to the commingling of funds by digital asset service providers.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

Based on the analysis of the Texas Department of Banking, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 451 Department of Banking

**LBB Staff:** JMc, MOc, GDZ, LBI