

**House Bill 1666**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

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

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

- (1) holds a money transmission license under Subchapter D, Chapter 151; and
- (2) either:
  - (A) serves more than 500 digital asset customers in this state;
  - or

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(B) has at least \$10 million in customer funds.  
(b) This chapter does not apply to:  
(1) a bank, as defined by Section 31.002; or  
(2) an entity excluded by commission rule or by order of the banking commissioner based on a finding that the entity is:  
(A) not required to hold a money transmission license under Subchapter D, Chapter 151; or  
(B) not subject to the requirements of this chapter.  
Sec. 160.004. DUTIES OF DIGITAL ASSET SERVICE PROVIDERS. (a) Except as provided by this chapter, a digital asset service provider may not:  
(1) commingle 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) use customer funds to secure or guarantee a transaction other than a transaction for the customer contributing the funds; or  
(3) maintain customer funds in such a manner that a digital asset customer may be unable to fully withdraw the customer's funds.  
(b) In addition to any other requirements under state law, a digital asset service provider shall maintain customer funds not subject to the requirements of Chapter 151:  
(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

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(1) a bank, as defined by Section 31.002; or  
(2) an entity excluded by commission rule or by order of the banking commissioner based on a finding that the entity is:  
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(1) in separate accounts for obligations to each digital asset customer; or  
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asset customers are not strictly segregated from each other.

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

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

(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) A digital asset service provider may meet the requirements of Subsections (c)(2), (d)(1), (d)(2), and (d)(4) by filing with the department a copy of an audit performed in accordance with the Securities Exchange Act of 1934 (15 U.S.C. Section

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

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

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

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

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

(1) an audit of the digital asset service provider performed in

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78a et seq.), the Sarbanes-Oxley Act of 2002 (15 U.S.C. Section 7201 et seq.), or regulations adopted under those Acts.

(g) A digital asset service provider may 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. That amount of funds, assets, or other property belonging to the digital asset service provider is considered and shall be treated as customer funds. A digital asset service provider may only 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.

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

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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) A digital asset service provider may 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. That amount of funds, assets, or other property belonging to the digital asset service provider is considered and shall be treated as customer funds. A digital asset service provider may only 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) The commissioner may 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 the public. [FA1]

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

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

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

Sec. 160.006. RULES. (a) The commission may adopt rules to administer and enforce this chapter, including rules necessary and appropriate to implement and clarify this chapter.

(b) Rules adopted under this section may allow the banking commissioner to temporarily waive the requirements of Section 160.004(c), (d), or (e) for a digital asset service provider if the commissioner finds that complying with those requirements is not technically or commercially feasible for the digital asset service provider.

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

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

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

(d) The commissioner may examine a digital asset service provider in the same manner as allowed under Subchapter G, Chapter 151. 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. The commission may adopt rules to administer and enforce this chapter, including rules necessary and appropriate to implement and clarify this chapter.

SECTION 2. Same as House version.

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