

ORIGINAL HOUSE  
BILL NO. HB0043

ENROLLED ACT NO. 61, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING  
2021 GENERAL SESSION

AN ACT relating to digital assets; amending the definition of digital asset; amending provisions relating to the nature of digital assets under commercial law; amending security interest provisions relating to digital assets; specifying the application of commercial law to specific types of digital assets; clarifying provisions relating to custody of digital assets by banks; establishing that certain digital asset provisions are consumer protection statutes for commercial law purposes; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 34-29-101(a)(i), 34-29-102(b) and by creating a new subsection (e), 34-29-103(a) through (d), (e)(i)(intro), (iv), (g)(intro), (i) and (ii) and 34-29-104(d)(intro), (ii) and (e) are amended to read:

**34-29-101. Definitions.**

(a) As used in this chapter:

(i) "Digital asset" means a representation of economic, proprietary or access rights that is stored in a computer readable format, and ~~includes digital consumer assets, digital securities and virtual currency~~ is either a digital consumer asset, digital security or virtual currency;

**34-29-102. Classification of digital assets as property; applicability to Uniform Commercial Code; application of other law.**

(b) Consistent with W.S. 34.1-8-102(a)(ix), a digital asset may be treated as a financial asset under that

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paragraph, pursuant to ~~a written~~an agreement with the owner of the digital asset. If treated as a financial asset, the digital asset shall remain intangible personal property.

(e) This chapter shall be considered a consumer protection statute for the purposes of W.S. 34.1-9-201(b).

**34-29-103. Perfection of security interests in digital assets; control; possession; security agreements; location.**

(a) Notwithstanding the financing statement requirement specified by W.S. 34.1-9-310(a) as otherwise applied to general intangibles or any other provision of law, perfection of a security interest in virtual currency ~~or digital securities~~ may be achieved through possession ~~or control, as applicable to the asset, consistent with W.S. 34-29-102(a)~~and perfection of a security interest in digital securities may be achieved by control. A security interest held by a secured party having possession or control, as applicable, of virtual currency or digital securities has priority over a security interest held by a secured party that does not have possession or control, as applicable. ~~of virtual currency or digital securities.~~ Other provisions of law relating to perfection and priority of security interests, including W.S. 34.1-9-322(c) and priority of control over delivery, shall ~~remain applicable~~apply, except that W.S. 34.1-9-322(a)(i) and (b) shall not apply. W.S. 34.1-9-207 shall apply to this section.

(b) Before a secured party may take possession or control under this section, the secured party shall enter into a security agreement with the debtor and, as necessary, other parties. The security agreement may set

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forth the terms under which a secured party may pledge its security interest as collateral for another transaction. Consistent with W.S. 34.1-9-201(a), the security agreement shall be effective according to its terms between parties, against purchasers of collateral and against creditors.

(c) If a debtor is located in Wyoming, a secured party may file a financing statement with the secretary of state to perfect a security interest in digital consumer assets or digital securities, including to perfect a security interest in proceeds ~~from a digital asset~~ pursuant to W.S. 34.1-9-315(d).

(d) Notwithstanding any other provision of law, including article 9 of the Uniform Commercial Code, title 34.1, Wyoming statutes, a transferee takes a digital asset free of any security interest two (2) years after the transferee takes the asset for value and does not have actual notice of an adverse claim at any time during the two (2) year period. This subsection only applies to a security interest perfected by filing.

(e) As used in this section:

(i) "Control," when used in article 9, title 34.1, Wyoming statutes and this section, consistent with W.S. 34.1-9-314, includes the following:

(iv) "Possession," when used in article 9, title 34.1, Wyoming statutes and this section, consistent with 34.1-9-313, means the ability to exclude others from the use of property, and includes use of a private key, a multi-signature arrangement exclusive to the secured party or a smart contract, as defined in this subsection, or any substantially similar analogue. "Possession" shall also

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include delivery of certificated digital securities, consistent with W.S. 34.1-8-301(a).

(g) For purposes of article 9, title 34.1 and this section, if collateral is required to be "located in a jurisdiction," a digital asset is located in Wyoming if the asset is possessed, or controlled ~~or otherwise held~~ by a Wyoming bank, trust company or other custodian, the debtor or secured party is physically located in Wyoming or the debtor or secured party is incorporated or organized in Wyoming, based on the following factors:

(i) Whether a security agreement typically ~~present in~~ accompanying a possessory security interest or other secured transaction exists, consistent with W.S. 34.1-9-201(a), including an agreement describing the possessory nature of a private key or any substantially similar analogue;

(ii) ~~The~~ Choice of law in a security agreement, evidencing the intent and understanding of the parties relating to ~~all potential aspects of~~ a transaction, including waivers of litigation in jurisdictions other than Wyoming, access to the Wyoming chancery court and judicial economy; and

**34-29-104. Digital asset custodial services.**

(d) Digital assets held in custody under this section are not depository liabilities or assets of the bank. A bank, or a subsidiary, may register as an investment adviser, investment company or broker dealer as necessary. A bank shall maintain possession or control, as applicable, over a digital asset while in custody. A customer shall elect, pursuant to a written agreement with the bank, one

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(1) of the following relationships for each digital asset held in custody:

(ii) Custody ~~under a bailment~~ pursuant to subsection (e) of this section.

(e) If a customer makes an election under paragraph (d)(ii) of this section, the bank may, based only on customer instructions, undertake transactions with the digital asset. A bank ~~maintains~~ is deemed to maintain possession or control pursuant to subsection (d) of this section by entering into an agreement with the counterparty to a transaction which contains a time for return of the asset and other customary terms in securities or commodities transactions. The bank shall not be liable for any loss suffered with respect to a transaction under this subsection, except for liability consistent with fiduciary and trust powers.

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**Section 2.** This act is effective July 1, 2021.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk