ORIGINAL HOUSE   ENGROSSED
BILL NO. HB0062

ENROLLED ACT NO. 100, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

AN ACT relating to property; making legislative findings; establishing that open blockchain tokens with specified consumptive characteristics are intangible personal property and not subject to a securities exemption; providing definitions; requiring developers and sellers of open blockchain tokens to file notices of intent and fees with the secretary of state; authorizing specified enforcement actions; making specified violations unlawful trade practices; repealing provisions granting open blockchain tokens a securities exemption; specifying applicability; providing an appropriation; and providing for effective dates.

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

Section 1.

(a) The legislature finds the following:

(i) Certain open blockchain tokens may be restricted to only be exchangeable for specified consumptive purposes, including services, software, content or property, whether real or tangible personal property, and do not entitle a token holder to a cash payment or a share of profits from the technology developer or business that created the token;

(ii) Open blockchain tokens with specified consumptive purposes are similar to loyalty programs operated by many businesses today, in which an individual is provided with services, content or property redeemable from the developer or business in exchange for a specified number of transactions or cash paid to the developer or business;

(iii) The open blockchain tokens governed by this act do not constitute securities because a person who is sold

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a consumptive open blockchain token cannot receive a cash payment or share of profits from a developer or business, but will instead receive a fixed amount of consumable services, content or property; and

> (iv) Because of the consumptive nature of open blockchain tokens and for the other reasons specified above, these tokens are properly classified as intangible personal property under Wyoming law and, therefore, do not require an exemption from securities laws.

Section 2. W.S. 34-29-101 is created to read:

CHAPTER 29
DIGITAL ASSETS

34-29-101. Wyoming Utility Token Act; open blockchain tokens classified as intangible personal property; characteristics; filing requirements; fee; enforcement authority; definitions; virtual currency.

(a) This section may be cited as the "Wyoming Utility Token Act."

(b) An open blockchain token with the following characteristics constitutes intangible personal property:

> (i) The predominant purpose of the token is consumptive, as defined in paragraph (g)(ii) of this section;

> (ii) The developer or seller did not market the token to the initial buyer as a financial investment, as defined in paragraph (g)(v) of this section; and

          (iii) At least one (1) of the following
subparagraphs is satisfied:

                (A) The developer or seller reasonably
believed that it sold the token to the initial buyer for a
consumptive purpose;

                (B) The token has a consumptive purpose that
is available at or near the time of sale and can be used at
or near the time of sale for a consumptive purpose;

                (C) The initial buyer of the token is
prohibited by the developer or seller of the token from
reselling the token until the token is available to be used
for a consumptive purpose;

                (D) The developer or seller takes other
reasonable precautions to prevent an initial buyer from
purchasing the token as a financial investment.

     (c) Before making an open blockchain token under
subsection (b) of this section available for sale, the
developer or seller of a token, or the registered agent of
the developer or seller, shall electronically file a notice
of intent with the secretary of state and pay a filing fee of
one thousand dollars ($1,000.00) to offset the costs of
administering this section. The notice of intent shall
contain the name of the person acting as a developer or
seller, the contact information of the person, or the
registered agent of the person and comprehensive details on
the open blockchain token under subsection (b) of this section
made available for sale, as required by the secretary of
state. A form shall be made available by the secretary of
state for this purpose, which shall include a secure
electronic form conspicuously posted on the internet website

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of the secretary of state. A developer, seller and the registered agent of these persons, if applicable, shall have a continuing duty to update the contact information provided on a notice of intent as long as the open blockchain token associated with the notice is actively being sold.

(d) A facilitator shall comply with the following requirements:

(i) A facilitator shall, before making any token available for resale to the public, confirm with the secretary of state that a notice of intent has been filed pursuant to subsection (c) of this section;

(ii) A facilitator shall, at all times, have a reasonable and good faith belief that a token subject to resale conforms to the requirements of paragraphs (b)(i) through (iii) of this section; and

(iii) The facilitator shall take reasonably prompt action to terminate the resale of a token which does not conform to the requirements of this subsection.

(e) A willful failure by a developer, seller or facilitator to comply with the duties imposed by this section shall constitute an unlawful trade practice under W.S. 40-12-105(a)(xvii). A developer, seller or facilitator is subject to all applicable criminal statutes, including the fraud provisions of W.S. 6-3-601 through 6-3-615.

(f) The secretary of state may refer the following to appropriate state or federal agencies for investigation, criminal prosecution, civil penalties and other appropriate enforcement actions:

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       (i) Suspected violations of this section;

       (ii) The developer, seller or facilitator of either an open blockchain token which conforms to the requirements of this section or another digital asset which substantially resembles an open blockchain token, but which, in the determination of the secretary of state, is being sold for financial investment or fraudulent purposes.

   (g) As used in this section:

       (i) "Blockchain" means a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature;

       (ii) "Consumptive" means a circumstance when a token is exchangeable for, or provided for the receipt of, services, software, content or real or tangible personal property, including rights of access to services, content or real or tangible personal property;

       (iii) "Developer" means the person primarily responsible for creating an open blockchain token or otherwise designing the token, including by executing the technological processes necessary to create the token;

       (iv) "Facilitator" means a person who, as a business, makes open blockchain tokens under subsection (b) of this section available for resale to the public after a token has been purchased by an initial buyer;

       (v) "Financial investment" means a contract, transaction or arrangement where a person invests money in a common enterprise and is led to expect profits solely from the efforts of a promoter or a third party;

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(vi) Except as otherwise provided in subsection (h) of this section, "open blockchain token" means a digital unit which is:

(A) Created:

(I) In response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(II) By deploying computer code to a digital ledger or database, which may include a blockchain, that allows for the creation of digital tokens or other units; or

(III) Using a combination of the methods specified in subdivisions (I) and (II) of this subparagraph.

(B) Recorded to a digital ledger or database, which may include a blockchain; and

(C) Capable of being traded or transferred between persons without an intermediary or custodian of value.

(vii) "Seller" means a person who makes an open blockchain token available for purchase to an initial buyer.

(h) Virtual currency or a digital security, as defined in W.S. 34-29-101(a), shall not constitute an open blockchain token.

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Section 3. W.S.   17-4-102(a)(xvii)(intro)   and 40-12-105(a) by creating new paragraph (xvii) are amended to read:

17-4-102. Definitions.

(a) In this act, unless the context otherwise requires:

(xvii) "Issuer" means a person that issues or proposes to issue a security, subject to ~~W.S. 17-4-206(a) and (c) and~~ the following:

40-12-105. Unlawful practices.

(a) A person engages in a deceptive trade practice unlawful under this act when, in the course of his business and in connection with a consumer transaction, he knowingly:

(xvii) Willfully fails to comply with the duties imposed by W.S. 34-29-101.

Section 4. W.S. 17-4-102(a)(iv)(F) and (xxviii)(F), 17-4-206, 40-22-104(a)(vii) and 40-22-126(b) are repealed.

Section 5.

(a) Except as otherwise provided in subsection (b) of this section, a person who has properly filed a notice of intent pursuant to 2018 Wyoming Session Laws, chapter 44 before the effective date of this act shall be subject to the requirements of this act.

(b) Notices of intent properly filed with the secretary of state pursuant to 2018 Wyoming Session Laws, chapter 44 before the effective date of this act, shall constitute

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compliance with W.S. 34-29-101(c), as of the effective date of this act.

(c) Open blockchain tokens relating to a notice of intent properly filed pursuant to 2018 Wyoming Session Laws, chapter 44 before the effective date of this act shall constitute intangible personal property under W.S. 34-29-101 after the effective date of this act.

Section 6. For the period beginning July 1, 2019 and ending June 30, 2020, there is appropriated fifty thousand dollars ($50,000.00) from the general fund to the secretary of state. This appropriation shall only be expended to provide services relating to the administration and enforcement of this act. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2020. The secretary of state may include a request for an appropriation for these services in its 2021-2022 standard budget request. This section shall be effective July 1, 2019.

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Section 7. Except as provided in section 6 of this act, this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(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