

ENROLLED ACT NO. 39, SENATE

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

AN ACT relating to digital assets; modifying the means to perfect a security interest in virtual currency and digital securities; modifying provisions relating to security agreements involving virtual currency and digital securities; providing definitions; specifying factors relating to location of digital assets used as collateral; amending duties and requirements for banks that provide custodial services; amending the scope of authorized custodial services; clarifying application of digital asset statutes; clarifying the duty of digital asset custodians to pay supervisory fees; clarifying the jurisdiction of Wyoming courts to hear cases related to digital assets; and providing for an effective date.

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

Section 1. W.S. 34-29-103(a), (b), (d), (e)(i), by creating a new paragraph (iv), (f) and by creating a new subsection (g), 34-29-104(b)(intro), (c), (e), (g)(v), (n) and (p)(iii) and 34-29-105 are amended to read:

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 a digital asset virtual currency or digital securities may be achieved through possession or control, as defined in paragraph (e)(i) of this section applicable to the asset, consistent with W.S. 34-29-102(a). A security interest held by a secured party having possession or control, as applicable,

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of ~~a digital asset~~ 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 ~~the asset~~ virtual currency or digital securities. Other provisions of law relating to priority of security interests, including priority of control over delivery, shall remain applicable.

(b) Before a secured party may take possession or control ~~of a digital asset~~ under this section, the secured party shall enter into a control security agreement with the debtor. ~~A control~~ The security agreement may ~~also~~ set forth the terms under which a secured party may pledge its security interest ~~in the digital asset~~ 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.

(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. This subsection only applies to a security interest perfected by ~~a method other than control~~ filing.

(e) As used in this section:

(i) ~~Consistent with subsection (f) of this section, "control" is equivalent to the term "possession"~~ "Control," when used in article 9, title 34.1, Wyoming statutes and ~~means this section, includes~~ the following:

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(A) A secured party, or an agent, custodian, fiduciary or trustee of the party, has ~~the exclusive legal authority to conduct a transaction relating to a digital asset~~ complied with W.S. 34.1-8-106, including by means of a private key or the use of a multi-signature arrangement ~~authorized by~~ exclusive to the secured party or any substantially similar analogue;

(B) Use of a smart contract created by a secured party ~~which has the exclusive legal authority to conduct a transaction relating to a digital asset~~ to comply with W.S. 34.1-8-106. As used in this subparagraph, "smart contract" means an automated transaction, as defined in W.S. 40-21-102(a)(ii), or any substantially similar analogue, which is comprised of code, script or programming language that executes the terms of an agreement, and which may include taking custody of and transferring an asset, or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.

(iv) "Possession," when used in article 9, title 34.1, Wyoming statutes and this section, 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 include delivery of certificated digital securities, consistent with W.S. 34.1-8-301(a).

(f) Perfection by ~~control~~ possession creates a possessory security interest ~~and does not require physical possession~~ under W.S. 34.1-9-301(a)(ii) in virtual currency or certificated digital securities, based on the possessory nature of a private key or any substantially similar analogue, which may be tangible or electronic.

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(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, 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 a possessory security interest 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

(iii) The relative clarity of the laws of other jurisdictions relating to a digital asset, consequences relating to unknown liens in those jurisdictions and the ability of a court to exercise jurisdiction over a particular digital asset.

34-29-104. Digital asset custodial services.

(b) A bank may serve as a qualified custodian, as specified by the United States securities and exchange commission in 17 C.F.R. § 275.206(4)-2, or as a custodian authorized by the United States commodity futures trading

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commission or other law. In performing custodial services under this section, a bank shall:

(c) A bank providing custodial services shall enter conform to the audit, accounting and related requirements specified by the commissioner and applicable law, which may include entering into an agreement with an independent public accountant to conduct an examination conforming to the requirements of 17 C.F.R. § 275.206(4)-2(a)(4) and (6), at the cost of the bank. ~~The~~ An accountant shall transmit the results of ~~the~~ any examination to the commissioner within one hundred twenty (120) days of the examination and may file the results with ~~the United States securities and exchange commission~~ other regulatory agencies as ~~its~~ their rules may provide. Material discrepancies in an examination shall be reported to the commissioner within one (1) day. The commissioner shall review examination results upon receipt within a reasonable time and during any regular examination conducted under W.S. 13-3-702.

(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 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. 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. ~~as a custodian under this section.~~

(g) A bank shall provide clear, written notice to each customer, and require written acknowledgement, of the following:

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(v) That the bank is not liable for losses suffered under subsection (e) of this section, except for liability consistent with fiduciary and trust powers. ~~as a custodian under this section.~~

(n) ~~Banks are not subject to the annual report license tax levied under W.S. 17-16-1630. In lieu of this tax and~~ To offset the costs of supervision and administration of this section, a bank which provides custodial services under this section shall pay a supervision fee equal to two-tenths of one mill on the dollar (\$.0002) relating to assets held in custody ~~under this section as of December 31 of each year, with payment of the supervision fee made on or before the following January 31~~ as provided by rule of the commissioner. The supervision fee shall be deposited by the commissioner into the financial institutions administration account and may be expended for any purpose authorized for that account. ~~Banks providing custodial services outside of this section shall not be required to pay this supervision fee.~~

(p) As used in this section:

(iii) "Custodial services" means the safekeeping, servicing and management of customer currency and digital assets. ~~through~~ This term includes the exercise of fiduciary and trust powers ~~under this section as a custodian, and includes fund administration and the execution of customer instructions involving the exercise of discretion, including transactions under subsection (e) of this section.~~

34-29-105. Jurisdiction of courts.

ORIGINAL SENATE
FILE NO. SF0047

ENGROSSED

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Subject to other jurisdictional limits placed on specific courts by Wyoming law, the courts of Wyoming shall have jurisdiction to hear claims in both law and equity relating to digital assets, including those arising from this chapter and the Uniform Commercial Code, title 34.1, Wyoming statutes.

Section 2. 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 Senate.

Chief Clerk