

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 181

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO DIGITAL ASSETS; AMENDING TITLE 28, IDAHO CODE, BY THE ADDITION
2 OF A NEW CHAPTER 53, TITLE 28, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO
3 DEFINE TERMS, TO PROVIDE FOR CLASSIFICATION OF DIGITAL ASSETS AS PROP-
4 ERTY AND TO PROVIDE APPLICATION TO THE UNIFORM COMMERCIAL CODE, TO PRO-
5 VIDE FOR DIGITAL ASSET CUSTODIAL SERVICES, TO PROVIDE FOR JURISDICTION
6 OF IDAHO COURTS, AND TO ESTABLISH THE IDAHO UTILITY TOKEN ACT.
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Title 28, Idaho Code, be, and the same is hereby amended
10 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
11 ter 53, Title 28, Idaho Code, and to read as follows:

12 CHAPTER 53
13 DIGITAL ASSETS

14 28-5301. SHORT TITLE. This chapter shall be known and may be cited as
15 the "Digital Assets Act."

16 28-5302. DEFINITIONS. As used in this chapter:

17 (1) "Digital asset" means a representation of economic, proprietary,
18 or access rights that is stored in a computer-readable format and includes
19 digital consumer assets, digital securities, and virtual currency.

20 (2) "Digital consumer asset" means a digital asset that is used or
21 bought primarily for consumptive, personal, or household purposes and in-
22 cludes:

23 (a) An open blockchain token constituting intangible personal property
24 as otherwise provided by law; and

25 (b) Any other digital asset which does not fall within subsection (3) or
26 (4) of this section.

27 (3) "Digital security" means a digital asset that constitutes a secu-
28 rity as defined in section 30-14-102, Idaho Code, but excludes digital con-
29 sumer assets and virtual currency.

30 (4) "Virtual currency" means a digital asset that is:

31 (a) Used as a medium of exchange, unit of account, or store of value; and

32 (b) Not recognized as legal tender by the United States government.

33 28-5303. CLASSIFICATION OF DIGITAL ASSETS AS PROPERTY -- APPLICABIL-
34 ITY TO UNIFORM COMMERCIAL CODE. (1) Digital assets are classified in the fol-
35 lowing manner:

36 (a) Digital consumer assets are intangible personal property and shall
37 be considered general intangibles as defined in section 28-9-102, Idaho
38 Code, only for the purposes of the uniform commercial code.

1 (b) Digital securities are intangible personal property and shall be
2 considered securities as defined in section 30-14-102, Idaho Code, and
3 investment property as defined in section 28-9-102, Idaho Code, only
4 for the purposes of the uniform commercial code.

5 (c) Virtual currency is intangible personal property and shall be con-
6 sidered money, notwithstanding section 28-9-201(24), Idaho Code, for
7 the purposes of the uniform commercial code.

8 (2) A digital asset may be treated as a financial asset pursuant to a
9 written agreement with the owner of the digital asset. If treated as a finan-
10 cial asset, the digital asset shall remain intangible personal property.

11 (3) A bank providing custodial services shall be considered to meet
12 the requirements of a securities intermediary pursuant to sections 28-8-504
13 through 28-8-508, Idaho Code.

14 (4) Classification of digital assets under this section shall be con-
15 strued in a manner to give the greatest effect to this chapter but shall not
16 be construed to apply to any other asset.

17 28-5304. PERFECTION OF SECURITY INTERESTS IN DIGITAL ASSETS -- CON-
18 TROL -- POSSESSION -- SECURITY AGREEMENTS -- LOCATION. (1) Notwithstanding
19 the financing statement requirement specified by section 28-9-310, Idaho
20 Code, as otherwise applied to general intangibles or any other provision
21 of law, perfection of a security interest in virtual currency or digital
22 securities may be achieved through possession or control, as applicable to
23 the asset. A security interest held by a secured party having possession
24 or control, as applicable, of virtual currency or digital securities has
25 priority over a security interest held by a secured party that does not have
26 possession or control, as applicable of virtual currency or digital securi-
27 ties. Other provisions of law relating to priority of security interests,
28 including priority of control over delivery, shall remain applicable.

29 (2) Before a secured party may take possession or control under this
30 section, the secured party shall enter into a security agreement with the
31 debtor. The security agreement may set forth the terms under which a secured
32 party may pledge its security interest as collateral for another transac-
33 tion. Consistent with section 28-9-201, Idaho Code, the security agreement
34 shall be effective according to its terms between parties, against pur-
35 chasers of collateral, and against creditors.

36 (3) A secured party may file a financing statement with the secretary of
37 state, including to perfect a security interest in proceeds from a digital
38 asset pursuant to section 28-9-315, Idaho Code.

39 (4) Notwithstanding any other provision of law, including article 9
40 of the uniform commercial code, a transferee takes a digital asset free of
41 any security interest two (2) years after the transferee takes the asset for
42 value and does not have actual notice of an adverse claim. This subsection
43 applies only to a security interest perfected by filing.

44 (5) As used in this section:

45 (a) "Control," when used in the uniform commercial code and this sec-
46 tion includes the following:

47 (i) A secured party, or an agent, custodian, fiduciary, or trustee
48 of the party, has complied with section 28-8-106, Idaho Code, in-
49 cluding by means of a private key or the use of a multi-signature

1 arrangement exclusive to the secured party or any substantially
2 similar analogue; and

3 (ii) A smart contract created by a secured party to comply with
4 section 28-8-106, Idaho Code. As used in this subparagraph,
5 "smart contract" means an automated transaction as described in
6 section 28-50-114, Idaho Code, or any substantially similar ana-
7 logue that is comprised of code, script, or programming language
8 that executes the terms of an agreement, and which may include
9 taking custody of and transferring an asset or issuing executable
10 instructions for these actions, based on the occurrence or nonoc-
11 currence of specified conditions.

12 (b) "Multi-signature arrangement" means a system of access control
13 relating to a digital asset for the purposes of preventing unauthorized
14 transactions relating to the asset in which two (2) or more private keys
15 are required to conduct a transaction, or any substantially similar
16 analogue;

17 (c) "Private key" means a unique element of cryptographic data, or any
18 substantially similar analogue that is:

19 (i) Held by a person;

20 (ii) Paired with a unique, publicly available element of crypto-
21 graphic data; and

22 (iii) Associated with an algorithm that is necessary to carry out
23 an encryption or decryption required to execute a transaction.

24 (d) "Possession," when used in the uniform commercial code and this
25 section, includes use of a private key, a multi-signature arrangement
26 exclusive to the secured party, or a smart contract as defined in this
27 subsection, or any substantially similar analogue. "Possession" shall
28 also include delivery of certificated digital securities consistent
29 with section 28-8-301(1) (a), Idaho Code.

30 (6) Perfection by possession creates a possessory security interest
31 under section 28-9-301, Idaho Code, in virtual currency or certificated
32 digital securities, based on the possessory nature of a private key or any
33 substantially similar analogue, which may be tangible or electronic.

34 (7) For purposes of the uniform commercial code and this section, if
35 collateral is required to be located in a jurisdiction, a digital asset is
36 located in Idaho if the asset is possessed, controlled, or otherwise held by
37 an Idaho bank, trust company, or other custodian, if the debtor or secured
38 party is physically located in Idaho, or if the debtor or secured party is in-
39 corporated or organized in Idaho, based on the following factors:

40 (a) Whether a security agreement typically present in a possessory se-
41 curity interest exists, consistent with section 28-9-201, Idaho Code,
42 including an agreement describing the possessory nature of a private
43 key or any substantially similar analogue;

44 (b) The choice of law in a security agreement, evidencing the intent
45 and understanding of the parties relating to all potential aspects of
46 a transaction, including waivers of litigation in jurisdictions other
47 than Idaho, access to the Idaho courts, and judicial economy; and

48 (c) The relative clarity of the laws of other jurisdictions relating
49 to a digital asset, consequences relating to unknown liens in those ju-

1 risdictions, and the ability of a court to exercise jurisdiction over a
2 particular digital asset.

3 28-5305. DIGITAL ASSET CUSTODIAL SERVICES. (1) A bank may provide cus-
4 todial services consistent with this section upon providing sixty (60) days'
5 written notice to the director the of the department of finance. The provi-
6 sions of this section are cumulative and not exclusive as an optional frame-
7 work for enhanced supervision of digital asset custody. If a bank elects to
8 provide custodial services under this section, it shall comply with all pro-
9 visions of this section.

10 (2) A bank may serve as a qualified custodian, as specified by the
11 United States securities and exchange commission in 17 CFR 275.206(4)-2,
12 or as a custodian authorized by the United States commodity futures trading
13 commission or other law. In performing custodial services under this sec-
14 tion, a bank shall:

15 (a) Implement all accounting, account statement, internal control, no-
16 tice, and other standards specified by applicable state or federal law
17 and rules for custodial services;

18 (b) Maintain information technology best practices relating to digi-
19 tal assets held in custody. The commissioner may specify required best
20 practices by rule;

21 (c) Fully comply with applicable federal anti-money laundering, cus-
22 tomer identification, and beneficial ownership requirements; and

23 (d) Take other actions necessary to carry out this section, which may
24 include exercising fiduciary powers similar to those permitted to na-
25 tional banks and ensuring compliance with federal law governing digital
26 assets classified as commodities.

27 (3) A bank providing custodial services shall conform to the audit, ac-
28 counting, and related requirements specified by the director and applicable
29 law, which may include entering into an agreement with an independent public
30 accountant to conduct an examination conforming to the requirements of 17
31 CFR 275.206(4)-2(a)(4) and (6), at the cost of the bank. An accountant shall
32 transmit the results of any examination to the director within one hundred
33 twenty (120) days of the examination and may file the results with other reg-
34 ulatory agencies as their rules may provide. Material discrepancies in an
35 examination shall be reported to the director within one (1) day. The direc-
36 tor shall review examination results upon receipt within a reasonable time
37 and during any regular examination conducted under section 26-1102, Idaho
38 Code.

39 (4) Digital assets held in custody under this section are not deposi-
40 tory liabilities or assets of the bank. A bank or a subsidiary of a bank may
41 register as an investment adviser, investment company, or broker-dealer as
42 necessary. A bank shall maintain control over a digital asset while in cus-
43 tody. A customer shall elect, pursuant to a written agreement with the bank,
44 one (1) of the following relationships for each digital asset held in cus-
45 tody:

46 (a) Custody under a bailment as a nonfungible or fungible asset. As-
47 sets held under this paragraph shall be strictly segregated from other
48 assets; or

1 (b) Custody under a bailment pursuant to subsection (5) of this sec-
2 tion.

3 (5) If a customer makes an election under subsection (4) (b) of this sec-
4 tion, the bank may, based only on customer instructions, undertake transac-
5 tions with the digital asset. A bank maintains control pursuant to subsec-
6 tion (4) of this section by entering into an agreement with the counterparty
7 to a transaction that contains a time for return of the asset. The bank shall
8 not be liable for any loss suffered with respect to a transaction under this
9 subsection, except for liability consistent with fiduciary and trust pow-
10 ers.

11 (6) A bank and a customer shall agree in writing regarding the source
12 code version the bank will use for each digital asset and the treatment of
13 each asset under the uniform commercial code, if necessary. Any ambiguity
14 under this subsection shall be resolved in favor of the customer.

15 (7) A bank shall provide clear, written notice to each customer and re-
16 quire written acknowledgment of the following:

17 (a) Prior to the implementation of any updates, material source code
18 updates relating to digital assets held in custody, except in emergen-
19 cies that may include security vulnerabilities;

20 (b) The heightened risk of loss from transactions under subsection (5)
21 of this section;

22 (c) That some risk of loss as a pro rata creditor exists as the result of
23 custody as a fungible asset or custody under subsection (4) (b) of this
24 section;

25 (d) That custody under subsection (4) (b) of this section may not result
26 in the digital assets of the customer being strictly segregated from
27 other customer assets; and

28 (e) That the bank is not liable for losses suffered under subsection
29 (5) of this section, except for liability consistent with fiduciary and
30 trust powers.

31 (8) A bank and a customer shall agree in writing to a time period within
32 which the bank must return a digital asset held in custody under this sec-
33 tion. If a customer makes an election under subsection (4) (b) of this sec-
34 tion, the bank and the customer may also agree in writing to the form in which
35 the digital asset shall be returned.

36 (9) All ancillary or subsidiary proceeds relating to digital assets
37 held in custody under this section shall accrue to the benefit of the cus-
38 tomer, except as specified by a written agreement with the customer. The
39 bank may elect not to collect certain ancillary or subsidiary proceeds,
40 as long as the election is disclosed in writing. A customer who makes an
41 election under subsection (4) (a) of this section may withdraw the digital
42 asset in a form that permits the collection of the ancillary or subsidiary
43 proceeds.

44 (10) A bank shall not authorize or permit rehypothecation of digital as-
45 sets under this section. The bank shall not engage in any activity to use or
46 exercise discretionary authority relating to a digital asset except based on
47 customer instructions.

48 (11) A bank shall not take any action under this section that would
49 likely impair the solvency or the safety and soundness of the bank, as deter-

1 mined by the commissioner after considering the nature of custodial services
2 customary in the banking industry.

3 (12) To offset the costs of supervision and administration of this sec-
4 tion, a bank that provides custodial services under this section shall pay a
5 supervision fee equal to two-tenths of one mill on the dollar (\$.0002) relat-
6 ing to assets held in custody as provided by rule of the commissioner. The
7 supervision fee shall be deposited by the director into the financial insti-
8 tution's administration account and may be expended for any purpose autho-
9 rized for that account.

10 (13) The director may adopt rules to implement this section.

11 (14) As used in this section:

12 (a) "Bank" has the meaning as in section 26-106, Idaho Code.

13 (b) "Custodial services" means the safekeeping, servicing, and manage-
14 ment of customer currency and digital assets. This term includes the
15 exercise of fiduciary and trust powers involving the exercise of dis-
16 cretion, including transactions under subsection (5) of this section.

17 (c) "Director" means the director the of the Idaho department of fi-
18 nance.

19 28-5306. JURISDICTION OF IDAHO COURTS. Subject to other jurisdic-
20 tional limits placed on specific courts by Idaho law, the courts of Idaho
21 shall have jurisdiction to hear claims in both law and equity relating to
22 digital assets, including those arising from this chapter and the uniform
23 commercial code.

24 28-5307. IDAHO UTILITY TOKEN ACT. (1) This section shall be known and
25 may be cited as the "Idaho Utility Token Act."

26 (2) An open blockchain token with the following characteristics con-
27 stitutes intangible personal property:

28 (a) The predominant purpose of the token is consumptive as defined in
29 subsection (7) (b) of this section;

30 (b) The developer or seller did not market the token to the initial
31 buyer as a financial investment as defined in subsection (7) (d) of this
32 section; and

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

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

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

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

42 (iv) The developer or seller takes other reasonable precautions
43 to prevent an initial buyer from purchasing the token as a finan-
44 cial investment.

45 (3) Before making an open blockchain token under subsection (2) of this
46 section available for sale, the developer or seller of a token, or the reg-
47 istered agent of the developer or seller, shall electronically file a no-
48 tice of intent with the secretary of state and pay a filing fee of one thou-

1 sand dollars (\$1,000) to offset the costs of administering this section. The
2 notice of intent shall contain the name of the person acting as a developer
3 or seller, the contact information of the person, or the registered agent
4 of the person, and comprehensive details on the open blockchain token un-
5 der subsection (2) of this section made available for sale, as required by
6 the secretary of state. A form shall be made available by the secretary of
7 state for this purpose, which shall include a secure electronic form con-
8 spicuously posted on the internet website of the secretary of state. A de-
9 veloper, seller, and the registered agent of these persons, if applicable,
10 shall have a continuing duty to update the contact information provided on a
11 notice of intent as long as the open blockchain token associated with the no-
12 tice is actively being sold.

13 (4) A facilitator must comply with the following requirements:

14 (a) Before making any token available for resale to the public, confirm
15 with the secretary of state that a notice of intent has been filed pur-
16 suant to subsection (3) of this section;

17 (b) At all times, have a reasonable and good faith belief that a to-
18 ken subject to resale conforms to the requirements of subsection (2) (a)
19 through (c) of this section; and

20 (c) The facilitator shall take reasonably prompt action to terminate
21 the resale of a token that does not conform to the requirements of this
22 subsection.

23 (5) A willful failure by a developer, seller, or facilitator to comply
24 with the duties imposed by this section shall constitute a violation of the
25 Idaho consumer protection act. A developer, seller, or facilitator is sub-
26 ject to all applicable criminal statutes.

27 (6) The attorney general may refer the following to appropriate state
28 or federal agencies for investigation, criminal prosecution, civil penal-
29 ties, and other appropriate enforcement actions:

30 (a) Suspected violations of this section;

31 (b) The developer, seller, or facilitator of either an open blockchain
32 token that conforms to the requirements of this section or another digi-
33 tal asset that substantially resembles an open blockchain token but
34 that, in the determination of the attorney general, is being sold for
35 financial investment or fraudulent purposes.

36 (7) As used in this section:

37 (a) "Blockchain" means a digital ledger or database that is chronolog-
38 ical, consensus-based, decentralized, and mathematically verified in
39 nature.

40 (b) "Consumptive" means a circumstance when a token is exchangeable
41 for, or provided for the receipt of, services, software, content, or
42 real or tangible personal property, including rights of access to ser-
43 vices, content, or real or tangible personal property.

44 (c) "Facilitator" means a person who, as a business, makes open
45 blockchain tokens under subsection (2) of this section available for
46 resale to the public after a token has been purchased by an initial
47 buyer.

48 (d) "Financial investment" means a contract, transaction, or arrange-
49 ment in which a person invests money in a common enterprise and is led to
50 expect profits solely from the efforts of a promoter or a third party.

- 1 (e) Except as otherwise provided in subsection (8) of this section,
2 "open blockchain token" means a digital unit that is created:
3 (i) In response to the verification or collection of a specified
4 number of transactions relating to a digital ledger or database;
5 (ii) By deploying computer code to a digital ledger or database,
6 which may include a blockchain, that allows for the creation of
7 digital tokens or other units; or
8 (iii) Using a combination of the methods specified in subpara-
9 graphs (i) and (ii) of this paragraph.
- 10 (f) "Seller" means a person who makes an open blockchain token avail-
11 able for purchase to an initial buyer.
- 12 (8) Virtual currency or a digital security as defined in section
13 28-5302, Idaho Code, shall not constitute an open blockchain token.