

SENATE BILL 2840

By Watson

AN ACT to amend Tennessee Code Annotated, Title 32;  
Title 34; Title 35; Title 39; Title 45; Title 47 and  
Title 66, relative to digital assets.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, is amended by adding the following  
as a new chapter:

**66-38-101. Chapter definitions.**

(a) As used in this chapter:

(1) "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;

(2) "Digital consumer asset" means a digital asset that is used or bought  
primarily for consumptive, personal, or household purposes and includes:

(A) An open blockchain token constituting intangible personal  
property as otherwise provided by law; or

(B) Any other digital asset that does not constitute a digital  
security or virtual currency;

(3) "Digital security" means a digital asset that constitutes a security but  
excludes digital consumer assets and virtual currency;

(4) "General intangible" has the same meaning as defined in § 47-9-  
102(a);

(5) "Investment property" has the same meaning as defined in § 47-9-  
102(a);

(6) "Security":

(A) Means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing;

(B) Includes:

(i) Both a certificated and an uncertificated security;

(ii) As an investment contract, an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor, and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(iii) As an investment contract, among other contracts, an interest in a limited partnership or a limited liability company, or an investment in a viatical settlement or similar agreement; and

(C) Does not include:

(i) An insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or

variable sum of money either in a lump sum or periodically for life or other specified period; and

(ii) An interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001, et seq.); and

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

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

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

(b) The terms digital consumer asset, digital security, and virtual currency are mutually exclusive.

**66-38-102. Classification of digital assets as property; applicability to Uniform Commercial Code.**

(a) Digital assets are classified in the following manner:

(1) Digital consumer assets are intangible personal property and are considered general intangibles only for the purposes of title 47, chapter 9;

(2) Digital securities are intangible personal property and are considered securities and investment property only for the purposes of title 47, chapters 8 and 9; and

(3) Virtual currency is intangible personal property and is considered money, notwithstanding § 47-1-201(b)(24), only for the purposes of title 47, chapter 9.

(b) Consistent with the definition of financial asset in § 47-8-102(a)(9), a digital asset may be treated as a financial asset under that subdivision, pursuant to a written

agreement with the owner of the digital asset. If a digital asset is treated as a financial asset, then the digital asset remains intangible personal property.

(c) A bank providing custodial services under § 66-38-104 is considered to meet the requirements of a security intermediary under § 47-8-102(a).

(d) The classification of digital assets under this section must be construed in a manner to give the greatest effect to this chapter but must not be construed to apply to any other asset.

**66-38-103. Perfection of security interests in digital assets; financing statements.**

(a) As used in this section:

(1) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one (1) or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction;

(2) Consistent with subsection (f), "control" is equivalent to the term "possession" as used in title 47, chapter 9, and means:

(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, including by means of a private key or the use of a multi-signature arrangement authorized by the secured party; or

(B) A smart contract created by a secured party that has the exclusive legal authority to conduct a transaction relating to a digital asset. As used in this subdivision (a)(2)(B), "smart contract" has the same meaning as defined in § 47-10-201;

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

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

(A) Held by a person;

(B) Paired with a unique, publicly available element of cryptographic data; and

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

(b) Notwithstanding the financing statement requirement specified by § 47-9-310(a) as otherwise applied to general intangibles or any other provision of law, perfection of a security interest in a digital asset may be achieved through control. A security interest held by a secured party having control of a digital asset has priority over a security interest held by a secured party that does not have control of the asset.

(c) Before a secured party may take control of a digital asset under this section, the secured party must enter into a control agreement with the debtor. A control agreement may set forth the terms under which a secured party may pledge its security interest in the digital asset as collateral for another transaction.

(d) A secured party may file a financing statement with the secretary of state to perfect a security interest in proceeds from a digital asset pursuant to § 47-9-315(d).

(e) Notwithstanding any other law, including title 47, chapter 9, 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 (e) only applies to a security interest perfected by a method other than control.

(f) Perfection by control creates a possessory security interest and does not require physical possession. For purposes of this section and title 47, chapter 9, a digital asset is located in this state if the asset is held by a Tennessee custodian, the debtor or secured party is physically located in this state, or the debtor or secured party is incorporated or organized in this state.

**66-38-104. Digital asset custodial services.**

(a) As used in this section:

(1) "Bank" has the same meaning as defined in § 47-1-201(b);

(2) "Commissioner" means the commissioner of financial institutions;

(3) "Custodial services" means the safekeeping and management of customer currency and digital assets through the exercise of fiduciary and trust powers under this section as a custodian, and includes fund administration and the execution of customer instructions; and

(4) "Department" means the department of financial institutions.

(b) A bank may provide custodial services consistent with this section upon providing sixty-days' written notice to the commissioner. The provisions of this section are cumulative and not exclusive as an optional framework for enhanced supervision of digital asset custody. However, if a bank elects to provide custodial services under this section, then the bank shall comply with this section.

(c) 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. In performing custodial services under this section, a bank shall:

(1) Implement all accounting, account statement, internal control, notice and other standards specified by applicable state or federal law and rules for custodial services;

(2) Maintain information technology best practices relating to digital assets held in custody. The commissioner may specify required best practices by rule;

(3) Fully comply with applicable federal anti-money laundering, customer identification, and beneficial ownership requirements; and

(4) Take other actions necessary to carry out this section, which may include exercising fiduciary powers similar to those permitted to national banks and ensuring compliance with federal law governing digital assets classified as commodities.

(d) A bank providing custodial services shall enter 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 accountant shall transmit the results of the 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 as its rules may provide. The accountant shall report material discrepancies in an examination to the commissioner within one (1) day of the examination. The commissioner shall review examination results upon receipt within a reasonable time and during any regular examination.

(e) 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 control over

a digital asset in its custody. A customer shall elect, pursuant to a written agreement with the bank, one (1) of the following relationships for each digital asset held in custody:

(1) Custody under a bailment as a nonfungible or fungible asset. A bank shall ensure that assets held under this subdivision (e)(1) are strictly segregated from other assets; or

(2) Custody under a bailment pursuant to subsection (f).

(f) If a customer makes an election under subdivision (e)(2), then the bank may, based only on customer instructions, undertake transactions with the digital asset. A bank maintains control pursuant to subsection (e) by entering into an agreement with the counterparty to a transaction that contains a time for return of the asset. The bank is not liable for any loss suffered with respect to a transaction under this subsection (f), except for liability consistent with fiduciary and trust powers as a custodian under this section.

(g) A bank and a customer shall agree in writing regarding the source code version the bank will use for each digital asset, and the treatment of each asset under the Uniform Commercial Code, compiled in title 47, chapters 1-9, if necessary. A court shall resolve any ambiguity under this subsection (g) in favor of the customer.

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

(1) Prior to the implementation of any updates, material source code updates relating to digital assets held in custody, except in emergencies that may include security vulnerabilities;

(2) The heightened risk of loss from transactions under subsection (f);

(3) That some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset or custody under subdivision (e)(2);



(4) That custody under subdivision (e)(2) may not result in the digital assets of the customer being strictly segregated from other customer assets; and

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

(i) A bank and a customer shall agree in writing to a time period within which the bank must return a digital asset held in custody under this section. If a customer makes an election under subdivision (e)(2), then the bank and the customer may also agree in writing to the form in which the digital asset is returned.

(j) All ancillary or subsidiary proceeds relating to digital assets held in custody under this section accrue to the benefit of the customer, except as specified by a written agreement with the customer. The bank may elect not to collect certain ancillary or subsidiary proceeds, as long as the election is disclosed in writing. A customer who makes an election under subdivision (e)(1) may withdraw the digital asset in a form that permits the collection of the ancillary or subsidiary proceeds.

(k) A bank shall not authorize or permit rehypothecation of digital assets under this section. The bank shall not engage in any activity to use or exercise discretionary authority relating to a digital asset except based on customer instructions.

(l) A bank shall not take any action under this section that would likely impair the solvency or the safety and soundness of the bank, as determined by the commissioner after considering the nature of custodial services customary in the banking industry.

(m) A bank that provides custodial services under this section shall pay the commissioner a supervision fee equal to two (2) one-hundredths of one cent (\$0.0002) per dollar value of the digital asset 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. The commissioner shall deposit the supervision fee into the state treasury upon notice from the commissioner, and all moneys collected by the commissioner pursuant to this section must be used by the administration of the department and for the department's sole use. Banks providing custodial services outside of this section are not required to pay this supervision fee.

(n) The commissioner may adopt rules to implement this section.

**66-38-105. Jurisdiction of courts.**

The courts of this state 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, compiled in title 47, chapters 1-9.

**66-38-106. Open blockchain tokens classified as intangible personal property; characteristics; filing requirements; fee; enforcement authority.**

(a) As used in this section:

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

(2) "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;

(3) "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;

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

(5) "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 third party;

(6) Except as provided in subsection (g), "open blockchain token" means a digital unit that 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 (a)(6)(A)(i) and (ii);

(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; and

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

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

(1) The predominant purpose of the token is consumptive;

(2) The developer or seller did not market the token to the initial buyer as a financial investment; and

(3) At least one (1) of the following 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; or

(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) 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) to offset the costs of administering this section. The notice of intent must 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, as required by the secretary of state, on the open blockchain token under subsection (b) made available for sale. The secretary of state shall make available a form for this purpose that is conspicuously posted on the secretary of state's website. A developer, a seller, and the registered agent of these persons, if applicable, 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:

(1) 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);

(2) A facilitator shall, at all times, have a reasonable and good faith belief that a token subject to resale conforms to the requirements of subdivisions (b)(1)-(3); and

(3) The facilitator shall take reasonably prompt action to terminate the resale of a token that does not conform to the requirements of subdivisions (d)(1) and (2).

(e) A willful failure by a developer, seller, or facilitator to comply with the duties imposed by this section constitutes an unlawful trade practice under the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18. Additionally, a developer, seller, or facilitator is subject to all applicable criminal statutes, including fraud and forgery offenses.

(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:

(1) Suspected violations of this section; and

(2) The developer, seller, or facilitator of either an open blockchain token that conforms to the requirements of this section or another digital asset that 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) Virtual currency or a digital security does not constitute an open blockchain token.

**66-38-107. Construction with other law on electronic transactions.**

If a provision of this chapter is inconsistent with a provision of the Uniform Electronic Transactions Act, compiled in title 47, chapter 10, then this chapter controls.

SECTION 2. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. This act shall take effect July 1, 2020, the public welfare requiring it.