

ENROLLED ACT NO. 27, HOUSE OF REPRESENTATIVES

SIXTY-FOURTH LEGISLATURE OF THE STATE OF WYOMING
2018 BUDGET SESSION

AN ACT relating to securities; providing that a person who develops, sells or facilitates the exchange of an open blockchain token is not subject to specified securities and money transmission laws; providing specified verification authority to the secretary of state and banking commissioner; making conforming amendments; and providing for an effective date.

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

Section 1. W.S. 17-4-206 is created to read:

17-4-206. Open blockchain token exemption.

(a) Except as otherwise provided by subsection (c) of this section, a developer or seller of an open blockchain token shall not be deemed the issuer of a security and shall not be subject to the provisions of W.S. 17-4-301 through 17-4-412 and 17-4-504 if all of the following are met:

(i) The developer or seller of the token, or the registered agent of the developer or seller, files a notice of intent with the secretary of state, as specified in subsection (d) of this section;

(ii) The purpose of the token is for a consumptive purpose, which shall only be exchangeable for, or provided for the receipt of, goods, services or content, including rights of access to goods, services or content; and

(iii) The developer or seller of the token did not sell the token to the initial buyer as a financial investment. This paragraph shall only be satisfied if:

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(A) The developer or seller did not market the token as a financial investment; and

(B) At least one (1) of the following is true:

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

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

(III) If the token does not have a consumptive purpose available at the time of sale, the initial buyer of the token is prevented from reselling the token until the token is available for use for a consumptive purpose; or

(IV) The developer or seller takes other reasonable precautions to prevent buyers from purchasing the token as a financial investment.

(b) Except as otherwise provided by subsection (c) of this section, a person who facilitates the exchange of an open blockchain token shall not be deemed a broker-dealer or a person who otherwise deals in securities under this chapter and shall not be subject to the provisions of W.S. 17-4-301 through 17-4-412 and 17-4-504 if all of the following are met:

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(i) The person, or the registered agent of the person, files a notice of intent with the secretary of state, as specified in subsection (d) of this section;

(ii) The person has a reasonable and good faith belief that a token subject to exchange conforms to the requirements of paragraphs (a)(i), (ii) and (iii) of this section; and

(iii) The person takes reasonably prompt action to terminate the exchange of a token that does not conform to the requirements of this subsection.

(c) Notwithstanding any other provision of law, a developer, seller or a person who facilitates the exchange of an open blockchain token is subject to the provisions of W.S. 17-4-501 through 17-4-503 and 17-4-505 through 17-4-510 only to the extent necessary to carry out those sections. The secretary of state shall have the authority provided under W.S. 17-4-601 through 17-4-613 to determine compliance with the provisions of this section, including whether a person qualifies for the exemptions set forth in this section. The evidentiary burdens specified in W.S. 17-4-503 shall apply in any proceeding initiated by the secretary of state pursuant to this subsection.

(d) A developer, seller or a person who facilitates the exchange of an open blockchain token, or the registered agent of the applicable person, shall electronically file a notice of intent with the secretary of state before the person shall qualify for an exemption under this section. The notice of intent shall contain the name of the person acting as a developer, seller or facilitator, the contact information of the person or the registered agent of the person and specify whether the person will be acting as a

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developer, seller or facilitator. A secure form shall be made available by the office of the secretary of state on its internet website for this purpose.

(e) As used in this section, "open blockchain token" means a digital unit which is:

(i) Created:

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

(B) By deploying computer code to a blockchain network that allows for the creation of digital tokens or other units; or

(C) Using any combination of the methods specified in subparagraphs (A) and (B) of this paragraph.

(ii) Recorded in a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature, especially relating to the supply of units and their distribution; and

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

Section 2. W.S. 17-4-102(a)(iv)(D), (E), by creating a new subparagraph (F), (xvii)(intro), (xxviii)(D), (E) and by creating a new subparagraph (F), 40-22-104(a)(iv), (v) and by creating a new paragraph (vi) and 40-22-126 by creating a new subsection (b) and by renumbering (b) through (f) as (c) through (g) are amended to read:

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17-4-102. Definitions.

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

(iv) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(D) An international banking institution;
~~or~~

(E) A person excluded by rule adopted or order issued under this act; ~~or~~ or

(F) A person who facilitates the exchange of an open blockchain token, as defined in W.S. 17-4-206(e) and subject to W.S. 17-4-206(c).

(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:

(xxviii) "Security" 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

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thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; 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. The term:

(D) Includes 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~~

(E) Includes as an "investment contract," among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement; ~~and~~ and

(F) Does not include an open blockchain token, as defined in W.S. 17-4-206(e), except as provided by that section.

40-22-104. Exemptions.

(a) This act shall not apply to:

(iv) Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States provided that they do not issue or sell payment instruments through

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authorized delegates or subdelegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks;~~and~~

(v) Electronic transfer of government benefits for any federal, state or county governmental agency as defined in Federal Reserve Board Regulation E by a contractor for and on behalf of the United States or any department, agency or instrumentality thereof, or any state or any political subdivisions thereof;~~or~~ or

(vi) A person who develops, sells or facilitates the exchange of an open blockchain token, as defined in W.S. 17-4-206(e).

40-22-126. Unlicensed persons; verification authority regarding exemptions.

(b) If the commissioner has reason to believe a person is engaged in or is about to engage in any activity which would be subject to this act but for an exemption asserted pursuant to W.S. 40-22-104(a)(vi), and the commissioner has reason to believe the requirements of W.S. 40-22-104(a)(vi) have not been met, the commissioner may issue an order to show cause why an order to cease and desist the activity should not issue.

(c) ~~(b)~~ In an emergency, the commissioner may petition the district court for the issuance of a temporary restraining order.

(d) ~~(e)~~ An order to cease and desist becomes effective upon service upon the person.

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(e) ~~(d)~~ An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to W.S. 40-22-127 and 40-22-128.

(f) ~~(e)~~ A person served with an order to cease and desist for violating W.S. 40-22-103 may petition the district court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to W.S. 40-22-127 and 40-22-128.

(g) ~~(f)~~ The commissioner shall commence a contested case proceeding within twenty (20) days after issuing an order to cease and desist.

ORIGINAL HOUSE
BILL NO. HB0070

ENGROSSED

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Section 3. 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