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AN ACT relating to property; classifying digital assets within existing laws; specifying that digital assets are property within the Uniform Commercial Code; authorizing security interests in digital assets; establishing an opt-in framework for banks to provide custodial services for digital asset property as custodians; specifying standards and procedures for custodial services under this act; clarifying the jurisdiction of Wyoming courts relating to digital assets; authorizing a supervision fee; making an appropriation; authorizing positions; specifying applicability; authorizing the promulgation of rules; and providing for an effective date.

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

Section 1. W.S. 34-29-101 through 34-29-105 and 34.1-1-210 are created to read:

CHAPTER 29

DIGITAL ASSETS

34-29-101. Definitions.

(a) As used in this chapter:

(i) "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;

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

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

          (B) Any other digital asset which does not fall within paragraphs (iii) and (iv) of this subsection.

          (iii) "Digital security" means a digital asset which constitutes a security, as defined in W.S. 17-4-102(a)(xxviii), but shall exclude digital consumer assets and virtual currency;

          (iv) "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 in paragraphs (a)(ii) through (iv) of this section are mutually exclusive.

34-29-102. Classification of digital assets as property; applicability to Uniform Commercial Code.

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

          (i) Digital consumer assets are intangible personal property and shall be considered general intangibles, as defined in W.S. 34.1-9-102(a)(xlii), only for the purposes of article 9 of the Uniform Commercial Code, title 34.1, Wyoming statutes;

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(ii) Digital securities are intangible personal property and shall be considered securities, as defined in W.S. 34.1-8-102(a)(xv), and investment property, as defined in W.S. 34.1-9-102(a)(xlix), only for the purposes of articles 8 and 9 of the Uniform Commercial Code, title 34.1, Wyoming statutes;

(iii) Virtual currency is intangible personal property and shall be considered money, notwithstanding W.S. 34.1-1-201(b)(xxiv), only for the purposes of article 9 of the Uniform Commercial Code, title 34.1, Wyoming statutes.

(b) Consistent with W.S. 34.1-8-102(a)(ix), a digital asset may be treated as a financial asset under that paragraph, pursuant to a written agreement with the owner of the digital asset. If treated as a financial asset, the digital asset shall remain intangible personal property.

(c) A bank providing custodial services under W.S. 34-29-104 shall be considered to meet the requirements of W.S. 34.1-8-102(a)(xiv).

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

34-29-103. Perfection of security interests in digital assets; financing statements.

(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 may be achieved through control, as defined in paragraph (e)(i) of

this section. 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.

(b) Before a secured party may take control of a digital asset under this section, the secured party shall enter into a control agreement with the debtor. A control 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.

(c) A secured party may file a financing statement with the secretary of state, including to perfect a security interest in proceeds from a digital asset pursuant to W.S. 34.1-9-315(d).

(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.

(e) As used in this section:

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

(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

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

(B) A smart contract created by a secured party which has the exclusive legal authority to conduct a transaction relating to a digital asset. 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.

(ii) "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;

(iii) "Private key" means a unique element of cryptographic data, or any substantially similar analogue, which 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.

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(f)   Perfection by control creates a possessory security interest and does not require physical possession. For purposes of article 9, title 34.1 and this section, a digital asset is located in Wyoming if the asset is held by a Wyoming custodian, the debtor or secured party is physically located in Wyoming or the debtor or secured party is incorporated or organized in Wyoming.

34-29-104.   Digital asset custodial services.

(a)   A bank may provide custodial services consistent with this section upon providing sixty (60) 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. If a bank elects to provide custodial services under this section, it shall comply with all provisions of this section.

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

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

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

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

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          (iv) 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.

     (c) 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. 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.

     (d) 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 while in 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:

          (i) Custody under a bailment as a nonfungible or
fungible asset. Assets held under this paragraph shall be
strictly segregated from other assets; or

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(ii) Custody under a bailment pursuant to subsection (e) of this section.

(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.

(f) 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, title 34.1, Wyoming statutes if necessary. Any ambiguity under this subsection shall be resolved in favor of the customer.

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

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

(ii) The heightened risk of loss from transactions under subsection (e) of this section;

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(iii) That some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset or custody under paragraph (d)(ii) of this section;

(iv) That custody under paragraph (d)(ii) of this section may not result in the digital assets of the customer being strictly segregated from other customer assets; and

(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.

(h) 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 paragraph (d)(ii) of this section, the bank and the customer may also agree in writing to the form in which the digital asset shall be returned.

(j) All ancillary or subsidiary proceeds relating to digital assets held in custody under this section shall 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 paragraph (d)(i) of this section 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.

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(m) A bank shall not take any action under this section which 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.

(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. 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.

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

(p) As used in this section:

(i) "Bank" has the meaning ascribed to it in W.S. 13-1-101(a)(i);

(ii) "Commissioner"   means   the   banking commissioner;

(iii) "Custodial services" means the safekeeping and management of customer currency and digital assets

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through the exercise of fiduciary and trust powers under this
section as a custodian, and includes fund administration and
the execution of customer instructions.

34-29-105. Jurisdiction of courts.

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.

34.1-1-210. Applicability of other sections.

Chapter 29, title 34, Wyoming statutes shall apply to this
title.

Section 2. W.S. 13-2-101(a)(ix) is amended to read:

13-2-101. Generally.

(a) Each bank may:

(ix) Operate a trust department and exercise all
powers enumerated by W.S. 13-5-101(b) and 34—29-104;

Section 3. If 2019 House Bill 0074 is enacted into law,
the entity created by 2019 House Bill 0074 may exercise all
powers set forth in W.S. 34-29-104 as created by this act.

Section 4. The department of audit is authorized two
(2) additional full-time employees for the purposes of this
act. There is appropriated one hundred seventy-five thousand
six hundred four dollars ($175,604.00) of special revenue
funds from the financial institutions administration account
to the department of audit. This appropriation shall be for

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the period beginning with the effective date of this act and
ending June 30, 2020.

Section 5.   This act is effective July 1, 2019.

(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