AN ACT

To enact Chapter 22 of Title 6 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 6:1401 and 1402, relative to digital assets; to provide definitions; to allow banks to serve as custodians of digital assets; to provide for parameters and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 22 of Title 6 of the Louisiana Revised Statutes of 1950, comprised of R.S. 6:1401 and 1402, is hereby enacted to read as follows:

CHAPTER 22. VIRTUAL CURRENCY CUSTODY SERVICES

§1401. Definitions

As used in this Chapter, the following words have the following meanings:

(1) "Bank" has the same meaning as provided for in R.S. 6:2.

(2) "Custody services" means the role of a bank in the safekeeping and custody of various customer assets.

(3) "Self-assessment" means either of the following:

(a) A bank's voluntary, self-initiated internal assessment, audit, or review of the bank and its practices, policies, and procedures.

(b) A bank’s voluntary, self-initiated assessment, audit, or review of the practices, policies, and procedures of a person acting under contract, directly or indirectly, as the bank's service provider, including mortgage servicers and
subservicers, credit and debit card processors, and providers of loan document systems.

(4) "Virtual currency" means an electronic representation of value intended to be used as a medium of exchange, unit of account, or store of value. "Virtual currency" does not exist in a physical form; it is intangible and exists only on the blockchain or distributed ledger associated with a particular virtual currency. The owner of virtual currency holds cryptographic keys associated with the specific unit of virtual currency in a digital wallet, which allows the rightful owner of the virtual currency to access and utilize it.

§1402. Provision of virtual currency custody services

A. A bank may provide its customers with virtual currency custody services if the bank has adequate protocols in place to effectively manage risks and comply with applicable laws. Prior to a bank offering virtual currency custody services, the bank shall carefully examine the risks involved in offering such services through a methodical self-assessment process. If a bank decides to offer such services, the bank shall do all of the following:

(1) Implement effective risk management systems and controls to measure, monitor, and control relevant risks associated with custody of digital assets such as virtual currency.

(2) Confirm that it has adequate insurance coverage for such services.

(3) Maintain a service provider oversight program to address risks to service provider relationships as a result of engaging in virtual currency custody services.

B. (1) A bank may provide virtual currency custody services in either a nonfiduciary or fiduciary capacity.

(2) In providing such services in a nonfiduciary capacity, the bank shall act as a bailee, taking possession of the customer's asset for safekeeping while legal title remains with the customer. The customer shall retain direct control over the keys associated with his virtual currency.
(3) In providing such services in a fiduciary capacity, a bank is required to possess trust powers as provided for in R.S. 6:731. Acting in a fiduciary capacity, the bank shall require customers to transfer their virtual currencies to the control of the bank by creating new private keys to be held by the bank. In its fiduciary capacity, a bank shall have authority to manage virtual currency assets as it would any other type of asset held in such capacity.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 802 Engrossed 2022 Regular Session Wright

Abstract: Allows banks to provide custodial services relative to digital access.

Proposed law defines "bank", "custody services", "self-assessment", and "virtual currency".

Proposed law allows a bank to provide virtual currency custodial services, if the bank has adequate protocols in place to effectively manage risk and comply with provisions of present law.

In addition to the protocols required pursuant to proposed law, a bank that provides virtual currency custodial services is required to do all of the following:

1. Implement effective risk management systems and controls to measure and monitor relevant risks.
2. Confirm that it has adequate insurance coverage for such services.
3. Maintain a service provider oversight program.

Proposed law allows a bank to provide virtual currency custodial services in a nonfiduciary capacity, and requires a bank acting in such capacity to act as a bailee, taking possession of the customer's assets for safekeeping. The customer retains direct control over the keys associated with his virtual currency, if the bank is operating in a nonfiduciary capacity.

Proposed law allows a bank to provide virtual currency custodial services in a fiduciary capacity, and requires a bank acting in such capacity to possess trust powers as provided in present law and to require its customers to transfer their virtual currency to the control of the bank. A bank functioning in this capacity shall have the authority to manage virtual currency assets as it would any other type of asset.

(Adds R.S. 6:1401-1402)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

CODING: Words in struck through type are deletions from existing law; words underscored are additions.
1. Remove provisions of proposed law relative to certain definitions, the provision of custodial services, written notice, cumulative application, a qualified custodian, prohibited actions, and rulemaking.

2. Define "bank", "custody services", "self-assessment", and "virtual currency".

3. Allow a bank to provide virtual currency custody services if the bank complies with certain requirements provided for in proposed law.

4. Allow a bank to provide virtual currency custody services in a nonfiduciary capacity and places certain requirements on a bank acting in such a capacity.

5. Allow a bank to provide virtual currency custody services in a fiduciary capacity and place certain requirements on a bank acting in such a capacity.

6. Make technical changes.

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