

2022 Regular Session

HOUSE BILL NO. 802

BY REPRESENTATIVE WRIGHT

COMMERCE: Provides relative to digital assets

1 AN ACT

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

6 Be it enacted by the Legislature of Louisiana:

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

9 CHAPTER 22. VIRTUAL CURRENCY CUSTODY SERVICES

10 §1401. Definitions

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

12 (1) "Custody services" means the role of a financial institution or trust
13 company in the safekeeping and custody of various customer assets.

14 (2) "Financial institution" has the same meaning as provided for in R.S. 6:2.

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

16 (a) A financial institution's or trust company's voluntary, self-initiated
17 internal assessment, audit, or review of the financial institution or trust company and
18 its practices, policies, and procedures.

19 (b) A financial institution's or trust company's voluntary, self-initiated
20 assessment, audit, or review of the practices, policies, and procedures of a person

1 acting under contract, directly or indirectly, as the financial institution's or trust
2 company's service provider, including mortgage servicers and subservicers, credit
3 and debit card processors, and providers of loan document systems.

4 (4) "Trust company" means a corporation or a limited liability trust company
5 organized in accordance with this Chapter or organized pursuant to the laws of the
6 United States, including a trust company organized pursuant to the laws of this state
7 before June 27, 2003, or an entity chartered to act as a fiduciary that is neither a
8 depository institution nor a foreign bank.

9 (5) "Virtual currency" has the same meaning as provided for in R.S. 6:1382.
10 §1402. Provision of virtual currency custody services

11 A. A financial institution or trust company may provide its customers with
12 virtual currency custody services if the financial institution or trust company has
13 adequate protocols in place to effectively manage risks and comply with applicable
14 laws. Prior to a financial institution or trust company offering virtual currency
15 custody services, the financial institution or trust company shall carefully examine
16 the risks involved in offering such services through a methodical self-assessment
17 process. If a financial institution or trust company decides to offer such services, the
18 financial institution or trust company shall do all of the following:

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

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

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

25 B.(1) Consistent with authority provided through the entity's charter, a
26 financial institution or trust company may provide virtual currency custody services
27 in either a nonfiduciary or fiduciary capacity.

28 (2) In providing such services in a nonfiduciary capacity, the financial
29 institution or trust company shall take possession of the customer's asset for

1 safekeeping while legal title remains with the customer. The customer shall retain
2 direct control over the keys associated with his virtual currency.
3 (3) In providing such services in a fiduciary capacity, a financial institution
4 or trust company is required to possess trust powers as provided for in R.S. 6:241,
5 575, and 731. Acting in a fiduciary capacity, the financial institution or trust
6 company shall require customers to transfer their virtual currencies to the control of
7 the financial institution or trust company by creating new private keys to be held by
8 the financial institution or trust company. In its fiduciary capacity, a financial
9 institution or trust company shall have authority to manage virtual currency assets
10 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 Reengrossed

2022 Regular Session

Wright

Abstract: Allows financial institutions and trust companies to provide custodial services relative to virtual currency.

Proposed law defines "custody services", "financial institutions", "self-assessment", "trust company", and "virtual currency".

Proposed law allows a financial institution or trust company to provide virtual currency custodial services, if the financial institution or trust company 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 financial institution or trust company 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 financial institution or trust company, consistent with authority provided through the entity's charter, to provide virtual currency custodial services in a nonfiduciary capacity, and requires a financial institution or trust company 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 financial institution or trust company is operating in a nonfiduciary capacity.

Proposed law allows a financial institution or trust company, consistent with authority provided through the entity's charter, to provide virtual currency custodial services in a fiduciary capacity, and requires a financial institution or trust company 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 financial institution or trust company. A financial institution or trust company 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:

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.

The House Floor Amendments to the engrossed bill:

1. Make proposed law applicable to financial institutions and trust companies.
2. Remove all instances of the word "bank" and its corresponding definition.
3. Add a definition for "financial institution" and "trust company".
4. Adds a condition that the actions taken by an entity pursuant to proposed law is to be in compliance with the entity's charter.