

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 through 1405, relative to digital assets; to provide definitions; to
4 allow banks to serve as custodians of digital assets; to provide for parameters and
5 procedures; to provide for relative state and federal regulatory standards; to provide
6 for rulemaking; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 22 of Title 6 of the Louisiana Revised Statutes of 1950,
9 comprised of R.S. 6:1401 through 1405, is hereby enacted to read as follows:

10 CHAPTER 22. CUSTODIAL SERVICES OF DIGITAL ASSETS

11 §1401. Definitions

12 As used in this Section the following words have the following meanings:

13 (1) "Bank" is defined as provided for in R.S. 6:2.

14 (2) "Commissioner" means the commissioner of the Office of Financial
15 Institutions.

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

1 §1402. Provision of custodial services; written notice required; cumulative
2 application

3 A. A bank may provide custodial services consistent with this Section, if the
4 bank provides written notice to the commission sixty days prior to provision of
5 custodial services.

6 B. The provisions of this Section are cumulative and not exclusive as an
7 optional framework for enhanced supervision of digital asset custody. If a bank
8 elects to provide custodial services in accordance with this section, it shall comply
9 with all provisions of this Section.

10 §1403. Qualified custodian

11 A.(1) A bank may serve as a qualified custodian, as provided for in 17 CFR
12 275.206(4)-2.

13 (2) In performing custodial services pursuant to this Chapter, a bank shall do
14 all of the following:

15 (a) Implement all accounting, account statement, internal control, notice, and
16 other standards specified by applicable state and federal laws and administrative
17 rules for custodial services.

18 (b) Maintain information technology best practices relating to digital assets
19 held in custody. The commissioner may specify the required best practices through
20 rule promulgation.

21 (c) Fully comply with applicable federal anti-money laundering, customer
22 identification and beneficial ownership requirements.

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

26 (3)(a) A bank providing custodial services pursuant to this Chapter shall
27 enter into an agreement with an independent public accountant to conduct an
28 examination conforming to the requirements of 17 CFR 275.206(4)-2(a)(4) and (6),
29 at the cost of the bank.

1 (b) The accountant shall transmit the results of the examination to the
2 commissioner within one hundred twenty days of the examination and may file the
3 results with the United States Securities and Exchange Commission as its rules may
4 provide.

5 (c) Material discrepancies in an examination shall be reported to the
6 commissioner within one day of becoming aware of the discrepancies. The
7 commissioner shall review examination results received within a reasonable time and
8 during any regular examination conducted pursuant to R.S. 6:1302 et seq.

9 (4)(a) Digital assets held in custody in accordance with this Chapter are not
10 depository liabilities or assets of the bank.

11 (b) A bank, or a subsidiary, may register as an investment adviser,
12 investment company or broker dealer as necessary.

13 (c) A bank shall maintain control over a digital asset while in custody.

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

16 (a) Custody under a bailment as a nonfungible or fungible asset. Assets held
17 pursuant to this Subparagraph shall be strictly segregated from other assets.

18 (b) Custody under a bailment pursuant to Paragraph (A)(6) of this Section.

19 (6)(a) If a customer makes an election pursuant to Subparagraph (A)(5)(b)
20 of this Section, the bank may, based only on customer instructions, undertake
21 transactions with the digital asset.

22 (b) A bank maintains control in accordance with Subparagraph (a) of this
23 Paragraph by
24 entering into an agreement with the counterparty to a transaction that contains a time
25 for return of the asset. The bank is not liable for any loss suffered with respect to a
26 transaction in accordance with this Paragraph, except for liability consistent with
27 fiduciary and trust powers as a custodian pursuant to this Chapter.

1 (7) A bank and a customer shall agree in writing regarding the source code
2 version the bank will use for each digital asset and the treatment of each asset
3 pursuant to the Uniform Commercial Code as adopted by this state.

4 (8) Any ambiguity in this Subsection shall be resolved in favor of the
5 customer.

6 B. A bank shall provide clear, written notice to each customer and require
7 written acknowledgment of all of the following:

8 (1) Before the implementation of any updates, material source code updates
9 relating to digital assets held in custody, except in emergencies which may include
10 security vulnerabilities.

11 (2) The heightened risk of loss from transactions involving digital ~~access~~
12 assets.

13 (3) That some risk of loss as a pro rata creditor exists as the result of custody
14 as a fungible asset or custody in accordance with this Chapter.

15 (4) That custody pursuant to this Chapter may not result in the digital assets
16 of the customer being strictly segregated from other customer assets.

17 (5) That the bank is not liable for losses suffered in accordance with this
18 Chapter, except for liability consistent with fiduciary and trust powers as a custodian
19 in accordance with this Chapter.

20 C.(1) A bank and a customer shall agree in writing to a time period within
21 which the bank shall return a digital asset held in custody pursuant to this Chapter.

22 (2) If a customer makes an election pursuant to this Chapter, the bank and
23 the customer may also agree in writing to the form in which the digital asset shall be
24 returned.

25 D.(1) All ancillary or subsidiary proceeds relating to digital assets held in
26 custody in accordance with this Chapter accrue to the benefit of the customer, except
27 as specified by a written agreement with the customer.

28 (2) The bank may elect not to collect certain ancillary or subsidiary proceeds,
29 provided as the election is disclosed in writing.

1 (3) A customer who makes an election under subChapter (4)(a) of this
2 Chapter may withdraw the digital asset in a form that permits the collection of the
3 ancillary or subsidiary proceeds.

4 §1404. Prohibited actions

5 A. A bank shall not authorize or permit rehypothecation of digital assets in
6 accordance with this Chapter.

7 B. The bank shall not engage in any activity to use or exercise discretionary
8 authority relating to a digital asset except based on customer instructions.

9 C. A bank shall not take any action pursuant to this Chapter that would likely
10 impair the solvency or the safety and soundness of the bank, as determined by the
11 commissioner after considering the nature of custodial services customary in the
12 banking industry.

13 §1405. Rulemaking

14 The commissioner shall adopt rules to implement the provisions of this
15 Chapter.

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 Original

2022 Regular Session

Wright

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

Proposed law defines "bank", "commissioner", and "custodial services".

Proposed law provides that a bank may provide custodial services consistent with proposed law, if the bank provides written notice to the commission 60 days prior to providing custodial services.

Proposed law provides that proposed law is cumulative and not exclusive as an optional framework for enhanced supervision of digital asset custody. Proposed law further provides that if a bank elects to provide custodial services, it must comply with proposed law.

Proposed law provides in performing custodial services pursuant to proposed law, a bank shall do all of the following:

- (1) Implement all accounting, account statement, internal code, notice, and other standards specified by applicable state and federal laws and administrative rules for custodial services.

- (2) Maintain information technology best practices relating to digital assets held in custody. The commissioner may specify the required best practices through rule promulgation.
- (3) Fully comply with applicable federal anti-money, laundering, customer identification and beneficial ownership requirements.
- (4) Take other actions necessary to carry out proposed law, 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.

Proposed law provides that digital assets held in custody under proposed law are not depository liabilities or assets of the bank.

Proposed law provides that a bank, or a subsidiary, may register as an investment adviser, investment company or broker dealer as necessary.

Proposed law further provides that a bank shall maintain control over a digital asset while in custody.

Proposed law provides that a customer shall elect, pursuant to a written agreement with the bank, one of the following relationships for each digital asset held in custody:

- (1) Custody under a bailment as a nonfungible or fungible asset. Assets held under proposed law shall be strictly segregated from other assets.
- (2) Custody under a bailment pursuant to proposed law

Proposed law provides that 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 present law.

Proposed law provides that any ambiguity under proposed law shall be resolved in favor of the customer.

Proposed law provides that a bank shall provide clear, written notice to each customer and require written acknowledgment of all of the following:

- (1) Before the implementation of any updates, material source code updates relating to digital assets held in custody, except in emergencies which may include security vulnerabilities.
- (2) The heightened risk of loss from transactions under proposed law.
- (3) That some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset or custody under proposed law.

Proposed law provides that the bank is not liable for losses suffered under proposed law, except for liability consistent with fiduciary and trust powers as a custodian under proposed law.

Proposed law provides that a bank shall not authorize or permit rehypothecation of digital assets.

Proposed law provides that the bank shall not engage in any activity to use or exercise discretionary authority relating to a digital asset except based on customer instructions.

Proposed law provides that a bank shall not take any action that would likely impair the solvency or the safety and soundness of the bank, as determined by the commissioner.

Proposed law provides that the commissioner shall adopt rules to implement proposed law.

(Adds R.S. 6:1401-1405)