

---

## 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)