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 financial institutions and trust companies 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) "Custody services" means the role of a financial institution or trust company in the safekeeping and custody of various customer assets.

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

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

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

(b) A financial institution's or trust company'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 financial institution's or trust
company's service provider, including mortgage servicers and subservicers, credit
and debit card processors, and providers of loan document systems.

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

(5) "Virtual currency" has the same meaning as provided for in R.S. 6:1382.

§1402. Provision of virtual currency custody services

A. A financial institution or trust company may provide its customers with
virtual currency custody services if the financial institution or trust company has
adequate protocols in place to effectively manage risks and comply with applicable
laws. Prior to a financial institution or trust company offering virtual currency
custody services, the financial institution or trust company shall carefully examine
the risks involved in offering such services through a methodical self-assessment
process. If a financial institution or trust company decides to offer such services, the
financial institution or trust company 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) Consistent with authority provided through the entity's charter, a
financial institution or trust company may provide virtual currency custody services
in either a nonfiduciary or fiduciary capacity.

(2) In providing such services in a nonfiduciary capacity, the financial
institution or trust company shall take 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 financial institution
or trust company is required to possess trust powers as provided for in R.S. 6:241,
575, and 731. Acting in a fiduciary capacity, the financial institution or trust
company shall require customers to transfer their virtual currencies to the control of
the financial institution or trust company by creating new private keys to be held by
the financial institution or trust company. In its fiduciary capacity, a financial
institution or trust company 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 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.