

By: Parker

S.B. No. 770

A BILL TO BE ENTITLED

AN ACT

relating to the commingling of funds by digital asset service providers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle E, Title 3, Finance Code, is amended by adding Chapter 160 to read as follows:

CHAPTER 160. DIGITAL ASSET SERVICE PROVIDERS

Sec. 160.001. DEFINITIONS. In this chapter:

(1) "Customer funds" means the digital assets, fiat currency, or other property of a digital asset customer.

(2) "Department" means the Texas Department of Banking.

(3) "Digital asset" means a natively electronic asset that confers economic, proprietary, or access rights and is recorded or stored in a blockchain, cryptographically secured distributed ledger, or similar technology, and includes:

(A) a digital asset that the laws of any country consider to be legal tender; or

(B) virtual currency as defined by Section 12.001, Business & Commerce Code.

(4) "Digital asset customer" means a person who deposits fiat currency or a digital asset with a digital asset service provider.

(5) "Digital asset service provider" means an

1 electronic platform that facilitates the trading of digital assets
2 on behalf of a digital asset customer and maintains custody of the
3 customer's digital assets.

4 Sec. 160.002. APPLICABILITY. (a) This chapter applies to a
5 digital asset service provider in this state that:

6 (1) serves more than 500 digital asset customers in
7 this state; or

8 (2) has at least \$10 million in customer funds.

9 (b) This chapter does not apply to:

10 (1) a bank, as defined by Section 31.002;

11 (2) an institutional trading division or accredited
12 investor division of a digital asset service provider; or

13 (3) an institution excluded by rule from this chapter
14 by the banking commissioner of Texas.

15 Sec. 160.003. DUTIES OF DIGITAL ASSET SERVICE PROVIDERS.

16 (a) A digital asset service provider may not:

17 (1) commingle customer funds with funds belonging to
18 the digital asset service provider, including the digital asset
19 service provider's:

20 (A) operating capital;

21 (B) proprietary accounts;

22 (C) digital assets;

23 (D) fiat currency; or

24 (E) other property that is not customer funds;

25 (2) use customer funds to secure or guarantee a
26 transaction other than a transaction for the customer contributing
27 the funds;

1 (3) maintain customer funds in such a manner that a
2 digital asset customer may be unable to fully withdraw the
3 customer's funds; or

4 (4) invest in an obligation not listed under
5 Subsection (b)(2).

6 (b) In addition to any other requirements under state law, a
7 digital asset service provider shall maintain reserves in an amount
8 sufficient to fulfill all obligations to digital asset customers.

9 These reserves may be held:

10 (1) in a commingled account in which digital assets of
11 digital asset customers are not strictly segregated from each
12 other; or

13 (2) in the digital asset corresponding to the digital
14 asset customer's obligations or obligations issued or guaranteed by
15 a governmental entity listed in Section 2256.009, Government Code,
16 as applicable.

17 (c) A digital asset service provider shall create a plan to
18 allow:

19 (1) each digital asset customer to view at least
20 quarterly an accounting of:

21 (A) any outstanding liabilities owed to the
22 digital asset customer; and

23 (B) the digital asset customer's digital assets
24 held in reserve by the digital asset service provider; and

25 (2) an auditor to access and view at any time the
26 information made available to each digital asset customer under
27 Subdivision (1).

1 (d) Not later than the 90th day after the end of each fiscal
2 year, a digital asset service provider shall file a report with the
3 department. The report must include:

4 (1) an attestation by the digital asset service
5 provider of outstanding liability to digital asset customers,
6 documented using zero-knowledge encryption or a similar industry
7 standard;

8 (2) evidence of customer assets held by the person,
9 documented using zero-knowledge encryption or a similar industry
10 standard;

11 (3) a copy of the provider's plan under Subsection (c);
12 and

13 (4) an attestation by an auditor that the information
14 in the report is true and accurate.

15 Sec. 160.004. REQUIREMENTS FOR MONEY TRANSMISSION LICENSE.

16 (a) In addition to any other requirements under Subchapter D,
17 Chapter 151, a digital asset service provider must comply with the
18 requirements of this chapter to obtain and maintain any money
19 transmission license under Subchapter D, Chapter 151.

20 (b) The department may suspend and revoke a money
21 transmission license issued under Subchapter D, Chapter 151, to a
22 digital asset provider if the provider violates the requirements of
23 this chapter.

24 Sec. 160.005. RULES. The department may adopt rules
25 necessary to implement this chapter.

26 SECTION 2. This Act takes effect September 1, 2023.