SENATE BILL NO. 2632

AN ACT TO CREATE A DIGITAL ASSET ACT; TO CLASSIFY DIGITAL ASSETS; TO SPECIFY THAT DIGITAL ASSETS ARE PROPERTY WITHIN THE UNIFORM COMMERCIAL CODE; TO AUTHORIZE SECURITY INTERESTS IN DIGITAL ASSETS; TO ESTABLISH AN OPT-IN FRAMEWORK FOR BANKS TO PROVIDE CUSTODIAL SERVICES FOR DIGITAL ASSET PROPERTY AS CUSTODIANS; TO SPECIFY STANDARDS AND PROCEDURES FOR CUSTODIAL SERVICES UNDER THIS ACT; TO CLARIFY THE JURISDICTION OF MISSISSIPPI COURTS RELATING TO DIGITAL ASSETS; TO AUTHORIZE A SUPERVISION FEE; TO AMEND SECTION 81-5-33, MISSISSIPPI CODE OF 1972, CONCERNING POWERS OF BANKS IN REGARD TO TRUSTS TO CONFORM; AND FOR RELATED PURPOSES.

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

SECTION 1. Definitions. (1) As used in this act:
(a) "Digital asset" means a representation of economic, proprietary or access rights that is stored in a computer readable format and includes digital consumer assets, digital securities and virtual currency.
(b) "Digital consumer asset" means a digital asset that is used or bought primarily for consumptive, personal or household purposes and includes:
(i) An open blockchain token constituting intangible personal property as otherwise provided by law;
(ii) Any other digital asset which does not fall
within paragraphs (c) and (d) of this subsection.

(c) "Digital security" means a digital asset which
constitutes a security, as defined in Section 75-71-102, but shall
exclude digital consumer assets and virtual currency.

(d) "Virtual currency" means a digital asset that is:
   (i) Used as a medium of exchange, unit of account
       or store of value; and
   (ii) Not recognized as legal tender by the United
       States government.

(2) The terms in subsection (1) of this section are mutually
exclusive.

SECTION 2. Classification of digital assets as property;
applicability to Uniform Commercial Code. (1) Digital assets are
classified in the following manner:

   (a) Digital consumer assets are intangible personal
       property and shall be considered general intangibles, as defined
       in Section 75-9-102, only for the purposes of Article 9 of the
       Uniform Commercial Code, Title 75, Chapter 9, Mississippi Code of
       1972;

   (b) Digital securities are intangible personal property
       and shall be considered securities, as "security" is defined in
       Section 75-8-102(a)(15), and investment property, as defined in
       Section 75-9-102(a)(49), only for the purposes of Articles 8 and 9
of the Uniform Commercial Code, Title 75, Chapters 8 and 9,
Mississippi Code of 1972;

(c) Virtual currency is intangible personal property
and shall be considered money, notwithstanding Section
75-1-201(b)(24), only for the purposes of Article 9 of the Uniform
Commercial Code, Title 75, Chapter 9, Mississippi Code of 1972.

(2) Consistent with Section 75-8-102(a)(9), a digital asset
may be treated as a financial asset under that paragraph, pursuant
to a written agreement with the owner of the digital asset. If
itreated as a financial asset, the digital asset shall remain
intangible personal property.

(3) A bank providing custodial services under Section
81-5-33 shall be considered to meet the requirements of Section
75-8-102(a)(14).

(4) Classification of digital assets under this section
shall be construed in a manner to give the greatest effect to this
chapter, but shall not be construed to apply to any other asset.

SECTION 3. Perfection of security interests in digital
assets; financing statements. (1) Notwithstanding the financing
statement requirement specified by Section 75-9-310(a) as
otherwise applied to general intangibles or any other provision of
law, perfection of a security interest in a digital asset may be
achieved through control, as defined in subsection (5)(a) of this
section. A security interest held by a secured party having
control of a digital asset has priority over a security interest held by a secured party that does not have control of the asset.

(2) Before a secured party may take control of a digital asset under this section, the secured party shall enter into a control agreement with the debtor. A control agreement may also set forth the terms under which a secured party may pledge its security interest in the digital asset as collateral for another transaction.

(3) A secured party may file a financing statement with the Secretary of State, including to perfect a security interest in proceeds from a digital asset pursuant to Section 75-9-315.

(4) Notwithstanding any other provision of law, including Article 9 of the Uniform Commercial Code, Title 75, Chapter 9, Mississippi Code of 1972, a transferee takes a digital asset free of any security interest two (2) years after the transferee takes the asset for value and does not have actual notice of an adverse claim. This subsection only applies to a security interest perfected by a method other than control.

(5) As used in this section:

(a) Consistent with subsection (6) of this section, "control" is equivalent to the term "possession" when used in Article 9, Title 75, Chapter 9, Mississippi Code of 1972, and means the following:

(i) A secured party, or an agent, custodian, fiduciary or trustee of the party, has the exclusive legal
authority to conduct a transaction relating to a digital asset, including by means of a private key or the use of a multi-signature arrangement authorized by the secured party;

(ii) A smart contract created by a secured party which has the exclusive legal authority to conduct a transaction relating to a digital asset. As used in this subparagraph, "smart contract" means an automated transaction, as defined in Section 75-12-3, or any substantially similar analogue, which is comprised of code, script or programming language that executes the terms of an agreement, and which may include taking custody of and transferring an asset, or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.

(b) "Multisignature arrangement" means a system of access control relating to a digital asset for the purposes of preventing unauthorized transactions relating to the asset, in which two (2) or more private keys are required to conduct a transaction, or any substantially similar analogue;

(c) "Private key" means a unique element of cryptographic data, or any substantially similar analogue, which is:

(i) Held by a person;

(ii) Paired with a unique, publicly available element of cryptographic data; and
Associated with an algorithm that is necessary to carry out an encryption or decryption required to execute a transaction.

(6) Perfection by control creates a possessory security interest and does not require physical possession. For purposes of this section and Article 9, Title 75, Chapter 9, Mississippi Code of 1972, a digital asset is located in Mississippi if the asset is held by a Mississippi custodian, the debtor or secured party is physically located in Mississippi or the debtor or secured party is incorporated or organized in Mississippi.

SECTION 4. Digital asset custodial services. (1) A bank may provide custodial services consistent with this section upon providing sixty (60) days' written notice to the commissioner. The provisions of this section are cumulative and not exclusive as an optional framework for enhanced supervision of digital asset custody. If a bank elects to provide custodial services under this section, it must comply with all provisions of this section.

(2) A bank may serve as a qualified custodian, as specified by the United States Securities and Exchange Commission in 17 C.F.R. Section 275.206(4)-2. In performing custodial services under this section, a bank must:

(a) Implement all accounting, account statement, internal control, notice and other standards specified by applicable state or federal law and rules for custodial services;
(b) Maintain information technology best practices relating to digital assets held in custody. The commissioner may specify required best practices by rule;

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

(d) Take other actions necessary to carry out this section, 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.

(3) A bank providing custodial services under this act must enter into an agreement with an independent public accountant to conduct an examination conforming to the requirements of 17 C.F.R. Section 275.206(4)-2(a)(4) and (6), at the cost of the bank. The accountant must transmit the results of the examination to the commissioner within one hundred twenty (120) days of the examination and may file the results with the United States Securities and Exchange Commission as its rules may provide. Material discrepancies in an examination must be reported to the commissioner within one (1) day. The commissioner must review examination results received within a reasonable time and during any regular examination conducted under Section 81-1-81.

(4) Digital assets held in custody under this section are not depository liabilities or assets of the bank. A bank, or a subsidiary, may register as an investment adviser, investment
company or broker dealer as necessary. A bank shall maintain
control over a digital asset while in custody. A customer must
elect, pursuant to a written agreement with the bank, one (1) of
the following relationships for each digital asset held in
custody:

(a) Custody under a bailment as a nonfungible or
fungible asset. Assets held under this paragraph shall be
strictly segregated from other assets; or

(b) Custody under a bailment pursuant to subsection (5)
of this section.

(5) If a customer makes an election under subsection (4)(b)
of this section, the bank may, based only on customer
instructions, undertake transactions with the digital asset. A
bank maintains control under subsection (4) of this section by
entering into an agreement with the counterparty to a transaction
that contains a time for return of the asset. The bank is not
liable for any loss suffered with respect to a transaction under
this subsection, except for liability consistent with fiduciary
and trust powers as a custodian under this section.

(6) 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 the Uniform Commercial Code,
Title 75, Mississippi Code of 1972, if necessary. Any ambiguity
under this subsection must be resolved in favor of the customer.
(7) A bank must provide clear, written notice to each customer and require written acknowledgement of the following:

(a) 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;

(b) The heightened risk of loss from transactions under subsection (5) of this section;

(c) That some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset or custody under subsection (4)(b) of this section;

(d) That custody under subsection (4)(b) of this section may not result in the digital assets of the customer being strictly segregated from other customer assets; and

(e) That the bank is not liable for losses suffered under subsection (5) of this section, except for liability consistent with fiduciary and trust powers as a custodian under this section.

(8) A bank and a customer must agree in writing to a time period within which the bank must return a digital asset held in custody under this section. If a customer makes an election under subsection (4)(b) of this section, the bank and the customer may also agree in writing to the form in which the digital asset shall be returned.

(9) All ancillary or subsidiary proceeds relating to digital assets held in custody under this section accrue to the benefit of
the customer, except as specified by a written agreement with the
customer. The bank may elect not to collect certain ancillary or
subsidiary proceeds, as long as the election is disclosed in
writing. A customer who makes an election under subsection (4)(a)
of this section may withdraw the digital asset in a form that
permits the collection of the ancillary or subsidiary proceeds.

(10) A bank shall not authorize or permit rehypothecation of
digital assets under this section. The bank shall not engage in
any activity to use or exercise discretionary authority relating
to a digital asset except based on customer instructions.

(11) A bank shall not take any action under this section
that would likely impair the solvency or the safety and soundness
of the bank, as determined by the commissioner after considering
the nature of custodial services customary in the banking
industry.

(12) To offset the costs of supervision and administration
of this section, a bank that provides custodial services under
this section must pay a supervision fee equal to two-tenths of one
mill on the dollar ($0.0002) relating to assets held in custody
under this section as of December 31 of each year, with payment of
the supervision fee made on or before the following January 31.
The supervision fee shall be deposited by the commissioner into
the Department of Banking and Consumer Protection's Banking
Maintenance Fund and may be expended for any purpose authorized
for that fund. Banks providing custodial services outside of this section are not required to pay this supervision fee.

(13) The commissioner may adopt rules to implement this section.

(14) As used in this section:

(a) "Bank" has the meaning ascribed to it in Section 81-3-1;

(b) "Commissioner" means the Mississippi Commissioner of Banking and Consumer Finance;

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

SECTION 5. Jurisdiction of courts. The courts of Mississippi have jurisdiction to hear claims in both law and equity relating to digital assets, including those arising from this act and the Uniform Commercial Code, Title 75, Mississippi Code of 1972.

SECTION 6. Section 81-5-33, Mississippi Code of 1972, is amended as follows:

81-5-33. Banks may accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or corporation or that may be committed or transferred to them by order of any court of record. They may
receive money in trust, take and accept by grant, assignment, 
transfer, devise or bequest, and hold any real or personal estate 
or trusts created according to the laws of this or any other state 
or of the United States, and execute those legal trusts in regard 

to the same, on such terms as may be directed or agreed upon.

They may exercise the powers enumerated in Section 4 of this act. 

They may act as agent for the investment of money or the 

management of property for other persons, and as agent for persons 

and corporations for the purpose of issuing, registering, 

transferring or countersigning the certificates of stock, bonds or 

other evidences of debt of any corporation, association, 
municipality, state, county or public authority on such terms as 

may be agreed upon. They also may act as guardian for any minor 
or person with mental illness under the appointment of any court 
of record having jurisdiction of the person or estate of the minor 
or person with mental illness and may act as administrator or 
executor of the estate of any deceased person. They may act as 
agent or attorney-in-fact and as commissioner for the sale of 
property, both real and personal, and may act as assignee or 
receiver, or as trustee in mortgages or bond issues, or in any 
other fiduciary capacity authorized by law. They may accept trust 
funds or other property upon specially agreed terms and pay or 

deliver the same to the owners, beneficiaries or others, as the 

case may be, when and as the same should be paid or delivered 

according to the terms of the trust agreement under which it is
held. Whenever under the laws of this or any other state or under
the rule or order of any court, the execution of a bond for the
protection of a private or court trust is required, a trust
company shall be authorized to execute the bond for the protection
of any trust or trust estate being administered by it.

Banking corporations created, organized and doing business
under the laws of the State of Mississippi may exercise, without
amendment of their charters, and under their charter authority to
engage in the general business of banking, all or any of the
foregoing powers. However, before any bank whose charter merely
authorizes the exercise of general banking functions may exercise
those powers, the previous written consent of the Commissioner of
Banking and Consumer Finance shall be obtained.

Banks exercising any or all of those powers shall segregate
all assets held in any fiduciary capacity from the general assets
of the bank and shall keep a separate set of books and records
showing in proper detail all transactions engaged in under the
authority of this section or under the authority granted to them
in their charter or otherwise. Those books and records shall be
inspected and examined by the state bank examiners at each and
every examination of the bank.

No bank shall receive in its trust department deposits of
current funds subject to check or the deposit of checks, drafts,
bills of exchange or other items for collection or exchange
purposes. Funds deposited or held in trust by the bank awaiting
investment or distribution shall be carried in a separate account and shall not be used by the bank in the conduct of its business, unless it first sets aside in the trust department United States bonds or bonds of the State of Mississippi or any subdivision of the state, the market value of which shall at all times be not less than ten percent (10%) in excess of the total funds so held, exclusive of the portion of funds insured by the Federal Deposit Insurance Corporation.

In the event of the failure or liquidation of the bank, the owners of the funds held in trust for investment or distribution shall have a prior lien on the bonds or other securities so set apart in addition to their claim against the assets of the bank.

In any case in which the laws of this state require that one acting as trustee, executor, administrator or in any fiduciary capacity must take an oath or make an affidavit, the president, vice president, cashier or trust officer of a bank may take the necessary oath or execute the necessary affidavit.

In making investments of trust funds, it shall be unlawful for any bank to purchase securities from itself or to purchase securities in which it may be interested, directly or indirectly. However, any bank, including a national bank, authorized to do business in this state in a fiduciary capacity may, unless prohibited or otherwise limited by the instrument governing the fiduciary relationship, in the exercise of its investment discretion or at the direction of another person authorized to...
direct the investment of funds held by the bank as fiduciary,
invest and reinvest in the securities of, or other interests in,
any open-end or closed-end management type investment company or
investment trust registered under the Investment Company Act of
1940, 15 USCS Section 80a-1, et seq., as amended, notwithstanding
that the banking institution or affiliate of the banking
institution provides services to the investment company or
investment trust, such as that of an investment advisor,
custodian, transfer agent, registrar, sponsor, distributor,
manager or otherwise, and receives reasonable remuneration for
those services, so long as the total compensation paid by the
trust or custodial estate as trustee's fees and mutual fund fees
is reasonable, taking into account the nature and extent of the
trustee's duties, the nature and extent of the services provided
to the investment company or investment trust, and the total
compensation, costs and fees that would otherwise be paid,
directly or indirectly, by the trust or custodial estate if the
investment were made in an investment company or investment trust
for which the bank or its affiliates provided no services. With
respect to any funds so invested, the banking institution shall
make available by statement, prospectus or otherwise to all
current income beneficiaries of an account the basis, expressed as
a percentage of asset value or otherwise, upon which the
remuneration is calculated. No bank shall lend to any officer,
director or employee of the bank any funds held in trust by it,
and any officer, director or employee making a loan, or to whom such a loan is made, shall be guilty of a felony and, upon conviction, may be fined not more than Five Thousand Dollars ($5,000.00) or imprisoned in the State Penitentiary for not more than five (5) years, or by both that fine and imprisonment, in the discretion of the court.

SECTION 7. This act shall take effect and be in force from and after July 1, 2022.