MISSISSIPPI LEGISLATURE
REGULAR SESSION 2022

By: Senator(s) Harkins
To: Business and Financial Institutions

SENATE BILL NO. 2633

AN ACT TO CREATE NEW SECTION 75-71-206, MISSISSIPPI CODE OF 1972, TO CREATE AN EXEMPTION FOR OPEN BLOCKCHAIN TOKENS FROM SECURITIES LAWS; TO AMEND SECTION 75-71-102, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS UNDER THE MISSISSIPPI SECURITIES ACT OF 2010 TO CONFORM; TO AMEND SECTION 75-15-7, MISSISSIPPI CODE OF 1972, TO REVISE EXEMPTIONS UNDER THE MISSISSIPPI MONEY TRANSMITTERS ACT TO CONFORM; TO AMEND SECTION 75-15-32, MISSISSIPPI CODE OF 1972, TO CLARIFY THE AUTHORITY OF THE COMMISSIONER TO INVESTIGATE SUSPECTED VIOLATIONS OF THE MISSISSIPPI MONEY TRANSMITTERS ACT EVEN IF A BLOCKCHAIN TOKEN EXemption IS ASSERTED; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section 75-71-206, Mississippi Code of 1972:

75-71-206. Open blockchain token exemption. (1) Except as otherwise provided by subsection (3) of this section, a developer or seller of an open blockchain token shall not be deemed the issuer of a security and shall not be subject to the provisions of the Mississippi Securities Act of 2010 if all of the following are met:

(a) The developer or seller of the token, or the registered agent of the developer or seller, files a notice of
intent with the Secretary of State, as specified in subsection (d) of this section;

(b) The purpose of the token is for a consumptive purpose, which shall only be exchangeable for, or provided for the receipt of, goods, services or content, including rights of access to goods, services or content; and

(c) The developer or seller of the token did not sell the token to the initial buyer as a financial investment. This paragraph shall only be satisfied if:

   (i) The developer or seller did not market the token as a financial investment; and

   (ii) At least one (1) of the following is true:

       1. The developer or seller of the token reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

       2. The token has a consumptive purpose that is available at the time of sale and can be used at or near the time of sale for use for a consumptive purpose;

       3. If the token does not have a consumptive purpose available at the time of sale, the initial buyer of the token is prevented from reselling the token until the token is available for use for a consumptive purpose; or

       4. The developer or seller takes other reasonable precautions to prevent buyers from purchasing the token as a financial investment.
(2) Except as otherwise provided by subsection (c) of this section, a person who facilitates the exchange of an open blockchain token shall not be deemed a broker-dealer or a person who otherwise deals in securities under this chapter and shall not be subject to the provisions of the Mississippi Securities Act of 2010 if all of the following are met:

(a) The person, or the registered agent of the person, files a notice of intent with the Secretary of State, as specified in subsection (d) of this section;

(b) The person has a reasonable and good-faith belief that a token, subject to exchange, conforms to the requirements of subsection (1) of this section; and

(c) The person takes reasonably prompt action to terminate the exchange of a token that does not conform to the requirements of this subsection.

(3) Notwithstanding any other provision of law, a developer, seller or a person who facilitates the exchange of an open blockchain token is subject to the provisions of the Mississippi Securities Act of 2010 only to the extent necessary to carry out those sections. The Secretary of State shall have the authority provided under the Mississippi Securities Act of 2010 to determine compliance with the provisions of this section, including whether a person qualifies for the exemptions set forth in this section. The evidentiary burdens specified in the Mississippi Securities
Act of 2010 shall apply in any proceeding initiated by the Secretary of State under this subsection (3).

(4) A developer, seller or a person who facilitates the exchange of an open blockchain token, or the registered agent of the applicable person, shall electronically file a notice of intent with the Secretary of State before the person shall qualify for an exemption under this section. The notice of intent shall contain the name of the person acting as a developer, seller or facilitator, the contact information of the person or the registered agent of the person and specify whether the person will be acting as a developer, seller or facilitator. A secure form shall be made available by the Office of the Secretary of State on its internet website for this purpose.

(5) As used in this section, "open blockchain token" means a digital unit which is:

(a) Created:

   (i) In response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

   (ii) By deploying computer code to a blockchain network that allows for the creation of digital tokens or other units; or

   (iii) Using any combination of the methods specified in this subsection (5)(a).
(b) Recorded in a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature, especially relating to the supply of units and their distribution; and

(c) Capable of being traded or transferred between persons without an intermediary or custodian of value.

SECTION 2. Section 75-71-102, Mississippi Code of 1972, is amended as follows:

75-71-102. In this chapter, unless the context otherwise requires:

(1) "Administrator" means the Secretary of State.

(2) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. The term does not include an individual excluded by rule adopted or order issued under this chapter. The term does not include an associated person of an issuer who is deemed not to be a broker under Securities and Exchange Commission Rule 3a4-1.

(3) "Bank" means:

(A) A banking institution organized under the laws of the United States;

(B) A member bank of the Federal Reserve System;
(C) Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 USC Section 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and

(D) A receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B) or (C).

(4) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) An agent;

(B) An issuer;

(C) A bank or savings institution if its activities as a broker-dealer are limited to those specified in subsection 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 USC Section 78c(a)(4) and (5)) or a bank that satisfies the conditions
described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 USC Section 78c(a)(4));

(D) An international banking institution; *

(E) A person excluded by rule adopted or order issued under this chapter *

(F) A person who facilitates the exchange of an open blockchain token as defined in Section 75-71-206 and subject to Section 75-71-206(3).

(5) "Depository institution" means:

(A) A bank; or

(B) A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(i) An insurance company or other organization primarily engaged in the business of insurance;

(ii) A Morris Plan bank; or

(iii) An industrial loan company that is not an "insured depository institution" as defined in Section 3(c)(2)
of the Federal Deposit Insurance Act, 12 USC 1813(c)(2), or any successor federal statute.

(6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 USC Section 77r(b)) or rules or regulations adopted pursuant to that provision.

(8) "Filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator.

(9) "Fraud," "deceit" and "defraud" are not limited to common law deceit.

(10) "Guaranteed" means guaranteed as to payment of all principal and all interest.

(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) A depository institution or international banking institution;

(B) An insurance company;

(C) A separate account of an insurance company;

(D) An investment company as defined in the Investment Company Act of 1940;
(E) A broker-dealer registered under the Securities Exchange Act of 1934;

(F) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of Ten Million Dollars ($10,000,000.00) or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(G) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of Ten Million Dollars ($10,000,000.00) or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(H) A trust, if it has total assets in excess of Ten Million Dollars ($10,000,000.00), its trustee is a depository
institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) An organization described in Section 501(c)(3) of the Internal Revenue Code (26 USC Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of Ten Million Dollars ($10,000,000);

(J) A small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 USC Section 681(c)) with total assets in excess of Ten Million Dollars ($10,000,000.00);

(K) A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 USC Section 80b-2(a)(22)) with total assets in excess of Ten Million Dollars ($10,000,000.00);

(L) A federal covered investment adviser acting for its own account;

(M) A "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 CFR 230.144A);
(N) A "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 CFR 240.15a-6);

(O) Any other person, other than an individual, of institutional character with total assets in excess of Ten Million Dollars ($10,000,000.00) not organized for the specific purpose of evading this chapter; or

(P) Any other person specified by rule adopted or order issued under this chapter.

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a
regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) An investment adviser representative;
(B) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;
(C) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;
(D) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;
(E) A federal covered investment adviser;
(F) A bank or savings institution;
(G) Any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or
(H) Any other person excluded by rule adopted or order issued under this chapter.
(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) Performs only clerical or ministerial acts;

(B) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 USC Section 80b-3a) and is:

   (i) An "investment adviser representative" as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 USC Section 80b-3a); or
(ii) Not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 USC Section 80b-2(a)(25)); or

(D) Is excluded by rule adopted or order issued under this chapter.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to Section 75-71-206(1) and (2) and the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a
lease, right, or royalty, whether whole or fractional, that
creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer
distribution" means a transaction or distribution not directly or
indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer
to obtain, or solicitation of an offer to sell, a security or
interest in a security for value. The term does not include a
tender offer that is subject to Section 14(d) of the Securities
Exchange Act of 1934 (15 USC 78n(d)).

(20) "Person" means an individual; corporation;
business trust; estate; trust; partnership; limited liability
company; association or organization, whether incorporated or
unincorporated; joint venture; government; governmental
subdivision, agency, or instrumentality; or any other legal or
commercial entity.

(21) "Place of business" of a broker-dealer, an
investment adviser, or a federal covered investment adviser means:

(A) An office at which the broker-dealer,
investment adviser, or federal covered investment adviser
regularly provides brokerage or investment advice or solicits,
meets with, or otherwise communicates with customers or clients;
or

(B) Any other location that is held out to the
general public as a location at which the broker-dealer,
investment adviser, or federal covered investment adviser provides 
brokerage or investment advice or solicits, meets with, or 
otherwise communicates with customers or clients.

(22) "Predecessor act" means the act repealed by 
Section 2, Chapter 528, Laws of 2009.

(23) "Price amendment" means the amendment to a 
registration statement filed under the Securities Act of 1933 or, 
if an amendment is not filed, the prospectus or prospectus 
supplement filed under the Securities Act of 1933 that includes a 
statement of the offering price, underwriting and selling 
discounts or commissions, amount of proceeds, conversion rates, 
call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer 
or an investment adviser means the executive office of the 
broker-dealer or investment adviser from which the officers, 
partners, or managers of the broker-dealer or investment adviser 
direct, control, and coordinate the activities of the 
broker-dealer or investment adviser.

(25) "Record," except in the phrases "of record," 
"official record," and "public record," means information that is 
inscribed on a tangible medium or that is stored in an electronic 
or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract 
to sell, or disposition of, a security or interest in a security 
for value, and "offer to sell" includes every attempt or offer to
dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) A gift of assessable stock involving an offer and sale; and

(C) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.


(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities,
including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term includes both a certificated and an uncertificated security. The term does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or other specified period; ** an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974; or an open blockchain token, as defined in Section 75-71-206. An "investment contract" includes, among other contracts, an investment in a limited partnership, an interest in a limited liability company, an investment in a viatical settlement or similar agreement, and an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

(29) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act

(30) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach or logically associate with the record an electronic symbol, sound, or process.

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. Section 75-15-7, Mississippi Code of 1972, is amended as follows:

75-15-7. Nothing in this chapter shall apply to:

(a) The sale or issuance or delivering of checks by:

   (i) Any financial institution whose deposits are insured by any agency of the United States government or any trust company authorized to do business in this state;

   (ii) The government of the United States or any department or agent thereof;
The State of Mississippi or any municipal corporation, county or other political subdivision of this state;

Agents of a licensee, as provided for in Section 75-15-17, provided that this exemption shall apply only to the agent's acts on behalf of the licensee and this exemption shall not exempt the agent from the provisions of this chapter where he conducts money transmissions for his own account;

Attorneys-at-law, as to checks issued in the regular course of the practice of law;

Persons not carrying on the trade or business of money transmission, this exemption is intended to include persons who conduct money transmissions only as an incidental act to another trade or business regularly carried on by them and persons who only occasionally and infrequently conduct money transmissions for another person; or

The Nationwide Mortgage Licensing System and Registry for mortgage brokers, mortgage lenders and mortgage loan originators * * *; or

(b) A person who develops, sells or facilitates the exchange of an open blockchain token, as defined in Section 75-71-206.

SECTION 4. Section 75-15-32, Mississippi Code of 1972, is amended as follows:
75-15-32. (1) The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required under this chapter.

(2) If the commissioner has reason to believe a person is engaged in, or is about to engage in, an activity that would be unlawful but for an exemption asserted under Section 75-15-7(b), and the commissioner has reason to believe the requirements of that subsection have not been met, the commissioner may issue an order to show cause why an order to cease and desist the activity should not issue.

SECTION 5. This act shall take effect and be in force from and after July 1, 2022.