

By: Senator(s) Harkins

To: Business and Financial
Institutions; Judiciary,
Division A

SENATE BILL NO. 2632

1 AN ACT TO CREATE A DIGITAL ASSET ACT; TO CLASSIFY DIGITAL
2 ASSETS; TO SPECIFY THAT DIGITAL ASSETS ARE PROPERTY WITHIN THE
3 UNIFORM COMMERCIAL CODE; TO AUTHORIZE SECURITY INTERESTS IN
4 DIGITAL ASSETS; TO ESTABLISH AN OPT-IN FRAMEWORK FOR BANKS TO
5 PROVIDE CUSTODIAL SERVICES FOR DIGITAL ASSET PROPERTY AS
6 CUSTODIANS; TO SPECIFY STANDARDS AND PROCEDURES FOR CUSTODIAL
7 SERVICES UNDER THIS ACT; TO CLARIFY THE JURISDICTION OF
8 MISSISSIPPI COURTS RELATING TO DIGITAL ASSETS; TO AUTHORIZE A
9 SUPERVISION FEE; TO AMEND SECTION 81-5-33, MISSISSIPPI CODE OF
10 1972, CONCERNING POWERS OF BANKS IN REGARD TO TRUSTS TO CONFORM;
11 AND FOR RELATED PURPOSES.

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

13 **SECTION 1. Definitions.** (1) As used in this act:

14 (a) "Digital asset" means a representation of economic,
15 proprietary or access rights that is stored in a computer readable
16 format and includes digital consumer assets, digital securities
17 and virtual currency.

18 (b) "Digital consumer asset" means a digital asset that
19 is used or bought primarily for consumptive, personal or household
20 purposes and includes:

21 (i) An open blockchain token constituting
22 intangible personal property as otherwise provided by law;



23 (ii) Any other digital asset which does not fall
24 within paragraphs (c) and (d) of this subsection.

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

28 (d) "Virtual currency" means a digital asset that is:

29 (i) Used as a medium of exchange, unit of account
30 or store of value; and

31 (ii) Not recognized as legal tender by the United
32 States government.

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

35 **SECTION 2. Classification of digital assets as property;**

36 **applicability to Uniform Commercial Code.** (1) Digital assets are
37 classified in the following manner:

38 (a) Digital consumer assets are intangible personal
39 property and shall be considered general intangibles, as defined
40 in Section 75-9-102, only for the purposes of Article 9 of the
41 Uniform Commercial Code, Title 75, Chapter 9, Mississippi Code of
42 1972;

43 (b) Digital securities are intangible personal property
44 and shall be considered securities, as "security" is defined in
45 Section 75-8-102(a)(15), and investment property, as defined in
46 Section 75-9-102(a)(49), only for the purposes of Articles 8 and 9



47 of the Uniform Commercial Code, Title 75, Chapters 8 and 9,
48 Mississippi Code of 1972;

49 (c) Virtual currency is intangible personal property
50 and shall be considered money, notwithstanding Section
51 75-1-201(b) (24), only for the purposes of Article 9 of the Uniform
52 Commercial Code, Title 75, Chapter 9, Mississippi Code of 1972.

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

58 (3) A bank providing custodial services under Section
59 81-5-33 shall be considered to meet the requirements of Section
60 75-8-102(a) (14).

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

64 **SECTION 3. Perfection of security interests in digital**

65 **assets; financing statements.** (1) Notwithstanding the financing
66 statement requirement specified by Section 75-9-310(a) as
67 otherwise applied to general intangibles or any other provision of
68 law, perfection of a security interest in a digital asset may be
69 achieved through control, as defined in subsection (5) (a) of this
70 section. A security interest held by a secured party having



71 control of a digital asset has priority over a security interest
72 held by a secured party that does not have control of the asset.

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

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

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

89 (5) As used in this section:

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

94 (i) A secured party, or an agent, custodian,
95 fiduciary or trustee of the party, has the exclusive legal



96 authority to conduct a transaction relating to a digital asset,
97 including by means of a private key or the use of a
98 multi-signature arrangement authorized by the secured party;

99 (ii) A smart contract created by a secured party
100 which has the exclusive legal authority to conduct a transaction
101 relating to a digital asset. As used in this subparagraph, "smart
102 contract" means an automated transaction, as defined in Section
103 75-12-3, or any substantially similar analogue, which is comprised
104 of code, script or programming language that executes the terms of
105 an agreement, and which may include taking custody of and
106 transferring an asset, or issuing executable instructions for
107 these actions, based on the occurrence or nonoccurrence of
108 specified conditions.

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

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

117 (i) Held by a person;

118 (ii) Paired with a unique, publicly available
119 element of cryptographic data; and



120 (iii) Associated with an algorithm that is
121 necessary to carry out an encryption or decryption required to
122 execute a transaction.

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

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

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

141 (a) Implement all accounting, account statement,
142 internal control, notice and other standards specified by
143 applicable state or federal law and rules for custodial services;



144 (b) Maintain information technology best practices
145 relating to digital assets held in custody. The commissioner may
146 specify required best practices by rule;

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

150 (d) Take other actions necessary to carry out this
151 section, which may include exercising fiduciary powers similar to
152 those permitted to national banks and ensuring compliance with
153 federal law governing digital assets classified as commodities.

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

166 (4) Digital assets held in custody under this section are
167 not depository liabilities or assets of the bank. A bank, or a
168 subsidiary, may register as an investment adviser, investment



169 company or broker dealer as necessary. A bank shall maintain
170 control over a digital asset while in custody. A customer must
171 elect, pursuant to a written agreement with the bank, one (1) of
172 the following relationships for each digital asset held in
173 custody:

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

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

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

188 (6) A bank and a customer shall agree in writing regarding
189 the source code version the bank will use for each digital asset
190 and the treatment of each asset under the Uniform Commercial Code,
191 Title 75, Mississippi Code of 1972, if necessary. Any ambiguity
192 under this subsection must be resolved in favor of the customer.



193 (7) A bank must provide clear, written notice to each
194 customer and require written acknowledgement of the following:

195 (a) Before the implementation of any updates, material
196 source code updates relating to digital assets held in custody,
197 except in emergencies which may include security vulnerabilities;

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

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

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

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

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

216 (9) All ancillary or subsidiary proceeds relating to digital
217 assets held in custody under this section accrue to the benefit of



218 the customer, except as specified by a written agreement with the
219 customer. The bank may elect not to collect certain ancillary or
220 subsidiary proceeds, as long as the election is disclosed in
221 writing. A customer who makes an election under subsection (4)(a)
222 of this section may withdraw the digital asset in a form that
223 permits the collection of the ancillary or subsidiary proceeds.

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

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

233 (12) To offset the costs of supervision and administration
234 of this section, a bank that provides custodial services under
235 this section must pay a supervision fee equal to two-tenths of one
236 mill on the dollar (\$.0002) relating to assets held in custody
237 under this section as of December 31 of each year, with payment of
238 the supervision fee made on or before the following January 31.
239 The supervision fee shall be deposited by the commissioner into
240 the Department of Banking and Consumer Protection's Banking
241 Maintenance Fund and may be expended for any purpose authorized



242 for that fund. Banks providing custodial services outside of this
243 section are not required to pay this supervision fee.

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

246 (14) As used in this section:

247 (a) "Bank" has the meaning ascribed to it in Section
248 81-3-1;

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

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

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

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

263 81-5-33. Banks may accept and execute all such trusts and
264 perform such duties of every description as may be committed to
265 them by any person or corporation or that may be committed or
266 transferred to them by order of any court of record. They may



267 receive money in trust, take and accept by grant, assignment,
268 transfer, devise or bequest, and hold any real or personal estate
269 or trusts created according to the laws of this or any other state
270 or of the United States, and execute those legal trusts in regard
271 to the same, on such terms as may be directed or agreed upon.
272 They may exercise the powers enumerated in Section 4 of this act.
273 They may act as agent for the investment of money or the
274 management of property for other persons, and as agent for persons
275 and corporations for the purpose of issuing, registering,
276 transferring or countersigning the certificates of stock, bonds or
277 other evidences of debt of any corporation, association,
278 municipality, state, county or public authority on such terms as
279 may be agreed upon. They also may act as guardian for any minor
280 or person with mental illness under the appointment of any court
281 of record having jurisdiction of the person or estate of the minor
282 or person with mental illness and may act as administrator or
283 executor of the estate of any deceased person. They may act as
284 agent or attorney-in-fact and as commissioner for the sale of
285 property, both real and personal, and may act as assignee or
286 receiver, or as trustee in mortgages or bond issues, or in any
287 other fiduciary capacity authorized by law. They may accept trust
288 funds or other property upon specially agreed terms and pay or
289 deliver the same to the owners, beneficiaries or others, as the
290 case may be, when and as the same should be paid or delivered
291 according to the terms of the trust agreement under which it is



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

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

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

313 No bank shall receive in its trust department deposits of
314 current funds subject to check or the deposit of checks, drafts,
315 bills of exchange or other items for collection or exchange
316 purposes. Funds deposited or held in trust by the bank awaiting



317 investment or distribution shall be carried in a separate account
318 and shall not be used by the bank in the conduct of its business,
319 unless it first sets aside in the trust department United States
320 bonds or bonds of the State of Mississippi or any subdivision of
321 the state, the market value of which shall at all times be not
322 less than ten percent (10%) in excess of the total funds so held,
323 exclusive of the portion of funds insured by the Federal Deposit
324 Insurance Corporation.

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

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

334 In making investments of trust funds, it shall be unlawful
335 for any bank to purchase securities from itself or to purchase
336 securities in which it may be interested, directly or indirectly.
337 However, any bank, including a national bank, authorized to do
338 business in this state in a fiduciary capacity may, unless
339 prohibited or otherwise limited by the instrument governing the
340 fiduciary relationship, in the exercise of its investment
341 discretion or at the direction of another person authorized to



342 direct the investment of funds held by the bank as fiduciary,
343 invest and reinvest in the securities of, or other interests in,
344 any open-end or closed-end management type investment company or
345 investment trust registered under the Investment Company Act of
346 1940, 15 USCS Section 80a-1, et seq., as amended, notwithstanding
347 that the banking institution or affiliate of the banking
348 institution provides services to the investment company or
349 investment trust, such as that of an investment advisor,
350 custodian, transfer agent, registrar, sponsor, distributor,
351 manager or otherwise, and receives reasonable remuneration for
352 those services, so long as the total compensation paid by the
353 trust or custodial estate as trustee's fees and mutual fund fees
354 is reasonable, taking into account the nature and extent of the
355 trustee's duties, the nature and extent of the services provided
356 to the investment company or investment trust, and the total
357 compensation, costs and fees that would otherwise be paid,
358 directly or indirectly, by the trust or custodial estate if the
359 investment were made in an investment company or investment trust
360 for which the bank or its affiliates provided no services. With
361 respect to any funds so invested, the banking institution shall
362 make available by statement, prospectus or otherwise to all
363 current income beneficiaries of an account the basis, expressed as
364 a percentage of asset value or otherwise, upon which the
365 remuneration is calculated. No bank shall lend to any officer,
366 director or employee of the bank any funds held in trust by it,



367 and any officer, director or employee making a loan, or to whom
368 such a loan is made, shall be guilty of a felony and, upon
369 conviction, may be fined not more than Five Thousand Dollars
370 (\$5,000.00) or imprisoned in the State Penitentiary for not more
371 than five (5) years, or by both that fine and imprisonment, in the
372 discretion of the court.

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

