

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 328

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO DIGITAL ASSETS; AMENDING TITLE 28, IDAHO CODE, BY THE ADDITION
2 OF A NEW CHAPTER 53, TITLE 28, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO
3 DEFINE TERMS, TO PROVIDE FOR CLASSIFICATION OF DIGITAL ASSETS AS PROP-
4 ERTY AND TO PROVIDE APPLICATION TO THE UNIFORM COMMERCIAL CODE, TO PRO-
5 VIDE FOR PERFECTION OF SECURITY INTERESTS AND CERTAIN SECURED PARTIES,
6 TO PROVIDE FOR DIGITAL ASSET CUSTODIAL SERVICES, AND TO PROVIDE FOR JU-
7 RISDICTION OF IDAHO COURTS.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Title 28, Idaho Code, be, and the same is hereby amended
11 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
12 ter 53, Title 28, Idaho Code, and to read as follows:

13 CHAPTER 53
14 DIGITAL ASSETS

15 28-5301. SHORT TITLE. This chapter shall be known and may be cited as
16 the "Digital Assets Act."

17 28-5302. DEFINITIONS. As used in this chapter:

18 (1) "Digital asset" means a representation of economic, proprietary,
19 or access rights that is stored in a computer-readable format and is a digi-
20 tal consumer asset, a digital security, or a virtual currency.

21 (2) "Digital consumer asset" means a digital asset that is used or
22 bought primarily for consumptive, personal, or household purposes and in-
23 cludes:

24 (a) An open blockchain token constituting intangible personal property
25 as otherwise provided by law; and

26 (b) Any other digital asset that does not fall within subsection (3) or
27 (4) of this section.

28 (3) "Digital security" means a digital asset that constitutes a secu-
29 rity as defined in section 30-14-102, Idaho Code, but excludes digital con-
30 sumer assets and virtual currency.

31 (4) "Financial institution" means any bank, trust company, savings and
32 loan association, credit union, or special purpose depository institution.

33 (5) "Virtual currency" means a digital asset that is:

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

35 (b) Not recognized as legal tender by the United States government.

36 28-5303. CLASSIFICATION OF DIGITAL ASSETS AS PROPERTY -- APPLICABIL-
37 ITY TO UNIFORM COMMERCIAL CODE. (1) Digital assets are classified in the fol-
38 lowing manner:

1 (a) Digital consumer assets are intangible personal property and shall
2 be considered general intangibles as defined in section 28-9-102, Idaho
3 Code, only for the purposes of the uniform commercial code.

4 (b) Digital securities are intangible personal property and shall be
5 considered securities as defined in section 30-14-102, Idaho Code, and
6 investment property as defined in section 28-9-102, Idaho Code, only
7 for the purposes of the uniform commercial code.

8 (c) Virtual currency is intangible personal property and shall be con-
9 sidered money, notwithstanding section 28-1-201(24), Idaho Code, for
10 the purposes of the uniform commercial code.

11 (2) A digital asset may be treated as a financial asset pursuant to an
12 agreement with the owner of the digital asset. If treated as a financial as-
13 set, the digital asset shall remain intangible personal property.

14 (3) A financial institution providing custodial services shall be con-
15 sidered to meet the requirements of a securities intermediary pursuant to
16 sections 28-8-504 through 28-8-508, Idaho Code.

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

20 (5) This chapter shall be considered a consumer protection statute for
21 the purposes of section 28-9-201(b), Idaho Code.

22 28-5304. PERFECTION OF SECURITY INTERESTS IN DIGITAL ASSETS -- CON-
23 TROL -- POSSESSION -- SECURITY AGREEMENTS -- LOCATION. (1) Notwithstanding
24 the financing statement requirement specified by section 28-9-310, Idaho
25 Code, as otherwise applied to general intangibles or any other provision of
26 law, perfection of a security interest in virtual currency may be achieved
27 through possession, and perfection of a security interest in digital securi-
28 ties may be achieved by control. A security interest held by a secured party
29 having possession or control, as applicable, of virtual currency or digital
30 securities has priority over a security interest held by a secured party
31 that does not have possession or control, as applicable. Other provisions
32 of law relating to perfection and priority of security interests, including
33 section 28-9-207, Idaho Code, and priority of control over delivery, shall
34 apply, except that section 28-9-322(a)(1) and (b) shall not apply.

35 (2) Before a secured party may take possession or control under this
36 section, the secured party shall enter into a security agreement with the
37 debtor and, as necessary, other parties. The security agreement may set
38 forth the terms under which a secured party may pledge its security interest
39 as collateral for another transaction. Consistent with section 28-9-201,
40 Idaho Code, the security agreement shall be effective according to its terms
41 between parties, against purchasers of collateral, and against creditors.

42 (3) If a debtor is located in Idaho, a secured party may file a financing
43 statement with the secretary of state to perfect a security interest in dig-
44 ital consumer assets or digital securities, including to perfect a security
45 interest in proceeds pursuant to section 28-9-315, Idaho Code.

46 (4) Notwithstanding any other provision of law, including article 9
47 of the uniform commercial code, a transferee takes a digital asset free of
48 any security interest two (2) years after the transferee takes the asset for
49 value and does not have actual notice of an adverse claim at any time during

1 the two (2) year period. This subsection applies only to a security interest
2 perfected by filing.

3 (5) As used in this section:

4 (a) "Control," when used in the uniform commercial code and this sec-
5 tion, consistent with section 28-9-313, Idaho Code, means that ability
6 to exclude others from the use of property, and includes the following:

7 (i) A secured party, or an agent, custodian, fiduciary, or trustee
8 of the party, that has complied with section 28-8-106, Idaho Code,
9 including by means of a private key or the use of a multi-signature
10 arrangement exclusive to the secured party or any substantially
11 similar analogue; and

12 (ii) A smart contract created by a secured party to comply with
13 section 28-8-106, Idaho Code. As used in this subparagraph,
14 "smart contract" means an automated transaction as described in
15 section 28-50-114, Idaho Code, or any substantially similar ana-
16 logue comprised of code, script, or programming language that
17 executes the terms of an agreement and may include taking custody
18 of and transferring an asset or issuing executable instructions
19 for these actions, based on the occurrence or nonoccurrence of
20 specified conditions.

21 (b) "Multi-signature arrangement" means a system of access control
22 relating to a digital asset for the purposes of preventing unauthorized
23 transactions relating to the asset in which two (2) or more private keys
24 are required to conduct a transaction, or any substantially similar
25 analogue.

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

28 (i) Held by a person;

29 (ii) Paired with a unique, publicly available element of crypto-
30 graphic data; and

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

33 (d) "Possession," when used in the uniform commercial code and this
34 section, includes use of a private key, a multi-signature arrangement
35 exclusive to the secured party, or a smart contract as defined in this
36 subsection, or any substantially similar analogue. "Possession" shall
37 also include delivery of certificated digital securities consistent
38 with section 28-8-301(1) (a), Idaho Code.

39 (6) Perfection by possession creates a possessory security interest
40 under section 28-9-301, Idaho Code, in virtual currency or certificated
41 digital securities, based on the possessory nature of a private key or any
42 substantially similar analogue, which may be tangible or electronic.

43 (7) For purposes of the uniform commercial code and this section, if
44 collateral is required to be located in a jurisdiction, a digital asset is
45 located in Idaho if the asset is possessed or controlled by an Idaho finan-
46 cial institution or other custodian, if the debtor or secured party is phys-
47 ically located in Idaho, or if the debtor or secured party is incorporated or
48 organized in Idaho, based on the following factors:

49 (a) Whether a security agreement typically accompanying a possessory
50 security interest or other secured transaction exists, consistent with

1 section 28-9-201, Idaho Code, including an agreement describing the
2 possessory nature of a private key or any substantially similar ana-
3 logue;

4 (b) Choice of law in a security agreement, evidencing the intent and un-
5 derstanding of the parties relating to a transaction, including waivers
6 of litigation in jurisdictions other than Idaho, access to the Idaho
7 courts, and judicial economy; and

8 (c) The relative clarity of the laws of other jurisdictions relating
9 to a digital asset, consequences relating to unknown liens in those ju-
10 risdications, and the ability of a court to exercise jurisdiction over a
11 particular digital asset.

12 28-5305. DIGITAL ASSET CUSTODIAL SERVICES. (1) A financial institu-
13 tion may provide custodial services consistent with this section upon pro-
14 viding sixty (60) days' written notice to the director the of the department
15 of finance. The provisions of this section are cumulative and not exclusive
16 as an optional framework for enhanced supervision of digital asset custody.
17 If a financial institution elects to provide custodial services under this
18 section, it shall comply with all provisions of this section.

19 (2) A financial institution may serve as a qualified custodian, as
20 specified by the United States securities and exchange commission in 17 CFR
21 275.206(4)-2, or as a custodian authorized by the United States commodity
22 futures trading commission or other law. In performing custodial services
23 under this section, a financial institution shall:

24 (a) Implement all accounting, account statement, internal control, no-
25 tice, and other standards specified by applicable state or federal law
26 and rules for custodial services;

27 (b) Maintain information technology best practices relating to digital
28 assets held in custody. The director may specify required best prac-
29 tices by rule;

30 (c) Fully comply with applicable federal anti-money laundering, cus-
31 tomer identification, and beneficial ownership requirements; and

32 (d) Take other actions necessary to carry out the provisions of this
33 section, which may include exercising fiduciary powers as authorized
34 similar to those permitted to national banks and ensuring compliance
35 with federal law governing digital assets classified as commodities.

36 (3) A financial institution providing custodial services shall conform
37 to the audit, accounting, and related requirements specified by the director
38 and applicable law, which may include entering into an agreement with an in-
39 dependent public accountant to conduct an examination conforming to the re-
40 quirements of 17 CFR 275.206(4)-2(a)(4) and (6), at the cost of the financial
41 institution. An accountant shall transmit the results of any examination to
42 the director within one hundred twenty (120) days of the examination and may
43 file the results with other regulatory agencies as their rules may provide.
44 Material discrepancies in an examination shall be reported to the director
45 within one (1) day. The director shall review examination results upon re-
46 ceipt within a reasonable time and during any regular examination conducted
47 by the director.

48 (4) Digital assets held in custody under this section are not deposi-
49 tory liabilities or assets of the financial institution. A financial insti-

1 tution or a subsidiary of a financial institution may register as an invest-
2 ment adviser, investment company, or broker-dealer as necessary. A finan-
3 cial institution shall maintain possession or control, as applicable, over a
4 digital asset while in custody. A customer shall elect, pursuant to a writ-
5 ten agreement with the financial institution, one (1) of the following rela-
6 tionships for each digital asset held in custody:

7 (a) Custody under a bailment as a nonfungible or fungible asset. As-
8 sets held under this paragraph shall be strictly segregated from other
9 assets; or

10 (b) Custody pursuant to subsection (5) of this section.

11 (5) If a customer makes an election under subsection (4) (b) of this sec-
12 tion, the financial institution may, based only on customer instructions,
13 undertake transactions with the digital asset. A financial institution is
14 deemed to maintain possession or control pursuant to subsection (4) of this
15 section by entering into an agreement with the counterparty to a transaction
16 that contains a time for return of the asset and other customary terms in se-
17 curities or commodities transactions. The financial institution shall not
18 be liable for any loss suffered with respect to a transaction under this sub-
19 section, except for liability consistent with fiduciary and trust powers.

20 (6) A financial institution and a customer shall agree in writing re-
21 garding the source code version the financial institution will use for each
22 digital asset and the treatment of each asset under the uniform commercial
23 code, if necessary. Any ambiguity under this subsection shall be resolved in
24 favor of the customer.

25 (7) A financial institution shall provide clear, written notice to each
26 customer and require written acknowledgment of the following:

27 (a) The heightened risk of loss from transactions under subsection (5)
28 of this section;

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

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

35 (d) That the financial institution is not liable for losses suffered
36 under subsection (5) of this section, except for liability consistent
37 with fiduciary and trust powers.

38 (8) A financial institution and a customer shall agree in writing to a
39 time period within which the financial institution must return a digital as-
40 set held in custody under this section. If a customer makes an election under
41 subsection (4) (b) of this section, the financial institution and the cus-
42 tomer may also agree in writing to the form in which the digital asset shall
43 be returned.

44 (9) All ancillary or subsidiary proceeds relating to digital assets
45 held in custody under this section shall accrue to the benefit of the cus-
46 tomer, except as specified by a written agreement with the customer. The fi-
47 nancial institution may elect not to collect certain ancillary or subsidiary
48 proceeds, as long as the election is disclosed in writing. A customer who
49 makes an election under subsection (4) (a) of this section may withdraw the

1 digital asset in a form that permits the collection of the ancillary or sub-
2 subsidiary proceeds.

3 (10) A financial institution shall not authorize or permit rehypotheca-
4 tion of digital assets under this section. The financial institution shall
5 not engage in any activity to use or exercise discretionary authority relat-
6 ing to a digital asset except based on customer instructions.

7 (11) A financial institution shall not take any action under this sec-
8 tion that would likely impair the solvency or the safety and soundness of the
9 financial institution, as determined by the director after considering the
10 nature of custodial services customary in the banking industry.

11 (12) To offset the costs of supervision and administration of this sec-
12 tion, a financial institution that provides custodial services under this
13 section shall pay a supervision fee equal to two-tenths of one mill on the
14 dollar (\$.0002) relating to assets held in custody as provided by rule of the
15 director. The supervision fee shall be deposited by the director into the
16 financial institution's administration account and may be expended for any
17 purpose authorized for that account.

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

19 (14) As used in this section:

20 (a) "Custodial services" means the safekeeping, servicing, and manage-
21 ment of customer currency and digital assets.

22 (b) "Director" means the director of the Idaho department of finance.

23 28-5306. JURISDICTION OF IDAHO COURTS. Subject to other jurisdic-
24 tional limits placed on specific courts by Idaho law, the courts of Idaho
25 shall have jurisdiction to hear claims in both law and equity relating to
26 digital assets, including those arising from this chapter and the uniform
27 commercial code.