

2022 Regular Session

HOUSE BILL NO. 802

BY REPRESENTATIVE WRIGHT

COMMERCE: Provides relative to digital assets

1 AN ACT

2 To enact Chapter 22 of Title 6 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 6:1401 and 1402, relative to digital assets; to provide definitions; to allow
4 banks to serve as custodians of digital assets; to provide for parameters and
5 procedures; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Chapter 22 of Title 6 of the Louisiana Revised Statutes of 1950,
8 comprised of R.S. 6:1401 and 1402, is hereby enacted to read as follows:

9 CHAPTER 22. VIRTUAL CURRENCY CUSTODY SERVICES

10 §1401. Definitions

11 As used in this Chapter, the following words have the following meanings:

12 (1) "Bank" has the same meaning as provided for in R.S. 6:2.

13 (2) "Custody services" means the role of a bank in the safekeeping and
14 custody of various customer assets.

15 (3) "Self-assessment" means either of the following:

16 (a) A bank's voluntary, self-initiated internal assessment, audit, or review of
17 the bank and its practices, policies, and procedures.

18 (b) A bank's voluntary, self-initiated assessment, audit, or review of the
19 practices, policies, and procedures of a person acting under contract, directly or
20 indirectly, as the bank's service provider, including mortgage servicers and

1 subservicers, credit and debit card processors, and providers of loan document
2 systems.

3 (4) "Virtual currency" means an electronic representation of value intended
4 to be used as a medium of exchange, unit of account, or store of value. "Virtual
5 currency" does not exist in a physical form; it is intangible and exists only on the
6 blockchain or distributed ledger associated with a particular virtual currency. The
7 owner of virtual currency holds cryptographic keys associated with the specific unit
8 of virtual currency in a digital wallet, which allows the rightful owner of the virtual
9 currency to access and utilize it.

10 §1402. Provision of virtual currency custody services

11 A. A bank may provide its customers with virtual currency custody services
12 if the bank has adequate protocols in place to effectively manage risks and comply
13 with applicable laws. Prior to a bank offering virtual currency custody services, the
14 bank shall carefully examine the risks involved in offering such services through a
15 methodical self-assessment process. If a bank decides to offer such services, the bank
16 shall do all of the following:

17 (1) Implement effective risk management systems and controls to measure,
18 monitor, and control relevant risks associated with custody of digital assets such as
19 virtual currency.

20 (2) Confirm that it has adequate insurance coverage for such services.

21 (3) Maintain a service provider oversight program to address risks to service
22 provider relationships as a result of engaging in virtual currency custody services.

23 B.(1) A bank may provide virtual currency custody services in either a
24 nonfiduciary or fiduciary capacity.

25 (2) In providing such services in a nonfiduciary capacity, the bank shall act
26 as a bailee, taking possession of the customer's asset for safekeeping while legal title
27 remains with the customer. The customer shall retain direct control over the keys
28 associated with his virtual currency.

1 (3) In providing such services in a fiduciary capacity, a bank is required to
 2 possess trust powers as provided for in R.S. 6:731. Acting in a fiduciary capacity,
 3 the bank shall require customers to transfer their virtual currencies to the control of
 4 the bank by creating new private keys to be held by the bank. In its fiduciary
 5 capacity, a bank shall have authority to manage virtual currency assets as it would
 6 any other type of asset held in such capacity.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 802 Engrossed

2022 Regular Session

Wright

Abstract: Allows banks to provide custodial services relative to digital access.

Proposed law defines "bank", "custody services", "self-assessment", and "virtual currency".

Proposed law allows a bank to provide virtual currency custodial services, if the bank has adequate protocols in place to effectively manage risk and comply with provisions of present law.

In addition to the protocols required pursuant to proposed law, a bank that provides virtual currency custodial services is required to do all of the following:

- (1) Implement effective risk management systems and controls to measure and monitor relevant risks.
- (2) Confirm that it has adequate insurance coverage for such services.
- (3) Maintain a service provider oversight program.

Proposed law allows a bank to provide virtual currency custodial services in a nonfiduciary capacity, and requires a bank acting in such capacity to act as a bailee, taking possession of the customer's assets for safekeeping. The customer retains direct control over the keys associated with his virtual currency, if the bank is operating in a nonfiduciary capacity.

Proposed law allows a bank to provide virtual currency custodial services in a fiduciary capacity, and requires a bank acting in such capacity to possess trust powers as provided in present law and to require its customers to transfer their virtual currency to the control of the bank. A bank functioning in this capacity shall have the authority to manage virtual currency assets as it would any other type of asset.

(Adds R.S. 6:1401-1402)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Remove provisions of proposed law relative to certain definitions, the provision of custodial services, written notice, cumulative application, a qualified custodian, prohibited actions, and rulemaking.
2. Define "bank", "custody services", "self-assessment", and "virtual currency".
3. Allow a bank to provide virtual currency custody services if the bank complies with certain requirements provided for in proposed law.
4. Allow a bank to provide virtual currency custody services in a nonfiduciary capacity and places certain requirements on a bank acting in such a capacity.
5. Allow a bank to provide virtual currency custody services in a fiduciary capacity and place certain requirements on a bank acting in such a capacity.
6. Make technical changes.