

1-1 By: Capriglione, et al. (Senate Sponsor - Parker) H.B. No. 1666  
1-2 (In the Senate - Received from the House April 24, 2023;  
1-3 April 24, 2023, read first time and referred to Committee on  
1-4 Business & Commerce; May 10, 2023, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 11,  
1-6 Nays 0; May 10, 2023, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>X</u>			
1-10	<u>X</u>			
1-11	<u>X</u>			
1-12	<u>X</u>			
1-13	<u>X</u>			
1-14	<u>X</u>			
1-15	<u>X</u>			
1-16	<u>X</u>			
1-17	<u>X</u>			
1-18	<u>X</u>			
1-19	<u>X</u>			

1-20 COMMITTEE SUBSTITUTE FOR H.B. No. 1666 By: King

1-21 A BILL TO BE ENTITLED  
1-22 AN ACT

1-23 relating to the commingling of funds by digital asset service  
1-24 providers; providing an administrative penalty.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Subtitle E, Title 3, Finance Code, is amended by  
1-27 adding Chapter 160 to read as follows:

1-28 CHAPTER 160. DIGITAL ASSET SERVICE PROVIDERS

1-29 Sec. 160.001. DEFINITIONS. In this chapter:

1-30 (1) "Commission" means the Finance Commission of  
1-31 Texas.

1-32 (2) "Customer funds" means the digital assets, fiat  
1-33 currency, or other property deposited by a digital asset customer.

1-34 (3) "Department" means the Texas Department of  
1-35 Banking.

1-36 (4) "Digital asset" means a natively electronic asset  
1-37 that confers economic, proprietary, or access rights and is  
1-38 recorded or stored in a blockchain, cryptographically secured  
1-39 distributed ledger, or similar technology, and includes:

1-40 (A) a digital asset that the laws of any country  
1-41 consider to be legal tender; or

1-42 (B) virtual currency as defined by Section  
1-43 12.001, Business & Commerce Code.

1-44 (5) "Digital asset customer" means a person who  
1-45 deposits fiat currency or a digital asset with a digital asset  
1-46 service provider.

1-47 (6) "Digital asset service provider" means an  
1-48 electronic platform that facilitates the trading of digital assets  
1-49 on behalf of a digital asset customer and maintains custody of the  
1-50 customer's digital assets.

1-51 Sec. 160.002. ADMINISTRATION. The department shall  
1-52 administer this chapter.

1-53 Sec. 160.003. APPLICABILITY. (a) This chapter applies to a  
1-54 digital asset service provider doing business in this state that:

1-55 (1) holds a money transmission license under  
1-56 Subchapter D, Chapter 151; and

1-57 (2) either:

1-58 (A) serves more than 500 digital asset customers  
1-59 in this state; or

1-60 (B) has at least \$10 million in customer funds.

2-1           (b) This chapter does not apply to:  
 2-2           (1) a bank, as defined by Section 31.002; or  
 2-3           (2) an entity excluded by commission rule or by order  
 2-4 of the banking commissioner based on a finding that the entity is:  
 2-5           (A) not required to hold a money transmission  
 2-6 license under Subchapter D, Chapter 151; or  
 2-7           (B) not subject to the requirements of this  
 2-8 chapter.  
 2-9           Sec. 160.004. DUTIES OF DIGITAL ASSET SERVICE PROVIDERS.  
 2-10 (a) Except as provided by this chapter, a digital asset service  
 2-11 provider may not:  
 2-12           (1) commingle customer funds with funds belonging to  
 2-13 the digital asset service provider, including the digital asset  
 2-14 service provider's:  
 2-15           (A) operating capital;  
 2-16           (B) proprietary accounts;  
 2-17           (C) digital assets;  
 2-18           (D) fiat currency; or  
 2-19           (E) other property that is not customer funds;  
 2-20           (2) use customer funds to secure or guarantee a  
 2-21 transaction other than a transaction for the customer contributing  
 2-22 the funds; or  
 2-23           (3) maintain customer funds in such a manner that a  
 2-24 digital asset customer may be unable to fully withdraw the  
 2-25 customer's funds.  
 2-26           (b) In addition to any other requirements under state law, a  
 2-27 digital asset service provider shall maintain customer funds not  
 2-28 subject to the requirements of Chapter 151:  
 2-29           (1) in separate accounts for obligations to each  
 2-30 digital asset customer; or  
 2-31           (2) in an omnibus account that only contains digital  
 2-32 assets of digital asset customers and in which digital assets of  
 2-33 digital asset customers are not strictly segregated from each  
 2-34 other.  
 2-35           (c) A digital asset service provider shall create a plan to  
 2-36 allow:  
 2-37           (1) each digital asset customer to view at least  
 2-38 quarterly an accounting of:  
 2-39           (A) any outstanding liabilities owed to the  
 2-40 digital asset customer; and  
 2-41           (B) the digital asset customer's digital assets  
 2-42 held in custody by the digital asset service provider; and  
 2-43           (2) an auditor to access and view at any time a  
 2-44 pseudonymized version of the information made available to each  
 2-45 digital asset customer under Subdivision (1).  
 2-46           (d) Not later than the 90th day after the end of each fiscal  
 2-47 year, a digital asset service provider shall file a report with the  
 2-48 department. The report must include the following information, as  
 2-49 of the end of the digital asset service provider's fiscal year:  
 2-50           (1) an attestation by the digital asset service  
 2-51 provider of outstanding liability to digital asset customers;  
 2-52           (2) evidence of customer assets held by the provider;  
 2-53           (3) a copy of the provider's plan under Subsection (c);  
 2-54 and  
 2-55           (4) an attestation by an auditor that the information  
 2-56 in the report is true and accurate.  
 2-57           (e) An auditor fulfilling the requirements of this section  
 2-58 must:  
 2-59           (1) be an independent certified public accountant  
 2-60 licensed in the United States; and  
 2-61           (2) apply attestation standards adopted by the  
 2-62 American Institute of Certified Public Accountants.  
 2-63           (f) A digital asset service provider may meet the  
 2-64 requirements of Subsections (c)(2), (d)(1), (d)(2), and (d)(4) by  
 2-65 filing with the department a copy of:  
 2-66           (1) an audit of the digital asset service provider  
 2-67 performed in accordance with the Sarbanes-Oxley Act of 2002 (15  
 2-68 U.S.C. Section 7201 et seq.) or regulations adopted under that Act;  
 2-69 or

3-1 (2) an audit of the digital asset service provider's  
3-2 parent company that includes an audit of the digital service  
3-3 provider performed in accordance with the Sarbanes-Oxley Act of  
3-4 2002 (15 U.S.C. Section 7201 et seq.) or regulations adopted under  
3-5 that Act.

3-6 (g) A digital asset service provider may include an amount  
3-7 of funds, assets, or property belonging to the digital asset  
3-8 service provider with customer funds for the purpose of  
3-9 facilitating trade and operational needs to provide digital asset  
3-10 services. That amount of funds, assets, or other property  
3-11 belonging to the digital asset service provider is considered and  
3-12 shall be treated as customer funds. A digital asset service  
3-13 provider may only withdraw or assert a claim on that amount to the  
3-14 extent that amount exceeds the amount deposited with the digital  
3-15 asset service provider by or for digital asset customers.

3-16 (h) The commissioner may waive a requirement of this section  
3-17 or allow a digital asset service provider to submit alternative  
3-18 information to satisfy a requirement of this section if the  
3-19 commissioner determines that the waiver or alternative information  
3-20 is consistent with the purposes of this chapter and in the best  
3-21 interest of this state.

3-22 Sec. 160.005. REQUIREMENTS FOR MONEY TRANSMISSION LICENSE.

3-23 (a) In addition to any other requirements under Subchapter D,  
3-24 Chapter 151, a digital asset service provider must comply with the  
3-25 requirements of this chapter to obtain and maintain any money  
3-26 transmission license under Subchapter D, Chapter 151. A digital  
3-27 asset service provider applying for a new money transmission  
3-28 license under Subchapter D, Chapter 151, must submit to the  
3-29 department the report required by Section 160.004(d).

3-30 (b) The department may suspend and revoke a money  
3-31 transmission license issued under Subchapter D, Chapter 151, to a  
3-32 digital asset service provider if the provider violates the  
3-33 requirements of this chapter.

3-34 (c) The department may impose any penalty under Subchapter  
3-35 H, Chapter 151, that the department may impose on a person who  
3-36 violates that chapter on a digital asset service provider who  
3-37 violates this chapter.

3-38 (d) The commissioner may examine a digital asset service  
3-39 provider in the same manner as allowed under Subchapter G, Chapter  
3-40 151. Information disclosed to the commissioner in connection with  
3-41 an examination under this section is confidential information and  
3-42 subject to the provisions regarding confidentiality under  
3-43 Subchapter G, Chapter 151.

3-44 Sec. 160.006. RULES. The commission may adopt rules to  
3-45 administer and enforce this chapter, including rules necessary and  
3-46 appropriate to implement and clarify this chapter.

3-47 SECTION 2. This Act takes effect September 1, 2023.

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