

SUMMARY—Revises provisions relating to digital assets. (BDR 10-981)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: Yes.

AN ACT relating to digital assets; classifying digital assets for the purposes of the treatment of such assets under the Uniform Commercial Code; authorizing a bank to provide certain custodial services for digital assets; setting forth certain requirements for the provision of such custodial services; exempting an operator of a peer-to-peer digital currency platform from certain provisions governing persons engaged in the business of transmitting money; revising the definition of “virtual currency” for the purposes of provisions exempting virtual currencies from taxation; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law contains Article 8 of the Uniform Commercial Code, the uniform law governing investment securities, and Article 9 of the Uniform Commercial Code, the uniform law governing secured transactions. (NRS 104.8101-104.8511, 104.9101-104.9717) **Sections 11-13** of this bill address the treatment of digital assets under Articles 8 and 9 of the Uniform Commercial Code. **Section 6** of this bill defines “digital asset” to mean a representation of economic, proprietary or access rights that is stored in a computer-readable format. **Sections 7, 8 and 10** of this bill define



three types of digital assets, which are digital consumer assets, digital securities and virtual currency.

Article 9 of the Uniform Commercial Code sets forth various classifications of assets, including, among others, goods, accounts, chattel paper and general intangibles, and prescribes different rules for secured transactions based upon the type of asset involved in the transaction. (NRS 104.9101-104.9717) **Section 11** of this bill sets forth the manner in which the different types of digital assets are classified under Article 9 of the Uniform Commercial Code for the purposes of determining the applicable rules under Article 9 that govern secured transactions involving digital assets. **Section 11** also sets forth the manner in which digital securities are classified for the purposes of the treatment of such assets under Article 8 as well as Article 9 of the Uniform Commercial Code.

Article 8 of the Uniform Commercial Code provides that any property that is held by a securities intermediary for another person in a securities account is a financial asset for the purposes of Article 8 if the securities intermediary has expressly agreed with the other person that property is to be treated as a financial asset. (NRS 104.8102) **Section 11** similarly authorizes a digital asset to be treated as a financial asset for the purposes of Article 8 pursuant to a written agreement with the owner of the digital asset. **Section 11** further deems a bank that provides certain custodial services set forth in **sections 14-19** of this bill to be a securities intermediary for the purposes of Article 8.

Under Article 9 of the Uniform Commercial Code, with various exceptions, a filing statement is required to perfect all security interests. (NRS 104.9310) **Section 12** of this bill creates an exception to this requirement and authorizes a security interest in a digital asset to be achieved



through control. **Section 13** of this bill sets forth the manner in which a person obtains control of a digital asset. Under **section 12**, a security interest held by a secured party having control of a digital asset has priority over any other security interest. **Section 12** also sets forth the circumstances under which a transferee takes a digital asset free of any security interest.

Sections 14-19 and 22 of this bill authorize a bank to provide certain custodial services with respect to digital assets. **Section 15** of this bill requires a bank that provides custodial services to enter into certain agreements with a customer to which the bank provides custodial services, including, among other agreements, an agreement in which the customer elects for a digital asset to be held either in: (1) custody under a bailment as a nonfungible or fungible asset; or (2) custody under a bailment in which the bank is authorized to undertake transactions with the digital asset at the instruction of the customer. **Section 16** of this bill requires a bank to provide certain notice to each customer to which the bank provides custodial services. **Section 17** of this bill sets forth certain authorized and prohibited practices for banks providing custodial services for digital assets.

Existing federal regulations require: (1) certain investment advisors to maintain funds and securities of clients with a qualified custodian; and (2) a qualified custodian to enter into an agreement with an independent public accountant to perform certain examinations. (17 C.F.R. § 275.206(4)-2) **Section 14** of this bill authorizes a bank to serve as such a qualified custodian. **Section 18** of this bill requires a bank that provides custodial services to enter into an agreement with an independent public accountant to perform examinations that comply with federal law.

Section 19 of this bill requires the Commissioner of Financial Institutions to adopt certain regulations to carry out the provisions of **sections 14-19**.



Section 20 of this bill provides that courts in this State have jurisdiction to hear claims involving digital assets.

Existing law exempts from taxation all intangible property, including, virtual currency. Under existing law, the term “virtual currency” includes only those digital representations of value that are created, issued and maintained on a public blockchain and not attached to any tangible asset or fiat currency. (NRS 361.228) **Section 21** of this bill retains the exemption from taxation for virtual currency set forth in existing law, but revises the definition of “virtual currency” to mirror the definition in **section 10** of this bill. Under **section 10**, “virtual currency” is defined to mean a digital asset that is: (1) a digital representation of value; (2) used as a medium of exchange, unit of account or store of value; and (3) not recognized as legal tender by the United States Government.

Existing law requires a person engaged in the business of receiving for transmission or transmitting money or credits to be licensed by the Commissioner of Financial Institutions. (Chapter 671 of NRS) **Section 23** of this bill exempts from this requirement, and all other requirements relating to money transmitters, an operator of a peer-to-peer digital currency platform who facilitates certain transactions involving virtual currency but does not provide custodial services or transfer or hold fiat currency.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 10 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 20, inclusive, of this act.

Sec. 2. 1. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this act have the meanings ascribed to them in those sections.*

2. The terms “digital consumer asset,” “digital security” and “virtual currency” are mutually exclusive.

Sec. 3. *“Bank” has the meaning ascribed to it in NRS 657.016.*

Sec. 4. *“Commissioner” means the Commissioner of Financial Institutions.*

Sec. 5. *“Custodial services” means the safekeeping, servicing and management of customer currency and digital assets. The term includes the exercise of fiduciary and trust powers involving the exercise of discretion, including transactions under subsection 3 of section 15 of this act.*

Sec. 6. *“Digital asset” means a representation of economic, proprietary or access rights that is stored in computer-readable format. The term includes a digital consumer asset, digital security and virtual currency.*



Sec. 7. *“Digital consumer asset” means a digital asset that is used or primarily intended for consumptive, personal or household purposes. The term includes any digital asset that is not a digital security or virtual currency.*

Sec. 8. *“Digital security” means a digital asset that constitutes a security, as defined in NRS 90.295. The term does not include a digital consumer asset or virtual currency.*

Sec. 9. *“Secured party” has the meaning ascribed to it in NRS 104.9102.*

Sec. 10. *“Virtual currency” means a digital asset that is:*

- 1. A digital representation of value;*
- 2. Used as a medium of exchange, unit of account or store of value; and*
- 3. Not recognized as legal tender by the United States Government.*

Sec. 11. *1. Digital assets are classified in the following manner:*

(a) A digital consumer asset is intangible personal property and, for the purposes of NRS 104.9101 to 104.9717, inclusive, shall be deemed to be a general intangible, as defined in NRS 104.9102.

(b) A digital security is intangible personal property and, for the purposes of NRS 104.8101 to 104.8511, inclusive, and 104.9101 to 104.9717, inclusive, shall be deemed to be:

(1) A security, as defined in NRS 104.8102; and

(2) Investment property, as defined in NRS 104.9102.

(c) Virtual currency is intangible personal property and, for the purposes of NRS 104.9101 to 104.9717, inclusive, shall be deemed to be money.



2. *A digital asset may be treated as a financial asset under paragraph (j) of subsection 1 of NRS 104.8102 pursuant to a written agreement with the owner of the digital asset. A digital asset treated as a financial asset pursuant to this subsection remains intangible personal property.*

3. *A bank that provides custodial services pursuant to sections 14 to 19, inclusive, of this act shall be deemed to be a securities intermediary, as defined in NRS 104.8102.*

4. *Classification of digital assets under this section must be construed in a manner to give the greatest effect to this chapter, but must not be construed to apply to any other asset.*

Sec. 12. 1. *Notwithstanding the provisions of NRS 104.9310 or any other provision of law, perfection of a security interest in a digital asset may be achieved through control of the digital asset. A security interest held by a secured party having control of a digital asset has priority over a security interest held by a secured party that does not have control of the asset.*

2. *Before a secured party may take control of a digital asset pursuant to this section, the secured party shall enter into a control agreement for the control of the digital asset with the debtor. The control agreement may set forth the terms under which a secured party may pledge its security interest in the digital asset as collateral for another transaction.*

3. *A secured party may file a financing statement with the Secretary of State, including, without limitation, to perfect a security interest in proceeds from a digital asset pursuant to NRS 104.9315.*

4. *Notwithstanding the provisions of NRS 104.9101 to 104.9717, inclusive, or any other provision of law, for a security interest in a digital asset perfected by a method other than*



control, a transferee takes a digital asset free of any security interest 2 years after the transferee takes the asset for value and does not have actual notice of an adverse claim.

5. Perfection of security interest in a digital asset by control creates a possessory security interest and does not require physical possession.

6. For the purposes of this section and NRS 104.9101 to 104.9717, inclusive, a digital asset is located in this State if:

- (a) The digital asset is held by a custodian located in this State;*
- (b) The debtor or secured party is physically located in this State; or*
- (c) The debtor or secured party is incorporated or organized in this State.*

7. As used in this section:

(a) "Control" is intended to be equivalent to the term "possession" as used in NRS 104.9101 to 104.9717, inclusive.

(b) "Debtor" has the meaning ascribed to it in NRS 104.9102.

Sec. 13. 1. *For the purposes of section 12 of this act, a secured party has control of a digital asset if:*

(a) The secured party, or an agent, custodian, fiduciary or trustee of the party, has the exclusive legal authority to conduct a transaction relating to a digital asset, including, without limitation, by means of a private key or the use of a multi-signature arrangement authored by the secured party; or

(b) The secured party has created a smart contract which has the exclusive legal authority to conduct a transaction relating to a digital asset.



2. *As used in this section:*

(a) *“Multi-signature arrangement” means a system of access control relating to a digital asset for the purposes of preventing unauthorized transactions relating to the asset, in which two or more private keys are required to conduct a transaction, or any substantially similar analogue.*

(b) *“Private key” means a unique element of cryptographic data, or any substantially similar analogue, which is:*

(1) *Held by a person;*

(2) *Paired with a unique, publicly available element of cryptographic data; and*

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

(c) *“Smart contract” means an automated transaction, as defined in NRS 719.040, or any substantially similar analogue, which is comprised of code, script or programming language that executes the terms of an agreement, and which may include, without limitation, taking custody of and transferring an asset, or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.*

Sec. 14. 1. *A bank may provide custodial services in accordance with the provisions of sections 14 to 19, inclusive, of this act upon providing 60 days written notice to the Commissioner. The provisions of sections 14 to 19, inclusive, of this act are cumulative and not exclusive as an optional framework for enhanced supervision for the custody of digital assets.*



A bank that elects to provide custodial services shall comply with the provisions of sections 14 to 19, inclusive, of this act.

2. A bank may serve as a qualified custodian, as specified in 17 C.F.R. § 275.206(4)-2.

3. Digital assets held in custody under sections 14 to 19, inclusive, of this act are not depository liabilities or assets of the bank. A bank, or a subsidiary, may register as an investment adviser, investment company or broker dealer as necessary.

4. All ancillary or subsidiary proceeds relating to digital assets held in custody under sections 14 to 19, inclusive, of this act must accrue to the benefit of the customer, except as specified by a written agreement with the customer. The bank may elect not to collect certain ancillary or subsidiary proceeds, as long as the election is disclosed in writing. A customer who makes an election under paragraph (a) of subsection 1 of section 15 of this act may withdraw the digital asset in a form that permits the collection of the ancillary or subsidiary proceeds.

Sec. 15. 1. *A bank that provides custodial services shall maintain control over a digital asset in the custody of the bank. A bank shall enter into an agreement with each customer for which the bank provides custodial services in which the customer elects one of the following relationships for each digital asset of the customer held in custody:*

(a) Custody under a bailment as a nonfungible or fungible asset; or

(b) Custody under a bailment in accordance with subsection 3.

2. Any digital asset held pursuant to an election under paragraph (a) of subsection 1 must be strictly segregated from other assets of the customer.



3. If a customer makes an election under paragraph (b) of subsection 1, the bank may, based only on customer instructions, undertake transactions with the digital asset. A bank maintains control of a digital asset pursuant to subsection 1 if the bank enters into an agreement with the counterparty to a transaction which contains a time for the return of the digital asset. The bank shall not be liable for any loss suffered with respect to a transaction under this subsection, except for liability consistent with fiduciary and trust powers as a custodian under sections 14 to 19, inclusive, of this act.

4. A bank and a customer shall agree in writing to a time period within which the bank must return a digital asset held in custody under sections 14 to 19, inclusive, of this act. If a customer makes an election under paragraph (b) of subsection 1, the bank and the customer may also agree in writing to the form in which the digital asset must be returned.

5. A bank and a customer shall agree in writing regarding the source code version the bank will use for each digital asset, and if necessary, the treatment of each asset under chapter 104 of NRS.

Sec. 16. *A bank shall provide clear, written notice to each customer to which the bank provides custodial services, and require acknowledge of the notice in writing, of the following:*

1. The customer will receive prior notice regarding the implementation of any updates of material source code relating to digital assets held in custody by the bank, except in an emergency that may include a security vulnerability;



2. Some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset under paragraph (a) of subsection 1 of section 15 of this act or custody under paragraph (b) of subsection 1 of section 15 of this act;

3. Custody under paragraph (b) of subsection 1 of section 15 of this act may not result in the digital asset of the customer being segregated from the other assets of the customer; and

4. The bank is not liable for losses suffered under paragraph (b) of subsection 1 of section 15 of this act, except for liability consistent with fiduciary and trust powers as a custodian under sections 14 to 19, inclusive, of this act.

Sec. 17. 1. A bank that provides custodial services shall:

(a) Implement all accounting, account statement, internal control, notice and other standards specified by applicable state or federal law and regulations for custodial services adopted by the Commissioner pursuant to section 19 of this act;

(b) Maintain best practices for information technology used in providing custodial services for digital assets in accordance with regulations adopted by the Commissioner pursuant to section 19 of this act;

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

(d) Take other actions necessary to carry out sections 14 to 19, inclusive, of this act, which may include, without limitation, exercising fiduciary powers similar to those permitted to national banks and ensuring compliance with federal law governing digital assets classified as commodities.



2. A bank that provides custodial services shall not:

(a) Authorize or permit rehypothecation of a digital asset;

(b) Engage in any activity to use or exercise discretionary authority relating to a digital asset, unless the customer so instructs; or

(c) Take any action that would likely impair the solvency or the safety and soundness of the bank, as prescribed by regulation of the Commissioner pursuant to section 19 of this act.

3. As used in this section, “rehypothecation” means the simultaneous reuse of repledging of a digital asset that is already in use or has already been pledged as collateral to another person.

Sec. 18. *1. A bank that provides custodial services shall enter into an agreement with an independent public accountant to conduct an examination conforming to the requirements of 17 C.F.R. § 275.206(4)-2(a)(4) and (6), at the cost of the bank.*

2. After an examination is conducted pursuant to subsection 1, the accountant that conducted the examination shall transmit the results of the examination to the Commissioner within 120 days after the examination and may file the results with the United States Securities and Exchange Commission as required by federal law. The accountant shall report any material discrepancy in an examination to the Commissioner within 1 day. The Commissioner shall review the results of the examination upon receipt within a reasonable time and during any examination conducted pursuant to chapter 665 of NRS.

Sec. 19. *The Commissioner shall adopt regulations as necessary to carry out the provisions of sections 14 to 19, inclusive, of this act. Such regulations must, without limitation:*



- 1. Set forth standards for the provision of custodial services by a bank;*
- 2. Establish best practices for information technology used in providing custodial services for digital assets; and*
- 3. Prescribe specific actions relating to the provision of custodial services that would likely impair the solvency or the safety and soundness of a bank pursuant to section 17 of this act.*

Sec. 20. *Subject to other jurisdictional limits placed on specific courts by the laws of this State, the courts of this State shall have jurisdiction to hear claims in both law and equity relating to digital assets, including those arising from this chapter and chapter 104 of NRS.*

Sec. 21. NRS 361.228 is hereby amended to read as follows:

361.228 1. All intangible personal property is exempt from taxation, including, without limitation:

(a) Shares of stock, bonds, mortgages, notes, bank deposits, virtual currencies, book accounts such as an acquisition adjustment and credits, and securities and choses in action of like character; and

(b) Goodwill, customer lists, contracts and contract rights, patents, trademarks, trade names, custom computer programs, copyrights, trade secrets, franchises and licenses.

2. The value of intangible personal property must not enhance or be reflected in the value of real property or tangible personal property.

3. The attributes of real property, such as zoning, location, water rights, view and geographic features, are not intangible personal property and must be considered in valuing the real property, if appropriate.



4. As used in this section ~~§~~:

- ~~—(a) “Public blockchain” means an electronic record of transactions or other data which:~~
 - ~~—(1) Is uniformly ordered;~~
 - ~~—(2) Is processed using a decentralized method by which two or more unaffiliated computers or machines verify the recorded transactions or other data;~~
 - ~~—(3) Is redundantly maintained by two or more unaffiliated computers or machines to guarantee the consistency or nonrepudiation of the recorded transactions or other data;~~
 - ~~—(4) Is validated by the use of cryptography; and~~
 - ~~—(5) Does not restrict the ability of any computer or machine to:~~
 - ~~—(I) View the network on which the record is maintained; or~~
 - ~~—(II) Maintain or validate the state of the public blockchain.~~
- ~~—(b) “State of the public blockchain” means the cumulative record of data on a public blockchain, consisting of the first block of the public blockchain, all finalized transactions on the public blockchain and all block rewards recorded on the public blockchain.~~
- ~~—(c) “Unaffiliated computers or machines” means computers or machines that are not under common ownership or control.~~
- ~~—(d) “Virtual], “*virtual* currency” [means a digital representation of value that:~~
 - ~~—(1) Is created, issued and maintained on a public blockchain;~~
 - ~~—(2) Is not attached to any tangible asset or fiat currency;~~
 - ~~—(3) Is accepted as a means of payment; and~~



~~(4) May only be transferred, stored or traded electronically.]~~ *has the meaning ascribed to it in section 10 of this act.*

Sec. 22. NRS 662.235 is hereby amended to read as follows:

662.235 1. Any bank organized under chapters 657 to 671, inclusive, of NRS may state in its articles of incorporation that it will carry on a trust company business in connection with the banking business, and in addition to the powers conferred upon banks may:

(a) Act as trustee under any mortgage or bond of any person, firm or corporation, or of any municipality or body politic.

(b) Accept and execute any municipal, corporate or individual trust not inconsistent with the laws of this State.

(c) Act under the order or appointment of any court as guardian, commissioner, receiver or trustee.

(d) Act as executor or trustee under any will.

(e) Act as fiscal or transfer agent of any state, municipality, body politic or corporation, and in a capacity to receive and disburse money and register, transfer and countersign certificates of stock, bonds and other evidences of indebtedness.

(f) Act as local or registered agent of foreign corporations.

(g) Provide custodial services for digital assets in accordance with sections 14 to 19, inclusive, of this act.

2. Any such bank holding any asset as a fiduciary shall:



(a) Segregate all such assets from any other assets of the bank and from the assets of any other trust, except as may be expressly provided otherwise by law or by the writing creating the trust.

(b) Record such assets in a separate set of books maintained for fiduciary activities.

Sec. 23. NRS 671.020 is hereby amended to read as follows:

671.020 1. This chapter does not apply to any:

(a) Bank, its parent or holding company or any subsidiary thereof, trust company, savings bank, savings and loan association, credit union, industrial bank or industrial loan and investment company, organized and regulated under the laws of this state or of the United States;

(b) Foreign banking corporation licensed to do banking business in this state; ~~for~~

(c) Telegraph company providing a public message service ~~for~~; *or*

(d) Operator of a peer-to-peer digital currency platform who facilitates the purchase and sale of virtual currency between users of the platform but does not, by way of an Internet website, online service, mobile application, physical establishment, kiosk or any other means:

(1) Perform custodial services with respect to virtual currency; or

(2) Transmit or hold fiat currency.

2. Subsection 1 does not reduce or alter any liability otherwise attaching to the sale, issuance, receipt for transmission or transmission of checks or money in any form.

3. As used in this section:

(a) "Custodial services" has the meaning ascribed to it in section 5 of this act.

(b) "Peer-to-peer digital currency platform" means an Internet website, online service or mobile application which allows users to purchase and sell virtual currency to other users.



(c) *“Virtual currency” has the meaning ascribed to it in section 10 of this act.*

Sec. 24. This act becomes effective on January 1, 2022.

