

1 AN ACT relating to digital assets.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. KRS CHAPTER 355A IS ESTABLISHED AND A NEW
4 SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *(1) As used in this chapter, unless the context requires otherwise:*

6 *(a) "Digital asset" means a representation of economic, proprietary, or access*
7 *rights that is:*

8 *1. Stored in a computer readable format; and*

9 *2. Either:*

10 *a. A digital consumer asset;*

11 *b. A digital security; or*

12 *c. Virtual currency;*

13 *(b) "Digital consumer asset":*

14 *1. Means a digital asset that is used or bought primarily for consumptive,*
15 *personal, or household purposes, except a digital security or virtual*
16 *currency; and*

17 *2. Shall include an open blockchain token that is intangible personal*
18 *property;*

19 *(c) "Digital security" means a digital asset that is a security, as defined in KRS*
20 *292.310; and*

21 *(d) "Virtual currency" means a digital asset, except an open blockchain token*
22 *that is a digital consumer asset, that is:*

23 *1. Used as a medium of exchange, unit of account, or store of value; and*

24 *2. Not recognized as legal tender by the United States government.*

25 *(2) The definitions for "digital consumer asset," "digital security", and "virtual*
26 *currency" shall be mutually exclusive.*

27 *(3) For purposes of KRS 355.9-201(2), this chapter shall be considered an applicable*

1 statute that establishes a different rule for consumers.

2 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 355A IS CREATED TO
3 READ AS FOLLOWS:

4 (1) Digital assets are classified in the following manner:

5 (a) The following are intangible personal property:

6 1. A digital consumer asset;

7 2. A digital security; and

8 3. Virtual currency;

9 (b) For purposes of Article 9 of KRS Chapter 355 only:

10 1. A digital consumer asset shall be considered a general intangible, as
11 defined in KRS 355.9-102;

12 2. A digital security shall be considered investment property, as defined
13 in KRS 355.9-102; and

14 3. Notwithstanding KRS 355.1-201, virtual currency shall be considered
15 money; and

16 (c) For purposes of Article 8 of KRS Chapter 355 only, a digital security shall
17 be considered a security, as defined in KRS 355.8-102.

18 (2) (a) Consistent with KRS 355.8-102(1)(i), a digital asset may be treated as a
19 financial asset under that provision, in accordance with an agreement with
20 the owner of the digital asset.

21 (b) If a digital asset is treated as a financial asset under this subsection, the
22 digital asset shall remain classified as intangible personal property.

23 (3) A financial institution providing custodial services under Section 6 of this Act
24 shall be considered to meet the requirements of a securities intermediary, as
25 defined in KRS 355.8-102.

26 (4) Classification of digital assets under this section shall be construed to give the
27 greatest effect to this chapter, but shall not apply to any other asset.

1 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 355A IS CREATED TO
2 READ AS FOLLOWS:

3 (1) As used in this section:

4 (a) When used in Article 9 of KRS Chapter 355, consistent with KRS 355.9-314,

5 "control" includes:

6 1. A secured party, or an agent, custodian, fiduciary, or trustee of the
7 secured party, that has complied with KRS 355.8-106, including by
8 means of:

9 a. A private key;

10 b. The use of a multi-signature arrangement exclusive to the
11 secured party; or

12 c. Any means substantially similar to the means described in
13 subdivision a. or b. of this subparagraph; and

14 2. Use of a smart contract created by a secured party to comply with KRS
15 355.8-106;

16 (b) When used in Article 9 of KRS Chapter 355, consistent with KRS 355.9-313,

17 "possession":

18 1. Means the ability to exclude others from the use of property; and

19 2. Shall include:

20 a. Use of a private key;

21 b. Use of a multi-signature arrangement exclusive to the secured
22 party;

23 c. Use of a smart contract;

24 d. Use of a device that is substantially similar to a device referenced
25 in subdivision a., b., or c. of this subparagraph; and

26 e. Delivery of a certificated digital security, consistent with KRS
27 355.8-301(1);

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

- 3 1. Held by a person;
4 2. Paired with a unique, publicly available element of cryptographic
5 data; and
6 3. Associated with an algorithm that is necessary to carry out an
7 encryption or decryption required to execute a transaction;

8 (d) "Multi-signature arrangement" means:

- 9 1. A system of access control relating to a digital asset for the purpose of
10 preventing unauthorized transactions relating to the asset, in which
11 two (2) or more private keys are required to conduct a transaction; or
12 2. A system substantially similar to the system described in subparagraph
13 1. of this paragraph; and

14 (e) "Smart contract" means:

- 15 1. An automated transaction, as defined in KRS 369.102; or
16 2. Any other similar transaction that is comprised of code, script, or
17 programming language that:
18 a. Executes the terms of an agreement; and
19 b. May include:
20 i. Taking custody of, and transferring, an asset; or
21 ii. Issuing executable instructions, based on the occurrence or
22 nonoccurrence of specified conditions.

23 (2) (a) Notwithstanding the financing statement requirement in KRS 355.9-310 as
24 otherwise applied to general intangibles or any other provision of law,
25 perfection of a security interest:

- 26 1. In virtual currency may be achieved through possession; and
27 2. In a digital security may be achieved by control.

- 1 (b) A security interest held by a secured party having possession of virtual
2 currency, or control of a digital security, has priority over a security interest
3 held by a secured party that does not have possession or control, as
4 applicable.
- 5 (c) KRS 355.9-322(1)(a) and (2) shall not apply to the perfection and priority of
6 a security interest under this subsection.
- 7 (d) Except as otherwise provided in this subsection, all other provisions of law
8 relating to perfection and priority of security interests, including KRS
9 355.9-322(3), KRS 355.9-207, and laws relating to priority of control over
10 delivery, shall apply to the perfection and priority of a security interest
11 under this subsection.
- 12 (3) (a) Before a secured party may take possession or control under this section,
13 the secured party shall enter into a security agreement with:
- 14 1. The debtor; and
15 2. As necessary, other parties.
- 16 (b) The security agreement may set forth the terms under which a secured party
17 may pledge its security interests as collateral for another transaction.
- 18 (c) Consistent with KRS 355.9-201(1), the security agreement shall be effective
19 according to its terms between the parties, against purchasers of collateral,
20 and against creditors.
- 21 (4) If a debtor is located in Kentucky, a secured party may file a financing statement
22 with the Secretary of State to perfect a security interest in a digital consumer
23 asset or a digital security, including to perfect a security interest in proceeds in
24 accordance with KRS 355.9-315(4).
- 25 (5) Notwithstanding any other provision of law, including Article 9 of KRS Chapter
26 355, a transferee takes a digital asset free of any security interest perfected by
27 filing two (2) years after the transferee takes the asset for value if the transferee

1 does not have actual notice of an adverse claim at any time during the two (2)
2 year period.

3 (6) Perfection by possession creates a possessory security interest under KRS 355.9-
4 301(2) in virtual currency or a certificated digital security, based on the
5 possessory nature of a private key, or a device substantially similar to a private
6 key, which may be tangible or electronic.

7 (7) For purposes of Article 9 of KRS Chapter 355 and this subsection, if collateral is
8 required to be "located in a jurisdiction", a digital asset shall be located in
9 Kentucky if:

10 (a) The asset is possessed or controlled by:

11 1. A Kentucky financial institution; or

12 2. Another custodian in Kentucky;

13 (b) The debtor or secured party is physically located in Kentucky;

14 (c) The debtor or secured party is incorporated or organized in Kentucky; or

15 (d) A consideration of the following factors weighs in favor of finding that the
16 digital asset is located in Kentucky:

17 1. Whether a security agreement typically accompanying a possessory
18 security interest or other secured transaction exists, consistent with
19 KRS 355.9-201(1), including an agreement describing the possessory
20 nature of a private key, or any device substantially similar to a private
21 key;

22 2. The choice of law in a security agreement, evidencing the intent and
23 understanding of the parties relating to a transaction, including
24 waivers of litigation in jurisdictions other than Kentucky, access to
25 Kentucky courts, and judicial economy; and

26 3. The relative clarity of the laws of other jurisdictions relating to a
27 digital asset, the consequences relating to unknown liens in those

1 *jurisdictions, and the ability of a court to exercise jurisdiction over a*
2 *particular digital asset.*

3 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 355A IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Blockchain" means a digital ledger or database that is chronological,*
7 *consensus-based, decentralized, and mathematically verified in nature;*

8 *(b) "Consumptive":*

9 *1. Means a circumstance when a token is exchangeable for, or provided*
10 *for the receipt of:*

11 *a. Services;*

12 *b. Software;*

13 *c. Content;*

14 *d. Real property; or*

15 *e. Tangible personal property; and*

16 *2. Shall include rights of access to:*

17 *a. Services;*

18 *b. Content;*

19 *c. Real property; or*

20 *d. Tangible personal property;*

21 *(c) "Developer" means the person primarily responsible for:*

22 *1. Creating an open blockchain token, including by executing the*
23 *technological processes necessary to create the token; or*

24 *2. Otherwise designing an open blockchain token;*

25 *(d) "Facilitator" means a person who, as a business, makes open blockchain*
26 *tokens described in subsection (2) of this section available for resale to the*
27 *public after a token has been purchased by an initial buyer;*

1 (e) "Financial investment" means a contract, transaction, or arrangement
2 where a person invests money in a common enterprise and is led to expect
3 profits solely from the efforts of a promoter or a third party;

4 (f) "Open blockchain token":

5 1. Means a digital unit that is:

6 a. Created:

7 i. In response to the verification or collection of a specified
8 number of transactions relating to a digital ledger or
9 database;

10 ii. By deploying computer code to a digital ledger or database,
11 which may include a blockchain, that allows for the
12 creation of digital tokens or other units; or

13 iii. Using a combination of the methods specified in subparts i.
14 and ii. of this subdivision;

15 b. Recorded to a digital ledger or database, which may include a
16 blockchain; and

17 c. Capable of being traded or transferred between persons without
18 an intermediary or custodian of value; and

19 2. Shall not include virtual currency or a digital security; and

20 (g) "Seller" means a person that makes an open blockchain token available for
21 purchase to an initial buyer.

22 (2) An open blockchain token with the following characteristics is intangible
23 personal property:

24 (a) The predominant purpose of the token is consumptive;

25 (b) The developer or seller did not market the token to the initial buyer as a
26 financial investment; and

27 (c) At least one (1) of the following is satisfied:

- 1 1. The developer or seller reasonably believed that it sold the token to the
2 initial buyer for a consumptive purpose;
- 3 2. The token:
- 4 a. Has a consumptive purpose that is available at, or near, the time
5 of sale; and
- 6 b. Can be used at, or near, the time of sale for a consumptive
7 purpose;
- 8 3. The initial buyer of the token is prohibited by the developer or seller
9 from reselling the token until the token is available to be used for a
10 consumptive purpose; or
- 11 4. The developer or seller takes other reasonable precautions to prevent
12 an initial buyer from purchasing the token as a financial investment.
- 13 (3) (a) Before making an open blockchain token described in subsection (2) of this
14 section available for sale in this state, the developer or seller of the token, or
15 the registered agent of the developer or seller, shall:
- 16 1. Electronically file a notice of intent with the Secretary of State; and
17 2. Pay a filing fee of one thousand dollars (\$1,000) to the Secretary of
18 State to offset the costs of administering this subsection.
- 19 (b) The notice of intent shall contain:
- 20 1. The name of the person acting as a developer or seller;
21 2. The contact information of the person filing the notice; and
22 3. Comprehensive details on the open blockchain token being made
23 available for sale, as required by the Secretary of State.
- 24 (c) Any forms required, or promulgated, under this subsection shall:
- 25 1. Be accessible to filers in a secure electronic format; and
26 2. Conspicuously posted on the Secretary of State's Web site.
- 27 (d) A developer, seller, and the registered agents of these persons, if applicable,

1 shall have a continuing duty to update the contact information provided on
2 a notice of intent filed with the Secretary of State under this subsection as
3 long as the open blockchain token associated with the notice is actively
4 being sold.

5 (e) The Secretary of State shall prescribe, by administrative regulation:

6 1. The details required under paragraph (b)3. of this subsection;

7 2. The form in which a notice of intent under this subsection shall be
8 made and updated; and

9 3. The procedures applicable to filings made under this subsection.

10 (4) A facilitator shall:

11 (a) Before making any token available for resale to the public in this state,
12 confirm with the Secretary of State that a notice of intent has been filed in
13 accordance with subsection (3) of this section;

14 (b) At all times, have a reasonable and good faith belief that a token subject to
15 resale conforms to the requirements of subsection (2)(a), (b), and (c) of this
16 section; and

17 (c) Take reasonably prompt action to terminate the resale of a token that does
18 not conform to the requirements of this section.

19 (5) (a) A willful failure by a developer, seller, or facilitator to comply with the
20 duties imposed under this section shall be deemed an act or practice in
21 violation of KRS 367.170.

22 (b) All of the remedies, powers, and duties delegated to the Attorney General by
23 KRS 367.190 to 367.300, and the penalties provided in KRS 367.990,
24 pertaining to acts and practices declared unlawful by KRS 367.170, shall be
25 applicable to a willful failure referenced in paragraph (a) of this subsection.

26 (c) A developer, seller, or facilitator is subject to all applicable criminal
27 statutes, including the fraud provisions of KRS Chapter 434.

1 (6) The Secretary of State may refer the following to appropriate state or federal
 2 agencies for investigation, criminal prosecution, civil penalties, and other
 3 appropriate enforcement actions:

4 (a) Suspected violations of this section; and

5 (b) The developer, seller, or facilitator of an open blockchain token, or another
 6 digital asset that substantially resembles an open blockchain token, which,
 7 in the determination of the Secretary of State, is being sold for any
 8 fraudulent purposes.

9 (7) This section may be cited as the "Kentucky Utility Token Act."

10 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 355A IS CREATED TO
 11 READ AS FOLLOWS:

12 Subject to other jurisdictional limits placed on specific courts under Kentucky law, the
 13 courts of Kentucky shall have jurisdiction to hear claims in both law and equity
 14 relating to digital assets, including those arising under this chapter, KRS Chapter 355,
 15 and Section 6 of this Act.

16 ➔SECTION 6. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 286 IS
 17 CREATED TO READ AS FOLLOWS:

18 (1) As used in this section:

19 (a) "Custodial services":

20 1. Means the safekeeping, servicing, and management of customer
 21 currency and digital assets; and

22 2. Shall include:

23 a. The exercise of fiduciary and trust powers involving the exercise
 24 of discretion;

25 b. Fund administration; and

26 c. The execution of customer instructions;

27 (b) "Digital asset" has the same meaning as in Section 1 of this Act; and

- 1 (c) "Financial institution" means any bank, trust company, savings and loan
2 association, credit union, or special purpose depository institution that is:
3 1. Chartered under this chapter; and
4 2. Authorized to act as a fiduciary and engage in trust business.
5 (2) (a) A financial institution may provide custodial services in accordance with
6 this section upon providing sixty (60) days written notice to the
7 commissioner.
8 (b) This section shall not be deemed exclusive, but shall be construed as an
9 optional framework for enhanced supervision of digital asset custody.
10 (c) If a financial institution elects to provide custodial services under this
11 section, it shall comply with all provisions of this section.
12 (3) A financial institution may serve:
13 (a) As a qualified custodian, as specified in 17 C.F.R. sec. 275.206(4)-2;
14 (b) As a custodian authorized by the United States commodity futures trading
15 commission; or
16 (c) As a custodian authorized under any other law.
17 (4) In performing custodial services under this section, a financial institution shall:
18 (a) Implement all accounting, account statement, internal control, notice, and
19 other standards specified by applicable state and federal law and
20 regulations for custodial services;
21 (b) Maintain information technology best practices relating to digital assets
22 held in custody. The commissioner may specify required best practices
23 under this paragraph through the promulgation of an administrative
24 regulation;
25 (c) Fully comply with applicable state and federal anti-money laundering,
26 customer identification, and beneficial ownership requirements; and
27 (d) Take other actions necessary to carry out this section, which may include:

- 1 1. Exercising fiduciary powers; and
- 2 2. Ensuring compliance with federal law governing digital assets
- 3 classified as commodities.
- 4 (5) (a) A financial institution providing custodial services under this section shall
- 5 conform to the audit, accounting, and related requirements specified by the
- 6 commissioner and applicable law, which may include entering into an
- 7 agreement with an independent public accountant to conduct an
- 8 examination conforming to the requirements of 17 C.F.R. sec. 275.206(4)-
- 9 2(a)(4) and (6), at the cost of the financial institution.
- 10 (b) An accountant shall transmit the results of any examination conducted
- 11 under this subsection to the commissioner within one hundred twenty (120)
- 12 days of the examination and may file the results with other regulatory
- 13 agencies as their rules may provide.
- 14 (c) Material discrepancies in an examination shall be reported to the
- 15 commissioner within one (1) day.
- 16 (d) The commissioner shall review examination results within a reasonable
- 17 time of receipt and during any regular examination.
- 18 (6) (a) Digital assets held in custody under this section are not depository liabilities
- 19 or assets of the financial institution.
- 20 (b) A financial institution, or a subsidiary, may register as an investment
- 21 adviser, investment company, or broker dealer, as necessary.
- 22 (c) A financial institution shall maintain possession or control, as applicable,
- 23 over a digital asset while in custody.
- 24 (d) A customer shall elect, pursuant to a written agreement with the financial
- 25 institution, one (1) of the following relationships for each digital asset in
- 26 custody:
- 27 1. Custody under a bailment as a nonfungible or fungible asset. Assets

1 held under this subparagraph shall be strictly segregated from other
2 assets; or

3 2. Custody as provided in subsection (7) of this section.

4 (7) (a) If a customer so elects, the financial institution may, based only on the
5 customer's instructions, undertake transactions with the digital asset.

6 (b) A financial institution is deemed to maintain possession or control in
7 accordance with subsection (6)(c) of this section by entering into an
8 agreement with the counterparty to a transaction that contains a time for
9 return of the asset and other customary terms in securities or commodities
10 transactions.

11 (c) The financial institution shall not be liable for any loss suffered with
12 respect to a transaction under this subsection, except for liability consistent
13 with fiduciary and trust powers.

14 (8) (a) A financial institution and a customer shall agree to the following, in
15 writing:

16 1. The source code version the financial institution will use for each
17 digital asset; and

18 2. The treatment of each asset under the Uniform Commercial Code,
19 KRS Chapter 355, if applicable.

20 (b) Any ambiguity as to the agreement reached under paragraph (a) of this
21 subsection shall be resolved in favor of the customer.

22 (9) A financial institution shall provide clear, written notice to each customer, and
23 require written acknowledgment, of the following:

24 (a) Prior to implementation, any material source code updates relating to
25 digital assets held in custody, except in emergencies that may include
26 security vulnerabilities;

27 (b) The heightened risk of loss from transactions referred to in subsection (7)

1 of this section;

2 (c) That some risk of loss as a pro rata creditor exists as the result of custody:

3 1. Under a bailment as a fungible asset; or

4 2. As provided in subsection (7) of this section;

5 (d) That custody as provided in subsection (7) of this section may not result in

6 the digital assets of the customer being strictly segregated from other

7 customer assets; and

8 (e) That the financial institution is not liable for losses suffered with respect to

9 a transaction referred to in subsection (7) of this section, except for liability

10 consistent with fiduciary and trust powers.

11 (10) (a) A financial institution and a customer shall agree in writing to a time

12 period within which the financial institution shall return a digital asset held

13 in custody under this section.

14 (b) If a customer makes an election under subsection (7) of this section, the

15 financial institution and the customer may also agree in writing to the form

16 in which the digital asset shall be returned.

17 (11) (a) All ancillary or subsidiary proceeds relating to digital assets held in custody

18 under this section shall accrue to the benefit of the customer, except as

19 specified by a written agreement with the customer.

20 (b) The financial institution may elect not to collect certain ancillary or

21 subsidiary proceeds, as long as the election is disclosed in writing.

22 (c) A customer that elects custody under a bailment as a nonfungible or

23 fungible asset may withdraw the digital asset in a form that permits the

24 collection of the ancillary or subsidiary proceeds.

25 (12) For digital assets held in custody under this section, a financial institution shall

26 not:

27 (a) Authorize, or permit, rehypothecation of the digital assets; or

1 **(b) Engage in any activity to use, or exercise, discretionary authority relating to**
 2 **a digital asset, except based on customer instructions.**

3 **(13) A financial institution shall not take any action that may be authorized under this**
 4 **section if that action would likely impair the solvency, or the safety and**
 5 **soundness, of the financial institution, as determined by the commissioner after**
 6 **considering the nature of custodial services customary in the banking and**
 7 **finance industry.**

8 **(14) To offset the costs of supervision and administration under this section, a**
 9 **financial institution that elects to provide custodial services in accordance with**
 10 **this section shall pay a supervision fee established by the commissioner through**
 11 **the promulgation of an administrative regulation.**

12 ➔SECTION 7. A NEW SECTION OF ARTICLE 1 OF KRS CHAPTER 355 IS
 13 CREATED TO READ AS FOLLOWS:

14 **Sections 1 to 5 and 6 of this Act shall be construed as supplemental to the provisions of**
 15 **this chapter. In the event of a conflict, the provisions of Sections 1 to 5 and 6 of this**
 16 **Act shall control.**

17 ➔Section 8. KRS 369.103 is amended to read as follows:

18 (1) Except as otherwise provided in subsection (2) of this section, KRS 369.101 to
 19 369.120 applies to electronic records and electronic signatures relating to a
 20 transaction, **including transactions involving digital assets, as defined in Section 1**
 21 **of this Act.**

22 (2) KRS 369.101 to 369.120 does not apply to a transaction to the extent it is governed
 23 by:

24 (a) A law governing the creation and execution of wills, codicils, or testamentary
 25 trusts;

26 (b) KRS Chapter 355 other than KRS 355.1-107 and 355.1-206, and Articles 2
 27 and 2A of KRS Chapter 355; and

1 (c) A law governing the creation or transfer of any negotiable instrument or any
2 instrument establishing title or an interest in title to a motor vehicle and
3 governed by KRS Chapter 186 or 186A.

4 (3) KRS 369.101 to 369.120 applies to an electronic record or electronic signature
5 otherwise excluded from the application of KRS 369.101 to 369.120 under
6 subsection (2) of this section to the extent it is governed by a law other than those
7 specified in subsection (2) of this section.

8 (4) A transaction subject to KRS 369.101 to 369.120 is also subject to other applicable
9 substantive law.

10 ➔Section 9. The Secretary of State and the commissioner of financial institutions
11 shall promulgate administrative regulations to implement the provisions of this Act on or
12 before October 1, 2021.

13 ➔Section 10. Sections 1 to 8 of this Act take effect on October 1, 2021.