

1 AN ACT relating to digital assets.

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

3 ➔Section 1. KRS 41.070 is amended to read as follows:

4 (1) **(a) As used in this section, "central bank digital currency":**

5 **1. Means a digital currency, digital medium of exchange, or digital**  
 6 **monetary unit of account that is:**

7 **a. Issued and made directly available to the public; or**

8 **b. Processed and validated;**

9 **by the United States Federal Reserve System, a federal agency, or a**  
 10 **foreign government; and**

11 **2. Does not include a digital asset that is:**

12 **a. Backed by legal tender or government treasuries; and**

13 **b. Issued by a qualified entity.**

14 **(b) As used in paragraph (a) of this subsection, "qualified entity" means an**  
 15 **entity that is not:**

16 **1. The United States Federal Reserve System;**

17 **2. A federal agency;**

18 **3. A foreign government; or**

19 **4. An instrumentality or agent of an entity referenced in subparagraph**  
 20 **1., 2., or 3. of this paragraph.**

21 **(2)** Unless otherwise expressly provided by law, no receipts from any source of state  
 22 money or money for which the state is responsible shall be held, used, or deposited  
 23 in any personal or special bank account, temporarily or otherwise, by any agent or  
 24 employee of any budget unit, to meet expenditures or for any other purpose.

25 **(3)**~~**(2)**~~ **(a)** All receipts of any character of any budget unit, all revenue collected for  
 26 the state, and all public money and dues to the state shall be deposited in state  
 27 depositories in the most prompt and cost-efficient manner available.

1       **(b)** However, in the case of state departments or agencies located outside  
2       Frankfort, and all state institutions, the Finance and Administration Cabinet  
3       may permit temporary deposits to be made to the accounts maintained by the  
4       agency, department, or institution in a state depository for a period not to  
5       exceed thirty (30) days, and may require that the money be forwarded to the  
6       State Treasury at the time and in the manner and form prescribed by the  
7       cabinet.

8       **(c)** ~~Nothing in~~ This section shall **not** be construed as authorizing any  
9       representative of any agency, department, or institution to enforce or cash,  
10      even for the purpose of a deposit, any check or other instrument of value  
11      payable to the Commonwealth or any agency thereof.

12     ~~(4)(3)~~ Each agency depositing its receipts directly with the State Treasurer shall do  
13      so in the manner approved by the State Treasurer as agent in charge of public fund  
14      deposits.

15     ~~(5)(4)~~ **(a)** The Department of Revenue may deposit receipts to the credit of the  
16      State Treasury directly with a state depository utilized by the Commonwealth  
17      for its primary banking services.

18     **(b) 1.** The State Treasurer, with the approval of the Finance and  
19      Administration Cabinet, may authorize other agencies to deposit receipts  
20      directly with a state depository to the credit of the State Treasury if the  
21      Treasurer prescribes the manner in which the deposit is to be made, and  
22      the forms and reports to be filed with the Treasury Department.

23     **2.** The Finance and Administration Cabinet shall prescribe the forms and  
24      reports to be filed with it when this type of deposit is made.

25     ~~(6)(5)~~ Each department, agency, or other budget unit which receives funds to be  
26      deposited into the State Treasury shall maintain records to report adequately each  
27      amount received, from whom received, and date received. Agency records shall be

1 easily reconcilable with the information forwarded to the State Treasurer.

2 **(7) A department, agency, or other budget unit, including the State Treasurer, shall**

3 **not:**

4 **(a) Accept central bank digital currency as a method of payment to the**  
 5 **department, agency, budget unit, or State Treasury; or**

6 **(b) Require a payment be made to the department, agency, budget unit, or State**  
 7 **Treasury using a central bank digital currency.**

8 ➔Section 2. KRS 45.345 is amended to read as follows:

9 (1) **As used in this section, "central bank digital currency" has the same meaning as**  
 10 **in Section 1 of this Act.**

11 **(2)** In addition to any payment method authorized by law~~[,]~~ and notwithstanding any  
 12 statute to the contrary, **except as otherwise provided in this section and Section 1**  
 13 **of this Act,** any state agency may accept the following methods of payment to  
 14 secure funds for deposit into the State Treasury:

15 (a) Credit card;

16 (b) Debit card;

17 (c) Electronic check;

18 (d) Automated clearinghouse (ACH) debit; or

19 (e) Any other electronic payment method upon the prior written approval of both  
 20 the Finance and Administration Cabinet and the Office of the State Treasurer.

21 ~~(3)~~~~(2)~~ Any fees charged to a state agency by the provider of the payment services  
 22 listed in subsection (1) of this section shall be deemed to represent collection  
 23 expenses and may be considered normal operating expenses of the agency, or the  
 24 agency may collect convenience fees from users to supplement agency costs of  
 25 delivering services.

26 **(4) A state agency shall not, either directly or through any of the methods listed in**  
 27 **subsection (2)(a), (b), (c), or (d) of this section or through another method, accept**

1 central bank digital currency as payment to secure funds for deposit into the State  
 2 Treasury or for any other purpose.

3 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO  
 4 READ AS FOLLOWS:

5 (1) As used in this section:

6 (a) "Central bank digital currency" has the same meaning as Section 1 of this  
 7 Act; and

8 (b) "Local government authority":

9 1. Means any city, county, charter county government, urban-county  
 10 government, consolidated local government, unified local government,  
 11 public school district, public institution of education, special district,  
 12 or municipal corporation, of this state; and

13 2. Includes any agency, authority, board, bureau, department,  
 14 commission, council, committee, instrumentality, or other entity, of an  
 15 entity referenced in subparagraph 1. of this paragraph.

16 (2) A local government authority shall not:

17 (a) Accept central bank digital currency as a method of payment to the local  
 18 government authority; or

19 (b) Require a payment be made to the local government authority using a  
 20 central bank digital currency.

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

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

24 (a) "Digital asset" means a representation of economic, proprietary, or access  
 25 rights that is:

26 1. Stored in a computer readable format; and

27 2. Either:

1           a. A digital consumer asset;

2           b. A digital security; or

3           c. Virtual currency;

4       (b) "Digital consumer asset":

5           1. Means a digital asset that is used or bought primarily for consumptive,  
6           personal, or household purposes, except a digital security or virtual  
7           currency; and

8           2. Includes an open blockchain token that is intangible personal  
9           property;

10       (c) "Digital security" means a digital asset that is a security, as defined in KRS  
11       292.310; and

12       (d) "Virtual currency":

13           1. Means a digital asset, except an open blockchain token that is a digital  
14           consumer asset, that is:

15           a. Used as a medium of exchange, unit of account, or store of  
16           value; and

17           b. Except as provided in subparagraph 2. of this paragraph, not  
18           recognized as legal tender by the United States government or a  
19           foreign government; and

20           2. Includes a virtual currency recognized as legal tender by a  
21           government if the virtual currency existed and operated as a medium  
22           of exchange before the currency was authorized or adopted by the  
23           government.

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

26       (3) For purposes of KRS 355.9-201(2), this chapter shall be considered an applicable  
27       statute that establishes a different rule for consumers.

1 (4) Notwithstanding any other law, nothing in this chapter shall apply to central  
2 bank digital currency as defined in Section 1 of this Act.

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

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

6 (a) The following are intangible personal property:

7 1. A digital consumer asset;

8 2. A digital security; and

9 3. Virtual currency;

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

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

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

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

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

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

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

24 (3) A financial institution providing custodial services under Section 9 of this Act  
25 shall be considered to meet the requirements of a securities intermediary, as  
26 defined in KRS 355.8-102.

27 (4) Classification of digital assets under this section shall be construed to give the

1 greatest effect to this chapter, but shall not apply to any other asset.

2 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 355A IS CREATED TO  
3 READ AS FOLLOWS:

4 (1) (a) As used in this section and Article 9 of KRS Chapter 355:

5 1. Consistent with KRS 355.9-314, "control" includes:

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

9 i. A private key;

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

12 iii. Any means substantially similar to the means described in  
13 subpart i. or ii. of this subdivision; and

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

16 2. Consistent with KRS 355.9-313, "possession":

17 a. Means the ability to exclude others from the use of property; and

18 b. Includes:

19 i. Use of a private key;

20 ii. Use of a multi-signature arrangement exclusive to the  
21 secured party;

22 iii. Use of a smart contract;

23 iv. Use of a device that is substantially similar to a device  
24 referenced in subpart i., ii., or iii. of this subdivision; and

25 v. Delivery of a certificated digital security, consistent with  
26 KRS 355.8-301(1).

27 (b) As used in this section:

- 1           1. "Multi-signature arrangement" means:
- 2           a. A system of access control relating to a digital asset for the
- 3           purpose of preventing unauthorized transactions relating to the
- 4           asset, in which two (2) or more private keys are required to
- 5           conduct a transaction; or
- 6           b. A system substantially similar to the system described in
- 7           subdivision a. of this subparagraph;
- 8           2. "Private key" means a unique element of cryptographic data, or any
- 9           substantially similar analogue, that is:
- 10           a. Held by a person;
- 11           b. Paired with a unique, publicly available element of
- 12           cryptographic data; and
- 13           c. Associated with an algorithm that is necessary to carry out an
- 14           encryption or decryption required to execute a transaction; and
- 15           3. "Smart contract" means:
- 16           a. An automated transaction, as defined in KRS 369.102; or
- 17           b. Any other similar transaction that is comprised of code, script, or
- 18           programming language that:
- 19           i. Executes the terms of an agreement; and
- 20           ii. May include taking custody of, and transferring, an asset
- 21           or issuing executable instructions based on the occurrence
- 22           or 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) and 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 7. 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. Includes 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. Does 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 be:
- 25           1. Accessible to filers in a secure electronic format; and
- 26           2. Conspicuously posted on the Secretary of State's website.
- 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 promulgated in accordance with KRS Chapter 13A:

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

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

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

11 (4) A facilitator shall:

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

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

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

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

23 (b) All of the remedies, powers, and duties delegated to the Attorney General by  
24 KRS 367.110 to 367.300, and the penalties provided in KRS 367.990,  
25 pertaining to acts and practices declared unlawful by KRS 367.170, shall be  
26 applicable to a willful failure referenced in paragraph (a) of this subsection.

27 (c) A developer, seller, or facilitator is subject to all applicable criminal

1 statutes, including the fraud provisions of KRS Chapter 434.

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

5 (a) Suspected violations of this section; and

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

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

11 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 355A IS CREATED TO  
12 READ AS FOLLOWS:

13 Subject to other jurisdictional limits placed on specific courts under Kentucky law, the  
14 courts of Kentucky shall have jurisdiction to hear claims in both law and equity  
15 relating to digital assets, including those arising under this chapter, KRS Chapter 355,  
16 and Section 9 of this Act.

17 ➔SECTION 9. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 286 IS  
18 CREATED TO READ AS FOLLOWS:

19 (1) As used in this section:

20 (a) "Custodial services":

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

23 2. Includes:

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

26 b. Fund administration; and

27 c. The execution of customer instructions;

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



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

1 financial institution, one (1) of the following relationships for each digital  
2 asset in custody:

3 1. Custody under a bailment as a nonfungible or fungible asset. Assets  
4 held under this subparagraph shall be strictly segregated from other  
5 assets; or

6 2. Custody as provided in subsection (9) of this section.

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

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

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

17 (10) (a) A financial institution and a customer shall agree to the following, in  
18 writing:

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

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

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

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

27 (a) Prior to implementation, any material source code updates relating to

- 1           digital assets held in custody, except in emergencies that may include  
2           security vulnerabilities;
- 3           (b) The heightened risk of loss from transactions referred to in subsection (9)  
4           of this section;
- 5           (c) That some risk of loss as a pro rata creditor exists as the result of custody:  
6           1. Under a bailment as a fungible asset; or  
7           2. As provided in subsection (9) of this section;
- 8           (d) That custody as provided in subsection (9) of this section may not result in  
9           the digital assets of the customer being strictly segregated from other  
10           customer assets; and
- 11           (e) That the financial institution is not liable for losses suffered with respect to  
12           a transaction referred to in subsection (9) of this section, except for liability  
13           consistent with fiduciary and trust powers.
- 14           (12) (a) A financial institution and a customer shall agree in writing to a time period  
15           within which the financial institution will return a digital asset held in  
16           custody under this section.
- 17           (b) If a customer makes an election under subsection (9) of this section, the  
18           financial institution and the customer may also agree in writing to the form  
19           in which the digital asset shall be returned.
- 20           (13) (a) All ancillary or subsidiary proceeds relating to digital assets held in custody  
21           under this section shall accrue to the benefit of the customer, except as  
22           specified by a written agreement with the customer.
- 23           (b) The financial institution may elect not to collect certain ancillary or  
24           subsidiary proceeds, as long as the election is disclosed in writing.
- 25           (c) A customer that elects custody under a bailment as a nonfungible or  
26           fungible asset may withdraw the digital asset in a form that permits the  
27           collection of the ancillary or subsidiary proceeds.

1 **(14) For digital assets held in custody under this section, a financial institution shall**

2 **not:**

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

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

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

11 **(16) To offset the costs of supervision and administration under this section, a**  
 12 **financial institution that elects to provide custodial services in accordance with**  
 13 **this section shall pay a supervision fee established by the commissioner through**  
 14 **the promulgation of an administrative regulation in accordance with KRS**  
 15 **Chapter 13A.**

16 ➔SECTION 10. A NEW SECTION OF ARTICLE 1 OF KRS CHAPTER 355 IS  
 17 CREATED TO READ AS FOLLOWS:

18 **KRS Chapter 355A and Section 9 of this Act shall be construed as supplemental to the**  
 19 **provisions of this chapter. In the event of a conflict, the provisions of KRS Chapter**  
 20 **355A and Section 9 of this Act shall control.**

21 ➔Section 11. KRS 369.103 is amended to read as follows:

22 (1) Except as otherwise provided in subsection (2) of this section, KRS 369.101 to  
 23 369.120 applies to electronic records and electronic signatures relating to a  
 24 transaction, **including transactions involving digital assets, as defined in Section 4**  
 25 **of this Act.**

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

- 1 (a) A law governing the creation and execution of wills, codicils, or testamentary  
2 trusts;
- 3 (b) KRS Chapter 355 other than KRS 355.1-107 and 355.1-206, and Articles 2  
4 and 2A of KRS Chapter 355; and
- 5 (c) A law governing the creation or transfer of any negotiable instrument or any  
6 instrument establishing title or an interest in title to a motor vehicle and  
7 governed by KRS Chapter 186 or 186A.
- 8 (3) KRS 369.101 to 369.120 applies to an electronic record or electronic signature  
9 otherwise excluded from the application of KRS 369.101 to 369.120 under  
10 subsection (2) of this section to the extent it is governed by a law other than those  
11 specified in subsection (2) of this section.
- 12 (4) A transaction subject to KRS 369.101 to 369.120 is also subject to other applicable  
13 substantive law.

14 ➔Section 12. KRS 355.1-102 is amended to read as follows:

15 **(1) Except as provided in subsection (2) of this section,** this article applies to a  
16 transaction to the extent that it is governed by another article of the Uniform  
17 Commercial Code.

18 **(2) Notwithstanding any other law, nothing in KRS Chapter 355 shall apply to**  
19 **central bank digital currency as defined in Section 1 of this Act.**

20 ➔Section 13. The Secretary of State and the commissioner of financial  
21 institutions shall promulgate administrative regulations to implement the provisions of  
22 Section 7 and 9 of this Act, as applicable, on or before October 1, 2025.

23 ➔Section 14. Sections 4 to 11 of this Act take effect on October 1, 2025.