

HB 1159 -- DIGITAL ASSETS

SPONSOR: McDaniel

This bill classifies digital assets. Digital assets are classified in the following manner:

(1) Digital consumer assets are intangible personal property and shall be considered general intangibles, for the purposes of Article 9 (Secured Transactions) of the Uniform Commercial Code;

(2) Digital securities are intangible personal property and shall be considered securities, for the purposes of Article 9 (Secured Transactions) of the Uniform Commercial Code; and

(3) Virtual currency is intangible personal property and shall not be considered monies, for the purposes of Article 9 (Secured Transactions) of the Uniform Commercial Code.

A digital asset may be treated as a financial asset pursuant to a written agreement with the owner of the digital asset. If treated as a financial asset, the digital asset shall remain intangible personal property.

Except for the financing statement required by the Uniform Commercial Code as otherwise applied to general intangibles, perfection of a security interest in a digital asset may be achieved through control. 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. Before taking control of a digital asset, the secured party must enter into a control agreement with the debtor.

A secured party may file a financing statement with the Secretary of State, including to perfect a security interest in proceeds from a digital asset.

For a security interest perfected by a method other than control, a transferee takes a digital asset free of any security interest two years after taking the asset for value without any notice of an adverse claim.

Possession by control creates a possessory security interest and does not require physical possession. A digital asset is located in Missouri if the asset is held by a Missouri custodian, or if the debtor or secured party is physically located in Missouri or incorporated or organized in Missouri.

A bank may choose to provide custodial services by giving 60 days' written notice to the commissioner. A bank may service as a qualified custodian. A bank providing custodial services must enter into an agreement with an independent public accountant to conduct an examination. The results of the examination must be sent to the commissioner within 120 days. Any material discrepancy in the examination must be reported within one day.

Digital assets held in custody are not depository liabilities or assets of the bank, but a bank must maintain control over a digital asset while in custody. A bank may register as an investment advisor, investment company, or broker dealer. A customer must elect via a written agreement with the bank which type of relationship the digital asset will be. The bank and customer must also agree in writing on the source code version the bank will use for each digital asset. Any ambiguity will be resolved in favor of the customer. The bank must provide a written notice to the customer. The bank and customer must agree in writing when the bank must return a digital asset back to the customer. Any ancillary or subsidiary proceeds relating to the digital asset will accrue to the benefit of the customer, except as specified in the written agreement.

A bank cannot permit rehypothecation of digital assets. A bank cannot exercise discretionary authority relating to a digital asset, except based on customer instructions. A bank that provides custodial services will pay a supervision fee to the financial institutions administration account of 2/100 of one cent relating to assets held in custody.

Missouri courts have jurisdiction to hear claims in both law and equity relating to digital assets.