Response to Request for Information
by Charles G. Cooper
Commissioner

Texas Department of Banking

House Committee on Pensions, Investments, and Financial Services

September 19, 2024

Members of the Pensions, Investments, and Financial Services Committee, thank you for the opportunity to submit a response regarding the implementation of legislation passed by the 88th Legislature and associated rulemaking relating to money services business activity.

S.B. 895 by Senator Nathan Johnson (companion H.B. 3573 by Representative Stan Lambert)

S.B. 895 repealed the Texas Money Services Act (Texas Finance Code, Chapter 151) and replaced it with the Texas Money Services Modernization Act (Texas Finance Code, Chapter 152). Exhibit I - Bill Analysis provides additional detail. The bill became effective September 1, 2023 although a transition period allowed existing licensees to satisfy the minimum requirements of the new chapter by no later than September 1, 2024. Rules to implement S.B. 895 were adopted by the Finance Commission of Texas on October 27, 2023.

The bill represented the Texas passage of the Money Transmission Modernization Act model law (MTMA), a result of many years of collaboration between the Texas Department of Banking (Department) and other state banking departments, along with industry representatives and experts, coordinated through the Conference of State Bank Supervisors (CSBS). The goal in drafting the model law was to harmonize money services business statutes among the states while retaining individual state authority.

Texas was the fifth state to approve the model law. As of August 31, 2024, 22 states have enacted the MTMA, four states have partial enactment, and enactment is in progress in two states (Exhibit II). As more states adopt the MTMA, the heightened consistency will further facilitate multi-state efforts leading to more efficient and effective regulation.

Of note, S.B. 895 established new standards for permissible investment coverage and a tiered minimum tangible net worth requirement to strengthen consumer protection, and to protect the integrity of, and maintain public confidence in, the financial system as a whole. While the transition from one regulatory regime to another can present compliance issues, the Department's reviews of MSB call report quarterly filings and onsite examinations during the twelve-month transition period have not identified systemic non-compliance issues resulting from the revised regulation. Moreover, the transition to processing new license applications under Chapter 152 has been successfully implemented and no substantive impediments to full implementation have been identified.

H.B. 1666 by Representative Giovanni Capriglione (companion S.B. 770 by Senator Tan Parker)

H.B. 1666 added Chapter 160 to the Texas Finance Code which sets out provisions relating to the comingling of funds by digital asset service providers (DASP) doing business in Texas that hold a money transmission license and either serve more than 500 digital asset customers in Texas or have at least $10 million in customer funds. The bill requires, among other things, that a DASP maintain reserves sufficient to fulfill all obligations to customers, create a plan that allows each customer to view, at least quarterly, an accounting of any outstanding liabilities to the customer, and by no later than the 90th day after the end of each fiscal year, to file a report with the Department providing certain information and an attestation by an auditor that the information is true and correct. Exhibit III - Bill Analysis provides additional detail. H.B. 1666 became effective September 1, 2023.

Currently, 25 money transmission licensees are subject to Chapter 160 and the Department is actively reviewing 14 license applications filed by prospective DASPs.

To date, the Department has responded to inquiries received directly from affected licensees, published a form as guidance to assist entities in complying with the new law, and commenced rulemaking to provide clarity and resolve outstanding issues. In March of this year, the Department published a standard "Texas Finance Code Chapter 160 Annual Report" form to be utilized by licensees to outline expectations with the chapter's annual report requirement. The form resolved multiple outstanding issues impacting the ability for licensees to comply including, notably, waiving the "auditor attestation" requirement of the annual report until the Department could undertake formal rulemaking to further clarify the statute.

The auditor attestation requirement, found in Sections 160.004(d)(4) and 160.004(e), remains as a material obstacle to full industry compliance. Section 160.004(d)(4) requires an auditor to provide an attestation that the information submitted by the DASP in its annual report is "true and accurate." Section 160.004(e) requires the auditor to be an independent certified public accountant licensed in the United States and to apply attestation standards adopted by the American Institute of Certified Public Accountants (AICPA). There is, however, no AICPA standard resulting in a "true and accurate" statement by the auditor. Nevertheless, the Department believes the statutory language is clear and unambiguous in requiring a qualified and independent third-party auditor to provide its own statement that the information put forth by the DASP is true and accurate.[1]

Consistent with this interpretation, on July 5, 2024, the Finance Commission published a proposed rule clarifying that Section 160.004(d)(4) requires an auditor to perform an examination and provide an unqualified opinion as to whether the items submitted by the DASP in the annual report, are fairly stated, in all material respects. In drafting the proposed rule, the Department determined that there are three applicable AICPA attestation standards; the Department settled on the examination attestation standard and resulting opinion as it is the only AICPA standard which results in a statement from the auditor comparable to the "true and accurate" language called for by the statute.[2]

In response to the proposed rule, the Department received several public comments identifying additional concerns and suggesting alternative options. A common theme among them is that clarification of the law is necessary to enable full compliance by the industry. Notably, however, it is clear that the industry has not established standards and procedures for an auditor to provide a "proof of reserves" attestation of this kind that would be applicable to an examination engagement. As a result of the comments, the Department is determining whether substantive revisions to the proposed rule text, consistent with the statutory language, are feasible and whether to issue guidance allowing for alternative information to be submitted to satisfy the requirement.

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[1] The Department notes that the "true and accurate" language is a mainstay of the H.B.1666 text, as originally filed. Section 160.004(e) was added as an amendment to the bill to require the auditor be qualified, independent, and act according to minimum standards set by industry.

[2] Alternatively, a review engagement would provide limited assurance concluding whether any material modification should be made to the subject matter to be in accordance with the criteria or for it to be fairly stated, and an agreed-upon-procedures engagement provides no opinion or conclusion on behalf of the auditor, instead it merely results in a description of the procedures that were applied to the subject matter and the results of those procedures.

EXHIBIT I

SUBJECT: Regulating money services businesses

COMMITTEE: Pensions, Investments & Financial Services — favorable, without amendment

VOTE: 6 ayes — Capriglione, Lambert, Bryant, Frazier, VanDeaver, Vo

1 nay — Leo-Wilson

2 absent — Bhojani, Plesa

SENATE VOTE: On final passage (March 30) — 30 - 1

WITNESSES: None (*considered in a formal meeting on April 24*)

BACKGROUND: Some have suggested that Texas' statutory regulations of the business of money transmission should be updated and streamlined due to expansion and changes in that business since the adoption of current regulations.

DIGEST: SB 895 would repeal and replace statute regulating and licensing money services, including money transmission and currency exchange services. The bill would:

- provide for the regulatory authority of the Texas Department of Banking, the Finance Commission of Texas, and the banking commissioner;
- establish requirements to apply for, receive, and maintain money services licenses;
- provide procedures for acquiring control of a money services licensee;
- establish reporting and record-keeping requirements;
- establish prudential standards regarding licensees' net worth, security, and permissible investments; and
- provide for enforcement.

Definitions. The bill would define money or monetary value to mean currency or a claim that can be converted into currency through a financial institution, electronic payments network, or other formal or informal payment system. The term also would include stablecoin that was pegged to a sovereign currency, was fully backed by assets held in the reserve, and granted a holder of the stablecoin the right to redeem the stablecoin for sovereign currency from the issuer.

Money services would mean money transmission services or currency exchange services. Money transmission would mean selling or issuing payment instruments to a person located in the state, selling or issuing stored value to a person located in the state, or receiving money for money transmission services from a person located in the state. Money transmission also would include payroll processing services and would not include the provision solely of online or telecommunications services or network access.

Administrative provisions. The bill would establish that the Texas Department of Banking would administer the new statute, and provide for the Finance Commission of Texas to adopt rules for that purpose and impose and collect fees and costs of operating the department and administering applicable law. The banking commissioner would be authorized to conduct investigations to administer and enforce the bill's provisions, including by administering oaths, subpoenaing witnesses, taking evidence, and requiring the production of relevant documents. The bill would provide for the confidentiality of information received by the commission and establish conditions for disclosure.

The commissioner would be authorized to conduct an examination or investigation of a money services licensee or the licensee's authorized delegate or take other actions to administer and enforce the bill's provisions, related regulations, and other applicable law, including the Banking Secrecy Act and the Patriot Act.

A money services licensee or authorized delegate would be required to provide full and complete access to all records the commissioner

reasonably required to conduct a complete examination. Records would have to be presented at the location and in the format specified by the commissioner. A money services licensee would pay all costs reasonably incurred in connection with an examination, unless otherwise directed by the commissioner.

The commissioner would be authorized to participate in multistate supervisory processes established between states for all money services licensees that held licenses in this and other states.

A money services licensee, authorized delegate, or a person who knowingly engaged in regulated activities requiring a license under the bill would be considered as having consented to the jurisdiction of the state's courts for all applicable action, regardless of whether the person filed for or held a license under the bill.

A person would be presumed to exercise a controlling influence over a money services licensee if the person held the power to vote at least 10 percent of the outstanding vote shares or voting interests of a money services licensee or person in control of a licensee. This presumption could be rebutted by evidence that the person was a passive investor. For purposes of determining the percentage of a money services licensee controlled by a person, the person's interest would be aggregated with the interest of any person related within the second degree of consanguinity or affinity, other than a grandparent or grandchild, or with a person who shared the person's home.

Money services licenses. SB 895 would prohibit a person from engaging in the businesses of money transmission or currency exchange services and from advertising, soliciting, or holding out to be engaged in those businesses unless licensed under the bill's provisions. This prohibition would not apply to a person who:

- was an authorized delegate of a money transmission licensee acting within the scope of authority conferred by written contract; or
- was exempt under other provisions of the bill and did not engage in

the business outside the scope of the applicable exemption.

The commissioner also could exempt a person from the prohibition because the person only incidentally engaged in money transmission for an unrelated business objective. The commission could exempt a retailer, wholesaler, or service provider that accepted foreign currency as payment in the ordinary course of business, unless:

- the value of the goods or services purchased in a single transaction exceeded $10,000;
- the change given or made as a result of the transition exceeded $100;
- the person attempted to structure the transaction to evade licensing requirements or avoid using a money services licensee;
- the person was engaged in the business of cashing checks, drafts, or other payment instruments for consideration and was not otherwise exempt from licensing under the bill; or
- the person would not be eligible for a license under the bill.

The commissioner could require that a person submit any necessary information, document, or fee payment through the Nationwide Multistate Licensing System and Registry (NMLS).

SB 895 would specify the material required to be included in an application for a money services license, including specific requirements for an applicant that was a corporation, limited liability company, partnership, or other legal entity. The bill also would specify additional information that would have to be provided to the commissioner if the applicant was an individual in control of a money services licensee or applicant, sought control of a licensee, or was a key individual, meaning an individual ultimately responsible for establishing or directing policies and procedures of a money services licensee. The information would include fingerprints for a background check and certain information related to personal history and experience. Such an individual who had resided outside the United States in the preceding 10 years would be required to provide an additional investigative background report prepared

by an independent search firm.

The commissioner would be required to promptly notify an applicant in writing of the date on which the application was determined to be complete. An application would have to be approved or denied within 120 days, or the application would be considered approved and the license would take effect. The commissioner could extend the application approval period for good cause. When an application was filed and considered complete, the commissioner would investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness.

The commissioner would be required to issue a license to an applicant upon finding that the applicant had complied with application requirements and it was in the public interest to permit the applicant to engage in money services. If the commissioner denied the application, the applicant would have to be informed in writing, and could appeal the denial by requesting a hearing within 30 days of receiving notice. The hearing would have to be heard within 45 days of the commissioner receiving the request unless the administrative law judge extended the period for good cause or the parties agreed to a later date.

In order to maintain a money services license, the licensee would be required to pay an annual license fee established by the commission, and submit a report containing a financial statement dated as of the last day of the licensee's fiscal year that ended in the preceding calendar year and documentation, certification, or any other information needed to determine:

- the security, net worth, permissible investments, and other requirements the licensee had to satisfy; and
- whether the licensee continued to meet the qualifications and requirements for licensure.

A report submitted late would be subject to a fee, and if the licensee failed to submit the report and pay the license fee and any late fee by the 45th

day after the original due date, the license would expire and the expiration would not be subject to appeal. The bill also would provide for the voluntary surrender of a license.

Acquisition of control. A person or group of persons seeking control of a money services licensee would have to obtain written approval from the commissioner before acquiring control. The person or persons would have to submit an application and fee as prescribed by the commissioner and commission rule. The commissioner would have to promptly notify the applicant in writing when the application was considered complete, and approve or deny the application within 60 days. If the commissioner did not approve or deny the application within that time, the application would be considered approved. The commissioner could extend the application period for good cause. The commissioner would be required to approve an acquisition of control upon finding that the application requirements were met and it was in the public interest to permit the person or group of persons to control the money services licensee. If the commission denied an application, the applicant would be able to appeal the denial in the same manner as an applicant for a money services license under the bill.

The bill would specify certain persons to whom the requirements for an application to acquire control of a money services licensee did not apply, including a person who had received approval to engage in money services or was identified as a person in control in a previous application, subject to certain conditions.

Key individuals. A money services licensee adding or replacing a key individual would be required to provide:

- notice no later than 15 days after the key individual's appointment, and
- within 45 days of that date, the same information required for a money services license applicant who was a key individual.

The commissioner would be authorized to disapprove a key individual

within 90 days of notice if it was not in the interests of the public or the customers of the money services licensee. The money services licensee could appeal the disapproval the same manner as a denied license application.

For approvals or disapprovals, the bill would provide for the commissioner to rely on results and determinations provided by a lead state in a multistate licensing process, if applicable.

Reporting and records. SB 895 would require money services licensees to submit certain quarterly and annual financial reports to the commissioner. A money transmission licensee would be required to submit a quarterly report of conditions and authorized delegates. A money services licensee would be required to file a report within one business day of having reason to know of the filing of a petition by or against the licensee for bankruptcy or reorganization, receivership, or other judicial or administrative proceedings, including to revoke or suspend the licensee's license in another state or country. A licensee also would be required to file a report by the third business day after having reason to know of the occurrence of a felony charge or conviction of the licensee, a key individual, a person in control of the licensee, or an authorized delegate. A licensee and an authorized delegate would be required to file all reports required by federal currency reporting, record keeping, and suspicious activity reporting.

A licensee would be required to maintain the following records for determining its compliance with the bill for at least five years:

- a general monthly ledger containing all asset, liability, capital, income, and expense accounts;
- bank statements and bank reconciliation records;
- for a money transmission licensee, records of outstanding money transmission obligations paid and sold and names and addresses of authorized delegates;
- for a currency exchange licensee, a record of each currency exchange transaction; and

- any other records the commissioner reasonably required.

All required records maintained by a money services licensee would be open to examination by the commissioner.

Authorized delegates. Before a money transmission licensee could conduct business through an authorized delegate or allow a person to act as an authorized delegate, the licensee would have to:

- adopt, and update as necessary, written policies and procedures designed to ensure that the authorized delegate complied with applicable state and federal law;
- enter into a written contract appointing an authorized delegate that met certain requirements under the bill; and
- conduct a reasonable risk-based background investigation for the licensee to determine whether the authorized delegate had complied with and would likely comply with applicable law.

If a money transmission licensee's license was suspended, revoked, surrendered, or expired, the licensee would have to provide documentation to the commissioner within five business days that the licensee had notified all applicable authorized delegates. On suspension, revocation, surrender, or expiration of a license, authorized delegates would be required to immediately cease money transmission services.

The bill would establish that an authorized delegate held in trust for the benefit of the money transmission licensee all money net of fees received from money transmission. If an authorized delegate commingled any funds received from money transmission with any other funds or property owned or controlled by the authorized delegate, all commingled funds and other property would be considered held in trust in favor of the licensee in an amount equal to the money net of fees received from money transmission.

An authorized delegate could not use a subdelegate to conduct money transmission on behalf of a money transmission licensee.

A person could not engage in the business of money transmission on behalf of a person who was not licensed or exempt under the bill, and a person who engaged in unauthorized activity would be jointly and severally liable with the unlicensed or nonexempt person.

Timely transmission, refunds, and disclosures. A money transmission licensee would be required to forward all money received for money transmission in accordance with the terms of agreement between the licensee and the sender unless the licensee had reason to believe that the sender could be a victim of fraud or that a crime or violation of law, rule, or regulation had occurred, was occurring, or could occur. The licensee would be required to respond to an inquiry by a sender with the reason for a failure to forward money unless the response would violate a state or federal law, rule, or regulation.

A money transmission licensee would be required to refund any and all money received for money transmission services to the sender within 10 days of receiving a sender's written request for a refund, with certain exceptions.

The bill would require a money transmission licensee or authorized delegate to provide a sender a receipt that contained, as appliable:

- the name of the sender;
- the name of the recipient;
- the date of the transaction;
- the unique transaction or identification number;
- the money transmission licensee's name, NMLS Unique ID, business address, and customer service telephone number;
- the amount of the transaction in US dollars;
- any fee charged by the licensee to the sender; and
- any taxes collected by the licensee from the sender.

The receipt would have to be in English and in a language other than English if the licensee or authorized delegate principally used that

language for transactions. Receipt requirements would not apply to:

- money received for money transmission subject to certain federal requirements for remittance transfers;
- money received that was not primarily for personal, family, or household purposes;
- money received under a written agreement between the licensee and a payee to process payment for goods or services provided by the payee; or
- payroll processing services.

A money transmission licensee that provided payroll processing services would, with certain exceptions, be required to issue reports to clients detailing payroll obligations in advance of the payroll funds being deducted from an account and make pay stubs or an equivalent statement available to workers.

Prudential standards. SB 895 would set minimum amounts for the tangible net worth a money transmission licensee would have to maintain depending on total assets. The commissioner could wholly or partly exempt a licensee from these requirements for good cause.

A money transmission licensee would be required to maintain security consisting of a surety bond. The bill would set amounts for the required security based on net worth in relation to total assets, and specify that with commissioner approval, a licensee could maintain a deposit in lieu of a bond. A currency exchange licensee also would be required to maintain security in amounts prescribed by the bill, with a maximum required security of $1 million. Security under the bill would have to:

- be in a form satisfactory to the commissioner;
- be payable to any claimant or to the commissioner, on behalf of a claimant or the state, for any liability arising out of a licensee’s money transmission business; and
- if the security was a bond, be issued by a qualified surety company authorized to engage in business in the state and acceptable to the

commissioner, or if the security was an irrevocable letter of credit, be issued by a financial institution acceptable to the commissioner.

The commissioner could collect from the security or its proceed any delinquent fee, assessment, cost, penalty, or other amount owed by a money services licensee. A security would remain in effect until canceled, and cancellation would not affect any liability from the period covered by the security. A security would have to cover claims for at least five years after the licensee ceased money services activities, subject to certain discretion by the commissioner. The bill would provide for a money services licensee or applicant to maintain a deposited amount of cash equivalents as an alternative to security requirements.

A money transmission licensee would be required to maintain permissible investments with a market value of at least the aggregate amount of its money transmission obligations. Other than these investments, the commissioner could limit the extent to which a specific investment maintained by a licensee could be considered a permissible investment if the investment represented undue risk to customers not reflected in investment market value. Permissible investments would be held in trust for the benefit of the purchasers and holders of the money transmission licensee's outstanding obligations in the event of:

- insolvency;
- the filing of a petition by or against the licensee under the U.S. Bankruptcy Code;
- the filing of a petition by or against a licensee for receivership;
- the commencement of any other judicial or administrative proceeding for the licensee's dissolution or reorganization; or
- an action by a creditor who was not a beneficiary of the trust against the licensee.

The bill would specify the types of investments permissible, including an irrevocable letter of credit for which the stated beneficiary was the commissioner that stipulated that the commissioner need only draw a sight draft under the letter of credit and present it to obtain funds up to the letter

of credit on presentation of certain items required by the bill. The bill would establish requirements for the letter of credit, including a requirement that it provide for automatic extension unless the issuer notified the commissioner that the letter would not be extended.

On receipt of a notice of expiration or non-extension of a letter of credit, the commissioner would have to require the money transmission licensee to demonstrate that the licensee maintained and would maintain sufficient permissible investments after the letter expired. If the licensee could not satisfactorily demonstrate this, the commissioner could draw on the letter of credit up to the amount necessary to meet the licensee's requirements to maintain permissible investments. The commissioner would have to offset the draw against the licensee's outstanding obligations. The commissioner could designate an agent as beneficiary to a letter of credit and participate in multistate processes to facilitate letters of credit.

Enforcement. SB 895 would allow an action for injunctive relief to enjoin a violation of the bill by the commissioner through the attorney general, the attorney general, the district attorney of Travis County, or the prosecuting attorney of the county in which the violation was alleged to have occurred. An action also could include a claim for ancillary relief.

The bill would require the commissioner to revoke a money services license if the commissioner found that the licensee did not provide the security or maintain the net worth required by the bill. The commissioner would be authorized to suspend or revoke licenses and authorized delegate designations for certain violations or compliance failures. The commissioner also could enforce the bill's requirements by issuing cease and desist orders, assessing administrative penalties, and entering into a consent order to resolve an applicable matter. The bill would provide notice, hearing, and other procedures for emergency and nonemergency orders issued by the commissioner. Under the bill it would be a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) to:

- intentionally make a false statement, misrepresentation, or

certification in a record or application filed with the Department of Banking or required to be maintained, or a rule adopted or order issued under the bill;
- intentionally make a false entry or omit a material entry in a record or application; or
- knowingly engage in unlicensed activity that required a license under the bill.

The bill would allow a person affected by a final order of the commissioner to petition for judicial review in a district court of Travis County.

The bill would specify the entities to which the bill would not apply. A license issued under current regulatory statute that would be repealed by SB 895 would remain in force under the bill's provisions. A licensee would have to satisfy the requirements to maintain a license under SB 895 by September 1, 2024.

The bill would take effect September 1, 2023.

EXHIBIT II

Money Transmission Modernization Act (MTMA) Adoption Status as of 8/31/2024

Status	Count
Enacted	22
Enacted Partial	4
2024 In Progress	2
Other	23

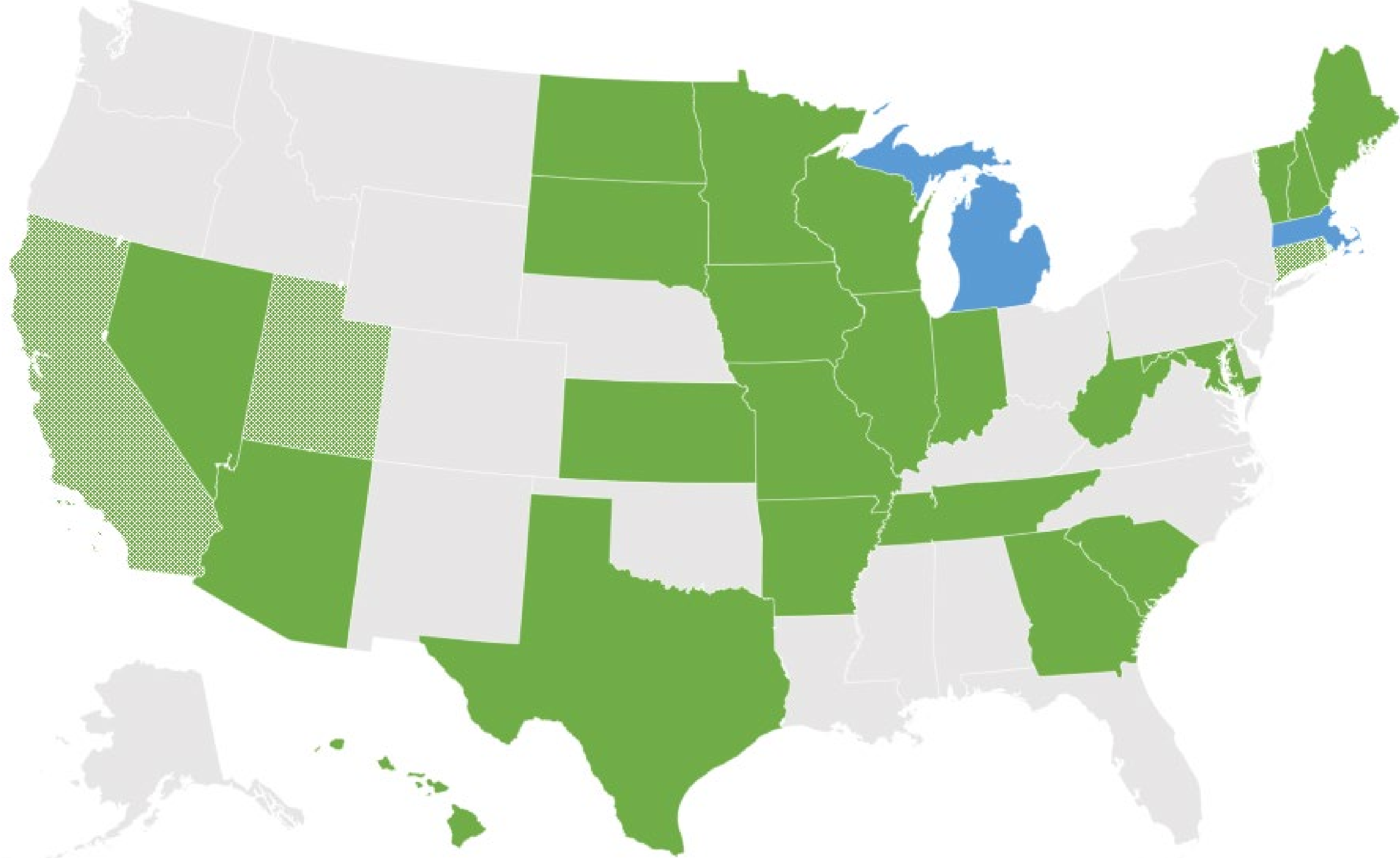

EXHIBIT III

HOUSE RESEARCH ORGANIZATION bill analysis 4/19/2023

HB 1666 (2nd reading)
Capriglione et al.
(CSHB 1666 by Capriglione)

SUBJECT: Regulating digital asset service providers

COMMITTEE: Pensions, Investments & Financial Services — committee substitute recommended

VOTE: 7 ayes — Capriglione, Bhojani, Bryant, Leo-Wilson, Plesa, VanDeaver, Vo

0 nays

2 absent — Lambert, Frazier

WITNESSES: For — Lee Bratcher, Texas Blockchain Council (*Registered, but did not testify*: Thomas Parkinson; Mark Terry)

Against — None

On — Ann Baddour, Texas Appleseed

DIGEST: CSHB 1666 would regulate digital assets by prohibiting the comingling of customer funds with funds belonging to the digital asset service provider and instituting regulations on withdrawing funds, reserve requirements, accounting transparency to customers, annual reporting, and suspension or revocation of a money transmission license.

The bill would apply to a digital asset service provider doing business in the state that holds a money transmission license and either serves more than 500 digital asset customers in the state or has at least $10 million in customer funds. CSHB 1666 would not apply to banks or to entities excluded based on a finding by the Finance Commission that they are not required to hold a money transmission license or not subject to the requirements of the bill.

Definitions. CSHB 1666 would establish the following definitions:

- "Customer funds" would mean the digital assets, fiat currency, or

other property deposited by a digital asset customer;

- "Digital asset" would mean a natively electronic asset that conferred economic, proprietary, or access rights and was recorded or stored in a blockchain, cryptographically secured distributed ledger, or similar technology, and included a digital asset that the laws of any country consider to be legal tender or virtual currency;
- "Digital asset customer" would mean a person who deposited fiat currency or a digital asset with a digital asset service provider; and
- "Digital asset service provider" would means an electronic platform that facilitated the trading of digital assets on behalf of a digital asset customer and maintained custody of the customer's digital assets.

Commingling, withdrawing funds. CSHB 1666 would prohibit digital asset service providers from commingling customer funds with funds belonging to the digital asset service provider, including operating capital, proprietary accounts, digital assets, fiat currency, or other property that was not customer funds.

The bill would prohibit a digital asset service provider from using customer funds to secure or guarantee a transaction other than a transaction for the customer contributing the funds.

Digital asset service providers also would be prohibited from maintaining customer funds in such a manner that the customer could be unable to fully withdraw their funds.

Reserve requirements. Digital asset service providers would have to maintain reserves in an amount sufficient to fulfill all obligations to digital asset customers. These reserves could be held:

- in separate accounts for obligations to each digital asset customer;
- in an omnibus account that only contained digital assets of digital asset customers and in which those assets were not strictly segregated from each other; or
- in the digital asset corresponding to the digital asset customer's

obligations or obligations issued or guaranteed by certain governmental entities, as applicable.

Accounting transparency to customers. A digital asset service provider would have to create a plan to allow each digital asset customer to view at least a quarterly accounting of any outstanding liabilities owed to the digital asset customer and the digital asset customer's digital assets held in reserve by the digital asset service provider. The plan would have to allow for an auditor at any time to access and view this information.

Annual report. The bill would require a digital asset service provider to file a report with the Texas Department of Banking within 90 days after the end of the fiscal year. The report would be required to include:

- an attestation by the digital asset service provider of outstanding liability to digital asset customers;
- evidence of customer assets held by the provider;
- a copy of the provider's plan to provide, at least quarterly, access to accounting of liabilities owed to the customer and the digital asset customer's digital assets held in reserve by the digital asset service provider; and
- an attestation by an auditor that the information in the report was true and accurate.

The auditor would have to be an independent certified public accountant licensed in the United States and apply attestation standards adopted by the American Institute of Certified Public Accountants.

Suspension or revocation of money transmission license. A digital asset service provider would have to comply with the requirements created by the bill to obtain and maintain a money transmission license. The Texas Department of Banking could suspend and revoke a license for failure to comply with the requirements of the bill.

Rules and administration. The Finance Commission of Texas would adopt rules to administer and enforce the bill, including rules necessary

and appropriate to implement and clarify these provisions. The Texas Department of Banking would be responsible for administering the law created by the bill.

The bill would take effect September 1, 2023.

SUPPORTERS SAY:

CSHB 1666 would help restore consumer trust in cryptocurrencies by regulating the entities that facilitate most digital asset consumer trading. Some digital asset service provider practices, such as the commingling of consumer investor funds with corporate assets, have led to the collapse of major providers and have resulted in a significant loss of money for many Texans. By prohibiting the commingling of funds and instituting measures regarding withdrawals, reserves, and transparency, the bill would help restore faith in the blockchain economy by ensuring that Texans have trusted and verified options when investing in digital assets. The bill also would not create onerous requirements for corporations by using existing regulatory framework.

While the bill does not explicitly establish penalties for digital asset service providers that do not comply or remedies for affected consumers, there are already mechanisms within current law that can be used to accomplish this goal, including civil penalties and civil action by the Texas Department of Banking.

CRITICS SAY:

CSHB 1666 may not contain the most effective provisions to accomplish its intended goal. The audit requirements may not be sufficient for the Texas Department of Banking to assess if there were enough funds to cover liabilities. The bill also does not provide for any specific mechanisms for penalizing digital asset service providers that do not comply or for remedying circumstances where consumers were adversely affected by noncompliance.