**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA BLOCKCHAIN INDUSTRY EMPOWERMENT ACT OF 2021” IN ORDER TO ESTABLISH THIS STATE AS AN INCUBATOR FOR TECH INDUSTRIES SEEKING TO DEVELOP INNOVATION BY USING BLOCKCHAIN TECHNOLOGY; BY ADDING SECTION 33‑6‑245 SO AS TO FURTHER PROVIDE FOR THE CONSTRUCTION OF TERMS RELATING TO STOCK AND CERTIFICATE TOKENS; TO AMEND SECTION 33‑6‑250, RELATING TO THE FORM AND CONTENT OF CORPORATE STOCK CERTIFICATES, SO AS TO AUTHORIZE CORPORATIONS TO ISSUE CERTIFICATE TOKENS IN LIEU OF STOCK CERTIFICATES; BY ADDING CHAPTER 47 TO TITLE 34 SO AS TO PROVIDE THAT A PERSON WHO DEVELOPS, SELLS, OR FACILITATES THE EXCHANGE OF AN OPEN BLOCKCHAIN TOKEN IS NOT SUBJECT TO SPECIFIED SECURITIES AND MONEY TRANSMISSION LAWS, AND TO PROVIDE SPECIFIED VERIFICATION AUTHORITY TO THE ATTORNEY GENERAL AND BANKING COMMISSIONER; BY ADDING CHAPTER 51 TO TITLE 34 SO AS TO SPECIFY THAT DIGITAL ASSETS ARE PROPERTY WITHIN THE UNIFORM COMMERCIAL CODE, TO AUTHORIZE SECURITY INTERESTS IN DIGITAL ASSETS, TO ESTABLISH AN OPT‑IN FRAMEWORK FOR BANKS TO PROVIDE CUSTODIAL SERVICES FOR DIGITAL ASSET PROPERTY AS CUSTODIANS, TO SPECIFY STANDARDS AND PROCEDURES FOR CUSTODIAL SERVICES, TO CLARIFY THE JURISDICTION OF SOUTH CAROLINA COURTS RELATING TO DIGITAL ASSETS, TO AUTHORIZE A SUPERVISION FEE, AND TO PROVIDE FOR OTHER RELATED PROVISIONS TO DIGITAL ASSETS; TO AMEND SECTION 35‑11‑105, RELATING TO DEFINITIONS UNDER THE SOUTH CAROLINA ANTI‑MONEY LAUNDERING ACT, SO AS TO DEFINE THE TERM “VIRTUAL CURRENCY”; AND TO AMEND SECTION 35‑11‑110, RELATING TO MATTERS AND TRANSACTIONS TO WHICH THE ANTI‑MONEY LAUNDERING ACT DOES NOT APPLY, SO AS TO PROVIDE THAT THE ACT DOES NOT APPLY TO BUYING, SELLING, ISSUING, OR TAKING CUSTODY OF PAYMENT INSTRUMENTS OR STORED VALUE IN THE FORM OF VIRTUAL CURRENCY OR RECEIVING VIRTUAL CURRENCY FOR TRANSMISSION TO A LOCATION WITHIN OR OUTSIDE THE UNITED STATES BY ANY MEANS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “South Carolina Blockchain Industry Empowerment Act of 2021”.

PART 1

Stock Certificate Issuance by Tokens

SECTION 2. Article 2, Chapter 6, Title 33 of the 1976 Code is amended by adding:

“Section 33‑6‑245. As used in this title, a reference to:

(1) share certificate, share, stock, share of stock, or words of similar import includes a certificate token;

(2) a requirement to print information on a share certificate or words of similar import is satisfied if the information satisfies the requirements set forth in Section 33‑6‑250(f);

(3) certificated shares or words of similar import includes shares represented by certificate tokens, and a reference to the delivery or deposit of these shares to the corporation refers to any method of granting control of the tokens to the corporations; and

(4) a certificate being duly endorsed or words of similar import means that the transaction authorizing transfer of control of the certificate token was signed by the lawful holder of the token with the network signature corresponding to the lawful holder’s data address to which the certificate token was issued or last lawfully transferred.”

SECTION 3. Section 33‑6‑250 of the 1976 Code is amended to read:

“Section 33‑6‑250. (a) Shares may be represented by certificates, but need not be so represented, subject to the provisions of Section 33‑6‑260(a). Unless Chapters 1 through 20 of this title or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum, each share certificate must state on its face:

(1) the name of the issuing corporation and that it is organized under the laws of this State;

(2) the name of the person to whom, or in the case of a certificate token, the data address to which the token was issued; and

(3) the number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series, ~~(~~and the authority of the board of directors to determine variations for future series~~)~~, must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Except as otherwise provided by subsection (f), each share certificate:

(1) must be signed ~~(~~either manually or in facsimile~~)~~ by two officers designated in the bylaws or by the board of directors; and (2) may bear the corporate seal or its facsimile.

(e) If the person who signed ~~(either manually or in facsimile)~~ a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

(f) The articles of incorporation or bylaws of a corporation may specify that all or a portion of the shares of the corporation may be represented by share certificates in the form of certificate tokens. The electronic message, command, or transaction that transmits the certificate tokens to the data address to which a certificate token was issued must be authorized at the time of issuance by one or more messages, commands, or transactions signed with the network signatures of two officers designated in the bylaws, or by the board of directors of the corporation.

(g) As used in this section:

(1) ‘Blockchain’ means a digital ledger or database which is chronological, consensus based, decentralized, and mathematically verified in nature.

(2) ‘Certificate token’ means a representation of shares that is stored in an electronic format which contains the information specified under subsections (b) and (c), and this information is:

(a) entered into a blockchain or other secure, auditable database;

(b) linked to or associated with the certificate token; and

(c) able to be transmitted electronically to the issuing corporation, the person to whom the certificate token was issued, and any transfers.

(3) ‘Network signature’ means a string of alphanumeric characters that, when broadcast by a person to the data address’s corresponding distributed or other electronic network or database, provides reasonable assurances to a recipient that the broadcasting person has knowledge or possession of the private key uniquely associated with the data address.”

PART II

Open Blockchain Tokens Not Subject to Security or Money Transmission Laws

SECTION 4. Title 34 of the 1976 Code is amended by adding:

“CHAPTER 47

Open Blockchain Tokens

Section 34‑47‑10. (A) Except as otherwise provided by subsection (C), a developer or seller of an open blockchain token must not be considered the issuer of a security if all of the following are met:

(1) the developer or seller of the token, or the registered agent of the developer or seller, files a notice of intent with the Attorney General, as specified in subsection (D);

(2) the purpose of the token is for a consumptive purpose, which only must be exchangeable for or provided for the receipt of goods, services, or content, including rights of access to goods, services, or content; and

(3) the developer or seller of the token did not sell the token to the initial buyer as a financial investment. This subsection must be satisfied only if:

(a) the developer or seller did not market the token as a financial investment; and

(b) at least one of the following is true:

(i) the developer or seller of the token reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

(ii) the token has a consumptive purpose that is available at the time of sale and can be used at or near the time of sale for use for a consumptive purpose;

(iii) if the token does not have a consumptive purpose available at the time of sale, the initial buyer of the token is prevented from reselling the token until the token is available for use for a consumptive purpose; or

(iv) the developer or seller takes other reasonable precautions to prevent buyers from purchasing the token as a financial investment.

(B) Except as otherwise provided by subsection (C), a person who facilitates the exchange of an open blockchain token must not be considered a broker‑dealer or a person who otherwise deals in securities if all of the following are met:

(1) the person, or the registered agent of the person, files a notice of intent with the Attorney General, as specified in subsection (D);

(2) the person has a reasonable and good faith belief that a token subject to exchange conforms to the requirements of subsections (A)(1), (2), and (3); and

(3) the person takes reasonably prompt action to terminate the exchange of a token that does not conform to the requirements of this subsection.

(C) Notwithstanding another provision of law, a developer, seller, or a person who facilitates the exchange of an open blockchain token is subject to other applicable provisions of law only to the extent necessary to carry out those sections. The Attorney General has the authority provided to determine compliance with the provisions of this section, including whether a person qualifies for the exemptions set forth in this section.

(D) A developer, seller, or a person who facilitates the exchange of an open blockchain token, or the registered agent of the applicable person, shall file electronically a notice of intent with the Attorney General before the person qualifies for an exemption under this section. The notice of intent shall contain the name of the person acting as a developer, seller, or facilitator, the contact information of the person or the registered agent of the person and specify whether the person will be acting as a developer, seller, or facilitator. A secure form must be made available by the Office of the Attorney General on its Internet website for this purpose.

(E) As used in this section, ‘open blockchain token’ means a digital unit which is:

(1) created:

(a) in response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(b) by deploying computer code to a blockchain network that allows for the creation of digital tokens or other units; or

(c) using any combination of the methods specified in subitems (a) and (b).

(2) Recorded in a digital ledger or database which is chronological, consensus‑based, decentralized, and mathematically verified in nature, especially relating to the supply of units and their distribution; and

(3) capable of being traded or transferred between persons without an intermediary or custodian of value.

Section 34‑47‑20. This chapter does not apply to:

(1) banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, or mutual banks organized under the laws of a state or the United States, provided that they do not issue or sell payment instruments through authorized delegates or subdelegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, or mutual banks;

(2) electronic transfer of government benefits for a federal, state, or county governmental agency as defined in Federal Reserve Board Regulation E by a contractor for and on behalf of the United States or a department, agency, or instrumentality of it, or a state or political subdivision of the State; or

(3) a person who develops, sells, or facilitates the exchange of an open blockchain token.

Section 34‑47‑30. (A) If the commissioner has reason to believe a person is engaged in or is about to engage in an activity which would be subject to this chapter and the person is not otherwise exempt from the provisions of this chapter, the commissioner may issue an order to show cause why an order to cease and desist the activity should not issue.

(B) In an emergency, the commissioner may petition the circuit court for the issuance of a temporary restraining order and the order to cease and desist becomes effective upon service upon the person.

(C) An order to cease and desist remains effective and enforceable pending the completion of any authorized appeals.”

PART III

Digital Assets

SECTION 5. Title 34 of the 1976 Code is amended by adding:

“CHAPTER 51

Digital Assets

Section 34‑51‑10. (A) As used in this chapter:

(1) ‘Digital asset’ means a representation of economic, proprietary, or access rights that is stored in a computer‑readable format, and includes digital consumer assets, digital securities, and virtual currency.

(2) ‘Digital consumer asset’ means a digital asset that is used or bought primarily for consumptive, personal, or household purposes and includes:

(a) an open blockchain token constituting intangible personal property as otherwise provided by law; and

(b) any other digital asset which does not fall within items (3) and (4).

(3) ‘Digital security’ means a digital asset which constitutes a security, but excludes digital consumer assets and virtual currency.

(4) ‘Virtual currency’ means a digital asset that is:

(a) used as a medium of exchange, unit of account, or store of value; and

(b) not recognized as legal tender by the United States government.

(B) The terms in subsections (A)(3) and (4) are mutually exclusive.

Section 34‑51‑20. (A) Digital assets are classified in the following manner:

(1) Digital consumer assets are intangible personal property and must be considered general intangibles, only for the purposes of Article 9 of the Uniform Commercial Code.

(2) Digital securities are intangible personal property and must be considered securities and investment property, only for the purposes of Articles 8 and 9 of the Uniform Commercial Code.

(3) Virtual currency is intangible personal property and must be considered money, only for the purposes of Article 9 of the Uniform Commercial Code.

(B) 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.

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

Section 34‑51‑30. (A) Notwithstanding the financing statement requirement under the Uniform Commercial Code as otherwise applied to general intangibles or another provision of law, perfection of a security interest in a digital asset may be achieved through control, as defined in subsection (E)(1). 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.

(B) Before a secured party may take control of a digital asset under this section, the secured party shall enter into a control agreement with the debtor. A control agreement also may set forth the terms under which a secured party may pledge its security interest in the digital asset as collateral for another transaction.

(C) A secured party may file a financing statement with the Attorney General, including to perfect a security interest in proceeds from a digital asset.

(D) Notwithstanding another provision of law, including Article 9 of the Uniform Commercial Code, a transferee takes a digital asset free of any security interest two years after the transferee takes the asset for value and does not have actual notice of an adverse claim. This subsection only applies to a security interest perfected by a method other than control.

(E) As used in this section:

(1) Consistent with subsection (F), ‘control’ is equivalent to the term ‘possession’ when used in Article 9 of the Uniform Commercial Code and means:

(a) a secured party, or an agent, custodian, fiduciary, or trustee of the party, has the exclusive legal authority to conduct a transaction relating to a digital asset, including by means of a private key or the use of a multisignature arrangement authorized by the secured party; and

(b) a smart contract created by a secured party which has the exclusive legal authority to conduct a transaction relating to a digital asset. As used in this subitem, ‘smart contract’ means an automated transaction, or any substantially similar analogue, which is comprised of code, script, or programming language that executes the terms of an agreement, and which may include taking custody of and transferring an asset, or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.

(2) ‘Multisignature arrangement’ means a system of access control relating to a digital asset for the purposes of preventing unauthorized transactions relating to the asset, in which two or more private keys are required to conduct a transaction, or any substantially similar analogue.

(3) ‘Private keys’ means a unique element of cryptographic data, or any substantially similar analogue, which is:

(a) held by a person;

(b) paired with a unique, publicly available element of cryptographic data; and

(c) associated with an algorithm that is necessary to carry out an encryption or decryption required to execute a transaction.

(F) Perfection by control creates a possessory security interest and does not require physical possession. For purposes of Article 9 of the Uniform Commercial Code and this section, a digital asset is located in South Carolina if the asset is held by a South Carolina custodian, the debtor or secured party is physically located in South Carolina, or the debtor or secured party is incorporated or organized in South Carolina.

Section 34‑51‑40. (A) A bank may provide custodial services consistent with this section upon providing sixty days written notice to the banking commissioner. The provisions of this section are cumulative and not exclusive as an optional framework for enhanced supervision of digital asset custody. If a bank elects to provide custodial services under this section, it shall comply with all provisions of this section.

(B) A bank may serve as a qualified custodian, as specified by the United States Securities and Exchange Commission in 17 C.F.R. Section 275.206(4)‑2. In performing custodial services under this section, a bank shall:

(1) implement all accounting, account statement, internal control, notice, and other standards specified by applicable state or federal law and rules for custodial services;

(2) maintain information technology best practices relating to digital assets held in custody. The commissioner may specify required best practices by regulation;

(3) fully comply with applicable federal anti‑money laundering, customer identification, and beneficial ownership requirements; and

(4) take other actions necessary to carry out this section, which may include exercising fiduciary powers similar to those permitted to national banks and ensuring compliance with federal law governing digital assets classified as commodities.

(C) A bank providing custodial services shall enter into an agreement with an independent certified public accountant to conduct an examination conforming to the requirements of 17 C.F.R. Section 275.206(4)‑2(a)(4) and (6), at the cost of the bank. The accountant shall transmit the results of the examination to the commissioner within one hundred twenty days of the examination and may file the results with the United States Securities and Exchange Commission as its rules may provide. Material discrepancies in an examination must be reported to the commissioner within one day. The commissioner shall review examination results upon receipt within a reasonable time and during any regular examination conducted.

(D) Digital assets held in custody under this section are not depository liabilities or assets of the bank. A bank or a subsidiary may register as an investment adviser, investment company, or broker‑dealer as necessary. A bank shall maintain control over a digital asset while in custody. A customer shall elect, pursuant to a written agreement with the bank, one of the following relationships for each digital asset held in custody:

(1) custody under a bailment as a nonfungible or fungible asset. Assets held under this item must be strictly segregated from other assets; or

(2) custody under a bailment pursuant to subsection (E).

(E) If a customer makes an election under subsection (D)(2), the bank may, based only on customer instructions, undertake transactions with the digital asset. A bank maintains control pursuant to subsection (D) by entering into an agreement with the counterparty to a transaction which contains a time for return of the asset. The bank is not liable for any loss suffered with respect to a transaction under this subsection, except for liability consistent with fiduciary and trust powers as a custodian under this section.

(F) A bank and a customer shall agree in writing regarding the source code version the bank will use for each digital asset, and the treatment of each asset under the Uniform Commercial Code, if necessary. Any ambiguity under this subsection must be resolved in favor of the customer.

(G) A bank shall provide clear, written notice to each customer, and require written acknowledgement of the following:

(1) prior to the implementation of any updates or material source code updates relating to digital assets held in custody, except in emergencies which may include security vulnerabilities;

(2) the heightened risk of loss from transactions under subsection (E);

(3) that some risk of loss as a prorata creditor exists as the result of custody as a fungible asset or custody under subsection (D)(2);

(4) that custody under subsection (D)(2) may not result in the digital assets of the customer being strictly segregated from other customer assets; and

(5) that the bank is not liable for losses suffered under subsection (E), except for liability consistent with fiduciary and trust powers as a custodian under this section.

(H) A bank and a customer shall agree in writing to a time period within which the bank must return a digital asset held in custody under this section. If a customer makes an election under subsection (D)(2), the bank and the customer also may agree in writing to the form in which the digital asset must be returned.

(I) All ancillary or subsidiary proceeds relating to digital assets held in custody under this section shall accrue to the benefit of the customer, except as specified by a written agreement with the customer. The bank may elect not to collect certain ancillary or subsidiary proceeds, as long as the election is disclosed in writing. A customer who makes an election under subsection (D)(2) may withdraw the digital asset in a form that permits the collection of the ancillary or subsidiary proceeds.

(J) A bank shall not authorize or permit rehypothecation of digital assets under this section. The bank shall not engage in any activity to use or exercise discretionary authority relating to a digital asset, except based on customer instructions.

(K) A bank shall not take any action under this section which would likely impair the solvency or the safety and soundness of the bank, as determined by the commissioner after considering the nature of custodial services customary in the banking industry.

(L) Banks are not subject to the bank license tax levied under the laws of this State. In lieu of this tax and to offset the costs of supervision and administration of this section, a bank which provides custodial services under this section shall pay a supervision fee equal to two‑tenths of one mill on the dollar ($.0002) relating to assets held in custody under this section as of December thirty‑first of each year, with payment of the supervision fee made on or before the following January thirty‑first. Banks providing custodial services outside of this section must not be required to pay this supervision fee.

(M) The commissioner may promulgate regulations to implement this section.

(N) As used in this section:

(1) ‘Commissioner’ means the banking commissioner of this State.

(2) ‘Custodial services’ means the safekeeping and management of customer currency and digital assets through the exercise of fiduciary and trust powers under this section as a custodian, and includes fund administration and the execution of customer instructions.

Section 34‑51‑50. The courts of South Carolina have jurisdiction to hear claims in both law and equity relating to digital assets, including those arising from this chapter and the Uniform Commercial Code.”

PART IV

Anti‑Money Laundering Exceptions for Virtual Currency

SECTION 6. Section 35‑11‑105 of the 1976 Code is amended by adding a new item to read:

“(21) ‘Virtual currency’ means any type of digital representation of value that:

(a) is used as a medium of exchange, unit of account or store of value; and

(b) is not recognized as legal tender by the United States government.”

SECTION 7. Section 35‑11‑110 of the 1976 Code is amended to read:

“Section 35‑11‑110. This chapter does not apply to:

(1) the United States or a department, agency, or instrumentality of the United States;

(2) money transmission by the United States Postal Service or by a contractor on behalf of the United States Postal Service;

(3) a state, county, city, or another governmental agency or governmental subdivision of a state;

(4) a bank, bank holding company, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C. Section 1861‑1867 (Supp. V 1999), or corporation organized under the Edge Act, 12 U.S.C. Section 611‑633 (1994 & Supp. V 1999), under the laws of a state or the United States if it does not issue, sell, or provide payment instruments or stored value through an authorized delegate who is not such a person;

(5) electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality of the United States, or a state or governmental subdivision, agency, or instrumentality of a state;

(6) a board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. Section 1‑25 (1994), or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for a board of trade;

(7) a registered futures commission merchant under the federal commodities laws to the extent of its operation as a futures commission merchant;

(8) a person who provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from that registration granted under the federal securities laws to the extent of its operation as a provider of clearance or settlement services;

(9) an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored‑value transactions, automated clearing house transfers, similar funds transfers;

(10) a person registered as a securities broker‑dealer under federal or state securities laws to the extent of his operation as a securities broker‑dealer; ~~or~~

(11) a credit union regulated and insured by the National Credit Union Association; or

(12) buying, selling, issuing, or taking custody of payment instruments or stored value in the form of virtual currency or receiving virtual currency for transmission to a location within or outside the United States by any means.”

PART V

Effective Date

SECTION 8. This act takes effect on April 30, 2021.

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