

ONE HUNDRED SEVENTH LEGISLATURE - FIRST SESSION - 2021
COMMITTEE STATEMENT
LB649

Hearing Date: Tuesday February 23, 2021
Committee On: Banking, Commerce and Insurance
Introducer: Flood
One Liner: Adopt the Nebraska Financial Innovation Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Aguilar, Bostar, Flood, Lindstrom, McCollister, Pahls, Slama, Williams
Nay:
Absent:
Present Not Voting:

Oral Testimony:

Proponents:

Senator Mike Flood
Mark Quandahl
Paul Neuner
Mike Cassling
Kyle Tautenhan
Grant Roscoe
Jacob Gideon
Angie Stenger
Denise Wilkinson
Dan Spray

Representing:

Introducer
Dvorak Law Group
Telcoin
Nebraska Tech Collaborative
Pinata
Crescent
Self
Growing Together Workforce Initiative
Norfolk Area Chamber of Commerce
Precision IT

Opponents:

Chris Hove
Carl Sjulín
Leslie Andersen
Bob Hallstrom

Representing:

Nebraska Bankers Association
Independent Community Bankers Association
Nebraska Bankers Association - Bank of Bennington
Nebraska Bankers Association

Neutral:

Kelly Lammers

Representing:

Nebraska Department of Banking and Finance

Submitted Written Testimony:

Proponents:

Representing:

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

This bill would enact 28 new section to be known as the Nebraska Financial Innovation Act. It would amend various sections generally regarding financial institutions to provide for the formation and regulation of digital asset depository institutions. A digital asset depository institution would be a bank or financial institution that holds liquid financial assets when such assets are in the form of binary data which is self-contained, uniquely identifiable, and has a value or an ability to use. The bill would provide, section by section as follows:

Section 1 would enact a new section to provide for a named act: the Nebraska Financial Innovation Act.

Section 2 would enact a new section to provide for legislative findings.

Section 3 would enact a new section to provide definitions for: (1) "Department"; (2) "Digital asset depository institution"; and (3) "Director".

Section 4 would enact a new section to provide that if any provision of law conflicts with the Nebraska Financial Innovation Act, the provisions of the act shall control.

Section 5 would enact a new section to provide that a digital asset depository institution shall be organized as a Nebraska domestic business corporation. This section would provide that, among its powers, a digital asset depository institution may: Receive notes and buy and sell gold and silver coins and bullion; Carry on a nonlending banking business for depositors; Provide payment services upon the request of a depositor; Make an application to become a member bank of the federal reserve system; Issue digital assets representing a digital contract for non-digital assets; Engage in activities usual or incidental to the business of banking with the approval of the Director of Banking and Finance. This section would provide that a digital asset depository institution shall not make loans. A digital asset depository institution may facilitate the provision of financial services resulting from the interaction of depositors with decentralized platforms. A digital asset depository institution may purchase debt obligations. This section would provide that a digital asset depository institution shall maintain its principal operating headquarters and the primary office of its chief executive officer in Nebraska. This section would provide that a digital asset depository institution may conduct business with depositors outside this state and may open a branch in another state. This section would provide that a digital asset depository institution may only accept deposits or provide other services to depositors engaged in a bona fide business.

Section 6 would enact a new section to provide that no depositor shall maintain an account with a digital asset depository institution or receive services from the institution unless the depositor meets criteria set forth in this section.

Section 7 would enact a new section to provide that a digital asset depository institution shall maintain unencumbered liquid assets valued at not less than one hundred percent of its liabilities.

Section 8 would enact a new section to provide that a digital asset depository institution shall maintain a contingency account to account for unexpected losses and expenses subject to the requirements of this section.

Section 9 would enact a new section to provide that a digital asset depository institution shall comply with all applicable federal laws.

Section 10 would enact a new section to provide for disclosure to and acknowledgement by depositors that deposits at the

digital asset depository institution are not insured by the Federal Deposit Insurance Corporation.

Section 11 would enact a new section to provide requirements for articles of incorporation of a digital asset depository institution.

Section 12 would enact a new section to provide requirements for capital stock and paid-up surplus.

Section 13 would enact a new section to provide that no person shall act as a digital asset depository institution without obtaining a charter and a certificate to operate from the Director of Banking and Finance.

Section 14 would enact a new section to provide requirements for a public hearing by the Director of Banking and Finance on an application for a digital asset depository institution charter.

Section 15 would enact a new section to provide that a hearing for a charter application shall be conducted as a contested case under the Administrative Procedure Act.

Section 16 would enact a new section to provide requirements for the Director of Banking and Finance to investigate and examine an application for a charter.

Section 17 would enact a new section to provide requirements for the Director of Banking and Finance to render a decision on a charter application.

Section 18 would enact a new section to provide that if an application is approved and a charter is granted by the Director of Banking and Finance, the digital asset depository institution shall not commence business before receiving a certificate of authority.

Section 19 would enact a new section to provide that a decision of the Director of Banking and Finance regarding the approval of a charter or issuance of a certificate of authority is appealable to the district court of Lancaster County in accordance with the Administrative Procedure Act.

Section 20 would enact a new section to provide requirements for a digital asset depository institution to furnish a surety bond or pledge specified capital equivalent to a bond.

Section 21 would enact a new section to provide that the Director of Banking and Finance may call for reports from a digital asset depository institution to inform the director of the condition of the institution. This section would provide that every digital asset depository institution is subject to examination by the director.

Section 22 would enact a new section to provide for suspension or revocation of the charter of a digital assets depository institution.

Section 23 would enact a new section to provide that if the charter of a digital asset depository institution is surrendered, suspended, or revoked, the institution shall continue to be subject to the Nebraska Financial Innovation Act during any liquidation or conservatorship.

Section 24 would enact a new section to provide that if the Director of Banking and Finance finds that a digital assets financial institution has failed or is operating in an unsafe or unsound condition, the director shall conduct a liquidation or appoint a receiver.

Section 25 would enact a new section to provide for voluntary dissolution by a digital asset depository institution.

Section 26 would enact a new section to provide that if a digital asset depository institution fails to submit any required report, the Director of Banking and Finance may impose and collect a fee for each day the report is overdue, as established by rule and regulation.

Section 27 would enact a new section to provide that each officer, director, employee, or agent of a digital asset depository institution is subject to removal upon the order of the Director of Banking and Finance for knowing or willful failure to perform a duty required by law or failure to conform to any rule, regulation, or order of the director.

Section 28 would enact a new section to provide the Director of Banking and Finance with rule and regulation authority to implement the Nebraska Financial Innovation Act.

Sections 30 to 34 and 36 to 38 would amend section 8-101.02, 8-101.03, 8-102, 8-113, 8-115, 8-148.09, 8-601, 8-602, and 8-701 to insert references to digital asset depository institutions in general provisions regarding financial institutions.

Section 35 would enact a new section in the Nebraska Banking Act to provide that a state-chartered bank may invest not more than twenty percent of its capital and surplus in stock of a corporation operating as a digital asset depository institution. With written approval of the Director of Banking and Finance, additional capital and surplus may be so invested.

Section 39 would amend section 8-702 to provide that a digital asset depository institution may obtain Federal Deposit Insurance Corporation insurance, if available.

Section 40 would provide for an operative date of October 21, 2021.

Section 41 would provide for repealers of the amendatory sections.

Explanation of amendments:

LB649 would adopt the Nebraska Financial Innovation Act to establish digital asset depositories to be supervised by the Nebraska Department of Banking and Finance.

The bill, as introduced, would authorize the chartering of a separate financial institution in Nebraska to be known as a "digital asset depository" institution.

The committee amendments (AM1018) would become the bill and would include:

Authorization for state-chartered banks to establish and operate a digital asset depository department, in addition to the creation and authorization of digital asset depository institutions with an operative date of October 1, 2021;

A prohibition against United States Currency lending by a digital asset depository institution;

Ability for digital asset depository institution application for membership in the Federal Reserve Bank system;

Allowance for a digital asset depository institution to utilize "bank" in its name if used in conjunction with the words "digital asset";

Increased minimum capital requirement of \$10,000,000 for a digital asset depository institution;

An authorization for the Director of Banking and Finance and the Governor to annually set the assessment of digital asset depositories to cover costs of supervision and administration of the Nebraska Financial Innovation Act;

Specification of the Department of Banking and Finance application, approval and regulatory processes for digital asset depositories, including an application fee of \$50,000 for charter or authority to operate a digital asset depository business;

Enhanced consumer protection provisions and required disclosures by digital asset depositories regarding risk of loss and lack of Federal Deposit Insurance Corporation insurance;

Enhanced requirement of compliance by digital asset depositories with state and federal laws, including the Bank Secrecy Act, Anti-Money Laundering, and customer identification; and

Addition of new provisions to Nebraska's Uniform Commercial Code to include "controllable electronic records," including definitions, perfection, control and discharge of security rights in digital assets with an operative date for the UCC provisions of July 1, 2022.

LB 649, as amended by AM1018, would provide, section by section as follows:

I. Introduction to the Nebraska Financial Innovation Act

Section 1. Citation as Nebraska Financial Innovation Act.

Section 2. Legislative findings.

Section 3. Definitions.

II. Creation and Authorization of Digital Asset Depositories: Digital Asset Depository Institutions (new charters) and Digital Asset Depository Departments (existing financial institutions)

Section 4. Director powers, authority, and supervision and control over digital asset depository institutions.

Section 5. Powers and requirements of digital asset depositories (non-lending, no USD deposits, enhanced BSA, Nebraska home office).

Section 6. Digital asset depository institutions subject to existing laws.

Section 7. Customer criteria to open or maintain an account.

Section 8. Customer terms and conditions and disclosures including fees, risk of loss, and lack of FDIC insurance.

Section 9. Unencumbered liquid assets requirement and definition. Requirement that United States currency to be held in Federal Reserve Bank or Nebraska FDIC institution.

Section 10. Compliance with state and federal laws including anti-money laundering, customer ID, and beneficial ownership.

Section 11. Notice of and required advertising disclaimers regarding risk of loss and consent for lack of insurance by the Federal Deposit Insurance Corporation.

Section 12. Digital asset depository institution formation; at least one Nebraska resident incorporator, articles of incorporation requirements.

Section 13. Capital stock and capital contributions; no less than \$10 million in capital.

III. Application and Approval Process for Digital Asset Depositories

Section 14. Application to the director for charter to operate as digital asset depository; authority for digital asset depository department of existing financial institution.

Section 15. Time for application review; notice of public hearing; publication requirement; establishment of \$50,000 application fee.

Section 16. Charter hearing within 120 days of application.

Section 17. Application hearing in compliance with Administrative Procedures Act.

Section 18. Determination of application; criteria of determination; background investigation of shareholders, officers, and directors.

Section 19. Decision of department or director regarding charter or authority, sufficiency of officers and directors; inclusion of term "digital asset bank"; efforts to assist financial literacy; consumer complaint policies and procedures; eligibility of federal reserve membership; appealable in accordance with Administrative Procedure Act.

Section 20. Digital asset depository satisfaction of conditions precedent.

Section 21. Appeals under the Administrative Procedures Act.

Section 22. Pledge of bond or assets.

IV. Examination and Supervision of Digital Asset Depositories by Nebraska Department of Banking and Finance

Section 23. Reports, examinations, and assessment of digital asset depositories.

Section 24. Authorized digital asset business activities.

Section 25. Director suspension or revocation of digital asset depository charter or authority.

Section 26. Application of Nebraska Financial Innovation Act during suspension or revocation.

Section 27. Failed, unsafe, or unsound digital asset depository; definitions.

Section 28. Voluntary dissolution of digital asset depository institution; dissolution processes.

Section 29. Overdue report fee.

Section 30. Officer, director, employee, or agent removal upon written notice from the director.

Section 31. Adoption and promulgation of rules and regulations by director.

V. Amendments and Additions to Existing Nebraska Banking Act

Section 32. Amendment of Section 8-101.02 establishing citation of Nebraska Banking Act.

Section 33. Amendment of Section 8-101.03 establishing definition of "digital asset depository" institution as a financial institution.

Section 34. Amendment of Section 8-102 establishing department control of digital asset depository institutions.

Section 35. Amendment of Section 8-113 regarding use of word "bank" or any derivative thereof by a digital asset depository.

Section 36. Amendment of Section 8-115 establishing requirement of a charter for a digital asset depository institution.

VI. Amendment to Existing Banking - Related and Other sections

Section 37. Amendment of Section 8-148.09 establishing inclusion of "digital asset depository institution" in definition of "financial institution".

Section 38. Amendment of Section 8-1.140 establishing rights, privileges of Nebraska institution same as federally chartered institution.

Section 39. Prohibition of investment of more than ten percent of capital in stock of a corporation.

Section 40. Custodial services permitted.

Section 41. Permitting director to adopt rules and regulations to carry out sections 40 to 42.

Section 42. Nebraska court jurisdiction.

VII. Amendments to Existing Banking - Related and Other Sections

Section 43. Amendment of Section 8-601 to include Nebraska Financial Innovation Act and digital asset depository institutions in director's authority to employ deputies, examiners, attorneys, and assistants. Assessment to offset costs of supervision and administration of the Nebraska Financial Innovation Act.

Section 44. Fees. Amendment of Section 8-602 to include application fee of \$50,000 for digital asset depository application under the Nebraska financial Innovation Act.

Section 45. Amendment of Section 8-701 permitting digital asset depository institutions in the definition of "banking institution".

Section 46. Amendment of Section 8-702 permitting digital asset depository institutions to obtain Federal Deposit Insurance Corporation insurance.

Section 47. Amendment of Section 8-2724 to include digital asset depository institutions in the exception from a license under the Nebraska Money Transmitters Act.

VIII. Nebraska Uniform Commercial Code Provisions- Amendments and New Sections: Controllable

Electronic Records

Section 48. Amendment of UCC Section 1-201 to include various definitions related to digital asset depositories.

Section 49. Amendment of UCC Section 9-102 to include controllable electronic records.

Section 50. Enactments of new UCC Section 9-107A to provide for addition of control of controllable electronic records.

Section 51. Amendment of UCC Section 9-301 to include Nebraska law governing perfection of controllable electronic records.

Section 52. Amendment of UCC Section 9-310 to include controllable electronic records.

Section 53. Amendment of UCC Section 9-312 to include perfection by filing of controllable electronic records.

Section 54. Amendment of UCC Section 9-314 to include perfection by control of controllable electronic records.

Section 55. Amendment of UCC Section 9-331 to include priority rights of controllable electronic records.

Section 56. Amendment of UCC Section 9-406 to include an exception in subsection (k) discharge of debtor.

Section 57. Enactments of new UCC Section 12-101 to provide for short title - Uniform Commercial Code - Controllable Electronic Records.

Section 58. Enactments of new UCC Section 12-101A to include intent language.

Section 59. Enactments of new UCC Section 12-102 to include definitions.

Section 60. Enactments of new UCC Section 12-103 to include scope.

Section 61. Enactment of new UCC Section 12-104 to include rights in controllable electronic records and certain accounts and payment intangibles.

Section 62. Enactment of new UCC Section 12-105 to include control of a controllable electronic record.

Section 63. Enactment of new UCC Section 12-106 to include discharge of account debtor on account or payment intangible included in controllable electronic record.

Section 64. Enactment of new UCC Section 12-107 to include governing law.

Section 65. Enactment of new UCC Section 12-108 to include applicability of article.

Section 66. Enactment of new UCC Section 12-109 to include savings clause.

Section 67. Operative Dates. Nebraska Financial Innovation Act operative on October 1, 2021, and Uniform Commercial Code provisions operative on July 1, 2022.

Section 68. Repeal of amendatory sections operative October 1, 2021.

Section 69. Repeal of amendatory UCC sections operative July 1, 2022.

Matt Williams, Chairperson