

The Nebraska Financial Innovation Act
Chapter 8, Article 30
§§ 8-3001 to 8-3031

8-3001

Act, how cited.

Sections 8-3001 to 8-3031 shall be known and may be cited as the Nebraska Financial Innovation Act.

Last Amended:

~ Reissue 2022

8-3002

Legislative findings and declarations.

The Legislature finds and declares that:

(1) Economic development initiatives demand buy-in and input from community stakeholders across multiple industries. The Legislature should send a strong message that Nebraska wants to bring high-tech jobs and digital asset operations to our state. Nebraska has an incredible opportunity to be a leader in this emerging technology;

(2) Nebraska desires to create an entrepreneurial ecosystem where young talent can be paired with private investors in order to create jobs, enhance our quality of life, and prevent the brain drain that is particularly acute in rural Nebraska. If Nebraska does not make intentional and meaningful changes to how it recruits and retains young people, Nebraska will be left behind;

(3) The rapid innovation of blockchain and digital ledger technology, including the growing use of virtual currency, digital assets, and other controllable electronic records has complicated the development of blockchain services and products in the marketplace;

(4) Blockchain innovators are able and willing to address banking compliance challenges such as federal customer identification, anti-money laundering, and beneficial ownership requirements to comply with regulators' concerns;

(5) Compliance with federal and state laws, including, but not limited to, know-your-customer and anti-money-laundering rules and the federal Bank Secrecy Act, is critical to ensuring the future growth and reputation of the blockchain and technology industries as a whole; and

(6) Authorizing digital asset depositories in Nebraska will provide a necessary and valuable service to blockchain innovators and customers, emphasize Nebraska's partnership with the technology and financial industries, safely grow this state's ever-evolving financial sector, and afford more opportunities for Nebraska residents.

Last Amended:

~ Supp. 2023, LB92, § 9

Effective Date: June 7, 2023

8-3003

Terms, defined.

For purposes of the Nebraska Financial Innovation Act:

(1) Blockchain means a distributed digital record of controllable electronic record transactions;

(2) Centralized finance means centralized digital asset exchanges, businesses, or organizations with a valid physical address;

(3) Control has the following meaning:

(a) A person has control of a controllable electronic record if:

(i) The following conditions are met:

(A) The controllable electronic record or the system in which it is recorded, if any, gives the person:

(I) The power to derive substantially all the benefit from the controllable electronic record;

(II) Subject to subdivision (b) of this subdivision, the exclusive power to prevent others from deriving substantially all the benefit from the controllable electronic record; and

(III) Subject to subdivision (b) of this subdivision, the exclusive power to transfer control of the controllable electronic record to another person or cause another person to obtain control of a controllable electronic record that derives from the controllable electronic record; and

(B) The controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, enables the person to readily identify itself as having the powers specified in subdivision (a)(i) of this subdivision; or

(ii) Another person obtains control of the controllable electronic record on behalf of the person, or having previously obtained control of the controllable electronic record, acknowledges that it has control on behalf of the person.

(b) A power specified in subdivisions (3)(a)(i)(A)(II) or (III) of this section can be exclusive, even if:

(i) The controllable electronic record or the system in which it is recorded, if any, limits the use to which the controllable electronic record may be put or has protocols that are programmed to result in a transfer of control; and

(ii) The person has agreed to share the power with another person.

(c) For the purposes of subdivision (3)(a)(i)(B) of this section, a person may be identified in any way, including by name, identifying number, cryptographic key, office, or account number;

(4) Controllable electronic borrowing means the act of receiving digital assets or the use of digital assets from a lender in exchange for the payment to the lender of digital assets, interest, fees, or rewards;

(5) Controllable electronic record means an electronic record that can be subjected to control. The term has the same meaning as digital asset and does not include electronic chattel paper, electronic documents, investment property, and transferable records under the Uniform Electronic Transactions Act;

(6) Controllable electronic record exchange means a business that allows customers to purchase, sell, convert, send, receive, or trade digital assets for other digital assets;

(7) Controllable electronic record lending means the act of providing digital assets to a borrower in exchange for digital assets, interest, fees, or rewards;

(8) Controllable electronic records staking means the act of pledging a digital asset or token with an expectation of gaining digital assets, interest, fees, or other rewards on such act;

(9) Customer means a digital asset depositor or digital asset account holder;

(10) Decentralized finance means digital asset exchanges, businesses, or organizations operating independently on blockchains;

(11) Department means the Department of Banking and Finance;

(12) Digital asset depository means a financial institution that securely holds liquid assets when such assets are in the form of controllable electronic records, either as a corporation organized, chartered, and operated pursuant to the Nebraska Financial Innovation Act as a digital asset depository institution or a financial institution operating a digital asset depository business as a digital asset depository department under a charter granted by the director;

(13) Digital asset depository department means a financial institution operating a digital asset depository business as a digital asset depository department under a charter granted by the director;

(14) Digital asset depository institution means a corporation operating a digital asset depository business organized and chartered pursuant to the Nebraska Financial Innovation Act;

(15) Director means the Director of Banking and Finance;

(16) Financial institution means a bank, savings bank, building and loan association, or savings and loan association chartered by the United States, the department, or a foreign state agency; or a trust company;

(17) Fork means a change to the protocol of a blockchain network;

(18) Independent node verification network means a shared electronic database where copies of the same information are stored on multiple computers; and

(19) Stablecoin means a controllable electronic record designed to have a stable value that is backed by a reserve asset.

Last Amended:

~ Supp. 2023, LB92, § 20

Effective Date: June 7, 2023

8-3004

Director; powers and duties.

The director shall have the power to issue to corporations desiring to transact business as a digital asset depository institution charters to transact digital asset depository business as defined in the Nebraska Financial Innovation Act. The director shall have general supervision and control over such digital asset depositories.

Last Amended:

~ Supp. 2023, LB92, § 21

Effective Date: June 7, 2023

8-3005

Digital asset depository; powers; digital asset depository institution; organization; operating authority; demand deposits and loans; prohibited.

(1)(a) A digital asset depository may:

- (i) Make contracts as a corporation under Nebraska law;
- (ii) Sue and be sued;
- (iii) Receive notes as permitted by federal law;
- (iv) Carry on a nonlending digital asset banking business for customers, consistent with subdivision (2)(b) of this section;
- (v) Provide payment services upon the request of a customer; and
- (vi) Make an application to become a member bank of the federal reserve system.

(b) A digital asset depository shall maintain its main office and the primary office of its chief executive officer in Nebraska.

(c) As otherwise authorized by this section, a digital asset depository may conduct business with customers outside this state.

(2)(a) A digital asset depository institution, consistent with the Nebraska Financial Innovation Act, shall be organized as a corporation under the Nebraska Model Business Corporation Act to exercise the powers set forth in subsection (1) of this section.

(b) A digital asset depository institution shall not accept demand deposits of United States currency or United States currency that may be accessed or withdrawn by check or similar means for payment to third parties and except as otherwise provided in this subsection, a digital

asset depository institution shall not make any loans to consumers for personal, property or household purposes, mortgage loans, or commercial loans of any fiat currency including, but not limited to, United States currency, including the provision of temporary credit relating to overdrafts. Notwithstanding this prohibition against fiat currency lending by a digital asset depository institution, a digital asset depository institution may facilitate the provision of digital asset business services resulting from the interaction of customers with centralized finance or decentralized finance platforms including, but not limited to, controllable electronic record exchange, staking, controllable electronic record lending, and controllable electronic record borrowing. A digital asset depository institution may purchase debt obligations specified by subdivision (2)(c) of section 8-3009.

(c) A digital asset depository institution may open a branch in this state or in another state in the manner set forth in section 8-157 or 8-2303. A branch in another state is subject to the laws of the host state. A digital asset depository institution, including any branch of the digital asset depository institution, may only accept digital asset deposits or provide other digital asset business services under the Nebraska Financial Innovation Act to individual customers or a customer that is a legal entity other than a natural person engaged in a bona fide business which is lawful under the laws of Nebraska, the laws of the host state if the entity is headquartered in another state, and federal law.

(3) The deposit limitations of subdivision (2)(a)(ii) of section 8-157 shall not apply to a digital asset depository.

(4) Any United States currency coming into an account established by a customer of a digital asset depository institution shall be held in a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, which maintained a main-chartered office in this state, any branch thereof in this state, or any branch of the financial institution which maintained the main-chartered office in this state prior to becoming a branch of such financial institution.

(5) A digital asset depository institution shall establish and maintain programs for compliance with the federal Bank Secrecy Act, in accordance with 12 C.F.R. 208.63, as the act and rule existed on January 1, 2023.

(6) A digital asset depository shall help meet the digital financial needs of the communities in which it operates, consistent with safe and sound operations, and shall maintain and update a public file available to any person on request and on any Internet website or mobile application it maintains containing specific information about its efforts to meet community needs, including:

(a) The collection and reporting of data;

(b) Its policies and procedures for accepting and responding to consumer complaints; and

(c) Its efforts to assist with financial literacy or personal finance programs to increase knowledge and skills of Nebraska students in areas such as digital assets, budgeting, credit, checking and savings accounts, loans, stocks, and insurance.

Last Amended:

~ Supp. 2023, LB92, § 22

Effective Date: June 7, 2023

8-3006

Digital asset depository institution; subject to other provisions of law.

A digital asset depository institution shall be subject to the Interstate Branching and Merger Act, the Nebraska Bank Holding Company Act of 1995, and Chapter 8, articles 6, 8, 13, 14, 15, 16, 19, 20, 25, 26, and 29 unless otherwise limited or excluded or the context otherwise requires.

Last Amended:

~ Reissue 2022

8-3007

Customers; criteria.

(1) No customer shall open or maintain an account with a digital asset depository or otherwise receive any services from the digital asset depository unless the customer meets the criteria of this subsection. A customer shall:

(a) Make sufficient evidence available to the digital asset depository to enable compliance with anti-money laundering, customer identification, and beneficial ownership requirements, as determined by the federal Bank Secrecy Act guidance and the policies and practices of the institution; and

(b) If the customer is a legal entity other than a natural person:

(i) Be in good standing with the jurisdiction in the United States in which it is incorporated or organized; and

(ii) Be engaged in a business that is lawful and bona fide in Nebraska, in the host state, if applicable, and under federal law consistent with subsection (3) of this section.

(2) A customer which meets the criteria of subsection (1) of this section may be issued a digital asset depository account and otherwise receive services from the digital asset depository, contingent on the digital asset depository maintaining sufficient insurance under subsection (5) of section 8-3023.

(3) Consistent with subdivisions (1)(a)(iv) and (v) of section 8-3005, and in addition to any requirements specified by federal law, a digital asset depository shall require that any potential customer that is a legal entity other than a natural person provide reasonable evidence that the entity is engaged in a business that is lawful and bona fide in Nebraska, in the host state, if applicable, and under federal law or is likely to open a lawful, bona fide business within a federal Bank Secrecy Act compliant timeframe, as the act existed on January 1, 2023. For purposes of this subsection, reasonable evidence includes business entity filings, articles of incorporation or organization, bylaws, operating agreements, business plans, promotional materials, financing agreements, or other evidence.

Last Amended:

~ Supp. 2023, LB92, § 23

Effective Date: June 7, 2023

8-3008

Digital asset depository account; disclosures to customer; requirements.

The terms and conditions of a customer's digital asset depository account at a digital asset depository shall be disclosed at the time the customer contracts for a digital asset business service. Such disclosure shall be full and complete, contain no material misrepresentations, be in readily understandable language, and shall include, as appropriate and to the extent applicable:

(1) A schedule of fees and charges the digital asset depository may assess, the manner by which fees and charges will be calculated if they are not set in advance and disclosed, and the timing of the fees and charges;

(2) A statement that the customer's digital asset depository account is not protected by the Federal Deposit Insurance Corporation;

(3) A statement whether there is support for forked networks of each digital asset;

(4) A statement that investment in digital assets is volatile and subject to market loss;

(5) A statement that investment in digital assets may result in total loss of value;

(6) A statement that legal, legislative, and regulatory changes may impact the value of digital assets;

(7) A statement that customers should perform research before investing in digital assets;

(8) A statement that transfers of digital assets are irrevocable, if applicable;

(9) A statement as to how liability for an unauthorized, mistaken, or accidental transfer shall be apportioned;

(10) A statement that digital assets are not legal tender in any jurisdiction;

(11) A statement that digital assets may be subject to cyber theft or theft and become unrecoverable;

(12) A statement about who maintains control, ownership, and access to any private key related to a digital assets customer's digital asset account; and

(13) A statement that losing private key information may result in permanent total loss of access to digital assets.

Last Amended:

~ Supp. 2023, LB92, § 24

Effective Date: June 7, 2023

8-3009

Digital asset depository; required liquid assets.

(1) At all times, a digital asset depository shall maintain unencumbered liquid assets denominated in United States dollars valued at not less than one hundred percent of the value of any outstanding stablecoin issued by the digital asset depository.

(2) For purposes of this section, liquid assets means:

(a) United States currency held on the premises of the digital asset depository that is not a digital asset depository institution;

(b) United States currency held for the digital asset depository by a federal reserve bank or a Federal Deposit Insurance Corporation-insured financial institution which has a main-chartered office in this state, any branch thereof in this state, or any branch of the financial institution which maintained a main-chartered office in this state prior to becoming a branch of such financial institution; or

(c) Investments which are highly liquid and obligations of the United States Treasury or other federal agency obligations, consistent with rules and regulations or order adopted by the director.

Last Amended:

~ Reissue 2022

8-3010

Digital asset depository; compliance with state and federal laws; required.

A digital asset depository shall comply with all state and federal laws, including, but not limited to, those relating to anti-money laundering, customer identification, and beneficial ownership.

Last Amended:

~ Reissue 2022

8-3011

Digital asset depository; notice and statement regarding insurance and risk; customer; acknowledgment.

(1) With respect to all digital asset business activities, a digital asset depository shall display and include in all advertising, in all marketing materials, on any Internet website or mobile application it maintains, and at each window or place where it accepts digital asset deposits, (a) a notice conspicuously stating that digital asset deposits and digital asset accounts are not insured by the Federal Deposit Insurance Corporation, if applicable, and (b) the following conspicuous statement: Holdings of digital assets are speculative and involve a substantial degree of risk, including the risk of complete loss. There is no assurance that any digital asset will be viable, liquid, or solvent. Nothing in this communication is intended to imply that any digital asset held in custody by a digital asset depository is low-risk or risk-free. Digital assets held in custody are not guaranteed by a digital asset depository and are not insured by the Federal Deposit Insurance Corporation.

(2) Upon opening a digital asset depository account, a digital asset depository shall require each customer to execute a statement acknowledging that all digital asset deposits at the digital asset depository are not insured by the Federal Deposit Insurance Corporation. The digital asset depository shall permanently retain this acknowledgment, whether in electronic form or as a signature card.

Last Amended:

~ Supp. 2023, LB92, § 25

Effective Date: June 7, 2023

8-3012

Digital asset depository institution; formation; articles of incorporation; contents; filing; capital requirements; bank holding company; powers.

(1) Except as otherwise provided by subsection (5) of this section, five or more adult persons, including at least one Nebraska resident, may form a digital asset depository institution. The incorporators shall subscribe the articles of incorporation and transmit them and the bylaws of the digital asset depository to the director as part of an application for a charter under section 8-3015.

(2) The articles of incorporation shall include the following information:

(a) The corporate name;

(b) The object for which the corporation is organized;

(c) The term of its existence, which may be perpetual;

(d) The place in Nebraska where its main office shall be physically located and its operations conducted;

(e) The amount of capital stock and the number of shares;

(f) The name and residence of each shareholder subscribing to more than ten percent of the stock and the number of shares owned by that shareholder;

(g) The number of directors and the names of those who shall manage the affairs of the corporation for the first year; and

(h) A statement that the articles of incorporation are made to enable the incorporators to avail themselves of the advantages of the laws of the state.

(3) Copies of all amended articles of incorporation and bylaws shall be filed in the same manner as the original articles of incorporation and bylaws.

(4) The incorporators shall solicit capital prior to filing an application for a charter with the director, consistent with section 8-3013. In the event an application for a charter is not filed or is denied by the director, all capital shall be promptly returned without loss.

(5) (5) Subject to federal and state law, a bank holding company may apply to hold a digital asset depository institution.

Last Amended:

~ Supp. 2023, LB92, § 26

Effective Date: June 7, 2023

8-3013

Digital asset depository institution; capital and surplus requirements.

(1) The capital stock of each digital asset depository institution chartered under the Nebraska Financial Innovation Act shall be subscribed for as paid-up stock. No digital asset depository institution shall be chartered with capital stock of less than ten million dollars.

(2) No digital asset depository institution shall commence business until the full amount of its authorized capital is subscribed and all capital stock is fully paid in. No digital asset depository institution may be chartered without a paid-up surplus fund of at least three years of estimated operating expenses in the amount disclosed pursuant to subsection (2) of section 8-3015 or in another amount required by the director.

(3) A digital asset depository institution may acquire additional capital prior to the granting of a charter and shall report this capital as an amendment to its charter application.

Last Amended:

~ Supp. 2023, LB92, § 27

Effective Date: June 7, 2023

8-3014

Financial institution; digital asset depository department; charter amendment; director; powers and duties.

(1) Any financial institution, having adopted or amended its articles of incorporation to authorize the conduct of a digital asset depository business may be further chartered by the director to transact a digital asset depository business in a digital asset depository department in connection with such financial institution.

(2) The director has the authority to issue to financial institutions amendments to their charters to transact a digital asset depository business, has general supervision and control over such digital asset depository departments of financial institutions, and may require the injection of additional capital.

(3) The director, before granting to any financial institution the right to operate a digital asset depository department, shall require such financial institution to make an application for amendment of its charter, setting forth such information as the director may require.

(4) A digital asset depository department of a financial institution when chartered under subsection (1) of this section shall be separate and apart from every other department of the financial institution and shall have all the powers, duties, and obligations of a digital asset depository institution as set forth in the Nebraska Financial Innovation Act.

(5) Any financial institution authorized to transact a digital asset depository business in a digital asset depository department pursuant to subsection (1) of this section may conduct such

digital asset depository business at the office of any financial institution which is a subsidiary of the same bank holding company as the authorized financial institution.

(6) A financial institution may deposit or have on deposit funds of an account controlled by the financial institution's digital asset depository department unless prohibited by applicable law.

Last Amended:

~ Supp. 2023, LB92, § 28

Effective Date: June 7, 2023

8-3015

Digital asset depository; act as; authority or charter to operate; required; application; fee.

(1) No corporation shall act as a digital asset depository without first obtaining a charter to operate from the director under the Nebraska Financial Innovation Act.

(2) The incorporators under section 8-3012 shall apply to the director for a charter. The application shall contain the digital asset depository institution's articles of incorporation, bylaws, a detailed business plan, a comprehensive estimate of operating expenses for the first three years of operation, a complete proposal for compliance with the provisions of the Nebraska Financial Innovation Act, evidence of the capital and surplus required under section 8-3013, and any investors or owners holding ten percent or more equity in the digital asset depository institution. The director may prescribe the form of application.

(3) A financial institution may apply to the director for a charter to operate a digital asset depository business as a department. The application shall contain a detailed business plan, a comprehensive estimate of operating expenses for the first three years of operation, and a complete proposal for compliance with the provisions of the Nebraska Financial Innovation Act. The director may prescribe the form of application.

(4) Each application for a charter shall be accompanied by an application fee of fifty thousand dollars.

Last Amended:

~ Supp. 2023, LB92, § 29

Effective Date: June 7, 2023

8-3016

Application for authority or charter; notice; hearing; director; department; powers and duties.

(1) After a substantially complete application for a digital asset depository institution charter or a digital asset depository department charter has been submitted, the director shall notify the applicants in writing within thirty calendar days of any deficiency in the required information or that the application has been accepted for filing. When the director is satisfied that all required information has been furnished, the director shall establish a time and place for a public hearing which shall be conducted not less than sixty days, nor more than one hundred twenty days, after notice from the director to the applicants that the application is in order.

(2) Within thirty days after receipt of notice of the time and place of the public hearing, the department shall cause notice of filing of the application and the hearing to be published at the

applicant's expense in a newspaper of general circulation within the county where the proposed digital asset depository is to be located. Publication shall be made at least once a week for three consecutive weeks before the hearing, stating the proposed location of the digital asset depository, the names of the applicants for a charter, the nature of the activities to be conducted by the proposed digital asset depository, and other information required by rule and regulation. The director shall electronically send notice of the hearing to state and national banks, federal savings and loan associations, state and federal credit unions, and other financial institutions in the state, federal agencies, and financial industry trade groups.

Last Amended:

~ Supp. 2023, LB92, § 30

Effective Date: June 7, 2023

8-3017

Application for charter or authority to operate; hearing; how conducted.

The hearing required by section 8-3016 shall be conducted under the Administrative Procedure Act and shall comply with the requirements of the act.

Last Amended:

~ Supp. 2023, LB92, § 31

Effective Date: June 7, 2023

8-3018

Application for charter or authority to operate; director; investigation and examination.

Upon receiving an application for a charter to become a digital asset depository institution or for a charter to operate a digital asset depository department, the applicable fee, and other information required by the director, the director shall make a careful investigation and examination of the following:

(1) The character, reputation, criminal record, financial standing, and ability of the shareholders owning ten percent or more equity in the applicant;

(2) The character, financial responsibility, criminal background, banking or other financial experience, and business qualifications of those proposed as officers and directors;

(3) Whether the applicant or any of its officers, directors, or shareholders owning ten percent or more equity in the applicant have ever been convicted of any (i) misdemeanor involving any aspect of a digital asset depository business or any business of a similar nature or (ii) felony;

(4) Whether the applicant or any of its officers, directors, or shareholders owning ten percent or more equity in the applicant have ever been permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of a digital asset depository business or any business of a similar nature;

(5) A criminal history record information check of the applicant, its officers, directors, and shareholders owning ten percent or more equity in the applicant. The direct cost of the criminal history record information check shall be paid by the applicant; and

(6) The application for a charter, including the adequacy and plausibility of the business plan of the digital asset depository, the benefits to the customers, and whether the applicant has offered a complete proposal for compliance with the Nebraska Financial Innovation Act.

Last Amended:

~ Supp. 2023, LB92, § 32

Effective Date: June 7, 2023

8-3019

Application for charter or authority to operate; decision; criteria and requirements; approval; how effected.

(1) Within ninety days after receipt of the transcript of the public hearing, the director shall render a decision on the application based on the following criteria and requirements:

(a) Whether the character, reputation, criminal record, financial standing, and ability of the shareholders owning ten percent or more equity in the applicant are sufficient to afford reasonable promise of a successful operation;

(b) That the digital asset depository will be operated by officers of integrity and responsibility;

(c) Whether the character, financial responsibility, criminal background, and banking or other financial experience and business qualifications of those proposed as officers and directors are sufficient to afford reasonable promise of a successful operation;

(d) The adequacy and plausibility of the business plan of the digital asset depository, including the ongoing customer expectations of the digital asset depository as determined by the director;

(e) Compliance by the digital asset depository institution with the capital and surplus requirements of section 8-3013;

(f) Whether the digital asset depository institution is being formed for no other purpose than legitimate objectives authorized by law;

(g) That the name of the proposed digital asset depository institution includes the words "digital asset bank" so that it does not resemble the name of any other financial institution transacting business in the state so as to cause confusion;

(h) That the digital asset depository will be operated in a safe and sound manner;

(i) That the digital asset depository shall help meet the digital financial needs of the communities in which it operates, consistent with safe and sound operations, and shall maintain and update a public file and on any Internet website or mobile application it maintains containing specific information about its efforts to meet community needs, including:

(i) The collection and reporting of data;

(ii) Its policies and procedures for accepting and responding to consumer complaints; and

(iii) Its efforts to assist with financial literacy or personal finance programs to increase knowledge and skills of Nebraska students in areas such as digital assets, budgeting, credit, checking and savings accounts, loans, stocks, and insurance;

(j) Whether the applicants have complied with all provisions of state law and are eligible to apply for membership in the federal reserve system; and

(k) Any other considerations in addition to statutory requirements submitted by the applicant pursuant to operational order, rules and regulations, or request of the department.

(2) The director shall approve an application upon making favorable findings on the criteria set forth in subsection (1) of this section. The director may conditionally approve an application by specifying conditions relating to the criteria or may deny the application. The director shall state findings of fact and conclusions of law as part of such decision and shall issue an order approving, conditionally approving, or denying the application.

Last Amended:

~ Supp. 2023, LB92, § 33

Effective Date: June 7, 2023

8-3020

Conditions to commence business; compliance required; failure to commence business; effect.

(1) If an application is approved, a charter shall not be issued and the digital asset depository shall not commence business before satisfaction of all conditions precedent contained in the director's order or conditional order.

(2) If an approved digital asset depository fails to commence business in good faith within twelve months after the issuance of a charter, the charter shall expire. The director, for good cause and upon an application filed prior to the expiration of the twelve-month period, may extend the time within which the digital asset depository may open for business.

Last Amended:

~ Supp. 2023, LB92, § 34

Effective Date: June 7, 2023

8-3021

Appeal.

Any decision of the department or director in approving, conditionally approving, or denying a charter for a digital asset depository is appealable in accordance with the Administrative Procedure Act.

Last Amended:

~ Supp. 2023, LB92, § 35

Effective Date: June 7, 2023

8-3022

Surety bond; pledge of assets; requirements; treatment.

(1) Except as otherwise provided by subsection (2) of this section, a digital asset depository shall, before transacting any business, pledge or furnish a surety bond to the director to cover costs likely to be incurred by the director in a liquidation or conservatorship of the digital asset depository. The amount of the surety bond or pledge of assets under subsection (2) of this section shall be determined by the director in an amount sufficient to defray the costs of a liquidation or conservatorship.

(2) In lieu of a bond, a digital asset depository may irrevocably pledge specified assets equivalent to a bond under subsection (1) of this section. Any assets pledged to the director under this subsection shall be held in a state or nationally chartered bank, trust company, federal reserve bank, or savings and loan association having a principal or branch office in this state, excluding affiliated institutions. All costs associated with pledging and holding such assets are the responsibility of the digital asset depository.

(3) Assets pledged to the director shall not include money and shall be of the same nature and quality as those required under section 8-210.

(4) The digital asset depository shall have the right, with the approval of the director, to substitute other securities for those deposited and shall be required to do so on written order of the director made for good cause shown. The digital asset depository shall pay the fees prescribed in section 8-602 for pledging and substitution of securities. So long as the digital asset depository so depositing shall continue to be solvent and is not in violation of the Nebraska Financial Innovation Act, such digital asset depository shall be permitted to receive the interest or dividends on such deposit.

(5) Surety bonds shall run to the State of Nebraska and shall be approved under the terms and conditions required under section 8-110.

(6) The director may by order or rules and regulations establish additional investment guidelines or investment options for purposes of the pledge or surety bond required by this section.

(7) In the event of a liquidation or conservatorship of a digital asset depository pursuant to section 8-3027, the director may, without regard to priorities, preferences, or adverse claims, reduce the surety bond or assets pledged under this section to cash as soon as practicable and utilize the cash to defray the costs associated with the liquidation or conservatorship.

(8) Income from assets pledged under subsection (2) of this section shall be paid to the digital asset depository no less than annually, unless a liquidation or conservatorship takes place.

(9) Upon evidence that the amount of the current surety bond or pledged assets is insufficient, the director may require a digital asset depository to increase its surety bond or pledged assets by providing not less than thirty days' written notice to the digital asset depository.

Last Amended:

~ Supp. 2023, LB92, § 36

Effective Date: June 7, 2023

8-3023

Reports; director; powers; examination by department; when; assessments and costs; insurance or bond required.

(1) The director may call for reports verified under oath from a digital asset depository at any time as necessary to inform the director of the condition of the digital asset depository. Such reports shall be available to the public.

(2) All reports required of a digital asset depository by the director and all materials relating to examinations of a digital asset depository shall be subject to the provisions of sections 8-103 and 8-108.

(3) Every digital asset depository is subject to examination by the department to determine the condition and resources of a digital asset depository, the mode of managing digital asset depository affairs and conducting business, the actions of officers and directors in the investment and disposition of funds, the safety and prudence of digital asset depository management, compliance with the requirements of the Nebraska Financial Innovation Act, and such other matters as the director may require.

(4) A digital asset depository shall pay an assessment in a sum to be determined by the director in accordance with section 8-601 and approved by the Governor and the costs of any examination or investigation as provided in sections 8-108 and 8-606.

(5) A digital asset depository shall maintain appropriate insurance or a bond covering the operational risks of the digital asset depository, which shall include coverage for directors' and officers' liability, errors and omissions liability, information technology infrastructure and activities liability, and business operations, as determined by the director.

Last Amended:

~ Supp. 2023, LB92, § 37

Effective Date: June 7, 2023

8-3024

Digital asset business activities authorized.

A digital asset depository is authorized to carry on one or more of the following digital asset business activities:

(1) Provide digital asset and cryptocurrency custody services. Such custody services shall not be provided for a digital asset or cryptocurrency unless the digital asset or cryptocurrency was:

(a) Initially offered for public trade more than six months prior to the date of the custody services; or

(b) Created or issued by any bank, savings bank, savings and loan association, or building and loan association organized under the laws of this state or organized under the laws of the United States to do business in this state;

(2) Issue stablecoins and hold deposits at a Federal Deposit Insurance Corporation-insured financial institution which has a main-chartered office in this state, any branch thereof in this state,

or any branch of the financial institution which maintained a main-chartered office in this state prior to becoming a branch of such financial institution that serves as reserves for stablecoins; and

- (3) Use independent node verification networks and stablecoins for payment activities.

Last Amended:

~Reissue 2022

8-3025

Charter or authority; suspend or revoke; grounds.

The director may suspend or revoke the charter of a digital asset depository if, after notice and opportunity for a hearing, the director determines that:

- (1) The digital asset depository has failed or refused to comply with an order issued under section 8-1,136, 8-2504, or 8-2743;

- (2) The application for a charter contained a materially false statement, misrepresentation, or omission; or

- (3) An officer, a director, or an agent of the digital asset depository, in connection with an application for a charter, an examination, a report, or other document filed with the director, knowingly made a materially false statement, misrepresentation, or omission to the department, the director, or the duly authorized agent of the department or director.

Last Amended:

~ Supp. 2023, LB92, § 38

Effective Date: June 7, 2023

8-3026

Charter or authority; surrendered, suspended, or revoked; effect.

If the charter of a digital asset depository is surrendered, suspended, or revoked, the digital asset depository shall continue to be subject to the provisions of the Nebraska Financial Innovation Act during any liquidation or conservatorship.

Last Amended:

~ Supp. 2023, LB92, § 39

Effective Date: June 7, 2023

8-3027

Failure, unsafe or unsound condition, or endangerment of customers' interests; director; conduct liquidation or appoint receiver.

- (1) If the director finds that a digital asset depository has failed, is operating in an unsafe or unsound condition, or is endangering the interests of customers, and the failure, unsafe or unsound condition, or endangerment has not been remedied within the time prescribed under section 8-1,117 or as directed by order of the director issued pursuant to section 8-1,136, 8-2504, or 8-2743, the director shall conduct a liquidation or appoint a receiver as provided by sections 8-198, 8-1,100, and 8-1,102.

(2) For purposes of this section:

(a) Failed or failure means, consistent with an order or rules and regulations of the director, a circumstance when a digital asset depository has not:

(i) Complied with the requirements of section 8-3009;

(ii) Maintained capital and surplus as required by section 8-3013; or

(iii) Paid, in the manner commonly accepted by business practices, its legal obligations to customers on demand or to discharge any promissory notes, or other indebtedness when due; and

(b) Unsafe or unsound condition means, consistent with an order or rules and regulations of the director, a circumstance relating to a digital asset depository which is likely to:

(i) Cause the failure of the digital asset depository;

(ii) Cause a substantial dissipation of assets or earnings;

(iii) Substantially disrupt the services provided by the digital asset depository to customers; **or**

(iv) Otherwise substantially prejudice the interests of customers of the digital asset depository.

Last Amended:

~ Reissue 2022

8-3028

Voluntary dissolution; procedure.

(1) A digital asset depository institution may voluntarily dissolve in accordance with this section. Voluntary dissolution shall be accomplished by either liquidating the digital asset depository institution or reorganizing the digital asset depository institution into an appropriate business entity that does not engage in any activity authorized only for a digital asset depository institution. Upon complete liquidation or completion of the reorganization, the director shall revoke the charter of the digital asset depository institution. Thereafter, the corporation or business entity shall not use the words digital asset depository or digital asset bank in its business name or in connection with its ongoing business.

(2) A digital asset depository institution may dissolve its charter either by liquidation or reorganization. The board of directors shall file an application for dissolution with the director, accompanied by a filing fee established by an order or the rules and regulations of the director. The application shall include a comprehensive plan for dissolution setting forth the proposed disposition of all assets and liabilities in reasonable detail to effect a liquidation or reorganization, and any other plans required by the director. The plan of dissolution shall provide for the discharge or assumption of all of the known and unknown claims and liabilities of the digital asset depository institution. Additionally, the application for dissolution shall include other evidence, certifications, affidavits, documents, or information as the director may require, including demonstration of how assets and liabilities will be disposed, the timetable for effecting disposition of the assets and

liabilities, and a proposal of the digital asset depository institution for addressing any claims that are asserted after dissolution has been completed. The director shall examine the application for compliance with this section, the business entity laws applicable to the required type of dissolution, and applicable orders and rules and regulations. The director may conduct a special examination of the digital asset depository institution, consistent with subsection (3) of section 8-3023, for purposes of evaluating the application.

(3) If the director finds that the application is incomplete, the director shall return it for completion not later than sixty days after it is filed. If the application is found to be complete by the director, the director shall approve or deny the application not later than thirty days after it is filed. If the director approves the application, the digital asset depository institution may proceed with the dissolution pursuant to the plan outlined in the application, subject to any further conditions the director may prescribe. If the digital asset depository institution subsequently determines that the plan of dissolution needs to be amended to complete the dissolution, it shall file an amended plan with the director and obtain approval to proceed under the amended plan. If the director does not approve the application or amended plan, the digital asset depository institution may appeal the decision to the director pursuant to the Administrative Procedure Act.

(4) Upon completion of all actions required under the plan of dissolution and satisfaction of all conditions prescribed by the director, the digital asset depository institution shall submit a written report of its actions to the director. The report shall contain a certification made under oath that the report is true and correct. Following receipt of the report, the director, no later than sixty days after the filing of the report, shall examine the digital asset depository institution to determine whether the director is satisfied that all required actions have been taken in accordance with the plan of dissolution and any conditions prescribed by the director. If all requirements and conditions have been met, the director shall, within thirty days of the examination, notify the digital asset depository institution in writing that the dissolution has been completed and issue an order of dissolution.

(5) Upon receiving an order of dissolution, the digital asset depository institution shall surrender its charter to the director. The digital asset depository institution shall then file articles of dissolution and other documents required by sections 21-2,184 to 21-2,201 for a corporation with the Secretary of State. In the case of reorganization, the digital asset depository institution shall file the documents required by the Secretary of State to finalize the reorganization.

(6) If the director determines that all required actions under the plan for dissolution, or as otherwise required by the director, have not been completed, the director shall notify the digital asset depository institution, not later than thirty days after this determination, in writing, of what additional actions shall be taken in order for the institution to be eligible for a certificate of dissolution. The director shall establish a reasonable deadline of up to thirty days for the submission of evidence that additional actions have been taken and the director may extend any deadline upon good cause. If the digital asset depository institution fails to file a supplemental report showing that the additional actions have been taken before the deadline, or submits a report that is found not to be satisfactory by the director, the director shall notify the digital asset depository institution in writing that its voluntary dissolution is not approved, and the institution may appeal the decision to the director pursuant to the Administrative Procedure Act.

(7) A financial institution operating a digital asset depository department may, upon adoption of a resolution by its board of directors, and upon compliance with the provisions of this section,

insofar as determined by the director by order or rule and regulation, surrender its charter for a digital asset depository department for cancellation to the department.

Last Amended:

~ Supp. 2023, LB92, § 40

Effective Date: June 7, 2023

8-3029

Reports; failure to submit as prescribed; fee

If a digital asset depository fails to submit any report required by the Nebraska Financial Innovation Act or by order or rules and regulations of the director within the prescribed period, the director may impose and collect a fee of five thousand dollars for each day the report is overdue, as established by order of the director. The fee shall be remitted to the State Treasurer for credit to the Department of Banking and Finance Settlement Cash Fund.

Last Amended:

~ Reissue 2022

8-3030

Digital asset depository; officer, director, employee, or agent; removal; grounds.

Each officer, director, employee, or agent of a digital asset depository, following written notice from the director, is subject to removal upon order of the director if such officer, director, employee, or agent knowingly, willfully, or negligently:

- (1) Fails to perform any duty required by the Nebraska Financial Innovation Act or other applicable law;
- (2) Fails to conform to any order or rules and regulations of the director; or
- (3) Endangers the interest of a customer or the safety and soundness of the digital asset depository.

Last Amended:

~ Supp. 2023, LB92, § 41

Effective Date: June 7, 2023

8-3031

Orders; rules and regulations.

The director may issue any order and adopt and promulgate any rules and regulations necessary to implement the Nebraska Financial Innovation Act.

Last Amended:

~ Reissue 2022
