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Bill Analysis

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SUMMARY

Special purpose depository institutions

- Creates a new type of bank charter called a "special purpose depository institution" (SPDI) that may engage in nonlending banking business with depositors, conduct activity incidental to the business of banking, and provide custodial services for digital assets.
- Requires an SPDI to pay the state's financial institutions tax.
- Restricts depositors in the SPDI to those that are legal entities, not a natural person, in good standing in their jurisdiction of organization, that conduct lawful business, and that have deposits equaling at least $5,000.
- Permits an SPDI to conduct activity incidental to the business of business with persons who are not qualified depositors, so long as those persons are engaged in lawful activities.
- Prohibits an SPDI to use the word "bank," "banker," banking," or "trust," or a combination of these words or other words of similar meaning, in a designation or name under which business of the SPDI is or may be conducted in Ohio.
- Requires the SPDI to comply with the federal Bank Secrecy Act.
- Requires an SPDI to maintain liquid assets of at least 100% of its depository liabilities.
- Requires an SPDI to maintain a contingency account for unexpected losses and expenses.
- Allows an SPDI to require payment of contributions from depositors to fund a contingency account.
- Requires an SPDI with deposits that are not insured by the Federal Deposit Insurance Corporation to notify customers of this fact.

- Specifies the all the necessary requirements an entity must comply with in order to receive a SPDI charter, such as requirements for first forming a corporation under Ohio law and the application requirements for the SPDI charter with the Superintendent.
- Requires the SPDI to have a least $10 million in capital stock prior to receiving a charter.
- Requires the SPDI to also have a surplus fund that includes at least three years of estimated operating expenses prior to receiving the charter.
- Requires an SPDI to pledge assets or furnish a surety bond to the Superintendent to cover costs likely to be incurred in a liquidation or conservatorship.
- Allows the Superintendent to call for reports verified under oath from an SPDI at any time as necessary to inform the Superintendent of the condition of the SPDI.
- Requires the Superintendent to conduct, and an SPDI to submit to, scheduled examinations and specifies the topics an examination must cover.
- Requires an SPDI to pay the Superintendent the cost of any examination and requires the Superintendent to remit that amount to the SPDI Fund.
- If the SPDI has failed or is operating in an unsafe or unsound condition, requires the Superintendent to conduct a liquidation or appoint a conservator.
- Permits an SPDI to voluntarily dissolve by liquidation or reorganization.
- Creates the Special Purpose Depository Institutions Fund (SPDI Fund) in the state treasury to be used by the Superintendent to facilitate the bill's provisions.
- Specifies that a violation of the SPDI law is an unfair or deceptive act or practice in violation of the Consumer Sales Practices Act, regardless if the violation involves a consumer transaction.
- Requires the Superintendent to adopt all rules necessary to implement the bill.

Digital assets

- Classifies a digital consumer asset as intangible personal property and considers it a general intangible under the secured transactions provisions of the Uniform Commercial Code (UCC).
- Classifies a digital security as intangible personal property and considers it a security under the investment securities provisions of the UCC and an investment property under the secured transactions provisions of the UCC.
- Classifies virtual currency as intangible personal property and considers it money under the secured transactions provisions of the UCC.
- Pursuant to an agreement with the owner of the digital asset, allows a digital asset to be treated as a financial asset for purposes of the investment securities provisions of the UCC and provides that, if treated as such, the digital asset remains intangible personal property.

- Provides that a bank providing custodial services under the bill is considered a securities intermediary under the investment securities provisions of the UCC.

Security interests in digital assets

- Allows perfection of a security interest in virtual currency to be achieved through possession.
- Allows possession of a security interest in digital securities to be achieved by control.
- Gives a security interest held by a secured party with such possession or control priority over a security interest held by a secured party without possession or control.
- Requires a secured party to enter into a security agreement with the debtor and, as necessary, other parties before taking possession or control.
- If a debtor is located in Ohio, allows a secured party to file a financing statement to perfect a security interest in digital consumer assets or digital securities, including to perfect a security interest in proceeds.
- Provides that in the case of a security interest perfected by filing, 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 at any time during the two-year period.
- Provides that perfection by possession creates a possessory security interest under the local law of the jurisdiction in which the virtual currency or certificated digital securities are located.
- States that for purposes of the UCC secured transactions provisions, if collateral is required to be "located in a jurisdiction," a digital asset is located in Ohio if it is possessed or controlled by an Ohio bank, a trust company, or other custodian; or if the debtor or secured party is physically located, incorporated, or organized in Ohio.

Custodial services

- Explicitly authorizes a bank, *including a credit union and an SPDI,* to provide custodial services for customer currency and digital assets.
- Requires a bank providing custodial services to conform to the audit, accounting, and related requirements specified by the Superintendent and applicable law at the cost of the bank.
- Requires a bank to maintain possession or control, as applicable, over a digital asset while in its custody.
- Requires a customer to elect, pursuant to a written agreement, one of the following relationships for each digital asset held in its custody:
  - Custody under a bailment;

- A custody relationship in which the customer allows the bank to undertake transactions with the digital asset according to the customer's instructions.

- Provides that a bank is not liable for any loss suffered with respect to transactions undertaken as part of the second type of custody above.
- Requires a bank and a customer to agree in writing regarding the source code version the bank will use for each digital asset, and the treatment of each asset under the UCC, if necessary.
- Requires a bank to provide clear, written notice to each customer, and obtain written acknowledgment of, source code updates, risk of loss, that certain digital assets may not be strictly segregated, and that the bank is not liable for losses due to transactions under the second type of custody above.
- Requires a bank and a customer to agree in writing to a time period within which, and in certain cases the form in which, the bank must return a digital asset held in custody.
- Provides that ancillary or subsidiary proceeds accrue to the benefit of the customer, except as specified by a written agreement with the customer.
- Prohibits a bank from authorizing or permitting rehypothecation of digital assets.
- Prohibits a bank from engaging in any activity to use or exercise discretionary authority relating to a digital asset except based on customer instructions.
- Prohibits a bank from taking any action under the bill that would likely impair the solvency or the safety and soundness of the bank.

Decentralized autonomous organization LLCs

- Allows a limited liability company (LLC) to form as or convert to a decentralized autonomous organization (DAO).
- Requires a DAO's articles of organization to include a statement regarding restrictions on fiduciary duties and transfers of ownership interests.
- Permits the DAO to be managed by natural persons or by smart contract.
- Provides that, in general, the articles and smart contracts govern all aspects of a DAO including relations among members, voting rights, distributions to members, etc.
- Allows the operation of a DAO to be supplemented by an operating agreement.
- Allows management to be vested in smart contracts only if the underlying smart contracts are able to be updated, modified, or otherwise upgraded.
- Unless otherwise provided for in the governing documents, states that no member has any fiduciary duty to the DAO or any member.
- Subjects all members to the implied contractual covenant of good faith and fair dealing.

- Provides that membership interests in a DAO managed by natural persons must be calculated by dividing a member's contribution of digital assets to the DAO by the total amount of digital assets contributed to the DAO at the time of a vote.
- If members do not contribute digital assets to a DAO as a prerequisite to becoming a member, provides that each member possesses one membership interest and is entitled to one vote.
- States that a quorum must require not less than a majority of membership interests entitled to vote.
- Requires a DAO to be dissolved upon the occurrence of certain specified events.

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DETAILED ANALYSIS

General overview

The bill can be divided into three major components. The bill (1) creates a new bank charter called a "special purpose depository institution" which may focus on traditional assets or on digital assets, (2) amends the Uniform Commercial Code (UCC) and enacts new provisions of the UCC to specify how digital assets should be handled under the law, and (3) creates a new type of business entity called a decentralized autonomous organization (DAO).

Special purpose depository institutions

Financial institutions, like many businesses, need a license to operate legally. The license is called a charter, and it allows the financial institution to perform core banking activities such as providing certain financial services to customers, including accepting deposits, making loans,

and providing a range of fiduciary services. While some charters allow banks to do all of these things, others are limited in purpose to allow only a subset of financial services. The type of charter obtained determines the regulatory framework under which a financial depository institution operates. Charters are issued by a state chartering authority or at the federal level. In Ohio, the Superintendent of Financial Intuitions (Superintendent) from the Division of Financial Intuitions in the Department of Commerce issues financial institution charters.[1]

The bill creates a new type of financial institution charter called a "special purpose depository institution" (SPDI). An SPDI is a state bank that can offer limited financial services outlined in the bill and explained in this analysis.[2] The SPDI can receive deposits from qualified depositors and conduct other activity incidental to the business of banking, including custody, asset servicing, fiduciary asset management, and related activities. An SPDI may focus on traditional assets or on digital assets, such as cryptocurrencies and nonfungible tokens. SPDIs are subject to the Ohio Financial Institution Tax.

In general, an SPDI must be corporation organized under Ohio law and once it receives its charter from the Superintendent, it can do any of the following:

- Make contracts as a corporation under Ohio law;
- Sue and be sued;
- Receive notes and buy and sell gold and silver coins and bullion as permitted by federal law;
- 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 (whether the Federal Reserve will accept an SPDI as a member bank is unclear)[3];
- Engage in any other activity that is usual or incidental to the business of banking, subject to the prior written approval of the Superintendent.

The Superintendent is not permitted to approve a request to engage in an incidental activity if the Superintendent finds that the requested activity will adversely affect the solvency or the safety and soundness of the SPDI or conflict with any provision of the bill. "Incidental activity" includes a range of activities, some of which may require the SPDI to obtain registration with the Division of Securities. "Incidental activity" includes custody, safekeeping, and asset servicing, investment advising, investment company and broker-dealer activities,

[1] See Page 2 of "An Analysis of Bank Charters and Selected Policy Issues" (PDF), January 21, 2022, Congressional Research Service, which is available on the CRS website: https://crsreports.congress.gov/.

[2] R.C. 1101.01 and 1120.01, and R.C. 1315.02, excluding SPDI from the Money Transmitter Law.

[3] See "Powell: Fed Will 'Make Progress' on Master Accounts for Nonbanks" ABA Banking Journal, January 11, 2022, which can be found on the ABA Banking Journal website: https://bankingjournal.aba.com.

exercising fiduciary powers similar to those permitted to national banks, receiving deposits, and other incidental activities authorized by the Superintendent.

Except for the purchase of highly liquid investments including U.S. Treasury or other federal agency obligations, the bill prohibits an SPDI from making loans to depositors, including the provision of temporary credit relating to overdrafts.

Although the bill requires an SPDI to maintain its principal operating headquarters and the primary office of its chief executive officer in Ohio, an SPDI can conduct business with depositors outside Ohio, and can also open a branch in another state in a manner set forth by the Superintendent in rules.

Because of its novel banking charter, an SPDI is prohibited from using the word "bank," "banker," "banking," or "trust," or a combination of words of similar meaning in any other language, in a designation or name, or as any part of a designation or name, under which business is or may be conducted in Ohio.[4]

Depositor qualifications and incidental activities

An SPDI is required to comply with all applicable federal laws, including the federal Bank Secrecy Act (BSA), which the bill requires the Superintendent to enforce.[5] The BSA is the common name for a series of federal laws and regulations enacted to combat money laundering and the financing of terrorism. The BSA requires each bank to establish a BSA/anti-money laundering compliance program.[6] In order to hold deposits at the SPDI, the depositor must meet certain criteria. The depositor must (1) be a legal entity other than a natural person that is in good legal standing with the jurisdiction in the U.S. in which it is incorporated or organized, (2) maintain a minimum $5,000 in deposit with the SPDI, (3) be engaged in a lawful, bona fide business, and (4) make sufficient evidence available to the SPDI to enable compliance with anti-money laundering, customer identification, and beneficial ownership requirements, as determined by the institution.

An SPDI may, however, conduct incidental activities with persons who are not qualified depositors, such as a natural person, so long as those persons are engaged in activities that are lawful under Ohio and federal law.

An SPDI must require that a potential depositor provide reasonable evidence that the person is engaged in a lawful, bona fide business, or is likely to open a lawful, bona fide business within the next six months. This provision does not apply with respect to incidental activities conducted with a person who is not a qualified depositor. "Reasonable evidence" includes all of the following:

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[4] R.C. 1120.02, 1120.04(E), and 5726.01(B).

[5] R.C. 1120.06.

[6] See "Bank Secrecy Act/Anti-Money Laundering (BSA/AML)," which can be found on the FDIC website: fdic.gov.

- Business entity filings;
- Articles of incorporation or organization;
- Bylaws;
- Operating agreements;
- Business plans;
- Promotional materials;
- Financing agreements.[7]

Liquid assets, contingency accounts, and lack of FDIC insurance

Unlike all other depository institutions, SPDIs are not required to maintain insurance, such as federal insurance from the Federal Deposit Insurance Corporation (FDIC). Therefore, under the bill, an SPDI must, at all times, maintain unencumbered liquid assets valued at not less than 100% of its depository liabilities. "Liquid assets" means any of the following:

- U.S. currency held on the premises of the SPDI;
- Reserve accounts of the SPDI at a federal reserve bank;
- Deposit accounts of the SPDI at a federally insured financial institution;
- Investments that are highly liquid, including obligations of the U.S. Treasury or other federal agency obligations, consistent with rules adopted by the Superintendent.[8]

An SPDI is also required to maintain a contingency account to account for unexpected losses and expenses and may require the payment of contributions from depositors to fund a contingency account. The bill provides that initial capital under "**Capital and surplus**" below constitutes compliance with this requirement for the first three years an SPDI is in operation. After that period, the bill requires an SPDI to maintain a contingency account totaling at least 2% of its depository liabilities provided that the contingency account must be adequate and reasonable in light of current and prospective business conditions, as determined by the Superintendent. An SPDI is required to refund a depositor any contingency account contributions the depositor made after the depositor's account is closed.[9]

If the deposits at an SPDI are not insured by the FDIC, the SPDI must display on any website it maintains, and at each window or place where it accepts deposits, a sign conspicuously stating that deposits are not insured by the FDIC. Also, when opening an account, the SPDI must require each depositor to execute a statement acknowledging that all

[7] R.C. 1120.03.

[8] R.C. 1120.04.

[9] R.C. 1120.05.

deposits at the SPDI are not insured by the FDIC, which the SPDI must keep permanently. The SPDI must also include in all advertising a disclosure that deposits are not insured by the FDIC.[10]

Formation

Articles of incorporation

Except in the case of a bank holding company applying to hold an SPDI, which the bill explicitly permits, five or more adults may form an SPDI. The incorporators must subscribe the articles of incorporation and transmit them to the Superintendent as part of an application for a charter under "**Charter**" below. The articles must include all of the following:

- The corporate name;
- The object for which the corporation is organized;
- The term of its existence, which may be perpetual;
- The place where its office must be located and its operations conducted;
- The amount of capital stock and the number of shares;
- The name and residence of each shareholder subscribing to more than 10% of the stock and the number of shares owned by that shareholder;
- The number of directors and the names of those who will manage the affairs of the corporation for the first year;
- A statement that the articles of incorporation are made to enable the incorporators to avail themselves of the advantages of the laws of Ohio.

Copies of all amended articles must be filed in the same manner as the original articles.[11]

Capital and surplus

The bill requires the incorporators to solicit capital prior to filing an application for a charter with the Superintendent, consistent with the provisions below. In the event an application for a charter is not filed or is denied by the Superintendent, all capital must be promptly returned without loss.

Under the bill, the capital stock of each SPDI chartered under the bill must be subscribed for as fully paid stock. No special purpose depository institution is allowed to be chartered with capital stock less than $10 million.

No SPDI may commence business until the full amount of its authorized capital is subscribed and all capital stock is fully paid in. No SPDI may be chartered without a paid up

[10] R.C. 1120.07.

[11] R.C. 1120.08(A) through (C) and (E).

surplus fund of not less than three years of estimated operating expenses in the amount disclosed pursuant to "**Charter**" below or in another amount required by the Superintendent.

The bill permits an SPDI to acquire additional capital prior to the granting of a charter and to report this capital in its charter application.[12]

Charter

Application and fee

The bill prohibits a person from acting as an SPDI without first obtaining a charter and certificate of authority to operate from the Superintendent. The incorporators must apply to the Superintendent for a charter. The Superintendent may prescribe the form of application by rule. The application must contain all of the following:

- The SPDI's articles of incorporation;
- A detailed business plan;
- A comprehensive estimate of operating expenses for the first three years of operation;
- A complete proposal for compliance with the bill's provisions;
- Evidence of the capital required under "**Capital and surplus**" above.[13]

Each application for a charter must be accompanied by an application fee established by the Superintendent pursuant to rule, which must not be greater than the costs incurred by the Superintendent in reviewing the application. The application fee must be credited to the Special Purpose Depository Institutions Fund created by the bill and which the Superintendent must use to administer the bill's provisions.[14]

Notification of results; publication; comments

Upon receiving an application for an SPDI charter, the bill requires the Superintendent to notify the applicants in writing within 30 calendar days of any deficiency in the required information or that the application has been accepted for filing. When the Superintendent is satisfied that all required information has been furnished, the Superintendent must notify the applicants of the acceptance of the application to incorporate an SPDI.

Within ten days after receipt from the Superintendent of the notice of acceptance of the application, the bill requires the applicants to publish a notice of the proposed incorporation in a newspaper of general circulation in the county where the SPDI's office is to be located. The applicants must publish the notice once a week for two weeks and furnish a certified copy of it to the Superintendent. The publication must state all of the following:

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[12] R.C. 1120.08(D) and 1120.09.

[13] R.C. 1120.10(A) and (B).

[14] R.C. 1120.10(C) and (D).

- The SPDI's proposed location;
- The names of the applicants for a charter;
- The nature of the activities to be conducted by the proposed SPDI;
- The date by which comments on the application must be filed with the Superintendent, which date must be 30 days after the date of the first publication of the notice;
- Any other information required by rule.

If any comments on the application are filed with the Superintendent within the 30-day period prescribed above, the Superintendent must determine whether the comments are relevant to the requirements for incorporation of an SPDI and, if so, investigate the comments in the manner the Superintendent considers appropriate.[15]

Investigation and examination

Upon receiving the articles of incorporation, the application for a charter, and other information required by the Superintendent, the bill requires the Superintendent to make a careful investigation and examination of all of the following:

- The character, reputation, and financial standing and ability of the incorporators;
- The character, financial responsibility, banking or other financial experience, and business qualifications of those proposed as officers and directors;
- The application for a charter, including the adequacy and plausibility of the SPDI's business plan and whether the SPDI has offered a complete proposal for compliance with the bill's provisions.[16]

Approval

Within 180 days following the date of acceptance of the application, the Superintendent must render a decision on the charter application based solely on the following criteria:

- Whether the character, reputation, financial standing, and ability of the incorporators is sufficient to afford reasonable promise of a successful operation;
- Whether the character, financial responsibility, banking or other financial experience, and business qualifications of those proposed as officers and directors is sufficient to afford reasonable promise of a successful operation;
- The adequacy and plausibility of the SPDI's business plan;
- Compliance with the requirements of "**Capital and surplus**" above;

[15] R.C. 1120.11(A) through (C).

[16] R.C. 1120.11(D).

- The SPDI is being formed for no purpose other than legitimate objectives authorized by law;
- That the name of the proposed SPDI does not resemble so closely the name of any other financial institution transacting business in the state so as to cause confusion;
- Whether the applicants have complied with all applicable provisions of state law.

The bill requires the Superintendent to approve an application upon making favorable findings on the above criteria. If necessary, the Superintendent may either conditionally approve an application by specifying conditions relating to the criteria or may disapprove the application.

If the Superintendent approves the application, the Superintendent is required to make a certificate to that effect and forward the certificate and the articles of incorporation to the Secretary of State for filing.[17]

Suspension and revocation

The bill allows the Superintendent to suspend or revoke a charter if, after notice and opportunity for a hearing, the Superintendent determines any of the following:

- The SPDI has failed or refused to comply with an order issued by the Superintendent under the financial institutions laws.
- The application for a charter contained a false statement, material misrepresentation, or material omission.
- An officer, director, or agent of the SPDI, in connection with an application for a charter, examination, report, or other document filed with the Superintendent, knowingly made a false statement, material misrepresentation, or material omission to the Superintendent or the duly authorized agent of the Superintendent.[18]

If an SPDI's charter is surrendered, suspended, or revoked, the SPDI is still subject to the bill's provisions during any liquidation or conservatorship (see "**Liquidation or Conservatorship**" below).[19]

Certificate of authority

Under the bill, if an application is approved and a charter granted by the Superintendent, the SPDI may not commence business before receiving a certificate of authority to operate from the Superintendent.

The application for a certificate of authority must be made to the Superintendent and must certify the address at which the SPDI will operate and that all adopted bylaws of the SPDI

[17] R.C. 1120.14.

[18] R.C. 1120.19.

[19] R.C. 1120.20.

have been attached as an exhibit to the application. The application must also state the identities and contact information of officers and directors.

The bill requires the Superintendent to approve or deny an application for a certificate of authority within 30 days after a complete application has been filed. The authority of the Superintendent to disapprove any application is restricted solely to noncompliance with the provisions in "**Certificate of authority**," provided that if the Superintendent approves the application, the Superintendent must issue a certificate of authority to the applicants within 20 days of the approval.

If the Superintendent denies the application, the Superintendent must mail a notice of denial to the applicants within 20 days of the denial, stating the reasons for denying the application, and grant to the applicants a period of 90 days to resubmit the application with the necessary corrections. If the applicants fail to comply with requirements of the notice of denial within 90 days from the receipt of the notice, the Superintendent must revoke the SPDI's charter. The failure of the Superintendent to act upon an application for a certificate of authority within 30 days is deemed an approval.

If an approved SPDI fails to commence business in good faith within six months after the issuance of a certificate of authority, the charter and certificate of authority expire. The Superintendent, for good cause and upon an application filed prior to the expiration of the six-month period, may extend the time within which the SPDI may open for business.[20]

Application decisions appealable

Under the bill, any decision of the Superintendent in approving, conditionally approving, or disapproving a charter for an SPDI or the issuance or denial of a certificate of authority is appealable to the court of common pleas of the county in which the SPDI is to be located, in accordance with the current law provisions regarding appeals from agency decisions denying licenses and registrations.[21]

Assets, bonds, and insurance

Assets or bond to cover costs of liquidation or conservatorship

The bill requires an SPDI, before transacting any business, to pledge assets or furnish a surety bond to the Superintendent to cover costs likely to be incurred by the Superintendent in a liquidation or conservatorship of the SPDI. The amount of the bond or assets must be determined by the Superintendent in an amount sufficient to defray the costs of a liquidation or conservatorship.

In lieu of a bond, an SPDI may irrevocably pledge specified assets equivalent to a bond as described above. All costs associated with pledging and holding the assets are the responsibility of the SPDI. Pledged assets must be unencumbered and must not serve as

[20] R.C. 1120.15.

[21] R.C. 1120.16; R.C. 119.12, not in the bill.

collateral for any other purpose. Assets pledged to the Superintendent must be of the kinds and in the manner prescribed by the Superintendent.

In the event of a liquidation or conservatorship of an SPDI, the Superintendent may, without regard to priorities, preferences, or adverse claims, reduce the surety bond or assets pledged to cash as soon as practicable and use the cash to defray the costs associated with the liquidation or conservatorship.

If assets are pledged, any income from those assets must be paid to the SPDI, unless a liquidation or conservatorship takes place.

Upon evidence that the current surety bond or pledged assets are insufficient, the Superintendent may require an SPDI to increase its surety bond or pledged assets by providing not less than 30 days' written notice to the SPDI. The SPDI may request an administrative hearing pursuant to the Ohio Administrative Procedure Act[22] not more than 30 days after receiving the written notice.

The bill requires the Superintendent to adopt rules to set procedures for these requirements and allows the Superintendent to adopt rules to establish additional investment guidelines or investment options for purposes of the asset pledge or surety bond.[23]

Insurance or bond for operational risks

Under the bill, an SPDI must maintain appropriate insurance or a bond covering the operational risks of the institution, which must include coverage for directors' and officers' liability, errors and omissions liability, and information technology infrastructure and activities liability.[24]

Reports and examinations

The bill permits the Superintendent to call for reports verified under oath from an SPDI at any time as necessary to inform the Superintendent of the condition of the SPDI. These reports and any materials relating to examinations of SPDIs are not public records and must not be released.

Notwithstanding any examination schedule requirement under continuing provisions requiring a biennial examination of each state bank and special examinations of various types of financial institutions,[25] an SPDI is subject to the examination of the Superintendent on a schedule established by the Superintendent by rule. The Superintendent or a duly appointed examiner must make a complete and careful examination of all of the following:

- The condition and resources of the SPDI;

[22] R.C. Chapter 119, not in the bill.

[23] R.C. 1120.17.

[24] R.C. 1120.171.

[25] R.C. 1121.10, 1121.101, and R.C. 1121.11, not in the bill.

- The mode of managing institution affairs and conducting business;
- The actions of officers and directors in the investment and disposition of funds;
- The safety and prudence of institution management;
- Compliance with the bill's requirements;
- Any other matters the Superintendent may require.

After an examination, the SPDI must remit to the Superintendent an amount equal to the total cost of the examination. This amount must be remitted to the Treasurer of State and deposited into the SPDI Fund.[26]

Liquidation or conservatorship

Under the bill, if the Superintendent finds that an SPDI has failed or is operating in an unsafe or unsound condition that has not been remedied within the time prescribed by the Superintendent, the Superintendent must conduct a liquidation or appoint a conservator as provided by the continuing provisions governing liquidations and conservatorships of state banks.

"Failed" or "failure" means, consistent with rules adopted by the Superintendent, a circumstance when an SPDI has not done any of the following:

- Complied with the bill's requirement to maintain unencumbered liquid assets valued at not less than 100% of its depository liabilities (see "**Liquid assets, contingency accounts, and lack of FDIC insurance**" above)[27];
- Maintained a contingency account as required by the bill (see "**Liquid assets, contingency accounts, and lack of FDIC insurance**" above)[28];
- Paid, in the manner commonly accepted by business practices, its legal obligations to depositors on demand or to discharge any certificates of deposit, promissory notes, or other indebtedness when due.

"Unsafe or unsound condition" means, consistent with rules adopted by the Superintendent, a circumstance relating to an SPDI that is likely to do any of the following:

- Cause the SPDI to fail;
- Cause a substantial dissipation of assets or earnings;
- Substantially disrupt the services provided by the SPDI to depositors;

[26] R.C. 1120.18.

[27] R.C. 1121.04.

[28] R.C. 1124.05.

- Otherwise substantially prejudice the depository interests of depositors.[29]

Voluntary dissolution

The bill permits an SPDI to voluntarily dissolve. Voluntary dissolution must be accomplished by either of the following methods:

- Liquidating the SPDI;
- Reorganizing the SPDI into an appropriate business entity that does not engage in any activity authorized only for an SPDI.

Upon complete liquidation or completion of the reorganization, the Superintendent must revoke the SPDI's charter and, afterward, the company is prohibited from using the word "special purpose depository institution" in its business name or in connection with its ongoing business.

The SPDI may dissolve its charter either by liquidation or reorganization. The board of directors must file an application for dissolution with the Superintendent, accompanied by a filing fee established by rule of the Superintendent. The application must include both of the following:

- A comprehensive plan for dissolution setting forth the proposed disposition of all assets and liabilities, in reasonable detail to effect a liquidation or reorganization;
- Any other plans required by the Superintendent.

The dissolution plan must provide for the discharge or assumption of all of the known and unknown claims and liabilities of the SPDI. Additionally, the application for dissolution must include other evidence, certifications, affidavits, documents, or information as the Superintendent may require, including all of the following:

- Demonstration of how assets and liabilities will be disposed;
- The timetable for effecting disposition of the assets and liabilities;
- A proposal for addressing any claims that are asserted after dissolution has been completed.

The bill requires the Superintendent to examine the application for compliance with these provisions, the business entity laws applicable to the required type of dissolution, and applicable rules. The Superintendent may conduct a special examination of the SPDI, consistent with the examination provisions of "**Reports and examinations**" above, for purposes of evaluating the application.

If the Superintendent finds that the application is incomplete, the Superintendent must return it for completion not later than 60 days after it is filed. If the application is found to be

[29] R.C. 1120.21.

complete by the Superintendent, the Superintendent must approve or disapprove the application not later than 30 days after it is filed. If the Superintendent approves the application, the SPDI may proceed with the dissolution pursuant to the plan outlined in the application, subject to any further conditions the Superintendent may prescribe. If the SPDI subsequently determines that the plan of dissolution needs to be amended to complete the dissolution, it must file an amended plan with the Superintendent and obtain approval to proceed under the amended plan. If the Superintendent does not approve the application or amended plan, the SPDI may appeal the decision pursuant to the Ohio Administrative Procedure Act.

Upon completion of all actions required under the plan of dissolution and satisfaction of all conditions prescribed by the Superintendent, the SPDI must submit a written report of its actions to the Superintendent. The report must contain a certification made under oath that the report is true and correct. Following receipt of the report, the Superintendent, not later than 60 days after the filing of the report, must examine the SPDI to determine whether the Superintendent is satisfied that all required actions have been taken in accordance with the plan of dissolution and any conditions prescribed by the Superintendent. If all requirements and conditions have been met, the Superintendent must, within 30 days of the examination, notify the SPDI in writing that the dissolution has been completed and issue a certificate of dissolution.

Upon receiving a certificate of dissolution, the SPDI must surrender its charter to the Superintendent. The SPDI must then file articles of dissolution and any other documents required by law for a corporation with the Secretary of State. In the case of reorganization, the SPDI must file the documents required by the Secretary of State to finalize the reorganization.

If the Superintendent determines that all required actions under the plan for dissolution, or as otherwise required by the Superintendent, have not been completed, the Superintendent must notify the SPDI, not later than 30 days after this determination, in writing what additional actions must be taken in order for the SPDI to be eligible for a certificate of dissolution. The Superintendent must establish a reasonable deadline for the submission of evidence that additional actions have been taken and the Superintendent may extend any deadline upon good cause. If the SPDI 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 Superintendent, the Superintendent must notify the SPDI in writing that its voluntary dissolution is not approved, and the SPDI may appeal the decision pursuant to the Ohio Administrative Procedure Act.[30]

[30] R.C. 1120.22; R.C. Chapter 119, not in the bill.

Fee for failure to submit required report

If an SPDI fails to submit any report required by the bill or rule, the bill allows the Superintendent to impose and collect a fee for each day the report is overdue, as established by rule.[31]

Removal of persons from the SPDI

Under the bill, each officer, director, employee, or agent of an SPDI, following written notice from the Superintendent, is subject to removal upon order of the Superintendent if the officer, director, employee, or agent knowingly or willfully fails to do either of the following:

- Perform any duty required by the bill or other applicable law;
- Conform to any rule or order of the Superintendent.[32]

Consumer Sales Practices Act

Any violation of the SPDI law is an unfair or deceptive act or practice in violation of the consumer Sales Practices Act, regardless if the violation involves a consumer transaction.[33]

Rules

Under the bill, the Superintendent is required to adopt all rules necessary to implement the bill, consistent with the provision requiring an SPDI to comply with all applicable federal laws.[34]

Digital assets

The bill amends the Uniform Commercial Code (UCC) to create new rules for digital assets. Under the bill, "**digital asset**" means a representation of economic, proprietary, or access rights that is stored in a computer readable format and is either a digital consumer asset, digital security, or virtual currency.[35]

Classification

Under the bill, digital assets are classified in one of three ways:

1. **Digital consumer asset. "**Digital consumer asset" is a digital asset that is used or bought primarily for consumptive, personal, or household purposes and includes either an open blockchain token constituting intangible personal property or any other digital asset that is not a digital security or virtual currency. A digital consumer asset is intangible personal property and is considered a general intangible as

[31] R.C. 1120.23.

[32] R.C. 1120.24.

[33] R.C. 1120.26.

[34] R.C. 1120.25.

[35] R.C. 1314.01.

defined in the portion of the UCC governing secured transactions for the purposes of that law.

2. **Digital security**. "Digital security" means a digital asset that constitutes a security, as defined under Ohio Securities Law, but excludes digital consumer assets and virtual currency.

3. **Virtual currency**. "Virtual currency" means a digital asset that is both used as a medium of exchange, unit of account, or store of value; and not recognized as legal tender by the U.S. government. Virtual currency is intangible personal property and must be considered money for purposes of UCC law governing secured transactions.[36]

The bill provides that, pursuant to an agreement with the owner of the digital asset, a digital asset may be treated as a financial asset as defined in the UCC investment securities provisions for purposes of those provisions. If treated as a financial asset, the digital asset remains intangible personal property. A "financial asset" is any of the following:

- A security;
- An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or
- Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under the UCC investment securities law.[37]

A bank providing custodial services under "**Custodial services**" below is considered a securities intermediary as defined in the UCC investment securities provisions for purposes of those provisions. A "securities intermediary" is a clearing corporation or a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.[38]

Classification of digital assets under the bill must be construed in a manner to give the greatest effect to the bill, but must not be construed to apply to any other asset.[39]

[36] R.C. 1314.01 and 1314.02(A).

[37] R.C. 1314.02(B); R.C. Chapter 1308 and 1308.01(A)(9), not in the bill.

[38] R.C. 1314.02(C); R.C. Chapter 1308 and 1308.01(A)(14), not in the bill.

[39] R.C. 1314.02(D).

Security interests in digital assets

Perfection and priority

Perfection is the process of putting others on notice that a secured party (a party holding a security interest, such as a lien, in the property of a debtor) claims a security interest in a debtor's collateral. Perfection is accomplished differently depending on the type of property involved. The bill specifies the method of perfection for security interests in virtual currency and digital securities.

Under the bill, perfection of a security interest in virtual currency may be achieved through possession, just like traditional money under current law. Perfection of a security interest in digital securities may be achieved by control. A security interest held by a secured party having possession of virtual currency or control of digital securities has priority over a security interest held by a secured party that does not have possession or control.[40]

"**Control**," consistent with the current law provision regarding how to determine which jurisdiction's law governs perfection in a particular case, includes both of the following:

- A secured party, or an agent, custodian, fiduciary, or trustee of the party, meeting the criteria for control described in the current provisions of the UCC investment securities law,[41] including by means of a private key or the use of a multi-signature arrangement exclusive to the secured party or any substantially similar analogue;
- Use of a smart contract created by a secured party to meet the criteria for control described in the current provisions of the UCC investment securities law.[42]

"**Possession**," consistent with the continuing provision regarding situations in which possession by or delivery to a secured party perfects a security interest without filing, means the ability to exclude others from the use of property, including through the use of a private key, a multi-signature arrangement exclusive to the secured party, a smart contract, or any substantially similar analogue. "Possession" includes delivery of certificated digital securities, consistent with the continuing provision describing when delivery of a certificated security to a purchaser occurs.[43]

All other laws relating to perfection and priority of security interests apply to perfection and priority of security interests in virtual currency and digital securities, except the provision specifying that conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection.[44] Under the bill, the general provisions relating to the

[40] R.C. 1314.03(B); R.C. 1309.312(B)(3), not in the bill.

[41] R.C. 1308.24, not in the bill.

[42] R.C. 1314.03(A)(1)(a); R.C. 1308.24, not in the bill.

[43] R.C. 1314.03(A)(1)(b); R.C. 1309.313 and 1308.27, not in the bill.

[44] R.C. 1309.322(A)(1), not in the bill.

rights and duties of a secured party having possession or control of collateral apply to virtual currency.[45]

Procedures and other details

The bill requires that a secured party, before taking possession or control, enter into a security agreement with the debtor and, as necessary, other parties. The security agreement may set forth the terms under which a secured party may pledge its security interest as collateral for another transaction. The security agreement is effective according to its terms between parties, against purchasers of collateral, and against creditors.[46]

If a debtor is located in Ohio, a secured party may file a financing statement with the Secretary of State to perfect a security interest in digital consumer assets or digital securities, including to perfect a security interest in proceeds.[47] In the case of a security interest perfected by filing, 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 at any time during the two-year period.[48]

Perfection by possession creates a possessory security interest under the local law of the jurisdiction in which the virtual currency or certificated digital securities are located. The locality is determined based on the possessory nature of a private key or any substantially similar analogue, which may be tangible or electronic.[49] A "**private key**" means a unique element of cryptographic data, or any substantially similar analogue, that is held by a person and both of the following apply:

- It is paired with a unique, publicly available element of cryptographic data;
- It is associated with an algorithm that is necessary to carry out an encryption or decryption required to execute a transaction.[50]

The bill states that for purposes of the UCC secured transactions provisions, if collateral is required to be "located in a jurisdiction," a digital asset is located in Ohio if the asset is possessed or controlled by a bank chartered under Ohio law, a trust company as defined in the financial institutions laws, or other custodian; or if the debtor or secured party is physically located, incorporated, or organized in Ohio, subject to the following considerations:

- Whether a security agreement typically accompanying a possessory security interest or other secured transaction exists – consistent with the provision stating that a security

[45] R.C. 1314.03(B); R.C. 1309.207, not in the bill.

[46] R.C. 1314.03(C).

[47] R.C. 1314.03(D); R.C. 1309.15(D), not in the bill.

[48] R.C. 1314.03(E).

[49] R.C. 1314.03(F); R.C. 1309.301(B), not in the bill.

[50] R.C. 1314.03(A)(2)(b).

agreement is effective according to its terms between the parties against purchasers of the collateral, and against creditors[51] – including an agreement describing the possessory nature of a private key or any substantially similar analogue;

- Choice of law in a security agreement, evidencing the intent and understanding of the parties relating to a transaction, including waivers of litigation in jurisdictions other than Ohio, access to the Ohio courts of common pleas, and judicial economy;
- The relative clarity of the laws of other jurisdictions relating to a digital asset, consequences relating to unknown liens in those jurisdictions, and the ability of a court to exercise jurisdiction over a particular digital asset.[52]

Custodial services

In general

The bill explicitly allows a bank, including a credit union or an SPDI, to provide custodial services for customer currency and digital assets. To do so, the bank must provide 60 days' written notice to the Superintendent and must comply with the below requirements.[53]

For the purposes of the bill's custodial services provisions, "bank" means all of the following:

- An entity that solicits, receives, or accepts money or its equivalent for deposit as a business, whether the deposit is made by check or is evidenced by a certificate of deposit, passbook, note, receipt, ledger card, or otherwise;
- A state bank or any entity doing business as a bank, savings bank, or savings association under authority granted by the office of the comptroller of the currency or the former office of thrift supervision, the appropriate bank regulatory authority of another state of the United States, or the appropriate bank regulatory authority of another country;
- A credit union or a foreign credit union qualified to do business in Ohio;
- An SPDI.[54]

The bill defines "custodial services" as the safekeeping, servicing, and management of customer currency and digital assets. This term includes the exercise of fiduciary and trust powers involving the exercise of discretion, including transactions under "**Transactions using client digital assets**" below.[55]

[51] R.C. 1309.201(A).

[52] R.C. 1314.03(G).

[53] R.C. 1314.04(B).

[54] R.C. 1314.04(A); R.C. 1101.01(B), not in the bill.

[55] R.C. 1314.04(A).

The bill provides that digital assets held in custody are not depository liabilities or assets of the bank. Notwithstanding any provision of the law to the contrary, a bank, or a subsidiary, may register as a broker-dealer, or any other registration as necessary under the Ohio Securities Act.[56]

Qualified custodian; compliance with other laws

In addition, the bill allows a bank to serve as a qualified custodian as specified in the federal law provision requiring a qualified custodian to maintain client funds and securities held by an investment advisor, or as a custodian authorized by the U.S. Commodity Futures Trading Commission or other law. In performing custodial services, a bank must do all of the following:

- Implement all accounting, account statement, internal control, notice, and other standards specified by applicable state or federal law and rules for custodial services;
- Maintain information technology best practices relating to digital assets held in custody. The Superintendent may specify required best practices by rule.
- Fully comply with applicable federal anti-money laundering, customer identification, and beneficial ownership requirements;
- Take other actions necessary to carry out the custodial services, 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.[57]

Under the bill, a bank providing custodial services must conform to the audit, accounting, and related requirements specified by the Superintendent and applicable law at the cost of the bank. These requirements may include entering into an agreement with an independent public accountant to conduct an examination conforming to the federal requirements regarding independent verification of an investment advisor's client funds and securities. An accountant must transmit the results of any examination to the Superintendent within 120 days of the examination and may file the results with other regulatory agencies as their rules may provide. The accountant must report material discrepancies in an examination to the Superintendent within one day. The Superintendent must review examination results upon receipt within a reasonable time and during any regular examination of an SPDI conducted under "**Reports and examinations**" above.[58]

Possession or control; transactions with client digital assets

A bank must maintain possession or control, as applicable, over a digital asset while in the bank's custody. A customer must elect, pursuant to a written agreement with the bank, one of the following relationships for each digital asset held in its custody:

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[56] R.C. 1314.04(E).

[57] R.C. 1314.04(C); 17 Code of Federal Regulations (C.F.R.) 275.206(4)-2, not in the bill.

[58] R.C. 1314.04(D) and 1120.18; 17 C.F.R. 275.206(4)-2(a)(4) and (6), not in the bill.

- Custody under a bailment as a nonfungible or fungible asset. Assets held in this way must be strictly segregated from other assets. "**Bailment**" means the customer has entrusted control of a digital asset to a bank for a specific purpose. It means a change of control but not change of title. "**Fungible**" is a characteristic of a digital asset that makes it commercially interchangeable with digital assets of the same kind. This is unlike a "**nonfungible**" digital asset which are unique and are not commercially interchangeable with digital assets of the same kind for monetary, commercial or other intrinsic reasons.[59]
- Custody can also be obtained if a customer elects to allow a bank to undertake transactions with a digital asset, the bank may do so based only on customer instructions. A bank is considered to maintain possession or control by entering into an agreement with the counterparty to a transaction that contains a time for return of the asset and other customary terms in securities or commodities transactions. The bank is not liable for any loss suffered with respect to such a transaction, except for liability consistent with fiduciary and trust powers.[60]

Agreement over source code and UCC treatment

The bill requires a bank and a customer to agree in writing regarding the source code version the bank will use for each digital asset, and the treatment of each asset under the UCC, if necessary. Any ambiguity relating to the agreement must be resolved in favor of the customer.[61]

Written notice

Under the bill, a bank must provide clear, written notice to each customer, and require written acknowledgment, of the all of the following:

- Prior to the implementation of any updates, material source code updates relating to digital assets held in custody, except in emergencies, which may include security vulnerabilities;
- The heightened risk of loss from transactions in which a customer elects to allow a bank to undertake transactions with a digital asset based on the customer's instructions;
- That some risk of loss as a pro-rata creditor exists as the result of custody as a fungible asset or a custody relationship in which the bank may undertake transactions with customer digital assets;

[59] R.C. 1314.04(A).

[60] R.C. 1314.04(E) and (F).

[61] R.C. 1314.04(G); R.C. 1301.101, not in the bill.

- That a custody relationship in which the bank may undertake transactions with customer digital assets may not result in the digital assets being strictly segregated from other customer assets;
- That the bank is not liable for losses suffered in a custody relationship in which the bank undertakes transactions with customer digital assets, except for liability consistent with fiduciary and trust powers.[62]

Return of digital asset; digital asset proceeds

The bill requires a bank and a customer to agree in writing to a time period within which the bank must return a digital asset held in custody. If a customer elects to allow the bank to undertake transactions with the customer's digital asset, the bank and the customer may also agree in writing to the form in which the digital asset must be returned.[63]

All ancillary or subsidiary proceeds relating to digital assets held in custody 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 elects custody under bailment may withdraw the digital asset in a form that permits the collection of the ancillary or subsidiary proceeds.[64]

Prohibitions

The bill prohibits a bank from authorizing or permitting rehypothecation (the simultaneous reuse or repledging of a digital asset that is already in use or has already been pledged as collateral to another person) of digital assets. The bank cannot engage in any activity to use or exercise discretionary authority relating to a digital asset except based on customer instructions.[65]

In addition, a bank cannot take any action under the bill that would likely impair the solvency or the safety and soundness of the bank, as determined by the Superintendent after considering the nature of custodial services customary in the banking industry.[66]

Decentralized autonomous organization LLCs

The bill allows a limited liability company (LLC) to be a decentralized autonomous organization (DAO). A DAO is an LLC that is algorithmically run or managed by smart contract. A smart contract is essentially a computer program that governs the DAO's use of assets, administration of membership interest votes, and other similar aspects of the DAO based on the occurrence or nonoccurrence of specified conditions (see "**Definitions**" below). For

[62] R.C. 1314.04(H).

[63] R.C. 1314.04(I).

[64] R.C. 1314.04(J).

[65] R.C. 1314.04(K).

[66] R.C. 1314.04(L).

example, a smart contract might automatically invest a certain portion of the DAO's assets in a particular project once a majority of members have voted to do so. That smart contract may then allow investment returns to flow back to the members' accounts and other subsequent actions to occur automatically depending on the state of the project at any given time. More simply, a DAO is an entity with no central leadership. Decisions get made from the bottom-up, governed by a community organized around a specific set of rules enforced on a blockchain.[67]

Definitions

"**Automated transaction**" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.[68]

"**Decentralized autonomous organization**" means an LLC organized under the bill or an existing LLC that converts to a DAO pursuant to "**Formation**" above.[69]

"**Digital asset**" has the same meaning as in "**Digital assets**" above.[70]

"**Majority of the members**," means the approval of more than 50% of participating membership interests in a vote for which a quorum of members is participating. A person dissociated as a member is not included for the purposes of calculating the majority of the members.[71]

"**Membership interest**" means a member's ownership share in a DAO managed by natural persons, which may be defined in the entity's articles of organization, smart contract, or operating agreement.[72]

"**Quorum**" means a minimum requirement on the sum of membership interests participating in a vote for that vote to be valid.[73]

"**Smart contract**" means an automated transaction or any substantially similar analogue, that is comprised of code, script, or programming language that executes the terms of an agreement and that may include taking custody of and transferring an asset, administrating membership interest votes with respect to a decentralized autonomous organization, or issuing

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[67] See "What is a decentralized autonomous organization, and how does a DAO work?," which can be found on the cointelegraph website: cointelegraph.com.

[68] R.C. 1706.90(F); R.C. 1306.01(B), not in the bill.

[69] R.C. 1706.90(A).

[70] R.C. 1706.90(B) and 1314.01(A).

[71] R.C. 1706.90(C).

[72] R.C. 1706.90(D).

[73] R.C. 1706.90(E).

executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.[74]

Formation

To be a DAO, an LLC's articles of organization must include a statement that the company is a DAO as described in the paragraph below. An LLC formed under Ohio law may convert to a DAO by amending its articles of organization to include the statement.[75]

A statement in substantially the following form must appear conspicuously in the articles of organization or operating agreement, if applicable, of a DAO:

> NOTICE OF RESTRICTIONS ON DUTIES AND TRANSFERS
>
> The rights of members in a decentralized autonomous organization may differ materially from the rights of members in other limited liability companies. R.C. Chapter 1706., underlying smart contracts, articles of organization, and operating agreement, if applicable, of a decentralized autonomous organization may define, reduce, or eliminate fiduciary duties and may restrict transfer of ownership interests, withdrawal, or resignation from the decentralized autonomous organization, return of capital contributions, and dissolution of the decentralized autonomous organization.[76]

The registered name for a DAO must include wording or an abbreviation to denote its status as a DAO, specifically the words "decentralized autonomous organization" or the abbreviation "D.A.O.," "DAO," "D.A.O. L.L.C.," or "DAO LLC."[77]

The articles of organization may provide that the DAO is managed by natural persons or by smart contract. If the articles do not specify the type of management, the DAO is presumed to be managed by natural persons.[78]

The bill permits any person to form a DAO by signing and delivering one original and one exact or conformed copy of the articles of organization to the Secretary of State for filing. The person forming the DAO need not be a member of the DAO. A DAO must have one or more members.[79]

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[74] R.C. 1706.90(F).

[75] R.C. 1706.901(A) and (B).

[76] R.C. 1706.901(C).

[77] R.C. 1706.901(D).

[78] R.C. 1706.901(E).

[79] R.C. 1706.902(A).

Each DAO must have and continuously maintain in Ohio a registered agent as required under the Ohio Revised Limited Liability Company Act.[80]

A DAO may form and operate for any lawful purpose, regardless of whether for profit or not for profit.[81]

Articles of organization

The bill requires a DAO's articles of organization to include the above statement entitled "NOTICE OF RESTRICTIONS ON DUTIES AND TRANSFERS" and to set forth the matters required for LLCs generally. The articles must also include a publicly available identifier of any smart contract directly used to manage, facilitate, or operate the decentralized autonomous organization.[82]

Except as otherwise provided by the bill, the articles of organization and smart contracts for every DAO govern all of the following:

- Relations among the members and between the members and the DAO;
- Rights and duties under the bill of a person in the person's capacity as a member;
- Activities of the DAO and the conduct of those activities;
- Means and conditions for amending the operating agreement;
- Rights and voting rights of members;
- Transferability of membership interests;
- Withdrawal of membership;
- Distributions to members prior to dissolution;
- Amendment of the articles of organization;
- Procedures for amending, updating, upgrading, editing, changing applicable smart contracts, including, if applicable, the underlying smart contracts of a decentralized autonomous organization managed by smart contract;
- All other aspects of the DAO.[83]

Requirement to amend articles

The bill requires a DAO's articles of organization to be amended when any of the following apply:

[80] R.C. 1706.902(C); R.C. 1706.09, not in the bill.

[81] R.C. 1706.902(C).

[82] R.C. 1706.903(A) and (B); R.C. 1706.16, not in the bill.

[83] R.C. 1706.903(C).

- There is a change in the DAO's name;
- There is a false or erroneous statement in the articles of organization;
- The DAO's smart contracts have been amended, updated, upgraded, edited, or changed.[84]

Operating agreement

To the extent the articles of organization or smart contract do not otherwise provide for a matter described in "**Articles of organization**" above, the bill allows the operation of a DAO to be supplemented by an operating agreement.[85]

Management

The bill allows management of a DAO to be vested in natural persons or a smart contract. A DAO may only be managed by smart contract if the underlying smart contracts are able to be updated, modified, or otherwise upgraded.[86]

No fiduciary duty; covenant of good faith and fair dealing

Unless otherwise provided for in the articles of organization or operating agreement, no member of a DAO has any fiduciary duty to the organization or any member. However, all members are subject to the implied contractual covenant of good faith and fair dealing (a duty, which is part of any contract even if not explicitly stated, that requires that neither party do anything that will destroy or injure the right of the other party to receive the benefits of the contract).[87]

Membership interests; quorum

For purposes of "**Withdrawal of member**" and "**Dissolution**" below and unless otherwise provided for in the articles of organization, smart contract, or operating agreement, all of the following apply:

- Membership interests in a DAO that is managed by natural persons must be calculated by dividing a member's contribution of digital assets to the DAO by the total amount of digital assets contributed to the DAO at the time of a vote.
- If members do not contribute digital assets to an organization as a prerequisite to becoming a member, each member possesses one membership interest and is entitled to one vote.

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[84] R.C. 1706.904.

[85] R.C. 1706.905.

[86] R.C. 1706.906.

[87] R.C. 1706.907; See "What You Should Know about the Implied Duty of Good Faith and Fair Dealing," American Bar Association, July 26, 2016, which can be found on the ABA website: americanbar.org.

- A quorum must require not less than a majority of membership interests entitled to vote.[88]

Records; information already available on an open blockchain

Under the bill, members have no right to separately inspect or copy records of a decentralized autonomous organization and the organization has no obligation to furnish any information concerning the organization's activities, financial condition, or other circumstances to the extent the information is available on an open blockchain.

An "open blockchain" is a digital ledger or database that is chronological, consensus-based, decentralized, and mathematically verified in nature and that is publicly accessible and its ledger of transactions is transparent.[89]

Withdrawal of member

The bill only allows a member to withdraw from a DAO in accordance with the terms set forth in the articles of organizations, the smart contracts, or, if applicable, the operating agreement. If no terms and conditions for withdrawal of a member are set forth for a DAO managed by natural persons, a member may withdraw only via a vote by a majority of the members.

Unless the DAO's articles of organization, smart contracts, or operating agreement provide otherwise, a withdrawn member forfeits all membership interests in the DAO, including any governance or economic rights.[90]

Dissolution

A DAO organized under the bill must be dissolved upon the occurrence of any of the following events:

- The period fixed for the duration of the DAO expires;
- By vote of the majority of members of a DAO managed by natural persons;
- At the time or upon the occurrence of events specified in the underlying smart contracts or as specified in the articles of organization or operating agreement;
- The failure of the DAO to approve any proposals or take any actions for a period of one year;
- By order of the Secretary of State if the DAO is deemed to no longer perform a lawful purpose.

[88] R.C. 1706.908.

[89] R.C. 1706.909.

[90] R.C. 1706.9010.

As soon as practicable following the occurrence of any of the events specified above, the DAO must execute a statement of intent to dissolve in the form prescribed by the Secretary of State.[91]

Conflict between governing documents

Under the bill, a DAO's articles of organization and operating agreement are effective as statements of authority. To the extent the underlying articles and operating agreement conflict, the articles control. To the extent the underlying articles and smart contract conflict, the smart contract controls, except as it relates to the provisions under "**Formation**" and "**Articles of organization**," above.[92]

HISTORY

Action	Date
Introduced	03-01-22

ANHB0585IN-134/ar

[91] R.C. 1706.9011.

[92] R.C. 1706.9012.