

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



SENATE BILL 19-023

BY SENATOR(S) Tate and Fenberg, Bridges, Fields, Hill, Lundeen, Marble, Priola, Rankin, Scott, Todd, Woodward, Garcia;
also REPRESENTATIVE(S) Kraft-Tharp and McKean, Bird, Melton, Roberts, Singer, Titone, Valdez A., Williams D.

CONCERNING EXEMPTIONS FROM THE SECURITIES LAWS FOR CRYPTOCURRENCIES, AND, IN CONNECTION THEREWITH, ENACTING THE "COLORADO DIGITAL TOKEN ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 11-51-308.7 as follows:

11-51-308.7. Colorado digital token act - legislative declaration - exemptions - definitions - rules. (1) **Short title.** THE SHORT TITLE OF THIS SECTION IS THE "COLORADO DIGITAL TOKEN ACT".

(2) **Legislative declaration.** THE GENERAL ASSEMBLY:

(a) FINDS THAT:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(I) CRYPTOECONOMIC SYSTEMS, WHICH ARE PROTOCOLS THAT GOVERN THE PRODUCTION, DISTRIBUTION, AND CONSUMPTION OF GOODS AND SERVICES IN A DECENTRALIZED DIGITAL ECONOMY, CAN BE AN IMPORTANT COMPONENT OF BLOCKCHAIN TECHNOLOGY;

(II) BLOCKCHAIN TECHNOLOGY HAS THE POTENTIAL TO CREATE NEW FORMS OF DECENTRALIZED "WEB 3.0" PLATFORMS AND APPLICATIONS THAT HAVE ADVANTAGES OVER THE CURRENT CENTRALIZED INTERNET PLATFORMS AND APPLICATIONS;

(III) COLORADO HAS BECOME A HUB FOR COMPANIES AND ENTREPRENEURS THAT SEEK TO UTILIZE CRYPTOECONOMIC SYSTEMS TO POWER BLOCKCHAIN TECHNOLOGY-BASED BUSINESS MODELS;

(IV) COMPANIES THAT SEEK TO UTILIZE CRYPTOECONOMIC SYSTEMS FACE REGULATORY UNCERTAINTY THAT THE ISSUANCE, SALE, AND PURCHASE OF DIGITAL TOKENS THAT HAVE A PRIMARILY CONSUMPTIVE PURPOSE MAY BE PROHIBITED UNDER THIS ARTICLE 51;

(V) CROWDFUNDING CONSUMER GOODS PLATFORMS PROVIDE A MEANS FOR COMPANIES AND ENTREPRENEURS TO ACQUIRE GROWTH CAPITAL AND CUSTOMERS BY PRESELLING THE RIGHT TO RECEIVE CONSUMER GOODS BEFORE THE GOODS ARE READY TO BE SOLD OR USED, IN ADDITION TO PROVIDING A MARKETPLACE FOR THE PURCHASE AND SALE OF CONSUMER GOODS THAT ARE READY FOR USE;

(VI) COMPANIES USING CRYPTOECONOMIC SYSTEMS THAT SEEK TO ACQUIRE GROWTH CAPITAL AND CUSTOMERS BY PRESELLING DIGITAL TOKENS THAT HAVE A PRIMARILY CONSUMPTIVE PURPOSE FACE REGULATORY UNCERTAINTY THAT THE OFFER, SALE, OR TRANSFER OF DIGITAL TOKENS MAY BE PROHIBITED UNDER THIS ARTICLE 51; AND

(VII) COMPANIES THAT SEEK TO CREATE A MARKETPLACE TO EFFECT THE PURCHASE, SALE, OR TRANSFER OF DIGITAL TOKENS THAT HAVE A PRIMARILY CONSUMPTIVE PURPOSE FACE REGULATORY UNCERTAINTY THAT EFFECTING OR ATTEMPTING TO EFFECT THE PURCHASE, SALE, OR TRANSFER OF A DIGITAL TOKEN MAY BE PROHIBITED UNDER THIS ARTICLE 51;

(b) DETERMINES THAT:

(I) THE COSTS AND COMPLEXITIES OF STATE SECURITIES REGISTRATION CAN OUTWEIGH THE BENEFITS TO COLORADO BUSINESSES USING CRYPTOECONOMIC SYSTEMS THAT SEEK TO RAISE GROWTH CAPITAL AND CREATE NEW DECENTRALIZED INTERNET PLATFORMS AND APPLICATIONS BY OFFERING THE SALE OR TRANSFER OF DIGITAL TOKENS THAT HAVE A PRIMARILY CONSUMPTIVE PURPOSE;

(II) COMPANIES THAT SEEK TO ISSUE OR EFFECT THE PURCHASE, SALE, OR TRANSFER OF DIGITAL TOKENS THAT HAVE A PRIMARILY CONSUMPTIVE PURPOSE FACE REGULATORY UNCERTAINTY UNDER COLORADO'S SECURITIES LAWS; AND

(III) THE ISSUANCE, SALE, PURCHASE, AND TRANSFER OF DIGITAL TOKENS THAT HAVE A PRIMARILY CONSUMPTIVE PURPOSE ALLOW COMPANIES USING CRYPTOECONOMIC SYSTEMS TO ACCESS THE GROWTH CAPITAL AND BUILD THE NECESSARY NETWORK OF PARTICIPANTS THEY NEED TO GROW AND EXPAND THEIR BUSINESSES; AND

(c) DECLARES THAT CREATING A COLORADO DIGITAL TOKEN ACT, WITH LIMITATIONS TO PROTECT CONSUMERS, WILL ENABLE COLORADO BUSINESSES THAT USE CRYPTOECONOMIC SYSTEMS TO OBTAIN GROWTH CAPITAL TO HELP GROW AND EXPAND THEIR BUSINESSES, THEREBY PROMOTING THE FORMATION AND GROWTH OF LOCAL COMPANIES AND THE ACCOMPANYING JOB CREATION AND HELPING MAKE COLORADO A HUB FOR COMPANIES THAT ARE BUILDING NEW FORMS OF DECENTRALIZED "WEB 3.0" PLATFORMS AND APPLICATIONS.

(3) Exemptions. (a) Issuer exemption. AN OFFER OR SALE OF A DIGITAL TOKEN IS EXEMPT FROM SECTION 11-51-301 IF:

(I) THE OFFER OR SALE:

(A) OCCURS AFTER THE SECURITIES COMMISSIONER INITIALLY PROMULGATES RULES TO IMPLEMENT THIS SECTION; AND

(B) COMPLIES WITH ALL OF THE REQUIREMENTS OF THIS SUBSECTION (3)(a) AND THOSE CONTAINED IN THE RULES PROMULGATED PURSUANT TO SUBSECTION (5) OF THIS SECTION;

(II) THE ISSUER OF THE DIGITAL TOKEN FILES A NOTICE OF INTENT

WITH THE SECURITIES COMMISSIONER AS SPECIFIED IN SUBSECTION (3)(c) OF THIS SECTION;

(III) THE PRIMARY PURPOSE OF THE DIGITAL TOKEN IS A CONSUMPTIVE PURPOSE;

(IV) THE ISSUER OF THE DIGITAL TOKEN MARKETS THE DIGITAL TOKEN TO BE USED FOR A CONSUMPTIVE PURPOSE AND DOES NOT MARKET THE DIGITAL TOKEN TO BE USED FOR A SPECULATIVE OR INVESTMENT PURPOSE; AND

(V) EITHER THE CONSUMPTIVE PURPOSE OF THE DIGITAL TOKEN IS AVAILABLE AT THE TIME OF SALE OR ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) THE CONSUMPTIVE PURPOSE OF THE DIGITAL TOKEN IS AVAILABLE WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE TIME OF SALE OR TRANSFER OF THE DIGITAL TOKEN;

(B) THE INITIAL BUYER IS PROHIBITED FROM RESELLING OR TRANSFERRING THE DIGITAL TOKEN UNTIL THE CONSUMPTIVE PURPOSE OF THE DIGITAL TOKEN IS AVAILABLE; AND

(C) THE INITIAL BUYER PROVIDES A KNOWING AND CLEAR ACKNOWLEDGMENT THAT THE INITIAL BUYER IS PURCHASING THE DIGITAL TOKEN WITH THE PRIMARY INTENT TO USE THE DIGITAL TOKEN FOR A CONSUMPTIVE PURPOSE AND NOT FOR A SPECULATIVE OR INVESTMENT PURPOSE.

(b) **Licensing exemption.** A PERSON THAT ENGAGES IN THE BUSINESS OF EFFECTING OR ATTEMPTING TO EFFECT THE PURCHASE, SALE, OR TRANSFER OF A DIGITAL TOKEN IS EXEMPT FROM SECTION 11-51-401 IF:

(I) THE PERSON:

(A) EFFECTS OR ATTEMPTS TO EFFECT THE PURCHASE, SALE, OR TRANSFER AFTER THE SECURITIES COMMISSIONER INITIALLY PROMULGATES RULES TO IMPLEMENT THIS SECTION; AND

(B) COMPLIES WITH ALL OF THE REQUIREMENTS OF THIS SUBSECTION

(3)(b) AND THOSE CONTAINED IN THE RULES PROMULGATED PURSUANT TO SUBSECTION (5) OF THIS SECTION;

(II) THE PERSON FILES A NOTICE OF INTENT WITH THE SECURITIES COMMISSIONER AS SPECIFIED IN SUBSECTION (3)(c) OF THIS SECTION;

(III) THE DIGITAL TOKEN CAN BE USED FOR A CONSUMPTIVE PURPOSE AT THE TIME THE PERSON EFFECTS THE PURCHASE, SALE, OR TRANSFER OF THE DIGITAL TOKEN; AND

(IV) THE PERSON TAKES REASONABLY PROMPT ACTION TO CEASE EFFECTING THE PURCHASE, SALE, OR TRANSFER OF ANY DIGITAL TOKEN THAT DOES NOT CONFORM TO THE REQUIREMENTS OF THIS SUBSECTION (3)(b).

(c) AN ISSUER OF A DIGITAL TOKEN AND A PERSON THAT IS ENGAGED IN THE BUSINESS OF EFFECTING OR ATTEMPTING TO EFFECT THE PURCHASE, SALE, OR TRANSFER OF A DIGITAL TOKEN EACH SHALL FILE OR CAUSE TO BE FILED A NOTICE OF INTENT WITH THE SECURITIES COMMISSIONER BEFORE THE ISSUER OR OTHER PERSON MAY QUALIFY FOR AN EXEMPTION UNDER THIS SECTION. THE SECURITIES COMMISSIONER SHALL MAKE A FORM AVAILABLE FOR THIS PURPOSE ON ITS WEBSITE. IF THE INFORMATION CONTAINED ON THE NOTICE REQUIRED BY THIS SUBSECTION (3)(c) BECOMES INACCURATE IN ANY MATERIAL RESPECT FOR ANY REASON, THE ISSUER OR OTHER PERSON SHALL FILE AN AMENDMENT TO THE NOTICE IN WRITING WITH THE SECURITIES COMMISSIONER WITHIN THIRTY DAYS.

(d) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 3, THE SECURITIES COMMISSIONER MAY ENTER INTO AGREEMENTS WITH FEDERAL, STATE, OR FOREIGN REGULATORS TO ALLOW DIGITAL TOKENS ISSUED, PURCHASED, SOLD, OR TRANSFERRED IN THIS STATE TO BE ISSUED, PURCHASED, SOLD, OR TRANSFERRED IN ANOTHER JURISDICTION AND ANY DIGITAL TOKENS ISSUED, PURCHASED, SOLD, OR TRANSFERRED IN ANOTHER JURISDICTION TO BE ISSUED, PURCHASED, SOLD, OR TRANSFERRED IN THIS STATE.

(4) **Definitions.** AS USED IN THIS SECTION:

(a) "CONSUMPTIVE PURPOSE" MEANS TO PROVIDE OR RECEIVE GOODS, SERVICES, OR CONTENT, INCLUDING ACCESS TO GOODS, SERVICES, OR CONTENT.

(b) "DIGITAL TOKEN" MEANS A DIGITAL UNIT THAT IS:

(I) CREATED:

(A) IN RESPONSE TO THE VERIFICATION OR COLLECTION OF A SPECIFIED NUMBER OF TRANSACTIONS RELATING TO A DIGITAL LEDGER OR DATABASE;

(B) BY DEPLOYING COMPUTER CODE TO A BLOCKCHAIN NETWORK THAT ALLOWS FOR THE CREATION OF DIGITAL TOKENS OR OTHER UNITS; OR

(C) USING ANY COMBINATION OF THE METHODS SPECIFIED IN SUBSECTIONS (4)(b)(I)(A) AND (4)(b)(I)(B) OF THIS SECTION;

(II) RECORDED IN A DIGITAL LEDGER OR DATABASE THAT IS CHRONOLOGICAL, CONSENSUS-BASED, DECENTRALIZED, AND MATHEMATICALLY VERIFIED IN NATURE, ESPECIALLY RELATING TO THE SUPPLY OF UNITS AND THEIR DISTRIBUTION; AND

(III) CAPABLE OF BEING TRADED OR TRANSFERRED BETWEEN PERSONS WITHOUT AN INTERMEDIARY OR CUSTODIAN OF VALUE.

(5) **Rules.** THE SECURITIES COMMISSIONER MAY ADOPT RULES AS NECESSARY TO IMPLEMENT THIS SECTION, TO ENFORCE THIS SECTION, OR TO PROVIDE EXEMPTIONS OR WAIVERS TO THE REQUIREMENTS OF THIS SECTION.

(6) **Safe Harbor.** NO PRESUMPTION SHALL ARISE THAT AN ISSUER OF ANY DIGITAL TOKEN OR OTHER CRYPTOCURRENCY, OR ANY PERSON THAT EFFECTS THE PURCHASE, SALE, OR TRANSFER OF ANY DIGITAL TOKEN OR OTHER CRYPTOCURRENCY, HAS VIOLATED THIS ARTICLE 51 SOLELY BY REASON OF THE PERSON'S PARTICIPATION IN THE ISSUANCE, PURCHASE, SALE, OR TRANSFER OF THE DIGITAL TOKEN OR OTHER CRYPTOCURRENCY IF THE PERSON DOES NOT MEET THE REQUIREMENTS SPECIFIED IN SUBSECTION (3)(a) OR (3)(b) OF THIS SECTION. NO PRESUMPTION SHALL ARISE THAT ANY ISSUER'S SECURITIES OFFERING PERMITTED UNDER THIS ARTICLE 51 WILL BE INTEGRATED WITH ANY ISSUER'S DIGITAL TOKEN OFFERING PERMITTED UNDER THIS SECTION.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following

the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO