

SENATE BILL No. 352

By Senator Bowser

1-21

AN ACT concerning unclaimed property; relating to digital assets; creating the bitcoin and digital assets reserve fund; providing definitions, procedures and requirements for abandoned digital assets; amending K.S.A. 58-3934, 58-3935, 58-3952 and 58-3955 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) There is hereby created in the state treasury the bitcoin and digital assets reserve fund. The state treasurer shall administer the fund. The fund shall consist of all airdrops, staking rewards or interest earned as prescribed in K.S.A. 58-3952(f), and amendments thereto. The rewards received from staking the digital asset may be in the form of digital assets. All expenditures from the bitcoin and digital assets reserve fund shall be in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state treasurer or the state treasurer's designee.

(b) Subject to appropriation acts, the state treasurer shall credit to the state general fund 10% of the each deposit of digital assets in the bitcoin and digital assets reserve fund. The state treasurer shall not deposit bitcoin in the state general fund.

(c) For the purposes of this section:

(1) (A) "Airdrop" means to issue a unit of a digital asset that is distributed in a broad, equipped and nondiscretionary manner based on conditions that are capable of being satisfied by a participant in a blockchain system as incentive-based rewards, including:

(i) To users of a digital asset or any blockchain system to which the digital asset relates;

(ii) for activities that are directly related to the operation of the blockchain system, including mining, validating, staking or any other activity that is directly tied to the operation of the blockchain system;

(iii) to existing holders of another digital asset in proportion to the total units of such other digital asset that is held by each person.

(B) "Airdrop" does not include an exchange of more than a nominal value of cash, property or other assets.

(2) "Digital assets" means any of the following that confers economic, proprietary or access rights or powers:

- 1 (A) Virtual currencies;
- 2 (B) cryptocurrencies; or
- 3 (C) any other digital-only assets.

4 (3) "Stake" or "staking" means committing digital assets to a
5 blockchain network to participate in the blockchain network's operations
6 by validating transactions, proposing and attesting to blocks and securing
7 the network.

8 Sec. 2. K.S.A. 58-3934 is hereby amended to read as follows: 58-
9 3934. As used in this act:

10 (a) "Administrator" means the state treasurer.

11 (b) (1) *"Airdrop" means to issue a unit of a digital asset that is*
12 *distributed in a broad, equipped and nondiscretionary manner based on*
13 *conditions that are capable of being satisfied by a participant in a*
14 *blockchain system as incentive-based rewards, including:*

15 (A) *To users of a digital asset or any blockchain system to which the*
16 *digital asset relates;*

17 (B) *for activities that are directly related to the operation of the*
18 *blockchain system, including mining, validating, staking or any other*
19 *activity that is directly tied to the operation of the blockchain system;*

20 (C) *to existing holders of another digital asset in proportion to the*
21 *total units of such other digital asset that is held by each person.*

22 (2) *"Airdrop" does not include an exchange of more than a nominal*
23 *value of cash, property or other assets.*

24 (c) "Apparent owner" means the person whose name appears on the
25 records of the holder as the person entitled to property held, issued or
26 owing by the holder.

27 ~~(e)~~(d) "Business association" means a corporation, joint-stock
28 company, investment company, partnership, unincorporated association,
29 joint venture, limited liability company, business trust, trust company, land
30 bank, safe deposit company, safekeeping depository, financial
31 organization, insurance company, mutual fund, utility, other business entity
32 consisting of one or more persons, whether or not for profit or the United
33 States government or any agency or subdivision thereof.

34 ~~(d)~~(e) "Communication in writing" or "correspondence" ~~shall include~~
35 *includes* email or other electronic communications if the recipient has
36 agreed in writing to receive electronic communications concerning the
37 property.

38 ~~(e)~~(f) "Digital assets" means any of the following that confers
39 economic, proprietary or access rights or powers:

- 40 (1) Virtual currencies;
- 41 (2) cryptocurrencies; or
- 42 (3) any other digital-only assets.

43 (g) "Domicile" means the state of incorporation of a corporation and

1 the state of the principal place of business of a holder other than a
2 corporation.

3 ~~(g)~~(h) "Financial organization" means a savings and loan association,
4 building and loan association, savings bank, industrial bank, bank, banking
5 organization or credit union.

6 ~~(g)~~(i) "Holder" means a person obligated to hold for the account of;
7 or deliver or pay to; the owner property that is subject to this act.

8 ~~(h)~~(j) "Insurance company" means an association, corporation,
9 fraternal or mutual benefit organization, whether or not for profit, engaged
10 in the business of providing life endowments, annuities or insurance,
11 including accident, burial, casualty, credit life, contract performance,
12 dental, disability, fidelity, fire, health, hospitalization, illness, life,
13 malpractice, marine, mortgage, surety, wage protection and workers
14 compensation insurance.

15 ~~(i)~~(k) "Last known address" means a description of the location of the
16 apparent owner sufficient for the purpose of the delivery of mail.

17 ~~(j)~~(l) "Mineral" means oil, gas, uranium, sulphur, lignite, coal and any
18 other substance that is ordinarily and naturally considered a mineral,
19 regardless of the depth at which the oil, gas, uranium, sulphur, lignite, coal
20 or other substance is found.

21 ~~(k)~~(m) "Mineral proceeds" means amounts payable for the extraction,
22 production or sale of minerals, or, upon abandonment of those payments,
23 all payments that become payable thereafter. The term includes amounts
24 payable:

25 (1) For the acquisition and retention of a mineral lease, including
26 bonuses, royalties, compensatory royalties, shut-in royalties, minimum
27 royalties and delay rentals;

28 (2) for the extraction, production or sale of minerals, including net
29 revenue interests, royalties, overriding royalties, extraction payments and
30 production payments; and

31 (3) under an agreement or option, including a joint operating
32 agreement, unit agreement, pooling agreement and farm-out agreement.

33 ~~(l)~~(n) "Money order" includes an express money order and a personal
34 money order, on which the remitter is the purchaser. The term does not
35 include a bank money order or any other instrument sold by a financial
36 organization if the seller has obtained the name and address of the payee.

37 ~~(m)~~(o) "Owner" means a person who has a legal or equitable interest
38 in property subject to this act or the person's legal representative. ~~The term~~
39 "Owner" includes a depositor in the case of a deposit, a beneficiary in the
40 case of a trust other than a deposit in trust and a creditor, claimant or payee
41 in the case of other property.

42 ~~(n)~~(p) "Person" means an individual, business association, financial
43 organization, estate, trust, state or other government, governmental

1 subdivision, agency or instrumentality or any other legal or commercial
2 entity.

3 ~~(q)~~(q) "Property" means tangible property or a fixed and certain
4 interest in intangible property that is held, issued or owed in the course of
5 a holder's business, or by a state or other government, governmental
6 subdivision, agency or instrumentality and all income or increments
7 therefrom. ~~The term~~ "Property" includes property that is referred to as or
8 evidenced by:

9 (1) Money, a check, draft, deposit, interest or dividend;

10 (2) credit balance, customer's overpayment, security deposit, refund,
11 credit memorandum, unpaid wage, mineral proceeds or unidentified
12 remittance;

13 (3) stock or other evidence of ownership of an interest in a business
14 association or financial organization;

15 (4) a bond, debenture, note or other evidence of indebtedness;

16 (5) money deposited to redeem stocks, bonds, coupons or other
17 securities or to make distributions;

18 (6) an amount due and payable under the terms of an annuity or
19 insurance policy, including policies providing life insurance, property and
20 casualty insurance, workers compensation insurance or health and
21 disability insurance; ~~and~~

22 (7) an amount distributable from a trust or custodial fund established
23 under a plan to provide health, welfare, pension, vacation, severance,
24 retirement, death, stock purchase, profit sharing, employee savings,
25 supplemental unemployment insurance or similar benefits; *and*

26 (8) *digital assets*.

27 ~~(r)~~(r) "Record" means information that is inscribed on a tangible
28 medium or that is stored in an electronic or other medium and is
29 retrievable in a perceivable form.

30 ~~(s)~~(s) "*Stake*" or "*staking*" means committing digital assets to a
31 blockchain network to participate in the blockchain network's operations
32 by validating transactions, proposing and attesting to blocks and securing
33 the network.

34 (t) "State" means any state of the United States, the District of
35 Columbia, the commonwealth of Puerto Rico or any territory, insular
36 possession or any other area subject to the jurisdiction of the United States.

37 ~~(u)~~(u) "Utility" means a person who owns or operates for public use
38 any plant, equipment, property, franchise or license for the transmission of
39 communications or the production, storage, transmission, sale, delivery or
40 furnishing of electricity, water, steam or gas.

41 ~~(v)~~(v) "Interest bearing property" means demand and savings accounts
42 and certificates of deposit ~~which~~ *that* at the time such accounts and
43 certificates were reported to the administrator paid interest to the owner.

1 Sec. 3. K.S.A. 58-3935 is hereby amended to read as follows: 58-
2 3935. (a) Property is presumed abandoned if it is unclaimed by the
3 apparent owner during the time set forth below for the particular property:

4 (1) Traveler's check, 15 years after its issuance;

5 (2) money order, seven years after issuance;

6 (3) except as provided in K.S.A. 58-3943, and amendments thereto,
7 stock or other equity interest in a business association or financial
8 organization, including a security entitlement under article 8 of the
9 uniform commercial code, five years after the earlier of:

10 (A) The date of the most recent dividend, stock split or other
11 distribution unclaimed by the apparent owner; or

12 (B) the date of the second mailing of a statement of account or other
13 notification or communication that was returned as undeliverable or after
14 the holder discontinued mailings, notifications or communications to the
15 apparent owner;

16 (4) debt of a business association or financial organization, other than
17 a bearer bond or an original issue discount bond, five years after the date
18 of the most recent interest payment unclaimed by the apparent owner;

19 (5) a demand, savings or time deposit, including a deposit that is
20 automatically renewable, five years after the earlier of maturity or the date
21 of the last indication by the owner of interest in the property, except that a
22 deposit that is automatically renewable is deemed matured for purposes of
23 this section upon its initial date of maturity, unless the owner has
24 consented to a renewal at or about the time of the renewal and the consent
25 is in writing or is evidenced by a memorandum or other record on file with
26 the holder;

27 (6) money or credits owed to a customer as a result of a retail
28 business transaction, five years after the obligation accrued;

29 (7) amount owed by an insurer on a life or endowment insurance
30 policy or an annuity that has matured or terminated, three years after the
31 obligation to pay arose or, in the case of a policy or annuity payable upon
32 proof of death, three years after the insured has attained; or would have
33 attained if living, the limiting age under the mortality table on which the
34 reserve is based;

35 (8) property distributable by a business association or financial
36 organization in a course of dissolution, one year after the property
37 becomes distributable;

38 (9) property received by a court as proceeds of a class action, and not
39 distributed pursuant to the judgment, one year after the distribution date;

40 (10) property held by a court, state or other government,
41 governmental subdivision, agency or instrumentality, one year after the
42 property becomes distributable;

43 (11) wages or other compensation for personal services, one year

1 after the compensation becomes payable;

2 (12) deposit or refund owed to a subscriber by a utility, one year after
3 the deposit or refund becomes payable;

4 (13) property held by agents and fiduciaries in a fiduciary capacity
5 for the benefit of another person, five years after it has become payable or
6 distributable, unless the owner has increased or decreased the principal,
7 accepted payment of principal or income, communicated concerning the
8 property or otherwise indicated an interest as evidenced by a memorandum
9 or other record on file prepared by the fiduciary;

10 (14) property in an individual retirement account, defined benefit plan
11 or other account or plan that is qualified for tax deferral under the income
12 tax laws of the United States, three years after the earliest of the date of the
13 distribution or attempted distribution of the property, the date of the
14 required distribution as stated in the plan or trust agreement governing the
15 plan; or the date, if determinable by the holder, specified in the income tax
16 laws of the United States by which distribution of the property ~~must~~ *shall*
17 begin in order to avoid a tax penalty;

18 (15) property distributable in the course of a demutualization,
19 rehabilitation or related reorganization of an insurance company shall be
20 deemed abandoned as follows:

21 (A) Any check or draft, two years after the date of the
22 demutualization or reorganization, if the check or draft has not been
23 presented for payment and the owner has not otherwise communicated
24 with the holder or its agent regarding the property;

25 (B) (i) any other property, two years after the date of the
26 demutualization or reorganization if instruments or statements reflecting
27 the distribution are either mailed to the owner and returned by the post
28 office as undeliverable; or not mailed to the owner because of an address
29 on the books and records of the holder that is known to be incorrect; and

30 (ii) the owner has not:

31 (a) Communicated in writing with the holder or its agent regarding
32 the property; or

33 (b) otherwise communicated with the holder or its agent regarding the
34 property as evidenced by a memorandum or other record on file with the
35 holder or its agent.

36 (c) For any time more than two years after the date of
37 demutualization or reorganization, any property ~~which~~ *that* is not subject
38 to subparagraph (A) or (B) ~~of this paragraph (15)~~ shall be treated under
39 other provisions of this chapter for the specific type of property;

40 (16) *digital assets, three years after a written or electronic*
41 *communication is returned to the owner as undeliverable by the United*
42 *States postal service, email or any other electronic messaging method, as*
43 *applicable. The three-year presumption of abandonment ceases*

1 immediately on the exercise of an act of ownership interest in the digital
2 asset or by a written, oral or electronic communication with the holder of
3 the digital asset and that is evidenced by a memorandum or other record
4 that is on file with the holder or the holder's agent. For the purposes of
5 this paragraph, "exercise of an act of ownership interest" includes any of
6 the following:

7 (A) The owner taking action regarding the digital asset;

8 (B) conducting a transaction regarding the digital asset or the
9 account in which the digital asset is held, including depositing moneys
10 into or withdrawing moneys from such account;

11 (C) electronically accessing the account in which the digital asset is
12 held;

13 (D) conducting any activity with respect to another account that is
14 owned by the owner and held by the same holder; or

15 (E) taking any other action that reasonably demonstrates to the
16 holder that the owner knows the property exists.

17 (17) all other property, five years after the owner's right to demand
18 the property or after the obligation to pay or distribute the property arises,
19 whichever first occurs first; and

20 ~~(17)~~(18) any proceeds of a sale pursuant to K.S.A. 58-817, and
21 amendments thereto, ~~which~~ that remain after satisfaction of the lien
22 provided by K.S.A. 58-816, and amendments thereto, ~~that~~ and have been
23 unclaimed by the owner for one year from receipt of the proceeds of the
24 sale and satisfaction of the lien.

25 (b) At the time that an interest is presumed abandoned under
26 subsection (a), any other property right accrued or accruing to the owner as
27 a result of the interest; and not previously presumed abandoned; is also
28 presumed abandoned.

29 (c) Property is unclaimed if, for the applicable period set forth in
30 subsection (a), the apparent owner has not communicated in writing or by
31 other means reflected in a contemporaneous record prepared by or on
32 behalf of the holder, with the holder concerning the property or the account
33 in which the property is held, and has not otherwise indicated an interest in
34 the property. A communication by an owner with a person other than the
35 holder or the holder's representative who has not in writing identified the
36 property to the owner is not an indication of interest in the property by the
37 owner.

38 (d) An indication of an owner's interest in property includes:

39 (1) The presentment of a check or other instrument of payment of a
40 dividend or other distribution made with respect to an account or
41 underlying stock or other interest in a business association or financial
42 organization or, in the case of a distribution made by electronic or similar
43 means, evidence that the distribution has been received;

1 (2) owner-directed activity in the account in which the property is
2 held, including a direction by the owner to increase, decrease or change
3 the amount or type of property held in the account;

4 (3) the making of a deposit to or withdrawal from a bank account;
5 and

6 (4) the payment of a premium with respect to a property interest in an
7 insurance policy, except that the application of an automatic premium loan
8 provision or other nonforfeiture provision contained in an insurance policy
9 does not prevent a policy from maturing or terminating if the insured has
10 died or the insured or the beneficiary of the policy has otherwise become
11 entitled to the proceeds before the depletion of the cash surrender value of
12 a policy by the application of those provisions.

13 (e) Property is payable or distributable for the purpose of this act
14 notwithstanding the owner's failure to make demand or to present any
15 instrument or document otherwise required to obtain payment.

16 (f) Any demand or savings account or matured timed deposit with a
17 financial organization shall not be presumed abandoned if regular
18 correspondence to an owner of the account has not been returned to the
19 sender.

20 (g) Any outstanding check, draft, credit balance, customer's
21 overpayment or unidentified remittance issued to a sole proprietorship or
22 business association as part of a commercial transaction in the ordinary
23 course of a holder's business shall not be presumed abandoned.

24 (h) A holder may not impose with respect to any property payable or
25 distributable for the purpose of this act, including any income or increment
26 derived therefrom, any fee or charge due to dormancy or inactivity or
27 cease payment of interest unless:

28 (1) There is an enforceable written contract between the holder and
29 the owner of the property pursuant to which the holder may impose a
30 charge or cease payment of interest;

31 (2) for property in excess of \$100, the holder, ~~no~~ not more than three
32 months before the initial imposition of those charges or cessation of
33 interest, has mailed written notice to the owner of the amount of those
34 charges at the last known address of the owner stating that those charges
35 will be imposed or that interest will cease, but the notice provided in this
36 section need not be given with respect to charges imposed or interest
37 ceased before the effective date of this act, or for property described in
38 K.S.A. 58-3937 and 58-3938, and amendments thereto; and

39 (3) the holder regularly imposes such charges or ceases payment of
40 interest and in no instance reverses or otherwise cancels them or
41 retroactively credits interest with respect to the property. Charges imposed
42 because of dormancy or inactivity may be made and collected monthly,
43 quarterly or annually except that beginning with the effective date of this

1 act, such charges may only be imposed for a maximum of five calendar
2 years.

3 (i) For the purpose of this section, a person who holds property as an
4 agent for a business association is deemed to hold the property in a
5 fiduciary capacity for that business association alone unless the agreement
6 between the agent and the business association provides otherwise.

7 (j) For the purposes of this act, a person who is deemed to hold
8 property in a fiduciary capacity for a business association alone is the
9 holder of the property only insofar as the interest of the business
10 association in the property is concerned, and the business association is the
11 holder of the property insofar as the interest of any other person in the
12 property is concerned.

13 (k) Any property held by a financial organization that would
14 otherwise be presumed abandoned under this section shall not be
15 presumed abandoned if the apparent owner:

16 (1) Owns other property ~~which~~ *that* is not presumed abandoned and if
17 the financial organization communicates in writing with the owner with
18 regard to the property that would otherwise be presumed abandoned under
19 this section at the address to which communications regarding the other
20 property regularly are sent; or

21 (2) had another relationship with the financial organization
22 concerning which the owner has:

23 (A) Communicated in writing with the financial organization; or

24 (B) otherwise indicated an interest as evidenced by a memorandum or
25 other record on file prepared by an employee of the financial organization
26 and if the financial organization communicates in writing with the owner
27 with regard to the property that would otherwise be abandoned under this
28 section at the address to which communications regarding the other
29 relationship regularly are sent.

30 Sec. 4. K.S.A. 58-3952 is hereby amended to read as follows: 58-
31 3952. (a) At the time of the filing of the report required by ~~subsection (d)~~
32 ~~of K.S.A. 58-3950(d)~~, and amendments thereto, and with that report, the
33 holder of property presumed abandoned shall pay, deliver or cause to be
34 paid or delivered to the administrator the property described in the report
35 as unclaimed, but if, at the time provided for delivery of the property, a
36 penalty or forfeiture in the payment of interest would result, the time for
37 compliance is extended until a penalty or forfeiture would no longer result.

38 (b) If the property reported to the administrator is a security or
39 security entitlement under article 8 of the uniform commercial code, the
40 administrator is an appropriate person to make an endorsement, instruction
41 or entitlement order on behalf of the apparent owner to invoke the duty of
42 the issuer or its transfer agent or the securities intermediary to transfer or
43 dispose of the security or the security entitlement in accordance with

1 article 8 of the uniform commercial code.

2 (c) If the holder of property reported to the administrator is the issuer
3 of a certificated security, the administrator has the right to obtain a
4 replacement certificate pursuant to K.S.A. 84-8-405, and amendments
5 thereto, but an indemnity bond is not required.

6 (d) An issuer, the holder and any transfer agent or other person acting
7 pursuant to the instructions of and on behalf of the issuer or holder in
8 accordance with this section is not liable to the apparent owner and ~~must~~
9 *shall* be indemnified against claims of any person in accordance with
10 K.S.A. 58-3953, and amendments thereto, for any loss or damage caused
11 by the transfer, issuance and delivery of the certificate or security to the
12 administrator.

13 (e) A holder is required to deliver property reported as aggregate
14 under K.S.A. 58-3950, and amendments thereto, only if the total amount
15 of the aggregate property reported exceeds \$250.

16 (f) *If the property reported to the administrator is a digital asset, the*
17 *holder shall report and deliver such digital asset in its native form to the*
18 *administrator or the administrator's designated qualified custodian within*
19 *30 days after reporting the property as abandoned. On direction by the*
20 *administrator, the qualified custodian may stake to receive rewards or*
21 *receive airdrops. On the expiration of three years after the date that the*
22 *digital asset was transferred to the qualified custodian and if the property*
23 *remains unclaimed, any airdrops or staking rewards shall be transferred*
24 *to the bitcoin and digital asset reserve fund established in section 1, and*
25 *amendments thereto. If the holder only possesses a partial private key to*
26 *the digital asset or is unable to move the digital asset, the holder shall*
27 *maintain such digital asset until the additional keys required to transfer*
28 *such digital asset become available. For the purposes of this subsection,*
29 *"qualified custodian" means any of the following that is licensed in this*
30 *state to sell digital assets and offer custody services to customers:*

31 (1) *A company;*

32 (2) *a federal or state chartered bank;*

33 (3) *a trust company; or*

34 (4) *a special purpose depository institution.*

35 Sec. 5. K.S.A. 58-3955 is hereby amended to read as follows: 58-
36 3955. (a) Except as provided in subsections (b) and (c), the administrator,
37 within three years after the receipt of abandoned property, shall sell ~~it~~ *such*
38 *property* to the highest bidder at public sale in whatever city in the state
39 affords in the judgment of the administrator the most favorable market for
40 the property involved. The administrator may decline the highest bid and
41 reoffer the property for sale if in the judgment of the administrator the bid
42 is insufficient. If in the judgment of the administrator the probable cost of
43 sale exceeds the value of the property, the property need not be offered for

1 sale. Any sale held under this section shall be preceded by a single
2 publication of notice, at least three weeks in advance of sale, in a
3 newspaper of general circulation in the county in which the property is to
4 be sold.

5 (b) Securities listed on an established stock exchange shall be sold at
6 prices prevailing at the time of sale on the exchange. Other securities may
7 be sold over the counter at prices prevailing at the time of sale or by any
8 other method the administrator considers advisable.

9 (c) All securities presumed abandoned and delivered to the
10 administrator shall be held for at least six months before they may be sold.
11 All securities ~~must~~ *shall* be sold within one year after they are delivered to
12 the administrator. A person making a claim under this act is entitled to
13 receive either the securities delivered to the administrator by the holder, if
14 they still remain in the hands of the administrator, or the proceeds received
15 from the sale, less any amounts deducted pursuant to ~~subsection (b) of~~
16 K.S.A. 58-3956(b), and amendments thereto, but no person has any claim
17 under this act against the state, the holder, any transfer agent, registrar or
18 other person acting for or on behalf of a holder for any appreciation in the
19 value of the property occurring after delivery by the holder to the
20 administrator.

21 (d) *The administrator shall sell digital assets that are listed on an*
22 *established digital asset exchange at prices prevailing on the exchange at*
23 *the time of the sale. The administrator shall not sell a digital asset listed*
24 *on an established digital asset exchange for less than the prevailing price*
25 *that is listed on such exchange at the time of sale. The administrator may*
26 *sell a digital asset that is not listed on an established exchange by any*
27 *commercially reasonable method.*

28 (e) ~~The purchaser purchase~~ of property at any sale conducted by the
29 administrator pursuant to this act ~~takes~~ *renders* the property free of all
30 claims of the owner or previous holder thereof and of all persons claiming
31 through or under them. The administrator shall execute all documents
32 necessary to complete the transfer of ownership.

33 Sec. 6. K.S.A. 58-3934, 58-3935, 58-3952 and 58-3955 are hereby
34 repealed.

35 Sec. 7. This act shall take effect and be in force from and after its
36 publication in the statute book.