



## 102ND GENERAL ASSEMBLY

### State of Illinois

### 2021 and 2022

#### HB5427

Introduced 1/31/2022, by Rep. Deanne M. Mazzochi

#### SYNOPSIS AS INTRODUCED:

205 ILCS 730/2 new  
205 ILCS 730/25 new  
205 ILCS 730/30 new

Amends the Blockchain Technology Act. Sets forth provisions concerning the purpose and findings of the Blockchain Technology Act. Provides that a court shall permit discovery of electronic records if the existence or ownership of a digital asset secured by a blockchain is factually in dispute. Sets forth provisions concerning permissible discovery of facts and information concerning digital assets and discovery procedures for digital assets. Provides that a court may order that the party with ownership or control over an account generate a test transaction in an amount not to exceed \$1 to prove ownership or control over the account. Provides that a party holding a digital asset where the nature and type of the digital asset is at issue in the case may shield the need for disclosure if it posts security with the court for a comparable value for the digital asset in question if the value of the digital asset can be assessed, or for a value that is reasonably correlated to the estimated value of any judgment. Provides that a party seeking to validate or challenge the nature, accuracy, or propriety of a vote taken in connection with a decentralized autonomous organization shall be allowed discovery sufficient to describe the nature and type of vote or votes being taken. Provides that the provisions are repealed 5 years after the effective date of the amendatory Act. Creates the Digital Asset Discovery Task Force to conduct a review of the court-ordered discovery of digital asset procedures. Sets forth provisions concerning the Task Force's members, administrative support, and compensation. Provides that the Task Force shall submit a report containing its findings and any recommendations to the Supreme Court and the General Assembly by January 1, 2023. Provides that the Task Force is dissolved on January 1, 2024. Effective immediately.

LRB102 25014 BMS 34271 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Blockchain Technology Act is amended by  
5 adding Sections 2, 25, and 30 as follows:

6 (205 ILCS 730/2 new)

7 Sec. 2. Purpose and findings. The purpose of this Act is to  
8 create general standards for authenticating, identifying, and  
9 validating blockchain-based digital assets.

10 The General Assembly finds that to encourage innovation  
11 and use of digital assets, including cryptocurrency, it is  
12 necessary to provide rudimentary protection to consumers who  
13 may seek to acquire or use such digital assets, or use them for  
14 payment purposes in commercial transactions. The procedures in  
15 this Act recognize that the significant intangible nature of  
16 digital assets, as well as decentralized decision making, will  
17 place burdens on parties seeking discovery and information in  
18 association with digital assets. At the same time, courts  
19 should not overly burden digital asset holders and individuals  
20 or organizations who hold or manage them with production  
21 obligations that risk being disproportionate to the needs of a  
22 case, or to abusive discovery that may damage the value of the  
23 digital asset that may be in dispute.

1 (205 ILCS 730/25 new)

2 Sec. 25. Court-ordered discovery of digital assets.

3 (a) If the existence or ownership of a digital asset  
4 secured by a blockchain, whether in the form of a smart  
5 contract, record, signature, or cryptocurrency, is factually  
6 in dispute, a court shall permit discovery, subject to  
7 reasonable time and scope constraints and the relevance to  
8 disputed issues and needs in the case pertaining to facts or  
9 legal disputes pertaining to the elements of the claim, as  
10 follows:

11 (1) The identity of a person who can authenticate a  
12 digital ledger and the process for generating the digital  
13 ledger. If no such person can be found within the  
14 jurisdiction of the State of Illinois, a party seeking  
15 discovery may compel the party holding the digital asset  
16 to identify a person who is prepared to authenticate the  
17 digital ledger and procedural protocols for assessing the  
18 trustworthiness of the digital ledger and who shall be:

19 (A) a resident of the State of Illinois;

20 (B) a non-resident who agrees to be subject to the  
21 jurisdiction of the court for this limited purpose,  
22 and the court may order that appearance for this  
23 purpose does not subject the non-resident to Illinois  
24 jurisdiction for any other purposes; or

25 (C) if the asset is held or managed by a

1 third-party provider, whether a financial institution,  
2 exchange, brokerage, or other legal entity serving as  
3 a repository for blockchain records, smart contracts,  
4 digital signatures, private keys, or cryptocurrency, a  
5 designee of such a third party who is willing to appear  
6 in the court's jurisdiction; the court may order that  
7 appearance for this purpose does not subject the  
8 non-resident to Illinois jurisdiction for any other  
9 purpose.

10 (2) The identification of an individual who has  
11 possession of a private key capable of transferring or  
12 otherwise modifying the digital asset.

13 (3) For cryptocurrency, a general description of the  
14 nature and type of private key, including, but not limited  
15 to, as the reasonable and proportionate needs of the case  
16 may require:

17 (A) A description of whether the private key has  
18 been reduced to a physical embodiment, including a  
19 handwritten note, QR code, thumb drive, computer  
20 drive, or other storage mechanism, and where this  
21 physical medium is located. Such information shall be  
22 treated as highly confidential trade secret  
23 information, and shall not be publicly disclosed  
24 unless a court specifically orders otherwise, unless  
25 otherwise agreed to in writing by the parties. A court  
26 may order that the physical location of the private

1           key be preserved and not moved absent reasonable  
2           advance notice to the court and the parties.

3           (B) If the private key is not embodied in a  
4           physical form, but only committed to human memory, a  
5           court may order that the party holding the private key  
6           generate a physical embodiment to secure the asset,  
7           post a bond to secure the asset, or place the digital  
8           asset in the management of an independent third party  
9           qualified to handle digital assets who agrees to be  
10           subject to the jurisdiction of the court and to not  
11           materially alter the digital asset.

12           (C) An estimated value of the digital asset, if  
13           the digital asset may be used to secure a judgment in  
14           the case or if the ownership or value of the digital  
15           asset itself is in dispute in the case.

16           (4) For cryptocurrency, a court may order that the  
17           party with ownership or control over an account generate a  
18           test transaction in an amount not to exceed \$1 to prove  
19           ownership or control over the account. A court may order  
20           that the party with ownership or control over the account  
21           not modify or transfer the digital asset if the digital  
22           asset may be used to satisfy a claim or judgment in the  
23           case, or take other reasonable precautions to preserve the  
24           value of the digital asset while a case is pending. A court  
25           may draw an adverse interest against a party for failure  
26           to comply with this paragraph.

1           (5) Whether the digital asset is maintained on a  
2           database or cloud service, if known and reasonably  
3           accessible based on the needs of the case.

4           (6) The number of persons or parties who have access  
5           to the digital asset, if known and reasonably accessible  
6           based on the needs of the case, and the nature of that  
7           access; and whether the data access requires private  
8           permission, is invite only, or has been publicly accessed  
9           or trust-tested.

10          (7) The general nature of the validation process for  
11          the digital asset, if knowable and reasonably accessible  
12          based on the needs of the case, including the criteria for  
13          trusted persons, proxies, voting, or other relationships  
14          used to secure the integrity of the blockchain.

15          (8) For a digital asset, accounting records or the  
16          identification of a person who can describe the nature and  
17          contents of the account, if knowable and reasonably  
18          accessible based on the needs of the case.

19          (9) A party holding a digital asset where the nature  
20          and type of the digital asset is at issue in the case may  
21          shield the need for disclosure, notwithstanding the  
22          procedures set forth in this subsection, if it posts  
23          security with the court for a comparable value for the  
24          digital asset in question if the value of the digital  
25          asset can be assessed, or for a value that is reasonably  
26          correlated to the estimated value of any judgment. The

1 fact that security was posted shall not be admissible  
2 before a jury and no inference shall be made against the  
3 party merely for posting security in connection with this  
4 paragraph.

5 (10) A party seeking to validate or challenge the  
6 nature, accuracy, or propriety of a vote taken in  
7 connection with a decentralized autonomous organization  
8 shall be allowed discovery sufficient to describe the  
9 nature and type of vote or votes being taken; the  
10 pre-approved protocol to be used for casting a vote in  
11 connection with a vote that is reasonably in dispute based  
12 on the factual needs and claims in the case; and the  
13 identity of an individual within the organization with  
14 knowledge, or who can be prepared with the applicable  
15 knowledge by those with operational control for the  
16 organization, as to the vote protocols and outcomes. The  
17 pre-approved written protocol in place at the time of the  
18 vote shall be presumed to be the governing protocol, and  
19 the burden shall be on the decentralized autonomous  
20 organization to demonstrate compliance with the voting  
21 protocol, including that the vote, including any vote  
22 involving a proxy or a vote through artificial  
23 intelligence or machine learning, was valid, accurate, and  
24 true under the protocol at the time of the vote.

25 (b) This Section is repealed 5 years after the effective  
26 date of this amendatory Act of the 102nd General Assembly.

1 (205 ILCS 730/30 new)

2 Sec. 30. Digital Asset Discovery Task Force.

3 (a) The Digital Asset Discovery Task Force is created. The  
4 purpose of the Task Force is to conduct a review of the  
5 court-ordered discovery of digital asset procedures under  
6 Section 25.

7 (b) The Task Force shall consist of 15 members as follows:

8 (1) one member appointed by the Speaker of the House  
9 of Representatives;

10 (2) one member appointed by the Minority Leader of the  
11 House of Representatives;

12 (3) one member appointed by the President of the  
13 Senate;

14 (4) one member appointed by the Minority Leader of the  
15 Senate;

16 (5) 2 members appointed by the Governor;

17 (6) 2 members appointed by Secretary of Financial and  
18 Professional Regulation representing companies in the  
19 business of blockchain-based assets; and

20 (7) 7 members appointed by the Justices of the Supreme  
21 Court.

22 (c) At the direction of the Supreme Court, the  
23 Administrative Office of the Illinois Courts shall provide  
24 administrative support to the Task Force.

25 (d) The Task Force shall submit a report containing its



1 findings and any recommendations to the Supreme Court and the  
2 General Assembly by January 1, 2023.

3 (e) The Task Force shall meet as it deems appropriate.

4 (f) Members of the Task Force shall serve without  
5 compensation.

6 (g) The Task Force is dissolved on January 1, 2024.

7 (h) The Supreme Court may establish procedural rules  
8 encouraging fairness and access for blockchain-based digital  
9 assets.

10 Section 99. Effective date. This Act takes effect upon  
11 becoming law.