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What Do Wyoming's 13 New Blockchain Laws Mean?

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Crypto & Blockchain

I bring you bitcoin/blockchain thru a 22-year Wall St. veteran's lens

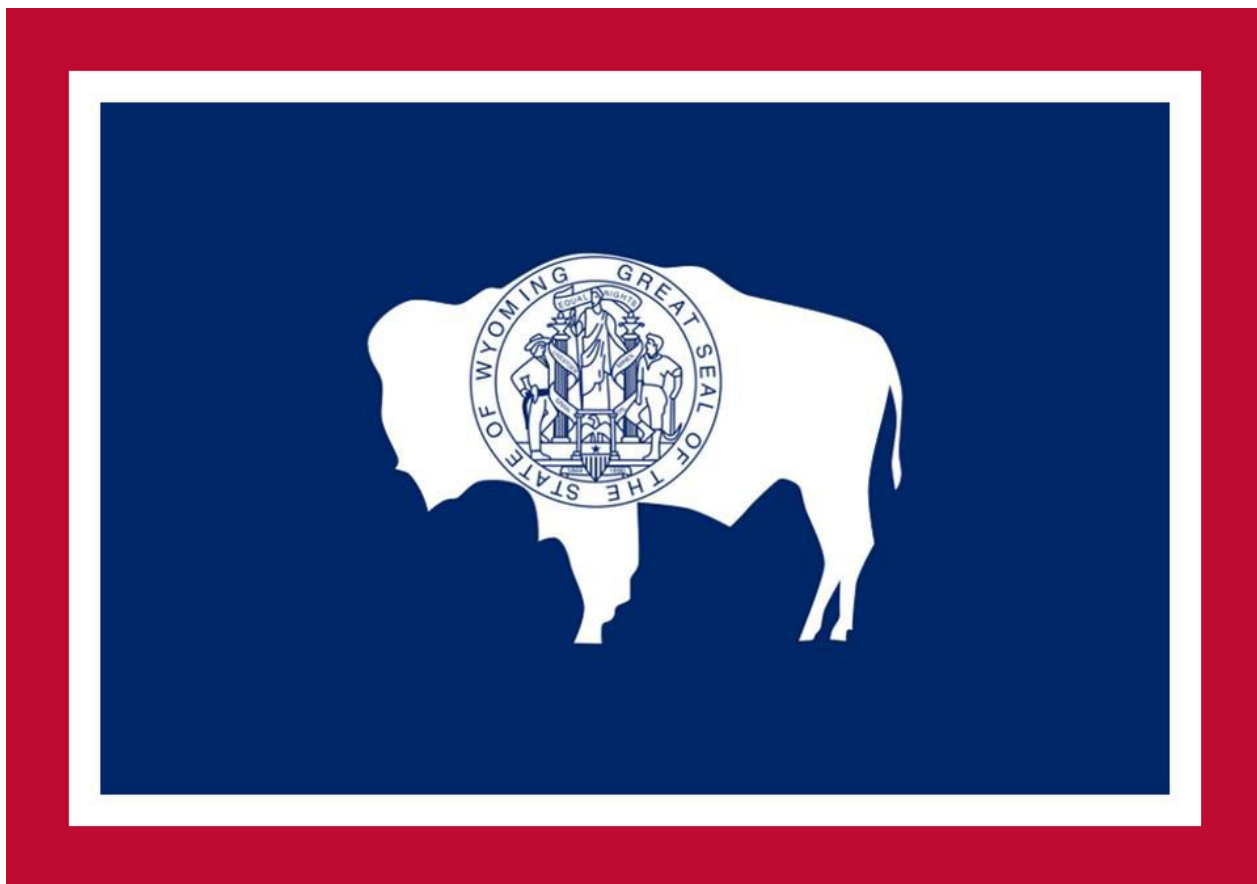
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Wyoming has now enacted a total of 13 blockchain-enabling laws, making it the only US state to provide a comprehensive, welcoming legal framework that enables blockchain technology to flourish, both for individuals and companies.

🐦 These laws enable innovation and creativity, and are meant to bring capital, jobs and revenue into Wyoming.

Law and technology are discrete systems. For a new technology to attain wide adoption, the law and technology must be “backwards-compatible,” as early bitcoin investor Trace Mayer puts it. In a nutshell, that’s what Wyoming has now done for blockchain technology.

Here’s an analysis of what I think it all means. NONE of what follows is legal or tax advice—this is for educational purposes only. You may not rely on it and you must seek a qualified adviser to advise you about how you can take advantage of the great opportunities Wyoming offers!

In sum, Wyoming is already the "Delaware of digital asset law," a reference to Delaware’s lead in corporate law. 🐦 More than a dozen other US states and Congress are now following Wyoming’s lead by enacting our bills (usually just one or two of Wyoming’s bills). But no other state is likely to catch up to Wyoming—it’s a very tall order for any legislature to enact 13 bills on a single topic in a compressed time frame, especially when another state has already claimed first-mover advantage.

Here are the top highlights regarding Wyoming’s newest blockchain laws:

- **Recognizes** direct property rights for individual owners of digital assets of all types (virtual currencies, digital securities and utility tokens) and applies the super-negotiability rules of commercial law to virtual currencies—which foster their liquidity—by applying the very same rules that apply to money. Wyoming’s commercial law reflects the true nature of digital assets (directly owned, peer-to-peer assets), and I strongly encourage other states to adopt Wyoming’s same commercial law protections;

- **Creates** a fintech sandbox to provide regulatory relief to financial innovators from existing laws for up to 3 years. It's broadly reciprocal with fintech sandboxes both in the US and globally;
- **Authorizes** a new type of state-chartered depository institution to provide basic banking services to blockchain and other businesses. The bank is required to have 100% reserves, cannot lend, is for business depositors only, and FDIC insurance is optional. Such banks could be operating as soon as March 31, 2020;
- **Authorizes** the first true "qualified custodian" for digital assets which is a bank. Wyoming banks can start such operations as soon as September 1, 2019. Wyoming's digital asset custodians will stand out above all others because they will respect the DIRECT ownership nature of digital assets! These new custodians won't be like traditional securities custodians, because for a Wyoming-based custodian investors will still DIRECTLY own their digital assets under custody as a BAILMENT, which means they retain direct ownership while merely giving up control (much like valet parking). Today, institutional investors are forced to be *de facto* creditors of their securities custodians, since all publicly-traded securities are owned indirectly. Custody under bailment is possible in securities custody today, but it's neutered by the fact that all securities are owned indirectly—investors can't directly own the real security, and therefore they're really just counterparties to the custodian. So, what Wyoming has done is truly revolutionary—BAILMENT + DIRECT ownership! It doesn't exist in securities custody today! Customers of Wyoming custodians can still choose indirect ownership, but it's on much more investor-friendly terms than exist in securities custody today. In sum, Wyoming will become known as the home of SOLVENT, investor-friendly digital asset custodians to which investment fiduciaries are likely to migrate over time.

Why would a staunch supporter of #NotYourKeysNotYourCoins, as I am, help set up a digital asset custodian—especially when I acknowledge all third parties can be security holes? Answer: the custodian is for large institutional investors, which are required by federal securities law to store the assets they manage at an

independent custodian. And, now, these institutional investors will be able to directly own the digital assets they custody at solvent Wyoming custodians.

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Capital ultimately flows to where it's treated best. For digital assets within the US, I'm pretty confident that will end up being Wyoming. It's all about its legal regime respecting DIRECT ownership of digital assets, whether by individuals or institutional investors. I was formerly a fiduciary of pension plans and, based on that experience, I think it will become a very big deal that provably SOLVENT custodians exist. As more and more securities are natively-issued on blockchains in the next several years, Wyoming's custodians will likely become the preferred digital-asset custodians of 401(k) plans and mutual funds—and they will help make securities markets fair to regular investors!

Here are some common questions about Wyoming's laws. Again, this is not legal or tax advice!

1. DO YOU NEED TO MOVE TO WYOMING TO BENEFIT FROM ITS BLOCKCHAIN LAWS?

No, not unless you're starting a Wyoming bank or custodian. For everyone else, it's pretty easy to take advantage of Wyoming's blockchain laws. Just ask your attorney!

2. HOW CAN INDIVIDUALS BENEFIT FROM THE WYOMING BLOCKCHAIN LAWS?

Individual owners of digital assets can gain the protections of Wyoming's laws by moving to Wyoming, or you may physically locate your cold storage digital assets

somewhere in Wyoming or set up your own Wyoming LLC, corporation, trust, foundation or other business entity (through which to own your digital assets). As I'll discuss below, there's a particular reason why owning digital assets via a Wyoming entity may be beneficial. From a personal wealth planning and protection standpoint, Wyoming's laws really can't be beat. Billions of dollars in trust assets are already managed in our state. Wyoming invented the LLC in 1977 and this year it revamped its trust and statutory foundation laws to be the best in the US. Its LLC laws have very strong privacy protections, and Wyoming is frequently cited as the tax-friendliest state in the United States (more on that below).

3. HOW CAN BUSINESSES BENEFIT FROM WYOMING'S BLOCKCHAIN LAWS?

Businesses have 3 ways to benefit and they're not mutually exclusive. Your business can (1) simply apply Wyoming law to its contracts involving digital assets, (2) legally domicile in Wyoming and/or (3) physically locate in Wyoming. If you own a blockchain business, you should already be asking your attorney why the company is still domiciled anywhere other than Wyoming and examine the costs/benefits of converting to a Wyoming domicile. One objection I've heard from attorneys is that Wyoming doesn't have a special court for resolving complex business disputes like Delaware does. Well, Wyoming just solved that by setting up its own business court ("Chancery Court") this year, details of which are [here](#).

4. HOW ARE THE TAXES IN WYOMING?

Basically, there are none at the state level—in most cases! In the US, federal taxes are distinct from state taxes and federal taxes apply to every American—but Wyoming can (and does) offer what's probably the friendliest *state* tax regime. Wyoming often comes up #1 on surveys of the best states for tax purposes. At the state level, Wyoming has no personal income tax, no corporate income tax, and almost none of the other "gotcha" taxes that frequently hit businesses domiciled in other US states, such as franchise taxes or gross-receipts taxes.

Every Delaware-registered business should be asking your tax adviser how much you pay in Delaware franchise taxes every year and then calculate how much you'd save by redomiciling to Wyoming (hint hint!). And, for digital assets specifically, last year Wyoming [exempted](#) them from property taxes. Sales taxes apply to tangible personal property, but Wyoming's legislature this year [classified](#) digital assets as *intangible* personal property so...you can fill in the blank.

As for federal tax relief, Wyoming can't fix the IRS's terrible tax treatment of digital assets (yes, spending bitcoin on a cup of coffee triggers federal capital gains tax). But there are [25 opportunity zones](#) located around Wyoming that provide potential capital gains tax deferral—again, talk to your tax adviser. Some of these locations might be great spots for cold-storage vaults, mining operations and/or the new headquarters of your start-up or investment fund.

In short, there are very good tax reasons why, as they say, “the billionaires are pushing out the millionaires” in Jackson Hole, Wyoming, and why so many tax-motivated relocations to Wyoming are happening. Wyoming is America's tax-friendliest state in many ways—and it has the clearest, tax-friendly approach to digital assets.

5. WHAT DOES WYOMING'S NEW COMMERCIAL LAW FOR DIGITAL ASSETS MEAN?

Wyoming is the first state to clarify the treatment of digital assets under existing commercial laws (e.g., the Uniform Commercial Code (UCC)), and [this](#) is probably the most important of Wyoming's new blockchain laws. Laws governing commerce are the foundational laws of business—they're a “protocol layer” of the legal system. These laws are essentially the plumbing that makes every financial transaction possible, and most importantly, they provide rules for what happens when a transaction doesn't go smoothly—ensuring parties have certainty regarding their rights and duties.

States control commercial laws in the US, so the federal government cannot trump what Wyoming has just created. I strongly encourage other states to enact Wyoming's same statutory language, which you can find [here](#).

Wyoming's commercial law for digital assets is WAY too detailed to analyze here, but I'll highlight my favorite four parts of it. First, as described above, it maps virtual currencies to the super-negotiability rules of money under existing law. In plain terms, this means a bitcoin purchaser can buy bitcoin free and clear of any pre-existing liens against it, unless the purchaser was defrauding a lender who had previously made a loan against that bitcoin. Second, it defines "control" in a manner that's consistent with how blockchain assets are actually controlled. It also enables a smart contract to take control of a digital asset—very forward-thinking! Third, it makes security interests in digital assets "possessory security interests," which means Wyoming law applies as long as the assets are, under this law, "located in" Wyoming—and the law makes it very easy to "locate" the digital assets in Wyoming. Possessory security interests have priority over other types of security interests. (For this reason alone, I suspect most coin lending and prime brokerage businesses will want to domicile in Wyoming.) Fourth, it extinguishes pre-existing liens after two years—to match the statute of limitations for fraudulent conveyance under federal bankruptcy law.

The latter is one reason why it may make sense for individuals to store digital assets in Wyoming or through a Wyoming LLC, trust or other entity. Here's the issue that may solve. It's possible—though admittedly an edge case—that a judge will enforce a prior lien against bitcoin that you, an innocent purchaser, did not know existed. To my knowledge that hasn't actually happened yet, but as bitcoin lending markets grow and as more merchants accept bitcoin (which may be covered by an all-assets lien over the merchant's inventory), the issue will inevitably arise. Some attorneys have called this [bitcoin's Achilles heel](#), and many speculate this "surprise" lien risk is one of the reasons why new bitcoins trade at a premium over older bitcoins in OTC markets. Well, Wyoming law provides a solution—ask your attorney about the myriad ways to get your digital assets subject to Wyoming law for two years!

6. ANYTHING ELSE?

Yes, a lot. Wyoming's money transmitter law [exempts crypto-to-crypto](#) transactions, effective as of last year. Many lawyers worry that Lightning Network

transactions may run afoul of money transmitter laws. Well, not in Wyoming (#probably!—check with your lawyer!) At least three other states that I know of have either enacted, or are in process of enacting, Wyoming's same money transmitter exemption for crypto-to-crypto transactions.

If you're working on security tokens, you won't find a friendlier state because Wyoming law legally recognizes both [uncertificated](#) and [certificated](#) blockchain shares of stock. Delaware was first to recognize blockchain shares, but it only recognizes uncertificated versions. Wyoming's new law regarding certificated shares just took effect this week, and WOW, Missouri was lightning fast in already copying it! Imitation is the sincerest form of flattery!

Wyoming was the first state to exempt [utility tokens](#) from its state securities laws, which took effect last year. State law doesn't trump federal laws regarding securities, but I'm pleased that Arizona also enacted a similar law last year and five other states have proposed it this year. Wyoming's law also heavily influenced the proposed federal [Token Taxonomy Act](#) in Congress. It's really true that the impetus to change bad federal law sometimes bubbles up from the states—and 7 states supporting a common cause is actually a lot, just one year into the effort—it's already a “movement” to push back against the SEC's view that most digital assets are securities.

And Wyoming added a couple of sweeteners to attract cryptocurrency miners to Wyoming as well.

One bill enables Wyoming's electric utilities to [negotiate directly](#) with miners, instead of requiring them to go through the ratemaking process. All gains and losses from mining agreements remain with the utility's shareholders, thereby completely insulating retail electric customers from these transactions.

And, with a goal to help Wyoming's struggling coal industry—which is crucial to Wyoming and is trying to recover from low coal prices—Wyoming passed a [bill](#) to provide a process for Wyoming's electric utilities to sell the coal-fired generation plants they would otherwise permanently be shutting down. Potential buyers may include crypto miners, among others, and I'm told power costs available in

Wyoming would be highly competitive with the best electricity prices available to miners around the world.

7. WHAT'S IN THIS FOR WYOMING?

CAPITAL, JOBS and REVENUE. It's really that simple.

8. WILL THERE BE PROBLEMS FOR WYOMING?

Sure. But Wyoming is ready, and its laws are pretty punitive on fraudsters. (Remember, rehypothecation is a felony in Wyoming...in New York, it wins bankers big bonuses. In Wyoming, it might land you in jail.)

9. TELL ME MORE ABOUT WYOMING'S QUALIFIED CUSTODIAN LAW

It's an opt-in regime available to any Wyoming bank, including its new special-purpose depository institutions. A bank license is superior to a trust company license for digital asset custody, for many reasons. Some have expressed concerns about triggering the Bank Holding Company Act (BHCA) by obtaining a Wyoming bank license, but a Wyoming special-purpose depository institution does not meet the definition of "bank" under the BHCA because it can't make commercial loans. The US Supreme Court has [rejected](#) previous attempts by the Federal Reserve to expand this definition, so Wyoming's special-purpose depository institution is a pretty neat regulatory option for those wanting to become qualified custodians of digital assets.

Wyoming's new law also ensures that digital asset owners have legal certainty about how their assets will be treated and the nature of the custodial relationship (clear laws that specifically govern digital assets + a Chancery Court exclusively devoted to fast resolution of business disputes). Digital assets held in custody today in any other state lack this certainty!

Wyoming's law contains many investor protections, and SOLVENT custodians will have no problem complying with these provisions. Institutional investors can

expect that Wyoming-based qualified custodians will actually be SOLVENT for three basic reasons:

- The custody relationship is legally a BAILMENT (akin to valet parking for your car, where you give up control but not ownership of your asset). This is far superior to how securities custodians traditionally work, where investors are *de facto* creditors of their custodians, which are leveraged and may or may not actually have on hand the assets they've promised to investors.
- The law's investor protections are a big deal—all value from digital assets (including forks, airdrops and staking) belongs to investors unless otherwise expressly agreed. This model is distinct from both traditional securities custodians and crypto exchanges, where investors are usually *de facto* creditors and where the firms frequently trade with customers' assets behind the scenes.
- Rehypothecation of assets—the practice of pledging the same asset as collateral for different loans, which is rampant in the securities industry and which poses solvency risks to traditional securities custodians—is expressly prohibited by Wyoming's new digital asset law. It was already a felony in Wyoming anyway, per a 1986 Supreme Court case ([*Smith v State*](#)).

In a nutshell, Wyoming's digital asset custodians will simply be service providers to institutional investors, who will still own their digital assets. They will not be counterparties that are *de facto* hedge funds in a relationship that is too often “heads I win, tails I win.” Fiduciaries of institutional investors will, I believe, appreciate this and migrate to Wyoming-based digital asset custodians.

Let me close by thanking the wise Wyoming legislators and Governor Gordon, who stand for strong property rights and are welcoming this industry with meaningful laws. Thank you also to all the small army of industry supporters who showed up to support the Wyoming Blockchain Coalition's events along the way, and to those who provided comments on our draft laws. We're all volunteers who crowdsourced this effort!

Very special thank you to Rep. Tyler Lindholm and Sen. Ogden Driskill, who led the posse so effectively. Special thanks to Steve Lupien of the Digital Asset Trade Association for his strong, intrepid support on the ground. Biggest thanks go to Chris Land, legislative draftsman extraordinaire and unsung hero of this massive undertaking—a true expert in commercial law and digital asset law. Yes, we even talked about the draft UCC bill on Christmas day!

I didn't intend to spend the last 14 months volunteering—but am so glad I did because it benefited two things I dearly love, Wyoming and blockchain. It's probable that my deep attraction to blockchain stems from my Wyoming upbringing. Wyoming instilled in me deep-seeded philosophies that have a strong cultural overlap with those of blockchain (i.e., what's mine is mine and what's yours is yours, good fences make good neighbors, rugged individualism, clear property rights and low taxes). Owing to this strong cultural overlap, it makes perfect sense that Wyoming will be the home of blockchain in the US!

I'll be hunkering down in the next few months to help advise the Wyoming Banking Division on the rules drafting process for institutional digital asset custody and special-purpose depository institutions. And I finally hope to finish the book I started writing about the intersection of Wall Street and blockchain. If only I weren't such a slow writer! :-)



Caitlin Long Contributor

I'm a 22-year Wall Street veteran who has been active in bitcoin since 2012, and whose passion is a fair and stable financial system. I saw inaccuracies in Wall Street's ledger systems while running Morgan Stanley's pension solutions business (2007-2016), holding senior rol... **Read More**

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