

118TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To impose requirements on digital exchanges, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. TILLIS (for himself and Mr. HICKENLOOPER) introduced the following bill; which was read twice and referred to the Committee on

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**A BILL**

To impose requirements on digital exchanges, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Proving Reserves of  
5 Others’ Funds Act” or the “PROOF Act”.

6 **SEC. 2. DEFINITIONS.**

7       In this Act:

8               (1) COVERED ASSET.—

9                       (A) IN GENERAL.—The term “covered  
10               asset” means, with respect to a customer of a

1 digital exchange, money, an asset, or property  
2 of the customer.

3 (B) EXCEPTIONS.—

4 (i) PROPRIETARY FUNDS.—The term  
5 “covered asset” does not include propri-  
6 etary funds of a digital exchange.

7 (ii) MARGIN ACCOUNTS.—If a cus-  
8 tomer of a digital exchange has opened a  
9 margin account for the purposes of bor-  
10 rowing cash or digital assets, or other re-  
11 lated activity, the assets in that margin ac-  
12 count are not covered assets.

13 (2) DIGITAL ASSET.—The term “digital asset”  
14 means any digital representation of value that is re-  
15 corded on a cryptographically-secured digital ledger.

16 (3) DIGITAL COMMODITY.—The term “digital  
17 commodity” means any form of fungible and intan-  
18 gible personal property that—

19 (A) can be—

20 (i) exclusively possessed; and

21 (ii) transferred from a person to an-  
22 other person without necessary reliance on  
23 an intermediary; and

24 (B) is not an investment contract.

25 (4) DIGITAL CUSTODIAN.—

1 (A) IN GENERAL.—The term “digital cus-  
2 todian” means an entity that holds, maintains,  
3 or safeguards digital commodities, digital as-  
4 sets, and other assets on behalf of a customer.

5 (B) EXCEPTION.—Any entity facilitating  
6 clearing or settling services of a covered asset  
7 on behalf of a customer shall not be considered  
8 to be a digital custodian of that covered asset  
9 for the duration of the clearing or settling proc-  
10 ess.

11 (5) DIGITAL EXCHANGE.—The term “digital ex-  
12 change” means a trading facility that lists for trad-  
13 ing not less than 1 digital commodity or digital  
14 asset.

15 (6) DIGITAL WALLET.—The term “digital wal-  
16 let” means any device, physical medium, program, or  
17 service that stores a digital asset or digital com-  
18 modity.

19 (7) INVESTMENT CONTRACT.—

20 (A) IN GENERAL.—The term “investment  
21 contract” means a contract—

22 (i) that provides for an investment of  
23 money in an enterprise with a sponsor; and

24 (ii) the objective of the performance of  
25 which is primarily profit (rather than con-

1                   sumption), which is derived primarily from  
2                   the managerial or entrepreneurial efforts  
3                   of the sponsor described in clause (i).

4                   (B) USE OF CERTAIN TERMS.—For the  
5                   purposes of subparagraph (A)—

6                   (i) the term “money” means—

7                   (I) any medium of exchange rec-  
8                   ognized as legal tender anywhere in  
9                   the world; or

10                   (II) any convertible virtual cur-  
11                   rency, as defined by the Financial  
12                   Crimes Enforcement Network of the  
13                   Department of the Treasury; and

14                   (ii) the term “sponsor” means a man-  
15                   ager or entrepreneur that has solicited in-  
16                   vestment in a contract described in that  
17                   subparagraph.

18                   (C) EFFECT OF MEMBERSHIP IN CERTAIN  
19                   ORGANIZATIONS.—A member of a formal or in-  
20                   formal decentralized autonomous organization  
21                   is not, solely by reason of that membership, or  
22                   through participation in such an organization,  
23                   the holder of an investment contract.

24                   (D) EXCLUSIONS.—A contract that would  
25                   otherwise be an investment contract under this

1 paragraph is not an investment contract if the  
2 obligee of that contract—

3 (i) as of the date on which the con-  
4 tract became effective, primarily expected  
5 profit from performance of the contract;  
6 and

7 (ii)(I) at a date after the date de-  
8 scribed in clause (i)—

9 (aa) primarily expects to con-  
10 sume goods or services associated with  
11 the contract; or

12 (bb) no longer expects profit pri-  
13 marily from the managerial or entre-  
14 preneurial efforts of the sponsor de-  
15 scribed in subparagraph (A)(i) with  
16 respect to the contract.

17 (8) OFFICE.—The term “Office” means the Of-  
18 fice of Domestic Finance of the Department of the  
19 Treasury.

20 (9) UNDER SECRETARY.—The term “Under  
21 Secretary” means the Under Secretary of the Treas-  
22 ury for Domestic Finance.

1 **SEC. 3. REQUIREMENTS FOR DIGITAL EXCHANGES RE-**  
2 **GARDING TREATMENT OF CUSTOMER AS-**  
3 **SETS.**

4 (a) **REQUIRED STANDARDS AND PROCEDURES.—**

5 Each digital exchange shall establish baseline accounting  
6 standards and procedures that are designed to protect and  
7 ensure the safety of covered assets of customers of the  
8 exchange.

9 (b) **HOLDING OF CUSTOMER ASSETS.—**

10 (1) **IN GENERAL.—**Each digital exchange shall  
11 hold the covered assets of each customer of the ex-  
12 change in a manner that minimizes—

13 (A) the risk of loss by the customer of any  
14 such covered asset; and

15 (B) any delay in the customer accessing  
16 any such covered asset.

17 (2) **SEGREGATION OF FUNDS.—**

18 (A) **IN GENERAL.—**Each digital exchange  
19 shall treat and deal with all covered assets of a  
20 customer of the exchange that are received by  
21 the exchange as belonging to the customer.

22 (B) **CO-MINGLING PROHIBITED.—**Except  
23 as provided in subparagraph (C), with respect  
24 to any covered asset of a customer of a digital  
25 exchange, the exchange may not—

1 (i) co-mingle that covered asset with  
2 assets that are not covered assets; or

3 (ii) use that covered asset to margin,  
4 secure, or guarantee any trade or account  
5 of any person other than the customer for  
6 which that item is held.

7 (C) EXCEPTIONS.—

8 (i) IN GENERAL.—A digital exchange  
9 may, for convenience, co-mingle and de-  
10 posit a covered asset of a customer of the  
11 exchange in the same account as funds of  
12 the exchange with any bank, trust com-  
13 pany, or qualified digital custodian.

14 (ii) WITHDRAWAL.—A digital ex-  
15 change may withdraw from a bank, trust,  
16 or digital wallet account such share of a  
17 covered asset of a customer of the ex-  
18 change as may be necessary in the ordi-  
19 nary course of business to margin, guar-  
20 antee, secure, transfer, adjust, or settle a  
21 transaction regarding a digital asset or  
22 digital commodity with another digital ex-  
23 change, including for the payment of a  
24 commission, a brokerage fee, interest,  
25 taxes, storage costs, or any other charge

1                   that lawfully accrues in connection with a  
2                   digital commodity transaction.

3                   (iii) SUBSTITUTION.—A customer may  
4                   explicitly consent to a digital exchange sub-  
5                   stituting covered assets of the customer  
6                   with certain other assets.

7                   (c) ENFORCEMENT.—

8                   (1) IN GENERAL.—If, in the process of review-  
9                   ing a report submitted to the Under Secretary under  
10                  section 4(b) with respect to a digital exchange, the  
11                  Under Secretary discovers that the digital exchange  
12                  has violated a provision of this section, the Under  
13                  Secretary, through the Office, shall impose a civil  
14                  penalty on the digital exchange in the manner de-  
15                  scribed in clauses (i), (ii), and (iii) of section  
16                  4(c)(1)(A) (subject to paragraph (2) of this sub-  
17                  section).

18                  (2) RULE OF CONSTRUCTION.—For the pur-  
19                  poses of a civil penalty imposed under paragraph  
20                  (1)—

21                         (A) an entity that is subject to the require-  
22                         ments of section 4(a), as described in section  
23                         4(c)(1)(A), shall be deemed to be an entity that  
24                         is subject to the requirements of this section;  
25                         and

1 (B) the failure of an entity to satisfy the  
2 requirements of section 4(a), as described in  
3 section 4(c)(1)(A), shall be deemed to be a fail-  
4 ure to satisfy the requirements of this section.

5 **SEC. 4. ATTESTATION REQUIREMENTS.**

6 (a) ATTESTATION.—

7 (1) IN GENERAL.—Not later than 30 days after  
8 the effective date of this section, and monthly there-  
9 after, each digital exchange and each digital custo-  
10 dian shall obtain from an independent auditing firm  
11 an attestation that the applicable entity has proof of  
12 reserves, which shall be accompanied by appropriate  
13 evidence demonstrating proof of those reserves, as  
14 described further in subsection (b).

15 (2) INABILITY TO OBTAIN SERVICES OF AUDIT-  
16 ING FIRM.—

17 (A) IN GENERAL.—A digital exchange or  
18 digital custodian may contract with, or other-  
19 wise obtain the services of, a disinterested third  
20 party to carry out the responsibilities of an  
21 independent auditing firm under paragraph (1)  
22 only if the digital exchange or digital custodian  
23 is unable to contract with, or otherwise obtain  
24 the services of, an independent auditing firm to  
25 carry out those responsibilities.

1 (B) APPLICABILITY.—If a digital exchange  
2 or digital custodian contracts with, or otherwise  
3 obtains the services of, a disinterested third  
4 party as described in subparagraph (A), that  
5 third party shall be subject to the requirements  
6 of this section to the same extent as an inde-  
7 pendent auditing firm carrying out the respon-  
8 sibilities described in paragraph (1).

9 (3) INDUSTRY STANDARD.—

10 (A) SOLICITATION OF STANDARD.—Not  
11 later than 90 days after the date of enactment  
12 of this Act, the Public Company Accounting  
13 Oversight Board and the American Institute of  
14 Certified Public Accountants shall jointly issue  
15 a request for public comment soliciting pro-  
16 posals from the digital asset industry regarding  
17 a standard for the attestations required under  
18 this section.

19 (B) ESTABLISHMENT OF ADVISORY COM-  
20 MITTEE.—After the expiration of the 90-day pe-  
21 riod described in subparagraph (A), the Public  
22 Company Accounting Oversight Board and the  
23 American Institute of Certified Public Account-  
24 ants shall establish an advisory committee that

1 shall be comprised of the entities that submit  
2 proposals under that subparagraph.

3 (C) CREATION OF STANDARD.—The advi-  
4 sory committee established under subparagraph  
5 (B) shall—

6 (i) create a proposed standard for the  
7 purposes described in subparagraph (A);  
8 and

9 (ii) submit to the Public Company Ac-  
10 counting Oversight Board and the Amer-  
11 ican Institute of Certified Public Account-  
12 ants the proposed standard described in  
13 clause (i) for approval of the proposed  
14 standard by those entities.

15 (D) APPROVAL OF STANDARD.—

16 (i) IN GENERAL.—Not later than 18  
17 months after the date of enactment of this  
18 Act, the Public Company Accounting Over-  
19 sight Board and the American Institute of  
20 Certified Public Accountants shall jointly  
21 approve a proposed standard submitted to  
22 those entities under subparagraph (C).

23 (ii) EXTENSION OF DEADLINE.—If, as  
24 of the date that is 18 months after the  
25 date of enactment of this Act, the Public



1           (ii) For the purposes of clause (i), cryp-  
2           tographic proof means a cryptographically  
3           verifiable attestation using a Merkle tree struc-  
4           ture, a zero-knowledge proof, or another similar  
5           mechanism that can prove—

6                   (I) the existence of the applicable li-  
7                   abilities; and

8                   (II) that the applicable liabilities are  
9                   the legal responsibility of the entity that is  
10                  the subject of the report.

11           (2) PUBLIC AVAILABILITY.—The Under Sec-  
12           retary, through the Office, shall make each report  
13           received under paragraph (1) available to the public,  
14           which shall include, in addition to the material de-  
15           scribed in subparagraphs (A), (B), and (C) of that  
16           paragraph—

17                   (A) the name of the entity for which the  
18                   attestation that is the subject of the report was  
19                   performed; and

20                   (B) the name of the auditing firm that  
21                   made the attestation described in subparagraph  
22                   (A) of this paragraph.

23           (c) ENFORCEMENT.—

24                   (1) CIVIL PENALTIES.—

1 (A) IN GENERAL.—With respect to an en-  
2 tity that is subject to the requirements under  
3 subsection (a) and fails to satisfy those require-  
4 ments, the Under Secretary, through the Office,  
5 shall, subject to subparagraph (B), impose a  
6 civil penalty on the entity as follows:

7 (i) If that failure is the only such fail-  
8 ure by the entity during the most recent  
9 24-month period, the amount of the pen-  
10 alty shall be the greater of the following:

11 (I) 25 cents per user or customer  
12 of the entity (as applicable), as of the  
13 date on which the penalty is imposed.

14 (II) 2.5 basis points of the total  
15 assets under management by the enti-  
16 ty, as of the date on which the penalty  
17 is imposed.

18 (ii) If the entity has 1 additional such  
19 failure during the most recent 24-month  
20 period, the amount of the penalty shall be  
21 the greater of the following:

22 (I) 55 cents per user or customer  
23 of the entity (as applicable), as of the  
24 date on which the penalty is imposed.

1 (II) 5.5 basis points of the total  
2 assets under management by the enti-  
3 ty, as of the date on which the penalty  
4 is imposed.

5 (iii) If the entity has more than 1 ad-  
6 ditional such failure during the most re-  
7 cent 24-month period, the amount of the  
8 penalty shall be the greater of the fol-  
9 lowing:

10 (I) 90 cents per user or customer  
11 of the entity (as applicable), as of the  
12 date on which the penalty is imposed.

13 (II) 9 basis points of the total as-  
14 sets under management by the entity,  
15 as of the date on which the penalty is  
16 imposed.

17 (B) LIMITATION.—The Under Secretary,  
18 through the Office, may not impose a penalty  
19 on an entity under subparagraph (A) if the im-  
20 position of that penalty would cause the total  
21 amount of penalties imposed on that entity  
22 under that subparagraph for the year in which  
23 the penalty would be imposed to exceed the  
24 lesser of the following:

1 (i) \$1 per user or customer of the en-  
2 tity (as applicable), as of the date on which  
3 the penalty would be imposed.

4 (ii) 10 basis points of the total assets  
5 under management by the entity, as of the  
6 date on which the penalty would be im-  
7 posed.

8 (2) PUBLICATION.—The Under Secretary,  
9 through the Office, shall make publicly available,  
10 with respect to the most recent 24-month period, the  
11 name of each entity that is subject to the require-  
12 ments under subsection (a) and has failed to satisfy  
13 those requirements.

14 (3) APPEALS.—

15 (A) IN GENERAL.—The Under Secretary  
16 shall establish a process through which an enti-  
17 ty on which a penalty is imposed under para-  
18 graph (1) may appeal that penalty.

19 (B) WAIVER OF PENALTY.—The Under  
20 Secretary shall waive a penalty imposed under  
21 paragraph (1) if the Under Secretary deter-  
22 mines in an appeal brought under subpara-  
23 graph (A) of this paragraph that the reason  
24 that the Under Secretary did not receive a re-  
25 port under subsection (b)(1) is because of an

1           action or omission by an auditing firm and not  
2           the entity on which the Under Secretary im-  
3           posed the penalty.

4           (C) PAUSE IN PAYMENT.—An entity on  
5           which the Under Secretary imposes a penalty  
6           under paragraph (1) shall not be required to  
7           pay that penalty during the period in which an  
8           appeal brought by the entity under this para-  
9           graph is pending.

10          (d) EFFECTIVE DATE.—This section shall take effect  
11          on the date on which the Public Company Accounting  
12          Oversight Board and the American Institute of Certified  
13          Public Accountants jointly approve, under subsection  
14          (a)(3), an industry standard for the attestations required  
15          under this section.