

Utah Passes Innovative DAO Legislation

Article By:

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On March 1, 2023, the Utah Legislature passed HB 357, the “Utah Decentralized Autonomous Organizations” Act (the “[Utah DAO Act](#)”). This was a combined effort of the Utah Legislature’s Blockchain and Digital Innovation Task Force, under the leadership of, Co-Chairs, Senator Kirk Cullimore and Representative Jordan Teuscher.

Why DAOs and Why Utah?

Decentralized Autonomous Organizations (known as “DAOs”) are a priority for the State, and a priority for the Blockchain and Digital Innovation Task Force. Utah is a fast-rising technology hub, with a sophisticated and advanced approach toward on-chain, decentralized, Web3 software and financial platforms, making legislation giving legal recognition and limited liability to DAOs a priority for the Task Force. In short, technology innovators and leaders are demanding that legislation keeps pace.

The Utah DAO Act

We have been students, practitioners and admirers of the states that have used the “LLC wrapper” approach to grant DAOs limited liability protections and legal entity status. These states were the first through the gates and should be commended for their visionary leadership. There are, however, limitations to the “LLC wrapper” approach, which we sought to address in Utah’s approach.

The Utah DAO Act adopted a version of the [COALA model law](#), which does more, goes further and achieves a level of “legal personality”, limited liability protections, and avenues for decentralization and anonymity than the simple “LLC wrapper” approach. More specifically, the Utah DAO Act, among other things:

1. Defines the DAO ownership/participant base in the abstract consistent with the realities and ethos of a complex and vast DAO community.
2. Incorporates a technology gatekeeping function to assure the DAO is indeed a DAO.
3. Uses “Bylaws” (not an Operating Agreement) to protect the DAO ownership/participants with

anonymity redactions and protections.

4. Introduces quality assurance requirements for DAO protocols.
5. Creates a clear and more nuanced tax treatment consistent with current DAO functionalities.
6. Establishes that there are no implicit fiduciary duties owed by DAO participants unless those duties are explicitly stated to apply.

In short, a limited liability company is not a DAO, and a DAO is not a limited liability company. The Utah DAO Act grants the DAO a form of legal recognition that is unique to DAOs.

The Utah DAO Act Passed

The Utah DAO Act passed both the House and Senate committees (with narrow approval) and robust discussion. There were concerns --and compromises. The three major concerns were:

1. Full “unaccountable” anonymity for the DAO base.
2. (Original) tax language that was “LLC flow through” inconsistent with potential state and federal tax realities.
3. Lack of ramp-up time to assure the Utah Division of Corporation is prepared to handle new applications.

Our approach to compromise was as follows:

1. **Accountability.** Require each DAO to have a disclosed incorporator, while still allowing the DAO participant base to remain anonymous (and “redacted”).
2. **Tax Language.** We solicited the participation of the Utah Tax Commissioners’ office to propose acceptable tax language, which is indeed more nuanced and consistent with the tax complexities of a DAO (that language can be reviewed under Section 48-5-406 of the Bill).
3. **Ramp-Up Time.** We agreed to make the effective date of the bill 2024. We made that compromise so we would have another year to edit, adjust and assure the practical implementations can be made for a smooth adoption.

The Utah Department of Commerce, which oversees the Division of Corporations and the Division of Securities, both critical for the roll-out and adoption of the new legislation, has been hands-on, cooperative, and visionary in the eventual adoption of the new Utah DAO Act.

On March 1, with the amendments (and compromises stated above) the Utah DAO Act was passed unanimously by both the House and the Senate.

What Now?

The Task Force will continue to work closely with the Utah Department of Commerce for the 2024 implementation of the new Utah DAO Act. We will engage closely with relevant industries (technology, finance and legal) to assure the new law is efficacious to need and purpose.

We will spend the remainder of 2023 exploring any weaknesses in the legislation and working toward fixes, while at the same time preparing for administrative onboarding. The Task Force will also be looking for opportunities to build and eventually pass complementary DAO legislation.

Challenges Remain

We understand the challenges of the current environment. We are not naive nor ignorant of many of the federal and judicial impediments of fractional sharing and tokenization, which are associated with DAOs. We also understand, however, that there is no going back, that the best technologies are being built in shared decentralized environments, and that law and policy should participate in and facilitate this movement. The continued overreaching and (mis)application of isolated terms in Depression-era laws (and “intent”) to revolutionary technology poised to define the next generation of the internet needs to be reconsidered. It is like applying 1900 horse and buggy speed codes to the era of automobiles. There is a path out of the oversimplified dichotomy of securities versus non-securities “analysis”, and that path starts with bold legislation which leans into new technologies. If the United States and other similar sovereign states don’t find that path they will get left behind -- literally placed behind exclusionary firewalls where the best ideas and innovations are taking hold. The US’s failure to embrace these technological innovations has already resulted in a sharp decline in America’s share of blockchain developers as compared to the rest of the world.

Come to Utah

So, starting in January 2024, a “Utah LLD” (a DAO designation under the new law) may be formed in Utah, and the State will become a welcoming environment for decentralization and on-chain innovation. We are excited about the possibilities.

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