

ASSEMBLY, No. 2891

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

SYNOPSIS

“Digital Asset and Blockchain Technology Act.”

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning digital assets and blockchain technology, and supplementing Title 17 of the Revised Statutes and chapter 6 of Title 54A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the “Digital Asset and Blockchain Technology Act.”

2. As used in this act:

“Control” means the ownership of, or the power to vote, 25 percent or more of the outstanding voting interest of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the person’s interest the interest of any other person controlled by that person or by any spouse, parent, or child of that person.

“Controlling person” means any person in control of a licensee.

“Department” means the Department of Banking and Insurance.

“Digital asset” means a representation of economic, proprietary, or access rights that is stored in a machine-readable format, has a transaction history that is recorded in a distributed, digital ledger or digital data structure in which consensus is achieved through a mathematically verifiable process, and includes digital consumer assets, digital securities, and virtual currency.

“Digital asset business” means a business that engages in the activities listed in subsection b. of section 3 of this act.

“Digital consumer asset” means a digital asset that is used or bought primarily for consumptive, personal, or household purposes and includes any other digital asset that does not fall within the terms digital security or virtual currency.

“Digital security” means a digital asset that provides an interest or participation in any profit-sharing agreement, but shall not include a digital consumer asset or virtual currency.

“Executive officer” means the licensee’s president, chairman of the executive committee, senior officer responsible for the licensee’s business in this State, chief financial officer, and any other person who performs similar functions.

“Issuing” means being the person who has authority over the initial creation and dissemination of a digital asset.

“Licensee” means a person licensed under this act or an applicant for licensure under this act.

“Resident” means a person that is: domiciled in New Jersey; physically located in New Jersey for more than 183 days of the previous 365 days; or a limited partnership, limited liability partnership, limited liability company, or corporation formed or incorporated in New Jersey.

“Responsible individual” means an individual who has managerial authority with respect to a licensee’s digital asset business activity with or on behalf of a resident.

“Transmission” means to engage in the business of receiving monetary value for transmission to a location inside or outside of the United States by any means, including, but not limited to, wire, facsimile, or electronic transfer.

“Virtual currency” means a digital asset that is used as a medium of exchange, unit of account, or store of value, and is not recognized as legal tender by the United States government.

3. a. A person shall not engage in a digital asset business activity, or hold itself out as being able to engage in a digital asset business activity, with or on behalf of a resident unless the person is:

(1) licensed in this State by the department, or has filed a pending license with the department; or

(2) licensed in another state to conduct digital asset business activity by a state with which this state has a reciprocity agreement.

b. The department may license a person to carry on one or more of the following digital asset business activities:

(1) receiving a digital asset for transmission or transmitting a digital asset, except where the transaction is undertaken for non-financial purposes and does not involve the transfer of more than a nominal amount of a digital asset;

(2) storing, holding, or maintaining custody of a digital asset on behalf of others, exempting all custodians otherwise regulated as a bank, trust, broker-dealer, or financial institution in any state or by the United States;

(3) buying and selling digital assets as a customer business;

(4) performing exchange services of digital assets as a customer business;

(5) issuing a digital asset; or

(6) borrowing or lending of, or facilitating the borrowing or lending of, customer digital assets.

c. A person who violates this section shall be liable for a penalty of \$500 per day, from the first day the department issues a notice of failure to apply a license until a license application is filed with the department.

4. a. An application for a license under this act shall be made in the form and medium to be prescribed by the department by regulation. The department shall require each application to be accompanied by a nonrefundable fee.

b. An applicant shall provide the following information relevant to the applicant’s proposed digital asset business activity:

(1) the legal name of the applicant, each current or proposed business address of the applicant, and any fictitious or trade name the applicant uses or plans to use in conducting its digital asset business activity with or on behalf of a resident;

(2) the legal name, any former or fictitious name, and the residential and business address of each executive officer and responsible individual of the applicant, and each controlling person of the applicant;

(3) a concise description of the current and former business of the applicant for the five years before the application is submitted or if the business has operated for less than five years, for the time the business has operated, including its products and services;

(4) the name, address, and telephone number of a person who manages each server the applicant expects to use in conducting its digital asset business activity with or on behalf of a resident;

(5) a list of any license revocation, license suspension, or other disciplinary action taken against the licensee in another state and any license applications rejected by another state;

(6) a list of any criminal conviction, deferred prosecution agreement, and pending criminal proceeding in any jurisdiction against the applicant, any executive officer, responsible individual, and controlling person of the applicant, and each person over which the applicant has control;

(7) a list of any litigation, arbitration, or administrative proceeding in any jurisdiction in which the applicant, or an executive officer, responsible individual, or controlling person of the applicant has been a party to for the five years before the application is submitted, determined to be material in accordance with generally accepted accounting principles and, to the extent the applicant would be required to disclose the litigation, arbitration, or administrative proceeding in the applicant's audited financial statements, reports to equity owners, and similar statements or reports;

(8) a list of any bankruptcy or receivership proceeding in any jurisdiction for the 10 years prior to the application's submission in which the applicant, any executive officer, responsible individual, or controlling person of the applicant, or person over which the applicant has control, was a debtor;

(9) the United State Postal Service address and electronic mail address to which communications from the department may be sent;

(10) the name, United State Postal Service address, and electronic mail address of the registered agent of the applicant in this State, if applicable;

(11) a copy of any certificate of coverage for each liability, casualty, business-interruption, or cyber-security insurance policy maintained by the applicant for itself or the applicant's users;

(12) if applicable, the date on which and the state in which the applicant is formed, and a copy of a current certificate of good standing issued by that state;

(13) policies and procedures to be adopted by the applicant to meet any obligations required by anti-money laundering and anti-terror financing laws;

(14) if a corporation has control of the applicant and the corporation's equity interests are publicly traded in the United States, a copy of the audited financial statement of the corporation for the most recent fiscal year or most recent report of the corporation filed under section 13 of the "Securities Exchange Act of 1934," 15 U.S.C. s.78m;

(15) if a corporation has control of the applicant and the corporation's equity interests are publicly traded outside the United States, a copy of the audited financial statement of the corporation for the most recent documentation similar to that required in paragraph (14) of this subsection, filed with the foreign regulator in the domicile of the corporation; and

(16) if available, for each executive officer, responsible individual, or controlling person of the applicant, for the three years before the application is submitted, the employment history, and the history of any investigation of the individual or legal proceeding to which the individual was a party.

c. For good cause, the department may waive any information required pursuant to subsection b. of this section, and may permit an applicant to submit other information instead of the required information.

5. a. A person licensed by another state to engage in digital asset business activity in that state may engage in digital asset business activity with or on behalf of a resident to the same extent as a licensee if:

(1) the department determines that the state in which the person is licensed has in force laws regulating digital asset business activity that are substantially similar to, or more protective of users than, this act; and

(2) the person submits to the department:

(a) a notice containing a statement that the person will rely on reciprocal licensing; a copy of the license to conduct digital asset business activity issued by the other state;

(b) a nonrefundable reciprocal license fee, to be determined by the department by regulation;

(c) a certification of license history from the agency responsible for issuing the license to conduct digital asset business activity in the other state; and

(d) a certification signed by the executive officer of the applicant affirming that the applicant shall conduct its digital asset business activity with or on behalf of a resident in compliance with this act.

6. a. The department shall grant or deny any digital asset business license application or license reciprocity application within 30 days of its receipt.

b. The department may refuse an application for a digital asset business license or license reciprocity application if:

(1) the application is incomplete in a material respect;

(2) the application includes false, misleading, or inaccurate information; or

(3) any applicant or principal of an applicant has engaged in dishonest or unethical practices in a digital asset business or in the securities commodities, banking, insurance, or investment advisory business.

c. A license issued pursuant to this act shall not be transferrable or assignable.

7. a. A licensee may apply for an annual renewal of a license by:

(1) paying a renewal fee in an amount determined by the department pursuant to regulation;

(2) submitting to the department the renewal report required pursuant to subsection b. of this section.

b. A license renewal report required pursuant to this section shall be submitted in a form and medium prescribed by the department by regulation. The report shall contain an update of all information required at initial licensing and a description of any:

(1) material change in the financial condition of the licensee;

(2) material litigation involving the licensee or an executive officer, responsible individual, or controlling person of the licensee;

(3) license suspension or revocation proceeding commenced, or other action taken, involving a license to conduct digital asset business activity issued by another state on which reciprocal licensing is based;

(4) federal or state investigation involving the licensee;

(5) material change in the business of the licensee; and

(6) changes to the executive officers of the licensee.

c. The department shall send the licensee a notice that an annual renewal is soon to be due. The notice shall be sent by regular mail and electronic mail between 30 and 60 days before the annual renewal is due. If a renewal is not filed within 15 days of the date that the annual renewal is due, the department shall send a second notice by regular mail and electronic mail notifying that licensee that its license shall be suspended if a renewal is not filed by the 30th day after the annual renewal is due.

d. If a license is suspended for failure to file an annual renewal, the license shall be reinstated if the licensee files a renewal report and pays a fee, in an amount determined by the commissioner pursuant to regulation.

8. a. The department may audit any digital asset business licensee.

b. The department may suspend or revoke a digital asset business license upon finding that:

(1) the department has been provided with false, misleading, or inaccurate information by or on behalf of the licensee;

(2) the clients of a licensee have been provided with false, misleading, or inaccurate information by or on behalf of the licensee;

(3) any principal or agent of a licensee has engaged in dishonest or unethical practice in a digital asset business or in the securities, commodities, banking, insurance, or investment advisory business;

(4) the licensee fails to provide documents requested by the department; or

(5) the licensee fails to renew its license.

c. The department may provide a warning notice to a licensee if the department suspects that a condition permitting suspension or revocation has occurred.

d. Any warning notice, suspension, or revocation issued by the department shall state the reasons for which it is given.

e. The department may issue general guidance to industry participants on how to best protect the interests of clients.

9. Any denial, suspension, or revocation of a license, or warning notice issued by the department shall prominently indicate that a right of appeal is available. A licensee or prospective licensee which is aggrieved by a decision of the department may appeal the decision by filing a request for a hearing before the Office of Administrative Law.

10. a. (1) A licensee shall provide to the department in a reasonable amount of time any document relating to the operations of the licensee upon receiving a written request from the department.

(2) Any notice requiring the production of documents pursuant to this section shall include the reasons for which it is given.

b. A licensee shall give written notice to the department within five days if there are any changes in the identities of the licensee's executive officers, responsible individuals, or controlling persons.

c. A license shall maintain a record of all client transactions for a period of not less than one year from the date the transaction occurred.

11. a. The terms and conditions of a digital asset business involving a consumer's account shall be disclosed at the time the consumer contracts for a digital asset business service. A disclosure shall be full and complete, contain no material misrepresentations, be in readily understandable language and may include, as appropriate and to the extent applicable:

(1) a schedule of fees and charges the licensee may assess, the manner by which fees and charges will be calculated if they are not set in advance and disclosed, and the timing of the fees and charges;

(2) whether a consumer's account is protected by the Federal Deposit Insurance Corporation;

(3) whether there is support for forked networks of each digital asset;

(4) that investment in digital assets is volatile and subject to market loss;

(5) that investment in digital assets may result in total loss of value;

(6) that legal, legislative and regulatory changes may impair the value of digital assets;

(7) that consumers should perform research before investing in digital assets;

(8) that transfers of digital assets are irrevocable, if applicable;

(9) how liability for an unauthorized, mistaken or accidental transfer shall be apportioned;

(10) that digital assets are not legal tender in any jurisdiction;

(11) that digital assets may be subject to cyber theft or theft and become unrecoverable;

(12) who maintains control, ownership and/or access to any private key related to a digital assets consumer's account;

(13) that losing private key information may result in permanent total loss of access to digital assets;

(14) under what circumstances the digital asset business will in the ordinary course of business disclose information concerning the consumer's account to third parties; and

(15) any other material investment risks.

b. All disclosures required by this act shall be displayed and individually agreed to by a consumer before any digital asset transaction at an electronic kiosk. Any fee to be charged shall be displayed and individually agreed to by a consumer before any digital asset transaction or digital asset balance inquiry at an electronic kiosk.

c. A licensee or registrant that has custody of digital assets for one or more persons shall maintain in its custody an amount of each type of digital assets sufficient to satisfy the aggregate entitlements of the persons to the type of digital asset.

d. The department may audit a licensee's compliance with this section.

12. a. Gross income shall not include up to \$1,000 of gains or income from the sale or exchange of digital assets for other than legal tender, except that following the first taxable year that this section is in effect, the \$1,000 limit shall be

increased annually by \$50.

b. Gross income shall not include up to \$250 of dividend distributions in the form of digital assets arising from the ownership of digital assets, except that following the first taxable year that this section is in effect, the \$250 limit shall be increased annually by \$20.

c. As used in this section “digital asset” shall mean the same as that term is defined pursuant to section 1 of P.L. ,
c. (C.) (pending before the Legislature as this bill).

13. This act shall take effect on the first day of the fourth month next following enactment, except the commissioner may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.

STATEMENT

This bill, the “Digital Asset and Blockchain Technology Act,” regulates digital asset business activity. The bill defines “digital asset” to mean a representation of economic, proprietary, or access rights that is stored in a machine-readable format, has a transaction history that is recorded in a distributed, digital ledger or digital data structure in which consensus is achieved through a mathematically verifiable process. Examples of digital assets include digital consumer assets, digital securities, and virtual currency.

The bill provides that a person may not engage in a digital asset business activity, or hold itself out as being able to engage in a digital asset business activity, with or on behalf of a resident unless the person is licensed in this State by the Department of Banking and Insurance, or has filed a pending license with the department, or licensed in another state to conduct digital asset business activity by a state with which this state has a reciprocity agreement.

The bill provides the department may license a person to carry on one or more of the following digital asset business activities:

- (1) receiving a digital asset for transmission or transmitting a digital asset, except where the transaction is undertaken for non-financial purposes and does not involve the transfer of more than a nominal amount of a digital asset;
- (2) storing, holding, or maintaining custody of a digital asset on behalf of others, exempting all custodians otherwise regulated as a bank, trust, broker-dealer, or financial institution in any state or by the United States;
- (3) buying and selling digital assets as a customer business;
- (4) performing exchange services of digital assets as a customer business;
- (5) administering or issuing a digital asset; or
- (6) borrowing or lending, or facilitating the borrowing or lending of, of customer digital assets.

The bill provides that a person who violates the provisions requiring licensure is liable for a penalty of \$500 per day, from the first day the department issues a notice of failure to apply a license until a license application is filed with the department.

The bill provides that an application for a license must be made in the form and medium to be prescribed by the department by regulation. Each application must be accompanied by a nonrefundable fee.

Applicants must provide certain information relevant to the applicant’s proposed digital asset business activity. For good cause, the department may waive any required information, and may permit an applicant to submit other information instead of the required information.

The bill provides that a person licensed by another state to engage in digital asset business activity in that state may engage in digital asset business activity with or on behalf of a resident of New Jersey to the same extent as a licensee if:

- (1) the department determines that the state in which the person is licensed has in force laws regulating digital asset business activity that are substantially similar to, or more protective of users than, this act; and
- (2) the person submits certain information and certifications to the department.

The bill requires the department to grant or deny any digital asset business license application or license reciprocity application within 30 days of its receipt. The department may refuse an application for a digital asset business license or license reciprocity application if a licensee or applicant fails to meet certain standards specified in the bill.

Licenses issued pursuant to the bill are not transferrable or assignable.

The bill provides standards for the annual renewal of digital asset business licenses.

Licensees are required to submit a renewal report that contains an update of all information required at initial licensing and a description of any:

- (1) material change in the financial condition of the licensee;
- (2) material litigation involving the licensee or an executive officer, responsible individual, or controlling person of the licensee;
- (3) license suspension or revocation proceeding commenced, or other action taken, involving a license to conduct digital asset business activity issued by another state on which reciprocal licensing is based;
- (4) federal or state investigation involving the licensee;
- (5) material change in the business of the licensee; and
- (6) changes to the executive officers of the licensee.

The bill provides that the department may audit any digital asset business licensee. The department may suspend or revoke a digital asset business license upon certain findings that.

The bill provides that the department may issue general guidance to industry participants on how to best protect the interests of clients.

Under the bill, any denial, suspension, or revocation of a license, or warning notice issued by the department is to prominently indicate that a right of appeal is available. A licensee or prospective licensee which is aggrieved by a decision of the department may appeal the decision by filing a request for a hearing before the Office of Administrative Law.

The bill requires the terms and conditions of a digital asset business involving a consumer's account to be disclosed at the time the consumer contracts for a digital asset business service. The disclosure must be full and complete, contain no material misrepresentations, be in readily understandable language and may include, as appropriate and to the extent applicable, certain information concerning fees and charges, risks to the consumer, and any protections or securities that are in place.

The disclosures required by the bill must be displayed and individually agreed to by a consumer before any digital asset transaction at an electronic kiosk. Any fee to be charged is required to be displayed and individually agreed to by a consumer before any digital asset transaction or digital asset balance inquiry at an electronic kiosk.

Under the bill, for purposes of calculating net gains or income and dividends pursuant to N.J.S.54A:5-1, gross income does not include:

- (1) up to \$1,000 of gains or income from the sale or exchange of digital assets for other than legal tender, except that following the first taxable year that the bill is in effect, the \$1,000 limit is to be increased annually by \$50; or
- (2) up to \$250 of dividend distributions in the form of digital assets arising from the ownership of digital assets, except that following the first taxable year that the bill is in effect, the \$250 limit is to be increased annually by \$20.