

ASSEMBLY, No. 3817

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED APRIL 5, 2018

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

Regulates and establishes certain consumer protections concerning digital currencies.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/13/2018)

1 AN ACT concerning digital currency and supplementing Title 17 of
2 the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 “Administrator” means a centralized authority with the power to
9 remove digital currency from circulation or to modify the
10 information stored in a distributed digital verification system.

11 “Affiliate” means any person that directly or indirectly controls,
12 is controlled by, or is under common control with, another person.

13 “Commissioner” means the Commissioner of Banking and
14 Insurance.

15 “Digital currency” means any type of digital unit that, regardless
16 of legal tender status, has no administrator and is:

17 (1) used as a currency, medium of exchange or stored value; or

18 (2) used as a substitute for government currency.

19 “Digital currency” shall not include:

20 (1) digital units that have nominal or no value as a currency or
21 medium of exchange and are not used as a substitute for
22 government currency;

23 (2) digital units that can be used solely with a gift card program;

24 (3) digital units that are used solely within online gaming
25 platforms and have no market or application outside of those
26 gaming platforms, or can be redeemed for real-world goods,
27 services, discounts, or purchases, but cannot be converted into, or
28 redeemed for government currency or digital currency; or

29 (4) digital units that are used solely within an affinity program
30 but do not otherwise meet the definition of digital currency as
31 defined herein.

32 “Digital currency business activity” means any person who
33 conducts any one of the following activities involving a New Jersey
34 person:

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

39 (2) storing, holding, or maintaining custody or control of digital
40 currency on behalf of others;

41 (3) buying or selling digital currency as a customer business;

42 (4) performing exchange services as a customer business;

43 (5) controlling or issuing a digital currency.

44 “Exchange service” means the conversion or exchange of
45 government currency or other value into digital currency, the
46 conversion or exchange of digital currency into government
47 currency or other value, or the conversion or exchange of one form
48 of digital currency into another form of digital currency.

1 “Gift card program” means a credit program that is:

2 (1) usable at a single merchant or an affiliated group of
3 merchants that share the same name, mark or logo or is usable at
4 multiple unaffiliated merchants or service providers;

5 (2) issued for a specified amount;

6 (3) potentially but not necessarily able to be increased in value
7 or reloaded;

8 (4) purchased and reloaded on a prepaid basis for the future
9 purchase or delivery of goods or services;

10 (5) honored upon presentation; and

11 (6) potentially but not necessarily able to be redeemed for the
12 same type of funds that were used to purchase or load the device.

13 “Government currency” means government-issued currency that
14 is designated as legal tender in its country of issuance through
15 government decree, regulation, or law.

16 “New Jersey person” means any person that resides, is located,
17 or is conducting business in New Jersey.

18 “Person” means any individual, partnership, corporation,
19 association, trust, or other business combination or entity, however
20 organized.

21 “Principal beneficiary” means any person entitled to 10 percent
22 or more of the benefits of a trust.

23 “Principal officer” means an executive officer of an entity,
24 including the chief executive, financial, operating, and compliance
25 officers, president, managing partner, general partner, controlling
26 partner, and trustee, as applicable.

27 “Principal stockholder” means any person that directly or
28 indirectly owns, controls, or holds with power to vote 10 percent or
29 more of any class of outstanding capital stock of a corporate entity
30 or possesses the power to direct or cause the direction of the
31 management or policies of the entity.

32 “Qualified trust company” means banks, trust companies, bank
33 holding companies credit unions, building and loan associations,
34 savings and loan associations, savings banks or mutual banks
35 organized under the laws of any state or the United States, provided
36 that they do not issue or sell payment instruments through
37 authorized delegates who are not banks, bank holding companies,
38 credit unions, building and loan associations, savings and loan
39 associations, savings banks or mutual banks.

40 “Registrant” means a person duly registered or completing a
41 registration under this act.

42 “Registration” means the process set forth in section 3 of this act.

43

44 2. a. A person engaging in digital currency business activity
45 shall complete a registration under this act.

46 b. This section shall not apply to qualified trust companies and
47 payment processors.

1 3. The registration required under this act shall be in writing,
2 under oath, and completed in a form prescribed by the Department
3 of Banking and Insurance, which shall contain the following:

4 a. the exact name of the registrant, including any “doing
5 business as” name, the form of organization, and the jurisdiction
6 where organized or incorporated;

7 b. a list of the registrants, affiliates, and an organization chart
8 illustrating the relationship between and among the registrant and
9 its affiliates;

10 c. for each principal officer, principal stockholder, and
11 principal beneficiary of the registrant, as applicable, and for all
12 individuals to be employed by the registrant, who have access to
13 any customer funds, whether denominated in digital currency or
14 government currency:

15 (1) a set of completed fingerprints; and

16 (2) two portrait-style photographs of each individual measuring
17 not more than two inches by two inches;

18 d. an organization chart of the registrant and its management
19 structure, including its principal officers or senior management,
20 indicating lines of authority and the allocation of duties among its
21 principal officers or senior management;

22 e. a business plan, including a description of the proposed,
23 current, and historical business of the registrant, including details
24 on the products and services provided and to be provided, all
25 associated website addresses, the jurisdictions in which the
26 registrant is engaged in business, the principal place of business, the
27 primary markets of operation, the projected customer base, any
28 specific marketing targets, and the physical address of any
29 operation in New Jersey; and

30 f. a registration fee to be set by the commissioner.
31

32 4. In the event of any material change in the registration
33 information required by section 3 of this act, the registrant shall,
34 within seven days of the change, supplement or amend its
35 registration by completing a form as prescribed by the
36 commissioner.
37

38 5. Each registrant shall maintain and enforce confidential,
39 written compliance policies, including policies with respect to anti-
40 fraud, anti-money laundering, cyber security, privacy and
41 information security, which shall be reviewed and approved by the
42 registrant’s board of directors or an equivalent governing body.
43

44 6. The registrant shall hold digital currency of the same type
45 and amount as that which it has custody from any New Jersey
46 person. Each registrant shall be prohibited from selling,
47 transferring, assigning, lending, hypothecating, pledging, or
48 otherwise using or encumbering any digital currency, the custody of

1 which is maintained for a New Jersey person, except for the sale,
2 transfer, or assignment of such assets at the direction of the New
3 Jersey person.

4
5 7. Each registrant shall make, keep, and preserve all of its
6 books and records of its digital currency business activity in their
7 original form or native file format for a period of at least five years
8 from the date of their creation and in a condition that will allow the
9 Department of Banking and Insurance to determine whether the
10 registrant is complying with all applicable laws, rules, and
11 regulations. The books and records maintained by each registrant
12 shall, without limitation, include:

13 a. for each transaction:

14 (1) the amount, date, and precise time of the transaction, any
15 payment instructions, the total amount of fees and charges received
16 and paid to, by, or on behalf of the registrant; and

17 (2) to the extent the registrant has knowledge of or has reason to
18 know, account numbers, telephone numbers, email addresses and
19 physical addresses of parties to the transaction;

20 b. a general ledger containing all asset, liability, ownership
21 equity, income, and expense accounts;

22 c. bank statements and bank reconciliation records;

23 d. any statements or valuations sent or provided to customers
24 and counterparties;

25 e. records or minutes of meetings of the board of directors or
26 an equivalent governing body;

27 f. communications and documentation related to investigations
28 of customer complaints and transaction error resolution or
29 concerning facts giving rise to possible violations of laws, rules, or
30 regulations; and

31 g. all other records required to be maintained in accordance
32 with this act.

33
34 8. a. No registrant shall advertise its products, services, or
35 activities in New Jersey or to any New Jersey person without
36 including the legal name of the registrant and the legend that the
37 registrant is a “registered New Jersey digital currency custodian.”

38 b. Each registrant shall maintain, for examination by the
39 commissioner, all advertising and marketing materials for a period
40 of at least seven years from the date of their creation, including but
41 not limited to print media, internet media, including websites, radio
42 and television advertising, road show materials, presentations, and
43 brochures. Each registrant shall maintain hard copy, website
44 captures of material changes to internet advertising and marketing,
45 and audio and video scripts of its advertising and marketing
46 materials, as applicable.

1 c. In all advertising and marketing materials, each registrant
2 shall comply with all disclosure requirements under federal and
3 State laws, rules, and regulations.

4 d. In all advertising and marketing materials, each registrant
5 and any person or entity acting on its behalf, shall not, directly or
6 by implication, make any false, misleading, or deceptive
7 representations or omissions.

8
9 9. Each registrant shall permit and assist the Department of
10 Banking and Insurance to examine the registrant whenever in the
11 commissioner's judgment such examination is necessary or
12 advisable, including, without limitation, to determine compliance
13 with the requirements set forth in this act. The examination may
14 include, without limitation, the premises, books, records, and any
15 other pertinent material of the registrant or its affiliates.

16
17 10. a. (1) Each registrant shall, prior to engaging in digital
18 currency business activity with any customer, disclose in clear,
19 conspicuous writing all material risks to the customer associated
20 with the particular digital currency business activities in which it
21 engages. Such risks may include, without limitation:

22 (a) Digital currency is not legal tender, is not backed by the
23 United States government, and the digital currency held by the
24 registrant on behalf of the customer is not subject to Federal
25 Deposit Insurance Corporation protections;

26 (b) Transactions in the digital currency held by the registrant on
27 behalf of the customer may be irreversible, and, accordingly, losses
28 due to fraudulent or accidental transactions may not be recoverable;

29 (c) Laws determining the rights and obligations of digital
30 currency users are not fully developed, and a court of law may find
31 that the elements of this transaction, including without limitation
32 the timing, amount, identity or location of the parties, may not be
33 the same as if the transaction had occurred with the U.S. dollar;

34 (d) The value of the digital currency held by the registrant on
35 behalf of the customer may change more quickly and unexpectedly
36 than that of government currencies like the U.S. dollar, and may in
37 fact become zero; and

38 (e) Technological difficulties experienced by the registrant may
39 prevent the customer from accessing the digital currency held by
40 the registrant on behalf of the customer.

41 (2) The Department of Banking and Insurance shall post on the
42 department's website information substantially similar to the
43 information required to be disclosed pursuant to this subsection,
44 including information about the material risks described herein.

45 b. Each registrant shall, prior to engaging in digital currency
46 business activity with any customer, disclose in clear, conspicuous
47 writing all relevant terms and conditions associated with its digital

1 currency business activity. Such disclosures may include, without
2 limitation:

- 3 (1) the customer's liability for unauthorized transactions;
- 4 (2) the customer's right to interrupt or prevent any transaction
5 and the procedure to initiate an interruption or prevention;
- 6 (3) the circumstances under which the registrant will, absent a
7 court or government order, disclose information concerning the
8 customer's account to third parties;
- 9 (4) the customer's right to receive periodic account statements
10 and valuations from the registrant;
- 11 (5) the customer's right to receive a receipt, trade ticket, or
12 other evidence of a transaction; and
- 13 (6) the customer's right to prior notice of a change in the
14 registrant's rules or policies.

15 c. Each registrant shall, prior to engaging in digital currency
16 business activity with any customer, disclose in clear, conspicuous
17 writing the terms and conditions of the transaction. The disclosures
18 may include, without limitation:

- 19 (1) the amount of the transaction;
- 20 (2) any fees, expenses, and charges borne by the customer,
21 including applicable exchange rates;
- 22 (3) the type and nature of the transaction; and
- 23 (4) a warning that once executed the transaction may not be
24 undone.

25 d. Each registrant shall ensure that all disclosures required in
26 the section are acknowledged in writing as received by customers.

27 e. Each registrant shall, upon completion of any transaction,
28 provide to any customer initiating the transaction, a receipt
29 containing the following information:

- 30 (1) the name and contact information of the registrant, including
31 a telephone number established by the registrant to answer
32 questions and register complaints;
- 33 (2) the type, value, date, and precise time of the transaction;
- 34 (3) any fee charged; and
- 35 (4) any exchange rate applied.

36
37 11. a. Each registrant shall establish and maintain written
38 policies and procedures to fairly and timely resolve customer
39 complaints.

40 b. Each registrant shall provide, in a clear and conspicuous
41 manner, on its website or websites, and in all physical locations the
42 following disclosures:

- 43 (1) the registrant's mailing address, email address, and
44 telephone number for the receipt of complaints;
- 45 (2) a statement that the complainant may also bring a complaint
46 to the attention of the Department of Banking and Insurance; and
- 47 (3) the Department of Banking and Insurance's mailing address,
48 website, and telephone number.

1 services, discounts, or purchases, but cannot be converted into, or
2 redeemed for government currency or digital currency; or

3 (4) digital units that are used solely within an affinity program
4 but do not otherwise meet the definition of digital currency as
5 defined in the bill.

6 The bill provides that a person engaged in digital currency
7 business activity is required to complete a registration under the
8 bill. Qualified trust companies and payment processors are not
9 required to register.

10 The registration is to be in writing, under oath, and completed in
11 a form prescribed by the department, and is required to contain
12 certain information including:

13 (1) the exact name of the registrant, the form of organization,
14 and the jurisdiction where organized or incorporated;

15 (2) a list of the registrants, affiliates, and an organization chart
16 illustrating the relationship between and among the registrant and
17 its affiliates;

18 (3) fingerprints and photographs of key members of the
19 registrant's organization;

20 (4) an organization chart of the registrant and its management
21 structure;

22 (5) a business plan; and

23 (6) a registration fee set by the Commissioner of Banking and
24 Insurance.

25 Registrants are required to maintain and enforce confidential,
26 written compliance policies, including policies with respect to anti-
27 fraud, anti-money laundering, cyber security, privacy and
28 information security, which shall be reviewed and approved by the
29 registrant's board of directors or an equivalent governing body.

30 The bill includes further consumer protections, including a
31 requirement that the registrant hold digital currency of the same
32 type and amount as that which it has custody from any person.
33 Registrants are prohibited from selling, transferring, assigning,
34 lending, hypothecating, pledging, or otherwise using or
35 encumbering any digital currency, the custody of which is
36 maintained for a New Jersey person, except for the sale, transfer, or
37 assignment of such assets at the direction of such person.

38 Registrants are required to make, keep, and preserve all of its
39 books and records of its digital currency business activity in their
40 original form or native file format for a period of at least five years
41 from the date of their creation and in a condition that will allow the
42 department to determine whether the registrant is complying with
43 all applicable laws, rules, and regulations.

44 The bill prohibits registrants from advertising its products,
45 services, or activities in New Jersey or to any New Jersey person
46 without including the legal name of the registrant and the legend
47 that such registrant is a "registered New Jersey digital currency
48 custodian." The registrant shall maintain, for examination by the

1 commissioner, all advertising and marketing materials for a period
2 of at least seven years from the date of their creation, including but
3 not limited to print media, internet media, including websites, radio
4 and television advertising, road show materials, presentations, and
5 brochures.

6 The bill provides that registrants must, prior to engaging in
7 digital currency business activity with any customer, disclose in
8 clear, conspicuous writing all material risks and relevant terms and
9 conditions to the customer associated with the particular digital
10 currency business activities in which it engages. Certain risks and
11 relevant terms and conditions that must be disclosed are listed in the
12 bill. Registrants must also establish and maintain written policies
13 and procedures to fairly and timely resolve customer complaints.

14 The department is also directed to include information on the
15 department's website describing the material risks associated with
16 engaging in digital currency business activity.

17 The bill also provides for penalties for a violation of the bill's
18 provisions, which include allowing the Commissioner of Banking
19 and Insurance to seek injunctive relief and a civil penalty in an
20 amount not to exceed \$5,000 for each violation.