

ASSEMBLY, No. 2891

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman JOE DANIELSEN

District 17 (Middlesex and Somerset)

Co-Sponsored by:

Assemblywoman Vainieri Huttie

SYNOPSIS

“Digital Asset and Blockchain Technology Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/30/2020)

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

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

7
8 1. This act shall be known and may be cited as the “Digital Asset
9 and Blockchain Technology Act.”

10
11 2. As used in this act:

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

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

19 “Department” means the Department of Banking and Insurance.

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

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

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

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

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

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

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

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

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

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

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

11

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

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

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

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

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

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

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

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

32 (5) issuing a digital asset; or

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

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

39

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

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

46 (1) the legal name of the applicant, each current or proposed
47 business address of the applicant, and any fictitious or trade name the

- 1 applicant uses or plans to use in conducting its digital asset business
2 activity with or on behalf of a resident;
- 3 (2) the legal name, any former or fictitious name, and the
4 residential and business address of each executive officer and
5 responsible individual of the applicant, and each controlling person
6 of the applicant;
- 7 (3) a concise description of the current and former business of the
8 applicant for the five years before the application is submitted or if
9 the business has operated for less than five years, for the time the
10 business has operated, including its products and services;
- 11 (4) the name, address, and telephone number of a person who
12 manages each server the applicant expects to use in conducting its
13 digital asset business activity with or on behalf of a resident;
- 14 (5) a list of any license revocation, license suspension, or other
15 disciplinary action taken against the licensee in another state and any
16 license applications rejected by another state;
- 17 (6) a list of any criminal conviction, deferred prosecution
18 agreement, and pending criminal proceeding in any jurisdiction
19 against the applicant, any executive officer, responsible individual,
20 and controlling person of the applicant, and each person over which
21 the applicant has control;
- 22 (7) a list of any litigation, arbitration, or administrative
23 proceeding in any jurisdiction in which the applicant, or an executive
24 officer, responsible individual, or controlling person of the applicant
25 has been a party to for the five years before the application is
26 submitted, determined to be material in accordance with generally
27 accepted accounting principles and, to the extent the applicant would
28 be required to disclose the litigation, arbitration, or administrative
29 proceeding in the applicant's audited financial statements, reports to
30 equity owners, and similar statements or reports;
- 31 (8) a list of any bankruptcy or receivership proceeding in any
32 jurisdiction for the 10 years prior to the application's submission in
33 which the applicant, any executive officer, responsible individual, or
34 controlling person of the applicant, or person over which the
35 applicant has control, was a debtor;
- 36 (9) the United State Postal Service address and electronic mail
37 address to which communications from the department may be sent;
- 38 (10) the name, United State Postal Service address, and electronic
39 mail address of the registered agent of the applicant in this State, if
40 applicable;
- 41 (11) a copy of any certificate of coverage for each liability,
42 casualty, business-interruption, or cyber-security insurance policy
43 maintained by the applicant for itself or the applicant's users;
- 44 (12) if applicable, the date on which and the state in which the
45 applicant is formed, and a copy of a current certificate of good
46 standing issued by that state;

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

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

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

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

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

25

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

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

34 (2) the person submits to the department:

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

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

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

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

- 1 6. a. The department shall grant or deny any digital asset
2 business license application or license reciprocity application within
3 30 days of its receipt.
- 4 b. The department may refuse an application for a digital asset
5 business license or license reciprocity application if:
- 6 (1) the application is incomplete in a material respect;
7 (2) the application includes false, misleading, or inaccurate
8 information; or
9 (3) any applicant or principal of an applicant has engaged in
10 dishonest or unethical practices in a digital asset business or in the
11 securities commodities, banking, insurance, or investment advisory
12 business.
- 13 c. A license issued pursuant to this act shall not be transferrable
14 or assignable.
15
- 16 7. a. A licensee may apply for an annual renewal of a license
17 by:
- 18 (1) paying a renewal fee in an amount determined by the
19 department pursuant to regulation;
20 (2) submitting to the department the renewal report required
21 pursuant to subsection b. of this section.
- 22 b. A license renewal report required pursuant to this section shall
23 be submitted in a form and medium prescribed by the department by
24 regulation. The report shall contain an update of all information
25 required at initial licensing and a description of any:
- 26 (1) material change in the financial condition of the licensee;
27 (2) material litigation involving the licensee or an executive
28 officer, responsible individual, or controlling person of the licensee;
29 (3) license suspension or revocation proceeding commenced, or
30 other action taken, involving a license to conduct digital asset
31 business activity issued by another state on which reciprocal
32 licensing is based;
33 (4) federal or state investigation involving the licensee;
34 (5) material change in the business of the licensee; and
35 (6) changes to the executive officers of the licensee.
- 36 c. The department shall send the licensee a notice that an annual
37 renewal is soon to be due. The notice shall be sent by regular mail
38 and electronic mail between 30 and 60 days before the annual
39 renewal is due. If a renewal is not filed within 15 days of the date
40 that the annual renewal is due, the department shall send a second
41 notice by regular mail and electronic mail notifying that licensee that
42 its license shall be suspended if a renewal is not filed by the 30th day
43 after the annual renewal is due.
- 44 d. If a license is suspended for failure to file an annual renewal,
45 the license shall be reinstated if the licensee files a renewal report
46 and pays a fee, in an amount determined by the commissioner
47 pursuant to regulation.

- 1 8. a. The department may audit any digital asset business
2 licensee.
- 3 b. The department may suspend or revoke a digital asset
4 business license upon finding that:
- 5 (1) the department has been provided with false, misleading, or
6 inaccurate information by or on behalf of the licensee;
- 7 (2) the clients of a licensee have been provided with false,
8 misleading, or inaccurate information by or on behalf of the licensee;
- 9 (3) any principal or agent of a licensee has engaged in dishonest
10 or unethical practice in a digital asset business or in the securities,
11 commodities, banking, insurance, or investment advisory business;
- 12 (4) the licensee fails to provide documents requested by the
13 department; or
- 14 (5) the licensee fails to renew its license.
- 15 c. The department may provide a warning notice to a licensee if
16 the department suspects that a condition permitting suspension or
17 revocation has occurred.
- 18 d. Any warning notice, suspension, or revocation issued by the
19 department shall state the reasons for which it is given.
- 20 e. The department may issue general guidance to industry
21 participants on how to best protect the interests of clients.
- 22
- 23 9. Any denial, suspension, or revocation of a license, or warning
24 notice issued by the department shall prominently indicate that a right
25 of appeal is available. A licensee or prospective licensee which is
26 aggrieved by a decision of the department may appeal the decision
27 by filing a request for a hearing before the Office of Administrative
28 Law.
- 29
- 30 10. a. (1) A licensee shall provide to the department in a
31 reasonable amount of time any document relating to the operations
32 of the licensee upon receiving a written request from the department.
- 33 (2) Any notice requiring the production of documents pursuant to
34 this section shall include the reasons for which it is given.
- 35 b. A licensee shall give written notice to the department within
36 five days if there are any changes in the identities of the licensee's
37 executive officers, responsible individuals, or controlling persons.
- 38 c. A license shall maintain a record of all client transactions for
39 a period of not less than one year from the date the transaction
40 occurred.
- 41
- 42 11. a. The terms and conditions of a digital asset business
43 involving a consumer's account shall be disclosed at the time the
44 consumer contracts for a digital asset business service. A disclosure
45 shall be full and complete, contain no material misrepresentations, be
46 in readily understandable language and may include, as appropriate
47 and to the extent applicable:

- 1 (1) a schedule of fees and charges the licensee may assess, the
2 manner by which fees and charges will be calculated if they are not
3 set in advance and disclosed, and the timing of the fees and charges;
 - 4 (2) whether a consumer's account is protected by the Federal
5 Deposit Insurance Corporation;
 - 6 (3) whether there is support for forked networks of each digital
7 asset;
 - 8 (4) that investment in digital assets is volatile and subject to
9 market loss;
 - 10 (5) that investment in digital assets may result in total loss of
11 value;
 - 12 (6) that legal, legislative and regulatory changes may impair the
13 value of digital assets;
 - 14 (7) that consumers should perform research before investing in
15 digital assets;
 - 16 (8) that transfers of digital assets are irrevocable, if applicable;
 - 17 (9) how liability for an unauthorized, mistaken or accidental
18 transfer shall be apportioned;
 - 19 (10) that digital assets are not legal tender in any jurisdiction;
 - 20 (11) that digital assets may be subject to cyber theft or theft and
21 become unrecoverable;
 - 22 (12) who maintains control, ownership and/or access to any
23 private key related to a digital assets consumer's account;
 - 24 (13) that losing private key information may result in permanent
25 total loss of access to digital assets;
 - 26 (14) under what circumstances the digital asset business will in
27 the ordinary course of business disclose information concerning the
28 consumer's account to third parties; and
 - 29 (15) any other material investment risks.
- 30 b. All disclosures required by this act shall be displayed and
31 individually agreed to by a consumer before any digital asset
32 transaction at an electronic kiosk. Any fee to be charged shall be
33 displayed and individually agreed to by a consumer before any digital
34 asset transaction or digital asset balance inquiry at an electronic
35 kiosk.
 - 36 c. A licensee or registrant that has custody of digital assets for
37 one or more persons shall maintain in its custody an amount of each
38 type of digital assets sufficient to satisfy the aggregate entitlements
39 of the persons to the type of digital asset.
 - 40 d. The department may audit a licensee's compliance with this
41 section.
 - 42
- 43 12. a. Gross income shall not include up to \$1,000 of gains or
44 income from the sale or exchange of digital assets for other than legal
45 tender, except that following the first taxable year that this section is
46 in effect, the \$1,000 limit shall be increased annually by \$50.
 - 47 b. Gross income shall not include up to \$250 of dividend
48 distributions in the form of digital assets arising from the ownership

1 of digital assets, except that following the first taxable year that this
2 section is in effect, the \$250 limit shall be increased annually by \$20.

3 c. As used in this section “digital asset” shall mean the same as
4 that term is defined pursuant to section 1 of P.L. , c. (C.)
5 (pending before the Legislature as this bill).
6

7 13. This act shall take effect on the first day of the fourth month
8 next following enactment, except the commissioner may take any
9 anticipatory administrative action in advance as shall be necessary
10 for the implementation of this act.
11

12
13 STATEMENT
14

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

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

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

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

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

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

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

43 (5) administering or issuing a digital asset; or

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

46 The bill provides that a person who violates the provisions
47 requiring licensure is liable for a penalty of \$500 per day, from the

1 first day the department issues a notice of failure to apply a license
2 until a license application is filed with the department.

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

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

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

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

20 (2) the person submits certain information and certifications to
21 the department.

22 The bill requires the department to grant or deny any digital asset
23 business license application or license reciprocity application within
24 30 days of its receipt. The department may refuse an application for
25 a digital asset business license or license reciprocity application if a
26 licensee or applicant fails to meet certain standards specified in the
27 bill.

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

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

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

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

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

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

42 (4) federal or state investigation involving the licensee;

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

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

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

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

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

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

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

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

25 (1) up to \$1,000 of gains or income from the sale or exchange of
26 digital assets for other than legal tender, except that following the
27 first taxable year that the bill is in effect, the \$1,000 limit is to be
28 increased annually by \$50; or

29 (2) up to \$250 of dividend distributions in the form of digital
30 assets arising from the ownership of digital assets, except that
31 following the first taxable year that the bill is in effect, the \$250 limit
32 is to be increased annually by \$20.