

[First Reprint]

**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)**

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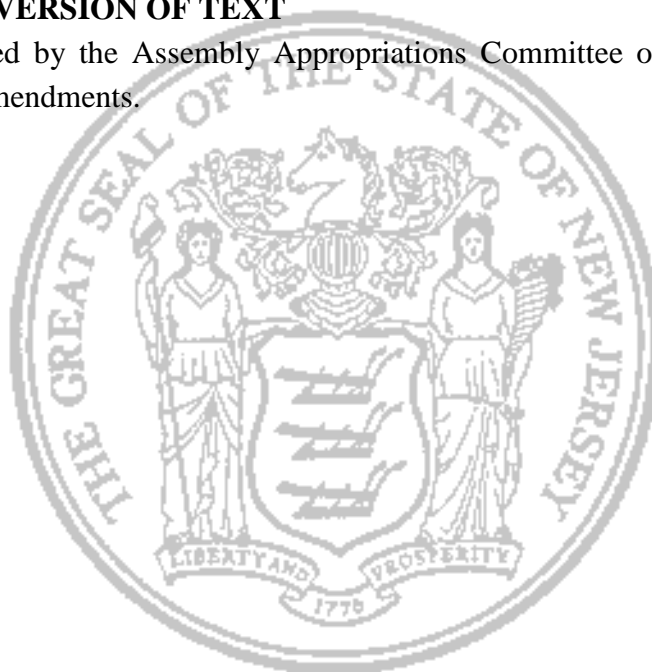
**Assemblywoman Vainieri Huttle and Assemblyman Johnson**

**SYNOPSIS**

“Digital Asset and Blockchain Technology Act.”

**CURRENT VERSION OF TEXT**

As reported by the Assembly Appropriations Committee on February 24, 2021, with amendments.



**(Sponsorship Updated As Of: 3/25/2021)**

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  
9 Asset 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  
16 the person’s interest the interest of any other person controlled by  
17 that 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  
31 terms digital security or virtual currency.

32 “Digital security” means a digital asset that provides an interest  
33 or participation in any profit-sharing agreement, but shall not  
34 include a 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  
37 licensee’s business in this State, chief financial officer, and any  
38 other person 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

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AAP committee amendments adopted February 24, 2021.

1 partnership, limited liability company, or corporation formed or  
2 incorporated in New Jersey.

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

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

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

13

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

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

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

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

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

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

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

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

35 (5) issuing a digital asset; or

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

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

42

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

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

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

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

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

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

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

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

23 c. <sup>1</sup> **For good cause, the department may waive any information**  
24 **required pursuant to subsection b. of this section, and may permit an**  
25 **applicant to submit other information instead of the required**  
26 **information.] No license shall be issued by the department to an**  
27 **individual who has, within the five years preceding the submission of**  
28 **an application for a license, been convicted of embezzlement, forgery,**  
29 **fraud, or theft.**<sup>1</sup>

30

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

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

39 (2) the person submits to the department:

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

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

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

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

5  
6 6. a. The department shall grant or deny any digital asset  
7 business license application or license reciprocity application within  
8 30 days of its receipt.

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

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

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

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

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

20  
21 7. a. A licensee may apply for an annual renewal of a license  
22 by:

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

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

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

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

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

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

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

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

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

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

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

5

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

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

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

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

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

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

20 (5) the licensee fails to renew its license.

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

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

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

28

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

35

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

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

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

44 c. A <sup>1</sup>~~license~~ licensee<sup>1</sup> shall maintain a record of all client  
45 transactions for a period of not less than <sup>1</sup>~~one year~~ six years<sup>1</sup> from  
46 the date the transaction occurred.

- 1 11. a. The terms and conditions of a digital asset business  
2 involving a consumer's account shall be disclosed at the time the  
3 consumer contracts for a digital asset business service. A  
4 disclosure shall be full and complete, contain no material  
5 misrepresentations, be in readily understandable language and may  
6 include, as appropriate and to the extent applicable:
- 7 (1) a schedule of fees and charges the licensee may assess, the  
8 manner by which fees and charges will be calculated if they are not  
9 set in advance and disclosed, and the timing of the fees and charges;
  - 10 (2) whether a consumer's account is protected by the Federal  
11 Deposit Insurance Corporation;
  - 12 (3) whether there is support for forked networks of each digital  
13 asset;
  - 14 (4) that investment in digital assets is volatile and subject to  
15 market loss;
  - 16 (5) that investment in digital assets may result in total loss of  
17 value;
  - 18 (6) that legal, legislative and regulatory changes may impair the  
19 value of digital assets;
  - 20 (7) that consumers should perform research before investing in  
21 digital assets;
  - 22 (8) that transfers of digital assets are irrevocable, if applicable;
  - 23 (9) how liability for an unauthorized, mistaken or accidental  
24 transfer shall be apportioned;
  - 25 (10) that digital assets are not legal tender in any jurisdiction;
  - 26 (11) that digital assets may be subject to cyber theft or theft and  
27 become unrecoverable;
  - 28 (12) who maintains control, ownership and/or access to any  
29 private key related to a digital assets consumer's account;
  - 30 (13) that losing private key information may result in permanent  
31 total loss of access to digital assets;
  - 32 (14) under what circumstances the digital asset business will in  
33 the ordinary course of business disclose information concerning the  
34 consumer's account to third parties; and
  - 35 (15) any other material investment risks.
- 36 b. All disclosures required by this act shall be displayed and  
37 individually agreed to by a consumer before any digital asset  
38 transaction at an electronic kiosk. Any fee to be charged shall be  
39 displayed and individually agreed to by a consumer before any  
40 digital asset transaction or digital asset balance inquiry at an  
41 electronic kiosk.
- 42 c. A licensee or registrant that has custody of digital assets for  
43 one or more persons shall maintain in its custody an amount of each  
44 type of digital assets sufficient to satisfy the aggregate entitlements  
45 of the persons to the type of digital asset.
- 46 d. The department may audit a licensee's compliance with this  
47 section.



- 1        12. a. Gross income shall not include up to \$1,000 of gains or  
2 income from the sale or exchange of digital assets for other than  
3 legal tender, except that following the first taxable year that this  
4 section is in effect, the \$1,000 limit shall be increased annually by  
5 \$50.
- 6        b. Gross income shall not include up to \$250 of dividend  
7 distributions in the form of digital assets arising from the ownership  
8 of digital assets, except that following the first taxable year that this  
9 section is in effect, the \$250 limit shall be increased annually by  
10 \$20.
- 11       c. As used in this section “digital asset” shall mean the same as  
12 that term is defined pursuant to section 1 of P.L.     , c. (C.     )  
13 (pending before the Legislature as this bill).  
14
- 15       13. This act shall take effect on the first day of the fourth month  
16 next following enactment, except the commissioner may take any  
17 anticipatory administrative action in advance as shall be necessary  
18 for the implementation of this act.