

[Second 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)

Assemblyman JOE DANIELSEN

District 17 (Middlesex and Somerset)

Co-Sponsored by:

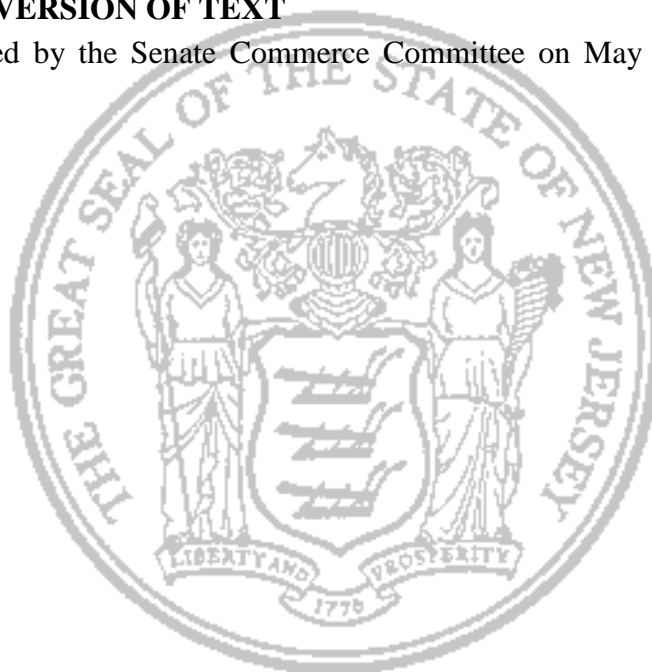
Assemblywoman Vainieri Huttie and Assemblyman Johnson

SYNOPSIS

“Digital Asset and Blockchain Technology Act.”

CURRENT VERSION OF TEXT

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

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

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

19 “Digital asset” means a representation of economic, proprietary,
 20 or access rights that is stored in a machine-readable format, has a
 21 transaction history that is recorded in a distributed, digital ledger or
 22 digital data structure in which consensus is achieved through a
 23 mathematically verifiable process, and includes digital consumer
 24 assets² **[**, digital securities,**]**² and virtual currency. ²“Digital asset”
 25 shall not include securities subject to regulation by the Bureau of
 26 Securities in the Division of Consumer Affairs in the Department of
 27 Law and Public Safety, whether in digital form or otherwise.²

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

30 “Digital consumer asset” means a digital asset that is used or
 31 bought primarily for consumptive, personal, or household purposes
 32 and includes any other digital asset that does not fall within the
 33 ²**[**terms digital security or **]** term² virtual currency.

34 ²**[**“Digital security” means a digital asset that provides an
 35 interest or participation in any profit-sharing agreement, but shall
 36 not include a digital consumer asset or virtual currency.**]**²

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

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

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

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:

¹Assembly AAP committee amendments adopted February 24, 2021.

²Senate SCM committee amendments adopted May 13, 2021.

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

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

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

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

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

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

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

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

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

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

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

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

38 (5) issuing a digital asset; or

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

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

45
46 4. a. An application for a license under this act shall be
47 ²submitted through the Nationwide Multistate Licensing System
48 and² made in the form and medium to be prescribed by the

1 department by regulation. The department shall require each
2 application to be accompanied by a nonrefundable fee.

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

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

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

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

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

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

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

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

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

43 (9) the United ¹**[State]** States¹ Postal Service address and
44 electronic mail address to which communications from the
45 department may be sent;

46 (10) the name, United ¹**[State]** States¹ Postal Service address,
47 and electronic mail address of the registered agent of the applicant
48 in this State, if applicable;

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

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

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

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

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

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

27 c. ¹For good cause, the department may waive any
28 information required pursuant to subsection b. of this section, and
29 may permit an applicant to submit other information instead of the
30 required information. No license shall be issued by the department
31 to an individual who has, within the five years preceding the
32 submission of an application for a license, been convicted of
33 embezzlement, forgery, fraud, or theft.¹
34

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

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

43 (2) the person submits to the department ²through the
44 Nationwide Multistate Licensing System²:

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

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

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

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

10
11 6. a. The department shall grant or deny any digital asset
12 business license application or license reciprocity application within
13 30 days of its receipt.

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

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

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

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

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

25
26 7. a. A licensee may apply for an annual renewal of a
27 license by:

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

30 (2) submitting to the department ²through the Nationwide
31 Multistate Licensing System² the renewal report required pursuant
32 to subsection b. of this section.

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

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

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

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

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

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

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

47 c. The department shall send the licensee a notice that an
48 annual renewal is soon to be due. The notice shall be sent by

1 regular mail and electronic mail between 30 and 60 days before the
2 annual renewal is due. If a renewal is not filed within 15 days of
3 the date that the annual renewal is due, the department shall send a
4 second notice by regular mail and electronic mail notifying that
5 licensee that its license shall be suspended if a renewal is not filed
6 by the 30th day after the annual renewal is due.

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

11
12 8. a. The department may audit any digital asset business
13 licensee.

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

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

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

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

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

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

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

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

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

34
35 9. Any denial, suspension, or revocation of a license, or
36 warning notice issued by the department shall prominently indicate
37 that a right of appeal is available. A licensee or prospective
38 licensee which is aggrieved by a decision of the department may
39 appeal the decision by filing a request for a hearing before the
40 Office of Administrative Law.

41
42 10. a. (1) A licensee shall provide to the department in a
43 reasonable amount of time any document relating to the operations of
44 the licensee upon receiving a written request from the department.

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

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

4 c. A ¹~~['license']~~ licensee¹ shall maintain a record of all client
5 transactions for a period of not less than ¹~~['one year']~~ six years¹ from
6 the date the transaction occurred.

7
8 11. a. The terms and conditions of a digital asset business
9 involving a consumer's account shall be disclosed at the time the
10 consumer contracts for a digital asset business service. A
11 disclosure shall be full and complete, contain no material
12 misrepresentations, be in readily understandable language and may
13 include, as appropriate and to the extent applicable:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (15) any other material investment risks.

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

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

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

7
8 ²[12. a. Gross income shall not include up to \$1,000 of gains
9 or income from the sale or exchange of digital assets for other than
10 legal tender, except that following the first taxable year that this
11 section is in effect, the \$1,000 limit shall be increased annually by
12 \$50.

13 b. Gross income shall not include up to \$250 of dividend
14 distributions in the form of digital assets arising from the ownership
15 of digital assets, except that following the first taxable year that this
16 section is in effect, the \$250 limit shall be increased annually by
17 \$20.

18 c. As used in this section "digital asset" shall mean the same as
19 that term is defined pursuant to section 1 of P.L. , c. (C.)
20 (pending before the Legislature as this bill).]²

21
22 ²[13.] 12.² This act shall take effect on the first day of the
23 fourth month next following enactment, except the commissioner
24 may take any anticipatory administrative action in advance as shall
25 be necessary for the implementation of this act.