

SENATE, No. 3132

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED NOVEMBER 5, 2020

Sponsored by:
Senator NELLIE POU
District 35 (Bergen and Passaic)

SYNOPSIS

“Digital Asset and Blockchain Technology Act.”

CURRENT VERSION OF TEXT

As introduced.



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
46 partnership, limited liability company, or corporation formed or
47 incorporated in New Jersey.

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1 “Responsible individual” means an individual who has
2 managerial authority with respect to a licensee’s digital asset
3 business activity 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
6 the 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
10 recognized 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
15 is:

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

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

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

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

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

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

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

33 (5) issuing a digital asset; or

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

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

40

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

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

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

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- 1 the applicant uses or plans to use in conducting its digital asset
2 business 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
8 the applicant for the five years before the application is submitted
9 or if the business has operated for less than five years, for the time
10 the 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
16 any 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
24 executive officer, responsible individual, or controlling person of
25 the applicant has been a party to for the five years before the
26 application is submitted, determined to be material in accordance
27 with generally accepted accounting principles and, to the extent the
28 applicant would be required to disclose the litigation, arbitration, or
29 administrative proceeding in the applicant's audited financial
30 statements, reports to equity owners, and similar statements or
31 reports;
- 32 (8) a list of any bankruptcy or receivership proceeding in any
33 jurisdiction for the 10 years prior to the application's submission in
34 which the applicant, any executive officer, responsible individual,
35 or controlling person of the applicant, or person over which the
36 applicant has control, was a debtor;
- 37 (9) the United State Postal Service address and electronic mail
38 address to which communications from the department may be sent;
- 39 (10) the name, United State Postal Service address, and
40 electronic mail address of the registered agent of the applicant in
41 this State, if applicable;
- 42 (11) a copy of any certificate of coverage for each liability,
43 casualty, business-interruption, or cyber-security insurance policy
44 maintained by the applicant for itself or the applicant's users;
- 45 (12) if applicable, the date on which and the state in which the
46 applicant is formed, and a copy of a current certificate of good
47 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
6 States, a copy of the audited financial statement of the corporation
7 for the most recent fiscal year or most recent report of the
8 corporation filed under section 13 of the "Securities Exchange Act
9 of 1934," 15 U.S.C. 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
23 an 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
29 as 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
32 activity that are substantially similar to, or more protective of users
33 than, this 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
41 responsible for issuing the license to conduct digital asset business
42 activity in the other state; and
- 43 (d) a certification signed by the executive officer of the
44 applicant affirming that the applicant shall conduct its digital asset
45 business activity with or on behalf of a resident in compliance with
46 this act.

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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
14 transferrable 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
23 shall be submitted in a form and medium prescribed by the
24 department by regulation. The report shall contain an update of all
25 information 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
37 annual renewal is soon to be due. The notice shall be sent by
38 regular mail and electronic mail between 30 and 60 days before the
39 annual renewal is due. If a renewal is not filed within 15 days of
40 the date that the annual renewal is due, the department shall send a
41 second notice by regular mail and electronic mail notifying that
42 licensee that its license shall be suspended if a renewal is not filed
43 by the 30th day 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
9 licensee;
- 10 (3) any principal or agent of a licensee has engaged in dishonest
11 or unethical practice in a digital asset business or in the securities,
12 commodities, banking, insurance, or investment advisory business;
- 13 (4) the licensee fails to provide documents requested by the
14 department; or
- 15 (5) the licensee fails to renew its license.
- 16 c. The department may provide a warning notice to a licensee
17 if the department suspects that a condition permitting suspension or
18 revocation has occurred.
- 19 d. Any warning notice, suspension, or revocation issued by the
20 department shall state the reasons for which it is given.
- 21 e. The department may issue general guidance to industry
22 participants on how to best protect the interests of clients.
23
- 24 9. Any denial, suspension, or revocation of a license, or
25 warning notice issued by the department shall prominently indicate
26 that a right of appeal is available. A licensee or prospective
27 licensee which is aggrieved by a decision of the department may
28 appeal the decision by filing a request for a hearing before the
29 Office of Administrative Law.
30
- 31 10. a. (1) A licensee shall provide to the department in a
32 reasonable amount of time any document relating to the operations
33 of the licensee upon receiving a written request from the
34 department.
- 35 (2) Any notice requiring the production of documents pursuant
36 to this section shall include the reasons for which it is given.
- 37 b. A licensee shall give written notice to the department within
38 five days if there are any changes in the identities of the licensee's
39 executive officers, responsible individuals, or controlling persons.
- 40 c. A license shall maintain a record of all client transactions for
41 a period of not less than one year from the date the transaction
42 occurred.
43
- 44 11. a. The terms and conditions of a digital asset business
45 involving a consumer's account shall be disclosed at the time the
46 consumer contracts for a digital asset business service. A
47 disclosure shall be full and complete, contain no material

1 misrepresentations, be in readily understandable language and may
2 include, as appropriate and to the extent applicable:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (15) any other material investment risks.

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

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

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

44

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

1 section is in effect, the \$1,000 limit shall be increased annually
2 by \$50.

3 b. Gross income shall not include up to \$250 of dividend
4 distributions in the form of digital assets arising from the ownership
5 of digital assets, except that following the first taxable year that this
6 section is in effect, the \$250 limit shall be increased annually by
7 \$20.

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

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

16
17
18 STATEMENT
19

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (2) the person submits certain information and certifications to
25 the department.

26 The bill requires the department to grant or deny any digital asset
27 business license application or license reciprocity application within
28 30 days of its receipt. The department may refuse an application
29 for a digital asset business license or license reciprocity application
30 if a licensee or applicant fails to meet certain standards specified in
31 the bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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