

[First Reprint]

**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 reported by the Senate Commerce Committee on May 13, 2021, with amendments.



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 assets<sup>1</sup> **[**, digital securities,**]**<sup>1</sup> and virtual currency. <sup>1</sup>“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.<sup>1</sup>

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 <sup>1</sup>**[**terms digital security or **]** term<sup>1</sup> virtual currency.

34 <sup>1</sup>**[**“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.**]**<sup>1</sup>

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:

<sup>1</sup>Senate 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 person  
20 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 submitted through the Nationwide Multistate Licensing System

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

- 1 (10) the name, United <sup>1</sup>**[State]** States<sup>1</sup> Postal Service address,  
2 and electronic mail address of the registered agent of the applicant  
3 in this State, if applicable;
- 4 (11) a copy of any certificate of coverage for each liability,  
5 casualty, business-interruption, or cyber-security insurance policy  
6 maintained by the applicant for itself or the applicant's users;
- 7 (12) if applicable, the date on which and the state in which the  
8 applicant is formed, and a copy of a current certificate of good  
9 standing issued by that state;
- 10 (13) policies and procedures to be adopted by the applicant to  
11 meet any obligations required by anti-money laundering and anti-  
12 terror financing laws;
- 13 (14) if a corporation has control of the applicant and the  
14 corporation's equity interests are publicly traded in the United  
15 States, a copy of the audited financial statement of the corporation  
16 for the most recent fiscal year or most recent report of the  
17 corporation filed under section 13 of the "Securities Exchange Act  
18 of 1934," 15 U.S.C. s.78m;
- 19 (15) if a corporation has control of the applicant and the  
20 corporation's equity interests are publicly traded outside the United  
21 States, a copy of the audited financial statement of the corporation  
22 for the most recent documentation similar to that required in  
23 paragraph (14) of this subsection, filed with the foreign regulator in  
24 the domicile of the corporation; and
- 25 (16) if available, for each executive officer, responsible  
26 individual, or controlling person of the applicant, for the three years  
27 before the application is submitted, the employment history, and the  
28 history of any investigation of the individual or legal proceeding to  
29 which the individual was a party.
- 30 c. <sup>1</sup>**[For good cause, the department may waive any**  
31 **information required pursuant to subsection b. of this section, and**  
32 **may permit an applicant to submit other information instead of the**  
33 **required information.] No license shall be issued by the department**  
34 **to an individual who has, within the five years preceding the**  
35 **submission of an application for a license, been convicted of**  
36 **embezzlement, forgery, fraud, or theft.**<sup>1</sup>
- 37
- 38 5. A person licensed by another state to engage in digital asset  
39 business activity in that state may engage in digital asset business  
40 activity with or on behalf of a resident to the same extent as a  
41 licensee if:
- 42 (1) the department determines that the state in which the person  
43 is licensed has in force laws regulating digital asset business  
44 activity that are substantially similar to, or more protective of users  
45 than, this act; and
- 46 (2) the person submits to the department <sup>1</sup>through the  
47 Nationwide Multistate Licensing System<sup>1</sup>:

- 1 (a) a notice containing a statement that the person will rely on  
2 reciprocal licensing; a copy of the license to conduct digital asset  
3 business activity issued by the other state;
- 4 (b) a nonrefundable reciprocal license fee, to be determined by  
5 the department by regulation;
- 6 (c) a certification of license history from the agency  
7 responsible for issuing the license to conduct digital asset business  
8 activity in the other state; and
- 9 (d) a certification signed by the executive officer of the  
10 applicant affirming that the applicant shall conduct its digital asset  
11 business activity with or on behalf of a resident in compliance with  
12 this act.

13  
14 6. a. The department shall grant or deny any digital asset  
15 business license application or license reciprocity application within  
16 30 days of its receipt.

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

- 19 (1) the application is incomplete in a material respect;  
20 (2) the application includes false, misleading, or inaccurate  
21 information; or  
22 (3) any applicant or principal of an applicant has engaged in  
23 dishonest or unethical practices in a digital asset business or in the  
24 securities commodities, banking, insurance, or investment advisory  
25 business.

26 c. A license issued pursuant to this act shall not be  
27 transferrable or assignable.

28  
29 7. a. A licensee may apply for an annual renewal of a license  
30 by:

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

33 (2) submitting to the department <sup>1</sup>through the Nationwide  
34 Multistate Licensing System<sup>1</sup> the renewal report required pursuant  
35 to subsection b. of this section.

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

- 40 (1) material change in the financial condition of the licensee;  
41 (2) material litigation involving the licensee or an executive  
42 officer, responsible individual, or controlling person of the licensee;  
43 (3) license suspension or revocation proceeding commenced, or  
44 other action taken, involving a license to conduct digital asset  
45 business activity issued by another state on which reciprocal  
46 licensing is based;
- 47 (4) federal or state investigation involving the licensee;

- 1 (5) material change in the business of the licensee; and  
2 (6) changes to the executive officers of the licensee.
- 3 c. The department shall send the licensee a notice that an  
4 annual renewal is soon to be due. The notice shall be sent by  
5 regular mail and electronic mail between 30 and 60 days before the  
6 annual renewal is due. If a renewal is not filed within 15 days of  
7 the date that the annual renewal is due, the department shall send a  
8 second notice by regular mail and electronic mail notifying that  
9 licensee that its license shall be suspended if a renewal is not filed  
10 by the 30th day after the annual renewal is due.
- 11 d. If a license is suspended for failure to file an annual renewal,  
12 the license shall be reinstated if the licensee files a renewal report  
13 and pays a fee, in an amount determined by the commissioner  
14 pursuant to regulation.
- 15
- 16 8. a. The department may audit any digital asset business  
17 licensee.
- 18 b. The department may suspend or revoke a digital asset  
19 business license upon finding that:
- 20 (1) the department has been provided with false, misleading, or  
21 inaccurate information by or on behalf of the licensee;
- 22 (2) the clients of a licensee have been provided with false,  
23 misleading, or inaccurate information by or on behalf of the  
24 licensee;
- 25 (3) any principal or agent of a licensee has engaged in dishonest  
26 or unethical practice in a digital asset business or in the securities,  
27 commodities, banking, insurance, or investment advisory business;
- 28 (4) the licensee fails to provide documents requested by the  
29 department; or
- 30 (5) the licensee fails to renew its license.
- 31 c. The department may provide a warning notice to a licensee  
32 if the department suspects that a condition permitting suspension or  
33 revocation has occurred.
- 34 d. Any warning notice, suspension, or revocation issued by the  
35 department shall state the reasons for which it is given.
- 36 e. The department may issue general guidance to industry  
37 participants on how to best protect the interests of clients.
- 38
- 39 9. Any denial, suspension, or revocation of a license, or  
40 warning notice issued by the department shall prominently indicate  
41 that a right of appeal is available. A licensee or prospective  
42 licensee which is aggrieved by a decision of the department may  
43 appeal the decision by filing a request for a hearing before the  
44 Office of Administrative Law.
- 45
- 46 10. a. (1) A licensee shall provide to the department in a  
47 reasonable amount of time any document relating to the operations

1 of the licensee upon receiving a written request from the  
2 department.

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

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

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

11

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

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

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

23 (3) whether there is support for forked networks of each digital  
24 asset;

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

27 (5) that investment in digital assets may result in total loss of  
28 value;

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

31 (7) that consumers should perform research before investing in  
32 digital assets;

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

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

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

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

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

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

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

46 (15) any other material investment risks.

1       b. All disclosures required by this act shall be displayed and  
2 individually agreed to by a consumer before any digital asset  
3 transaction at an electronic kiosk. Any fee to be charged shall be  
4 displayed and individually agreed to by a consumer before any  
5 digital asset transaction or digital asset balance inquiry at an  
6 electronic kiosk.

7       c. A licensee or registrant that has custody of digital assets for  
8 one or more persons shall maintain in its custody an amount of each  
9 type of digital assets sufficient to satisfy the aggregate entitlements  
10 of the persons to the type of digital asset.

11       d. The department may audit a licensee's compliance with this  
12 section.

13  
14       <sup>1</sup>**[12. a.** Gross income shall not include up to \$1,000 of gains or  
15 income from the sale or exchange of digital assets for other than  
16 legal tender, except that following the first taxable year that this  
17 section is in effect, the \$1,000 limit shall be increased annually  
18 by \$50.

19       b. Gross income shall not include up to \$250 of dividend  
20 distributions in the form of digital assets arising from the ownership  
21 of digital assets, except that following the first taxable year that this  
22 section is in effect, the \$250 limit shall be increased annually by  
23 \$20.

24       c. As used in this section "digital asset" shall mean the same as  
25 that term is defined pursuant to section 1 of P.L.     , c. (C.     )  
26 (pending before the Legislature as this bill).<sup>1</sup>

27  
28       <sup>1</sup>**[13.] 12.**<sup>1</sup> This act shall take effect on the first day of the  
29 fourth month next following enactment, except the commissioner  
30 may take any anticipatory administrative action in advance as shall  
31 be necessary for the implementation of this act.