

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 3132

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 13, 2021

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 3132.

As amended, this bill, the “Digital Asset and Blockchain Technology Act,” regulates digital asset business activity. The bill defines “digital asset” to mean a representation of economic, proprietary, or access rights that is stored in a machine-readable format, has a transaction history that is recorded in a distributed, digital ledger or digital data structure in which consensus is achieved through a mathematically verifiable process. Examples of digital assets include digital consumer assets, digital securities, and virtual currency. “Digital asset” does not include securities, whether in digital form or otherwise, regulated by the Bureau of Securities in the Division of Consumer Affairs in the Department of Law and Public Safety.

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

The bill provides the department may license a person to carry on one or more digital asset business activities described in the bill.

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

The bill provides that an application for a license is to be submitted through the Nationwide Multistate Licensing System, and made in the form and medium to be prescribed by the department by regulation. Each application is to be accompanied by a nonrefundable fee.

Applicants are to provide certain information relevant to the applicant’s proposed digital asset business activity, submitting the information through the Nationwide Multistate Licensing System. The bill provides that no license may be issued by the department to an individual who has, within the five years preceding the submission of

an application for a license, been convicted of embezzlement, forgery, fraud, or theft.

The bill provides that a person licensed by another state to engage in digital asset business activity in that state may engage in digital asset business activity with or on behalf of a resident of New Jersey to the same extent as a licensee if certain criteria are met pursuant to the bill. An application for such a person is to be submitted through the National Multistate Licensing System.

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

Licensees are required to submit a renewal report, through the Nationwide Multistate Licensing System, that contains an update of all information required at initial licensing and a description of certain information described in the bill.

The bill provides that the department may audit any digital asset business licensee. The department may suspend or revoke a digital asset business license upon certain findings that are provided in the bill.

Under the bill, any denial, suspension, or revocation of a license, or warning notice issued by the department, is to prominently indicate that a right of appeal is available. A licensee or prospective licensee that is aggrieved by a decision of the department may appeal the decision by filing a request for a hearing before the Office of Administrative Law. The department may issue written requests for information to a licensee regarding the operations of the licensee. A record on all client transactions is to be maintained by the licensee for not less than six years.

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

The disclosures required by the bill are to be displayed and individually agreed to by a consumer before any digital asset transaction at an electronic kiosk. Any fee to be charged is required to be displayed and individually agreed to by a consumer before any digital asset transaction or digital asset balance inquiry at an electronic kiosk.

As amended and reported, this bill is identical to Assembly Bill No. 2891 (1R) as also amended and reported by the committee.

COMMITTEE AMENDMENTS

The committee amendments:

(1) remove the definition of and references to “digital security” from the bill;

(2) add language to the definition of “digital asset” to exempt securities, whether in digital form or otherwise, regulated by the Bureau of Securities in the Division of Consumer Affairs in the Department of Law and Public Safety;

(3) remove a provision allowing the Department of Banking and Insurance to waive certain information requirements of applicants for licenses under the bill;

(4) require that submission of an application for an initial license, of a renewal report for licensure renewal, and of documents for an out-of-State individual to be licensed in New Jersey is to be conducted through the Nationwide Multistate Licensing System;

(5) provide that no license may be issued by the department to an individual who has, within the five years preceding the submission of an application for a license, been convicted of embezzlement, forgery, fraud, or theft;

(6) change the period in which a licensee must maintain a record of all client transactions from not less than one year from the date the transaction occurred to not less than six years from that date; and

(7) remove language to exclude certain income and dividends from gross income for tax purposes.