

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2371

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 19, 2023

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2371 (1R) with committee amendments.

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 and 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, as defined pursuant to law.

The bill provides that a person is not to engage in a digital asset business activity, or hold themselves 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 New Jersey Bureau of Securities (bureau), or has filed a pending license with the bureau.

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

The bureau is given the authority to exempt persons from the provisions of the bill concerning engaging in digital asset business activity without a license and to determine whether a person is subject to a license pursuant to 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 bureau issues a notice of failure to apply a license until a license application is filed with the bureau.

The bill provides that an application for a license is to be submitted in a form and manner as determined by the bureau. 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. The bill provides that no license may be issued by the bureau 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 requires the bureau to grant or deny any digital asset business license application or license reciprocity application within 120 days of the receipt of the completed application. The bureau 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 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 bureau may audit any digital asset business licensee. The bill stipulates that each licensee is to maintain and enforce confidential, written compliance policies which are to be reviewed and approved by the licensee's board of directors or an equivalent governing body. The bureau may suspend or revoke a digital asset business license upon certain findings that are provided in the bill.

The bill provides the bureau chief with the authority to, for good cause shown, deny, suspend, or revoke a license pending final determination of a proceeding. Notice of any suspension or revocation issued by the bureau is to prominently indicate the right to a hearing.

A licensee, under the bill, is to provide the bureau with any document relating to the operations of the licensee upon receiving written notice from the bureau. The licensee is to maintain records of all client transactions and any accounts, correspondences, memoranda, and other records as the bureau may require, for no less than six years from the date of a transaction's occurrence, unless the bureau by rule prescribes another timeframe.

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.

Under the bill, it is a violation for any person to make or cause to be made in any document filed with the bureau or in any proceeding, investigation or examination conducted under the bill, any statement which is, at the time and in the light of the

circumstances under which it is made, false or misleading in any material respect. In addition, the bill provides the bureau chief with certain investigatory authority to determine whether any person has violated or is about to violate any provisions of the bill, or to otherwise aid in the enforcement of the bill.

Lastly, the bill establishes the “Digital Asset Enforcement Fund” in the Division of Consumer Affairs (division) of the Department of Law and Public Safety is to continue as a dedicated, nonlapsing, revolving fund. All fees, penalties, costs, fines, and other collected moneys are to be deposited in the fund and used by the director of the division to administer and enforce the provisions of the bill, and to conduct investigations related to the bill.

As amended and reported by the committee, this bill is identical to the Senate Committee Substitute for Senate Bill No.1756 (1R), as also reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) provide that the New Jersey Bureau of Securities, rather than the Department of Banking and Insurance, is to regulate digital asset business pursuant to the provisions of the bill;
- 2) stipulate that the bureau is to establish how an application for a license is to be submitted and has the authority to require applicants to provide certain additional information on proposed digital asset business activity;
- 3) grant the bureau authority to determine the form and manner in which renewal reports are to be submitted;
- 4) delineate further the circumstances under which the bureau may deny, suspend, or revoke a digital asset business license;
- 5) require a licensee to maintain, in addition to records of all client transactions, records of any accounts, correspondence, memoranda, and other records as the bureau prescribes for at least six years from the date of the transaction, unless the bureau by rule prescribes another timeframe;
- 6) make it unlawful for a person to make or cause to be made, in documents filed with the bureau or in any proceeding, investigation, or examination conducted pursuant to the bill, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect;
- 7) outline the enforcement measures the bureau chief is authorized to perform and circumstances under which the Superior Court may get involved;
- 8) allow the bureau chief to restrain a person from engaging in digital asset business activity;
- 9) establish the “Digital Asset Enforcement Fund” in the Division of Consumer Affairs of the Department of Law and Public Safety as a dedicated, nonlapsing, revolving fund for the administration and

enforcement of, and the conduction of investigations pursuant to, the bill, to which all fees, penalties, costs, and other moneys collected are to be deposited;

10) authorize the bureau to adopt, amend, or rescind any forms or orders and any rules or regulations as necessary to effectuate the purposes of the bill;

11) stipulate the bill is not intended to limit the authority of the Department of Banking and Insurance over any financial institutions, insurance companies or other entities;

12) delete provisions addressing the authority of the department and digital asset business activity, the confidentiality of certain records, and the definitions in current law relative to the funding mechanism for the Division of Banking; and

13) make technical corrections.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.