ASSEMBLY, No. 1392

STATE OF NEW JERSEY

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SYNOPSIS

Regulates and establishes certain consumer protections concerning digital currencies.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning digital currency and supplementing Title 17 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in this act:

"Administrator" means a centralized authority with the power to remove digital currency from circulation or to modify the information stored in a distributed digital verification system.

"Affiliate" means any person that directly or indirectly controls, is controlled by, or is under common control with, another person.

"Commissioner" means the Commissioner of Banking and Insurance.

"Digital currency" means any type of digital unit that, regardless of legal tender status, has no administrator and is:

(1) used as a currency, medium of exchange or stored value; or

(2) used as a substitute for government currency.

"Digital currency" shall not include:

(1) digital units that have nominal or no value as a currency or medium of exchange and are not used as a substitute for government currency;

(2) digital units that can be used solely with a gift card program;

(3) digital units that are used solely within online gaming platforms and have no market or application outside of those gaming platforms, or can be redeemed for real-world goods, services, discounts, or purchases, but cannot be converted into, or redeemed for government currency or digital currency; or

(4) digital units that are used solely within an affinity program but do not otherwise meet the definition of digital currency as defined herein.

"Digital currency business activity" means any person who conducts any one of the following activities involving a New Jersey person:

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

(2) storing, holding, or maintaining custody or control of digital currency on behalf of others;

(3) buying or selling digital currency as a customer business;

(4) performing exchange services as a customer business;

(5) controlling or issuing a digital currency.

"Exchange service" means the conversion or exchange of government currency or other value into digital currency, the conversion or exchange of digital currency into government currency or other value, or the conversion or exchange of one form of digital currency into another form of digital currency.

"Gift card program" means a credit program that is:

(1) usable at a single merchant or an affiliated group of merchants that share the same name, mark or logo or is usable at multiple unaffiliated merchants or service providers;

(2) issued for a specified amount;

(3) potentially but not necessarily able to be increased in value or reloaded;

(4) purchased and reloaded on a prepaid basis for the future purchase or delivery of goods or services;

(5) honored upon presentation; and

(6) potentially but not necessarily able to be redeemed for the same type of funds that were used to purchase or load the device.

"Government currency" means government-issued currency that is designated as legal tender in its country of issuance through government decree, regulation, or law.

"New Jersey person" means any person that resides, is located, or is conducting business in New Jersey.

"Person" means any individual, partnership, corporation, association, trust, or other business combination or entity, however organized.

"Principal beneficiary" means any person entitled to 10 percent or more of the benefits of a trust.

"Principal officer" means an executive officer of an entity, including the chief executive, financial, operating, and compliance officers, president, managing partner, general partner, controlling partner, and trustee, as applicable.

"Principal stockholder" means any person that directly or indirectly owns, controls, or holds with power to vote 10 percent or more of any class of outstanding capital stock of a corporate entity or possesses the power to direct or cause the direction of the management or policies of the entity.

"Qualified trust company" means banks, trust companies, bank holding companies credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States, provided that they do not issue or sell payment instruments through authorized delegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks.

"Registrant" means a person duly registered or completing a registration under this act.

"Registration" means the process set forth in section 3 of this act.

2. a. A person engaging in digital currency business activity shall complete a registration under this act.

b. This section shall not apply to qualified trust companies and payment processors.

3. The registration required under this act shall be in writing, under oath, and completed in a form prescribed by the Department of Banking and Insurance, which shall contain the following:

a. the exact name of the registrant, including any "doing business as" name, the form of organization, and the jurisdiction where organized or incorporated;

b. a list of the registrants, affiliates, and an organization chart illustrating the relationship between and among the registrant and its affiliates;

c. for each principal officer, principal stockholder, and principal beneficiary of the registrant, as applicable, and for all individuals to be employed by the registrant, who have access to any customer funds, whether denominated in digital currency or government currency:

(1) a set of completed fingerprints; and

(2) two portrait-style photographs of each individual measuring not more than two inches by two inches;

d. an organization chart of the registrant and its management structure, including its principal officers or senior management, indicating lines of authority and the allocation of duties among its principal officers or senior management;

e. a business plan, including a description of the proposed, current, and historical business of the registrant, including details on the products and services provided and to be provided, all associated website addresses, the jurisdictions in which the registrant is engaged in business, the principal place of business, the primary markets of operation, the projected customer base, any specific marketing targets, and the physical address of any operation in New Jersey; and

f. a registration fee to be set by the commissioner.

4. In the event of any material change in the registration information required by section 3 of this act, the registrant shall, within seven days of the change, supplement or amend its registration by completing a form as prescribed by the commissioner.

5. Each registrant shall maintain and enforce confidential, written compliance policies, including policies with respect to anti-fraud, anti-money laundering, cyber security, privacy and information security, which shall be reviewed and approved by the registrant's board of directors or an equivalent governing body.

6. The registrant shall hold digital currency of the same type and amount as that which it has custody from any New Jersey person. Each registrant shall be prohibited from selling, transferring, assigning, lending, hypothecating, pledging, or otherwise using or encumbering any digital currency, the custody of

which is maintained for a New Jersey person, except for the sale, transfer, or assignment of such assets at the direction of the New Jersey person.

7. Each registrant shall make, keep, and preserve all of its books and records of its digital currency business activity in their original form or native file format for a period of at least five years from the date of their creation and in a condition that will allow the Department of Banking and Insurance to determine whether the registrant is complying with all applicable laws, rules, and regulations. The books and records maintained by each registrant shall, without limitation, include:

a. for each transaction:

(1) the amount, date, and precise time of the transaction, any payment instructions, the total amount of fees and charges received and paid to, by, or on behalf of the registrant; and

(2) to the extent the registrant has knowledge of or has reason to know, account numbers, telephone numbers, email addresses and physical addresses of parties to the transaction;

b. a general ledger containing all asset, liability, ownership equity, income, and expense accounts;

c. bank statements and bank reconciliation records;

d. any statements or valuations sent or provided to customers and counterparties;

e. records or minutes of meetings of the board of directors or an equivalent governing body;

f. communications and documentation related to investigations of customer complaints and transaction error resolution or concerning facts giving rise to possible violations of laws, rules, or regulations; and

g. all other records required to be maintained in accordance with this act.

8. a. No registrant shall advertise its products, services, or activities in New Jersey or to any New Jersey person without including the legal name of the registrant and the legend that the registrant is a "registered New Jersey digital currency custodian."

b. Each registrant shall maintain, for examination by the commissioner, all advertising and marketing materials for a period of at least seven years from the date of their creation, including but not limited to print media, internet media, including websites, radio and television advertising, road show materials, presentations, and brochures. Each registrant shall maintain hard copy, website captures of material changes to internet advertising and marketing, and audio and video scripts of its advertising and marketing materials, as applicable.

c. In all advertising and marketing materials, each registrant shall comply with all disclosure requirements under federal and State laws, rules, and regulations.

d. In all advertising and marketing materials, each registrant and any person or entity acting on its behalf, shall not, directly or by implication, make any false, misleading, or deceptive representations or omissions.

9. Each registrant shall permit and assist the Department of Banking and Insurance to examine the registrant whenever in the commissioner's judgment such examination is necessary or advisable, including, without limitation, to determine compliance with the requirements set forth in this act. The examination may include, without limitation, the premises, books, records, and any other pertinent material of the registrant or its affiliates.

10. a. (1) Each registrant shall, prior to engaging in digital currency business activity with any customer, disclose in clear, conspicuous writing all material risks to the customer associated with the particular digital currency business activities in which it engages. Such risks may include, without limitation:

(a) Digital currency is not legal tender, is not backed by the United States government, and the digital currency held by the registrant on behalf of the customer is not subject to Federal Deposit Insurance Corporation protections;

(b) Transactions in the digital currency held by the registrant on behalf of the customer may be irreversible, and, accordingly, losses due to fraudulent or accidental transactions may not be recoverable;

(c) Laws determining the rights and obligations of digital currency users are not fully developed, and a court of law may find that the elements of this transaction, including without limitation the timing, amount, identity or location of the parties, may not be the same as if the transaction had occurred with the U.S. dollar;

(d) The value of the digital currency held by the registrant on behalf of the customer may change more quickly and unexpectedly than that of government currencies like the U.S. dollar, and may in fact become zero; and

(e) Technological difficulties experienced by the registrant may prevent the customer from accessing the digital currency held by the registrant on behalf of the customer.

(2) The Department of Banking and Insurance shall post on the department's website information substantially similar to the information required to be disclosed pursuant to this subsection, including information about the material risks described herein.

b. Each registrant shall, prior to engaging in digital currency business activity with any customer, disclose in clear, conspicuous writing all relevant terms and conditions associated with its digital

currency business activity. Such disclosures may include, without limitation:

(1) the customer's liability for unauthorized transactions;

(2) the customer's right to interrupt or prevent any transaction and the procedure to initiate an interruption or prevention;

(3) the circumstances under which the registrant will, absent a court or government order, disclose information concerning the customer's account to third parties;

(4) the customer's right to receive periodic account statements and valuations from the registrant;

(5) the customer's right to receive a receipt, trade ticket, or other evidence of a transaction; and

(6) the customer's right to prior notice of a change in the registrant's rules or policies.

c. Each registrant shall, prior to engaging in digital currency business activity with any customer, disclose in clear, conspicuous writing the terms and conditions of the transaction. The disclosures may include, without limitation:

(1) the amount of the transaction;

(2) any fees, expenses, and charges borne by the customer, including applicable exchange rates;

(3) the type and nature of the transaction; and

(4) a warning that once executed the transaction may not be undone.

d. Each registrant shall ensure that all disclosures required in the section are acknowledged in writing as received by customers.

e. Each registrant shall, upon completion of any transaction, provide to any customer initiating the transaction, a receipt containing the following information:

(1) the name and contact information of the registrant, including a telephone number established by the registrant to answer questions and register complaints;

(2) the type, value, date, and precise time of the transaction;

(3) any fee charged; and

(4) any exchange rate applied.

11. a. Each registrant shall establish and maintain written policies and procedures to fairly and timely resolve customer complaints.

b. Each registrant shall provide, in a clear and conspicuous manner, on its website or websites, and in all physical locations the following disclosures:

(1) the registrant's mailing address, email address, and telephone number for the receipt of complaints;

(2) a statement that the complainant may also bring a complaint to the attention of the Department of Banking and Insurance; and

(3) the Department of Banking and Insurance's mailing address, website, and telephone number.

12. a. If it appears to the commissioner that any person has committed or is about to commit a violation of any provision of this act or of any rule or order of the commissioner, the commissioner may apply to the Superior Court for an order enjoining that person from violating or continuing to violate this act or any rule, regulation or order of the commissioner and for injunctive or other relief as the nature of the case may require.

b. If, after notice and hearing, the commissioner finds that a person has violated any provision of this act or a rule adopted under this act, the commissioner may order the person to pay the commissioner a civil penalty in an amount specified by the commissioner, not to exceed $5,000 for each violation. Each violation shall constitute a separate offense and the penalty under this section shall be in addition to a suspension or revocation of a registration. No proceeding shall be initiated and no penalty shall be assessed pursuant to this section until after that person has been notified in writing of the nature of the violation and has been afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so. The provisions of the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), shall apply.

c. The commissioner, in the exercise of the commissioner's reasonable judgment, is authorized to compromise, settle, and collect civil penalties with any person for violations of any provision of this act, or of any rule, regulation or order issued or promulgated pursuant to this act.

13. This act shall take effect on the first day of the fourth month next after enactment.

STATEMENT

This bill requires digital currency businesses operating in New Jersey to register with the Department of Banking and Insurance and establishes certain consumer protections.

Under the bill, "digital currency" means any type of digital unit that, regardless of legal tender status, has no administrator and is:

(1) used as a currency, medium of exchange or stored value; or

(2) used as a substitute for government currency.

The bill excludes from the definition of "digital currency":

(1) digital units that have nominal or no value as a currency or medium of exchange and are not used as a substitute for government currency;

(2) digital units that can be used solely with a gift card program;

(3) digital units that are used solely within online gaming platforms and have no market or application outside of those gaming platforms, or can be redeemed for real-world goods,

services, discounts, or purchases, but cannot be converted into, or redeemed for government currency or digital currency; or

(4) digital units that are used solely within an affinity program but do not otherwise meet the definition of digital currency as defined in the bill.

The bill provides that a person engaged in digital currency business activity is required to complete a registration under the bill. Qualified trust companies and payment processors are not required to register.

The registration is to be in writing, under oath, and completed in a form prescribed by the department, and is required to contain certain information including:

(1) the exact name of the registrant, the form of organization, and the jurisdiction where organized or incorporated;

(2) a list of the registrants, affiliates, and an organization chart illustrating the relationship between and among the registrant and its affiliates;

(3) fingerprints and photographs of key members of the registrant's organization;

(4) an organization chart of the registrant and its management structure;

(5) a business plan; and

(6) a registration fee set by the Commissioner of Banking and Insurance.

Registrants are required to maintain and enforce confidential, written compliance policies, including policies with respect to anti-fraud, anti-money laundering, cyber security, privacy and information security, which shall be reviewed and approved by the registrant's board of directors or an equivalent governing body.

The bill includes further consumer protections, including a requirement that the registrant hold digital currency of the same type and amount as that which it has custody from any person. Registrants are prohibited from selling, transferring, assigning, lending, hypothecating, pledging, or otherwise using or encumbering any digital currency, the custody of which is maintained for a New Jersey person, except for the sale, transfer, or assignment of such assets at the direction of such person.

Registrants are required to make, keep, and preserve all of its books and records of its digital currency business activity in their original form or native file format for a period of at least five years from the date of their creation and in a condition that will allow the department to determine whether the registrant is complying with all applicable laws, rules, and regulations.

The bill prohibits registrants from advertising its products, services, or activities in New Jersey or to any New Jersey person without including the legal name of the registrant and the legend that such registrant is a "registered New Jersey digital currency custodian." The registrant shall maintain, for examination by the

commissioner, all advertising and marketing materials for a period of at least seven years from the date of their creation, including but not limited to print media, internet media, including websites, radio and television advertising, road show materials, presentations, and brochures.

The bill provides that registrants must, prior to engaging in digital currency business activity with any customer, disclose in clear, conspicuous writing all material risks and relevant terms and conditions to the customer associated with the particular digital currency business activities in which it engages. Certain risks and relevant terms and conditions that must be disclosed are listed in the bill. Registrants must also establish and maintain written policies and procedures to fairly and timely resolve customer complaints.

The department is also directed to include information on the department's website describing the material risks associated with engaging in digital currency business activity.

The bill also provides for penalties for a violation of the bill's provisions, which include allowing the Commissioner of Banking and Insurance to seek injunctive relief and a civil penalty in an amount not to exceed $5,000 for each violation.