SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]
SENATE, No. 3132

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 6, 2021

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3132 (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, 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 subject to regulation by the Bureau of Securities in the Division of Consumer Affairs in the Department of Law and Public Safety, whether in digital form or otherwise..

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.

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 requires the department to grant or deny any digital asset business license application or license reciprocity application within 120 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 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 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 (3R) as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments add language to:

(1) Remove reciprocity language for licensees in other states;

(2) Update the parties exempted from licensure if they store, hold or maintain custody of a digital asset on behalf of others to include credit unions or money transmitters licensed in New Jersey;

(3) Update the information an applicant is required to submit regarding a proposed digital asset business activity;

(4) Authorize the Department of Banking and Insurance (the department) to perform a criminal history records check of an applicant;

(5) Stipulate that a license is not to be issued if an individual, in the five years preceding the submission of an application, has been convicted of embezzlement, forgery, fraud or theft;

(6) Delete the provision allowing a person in another state to engage in digital asset business activity with a resident in New Jersey, consistent with removal of provision allowing reciprocity;

(7) Extend the time for the department to approve or deny a license application from 30 to 120 days;

(8) Expand the grounds for denial, suspension or revocation of a license, and allow the department to bring actions against any person who violates the provisions of the bill;

(9) Add a provision on the authority of the department to perform investigations and examinations on applicants or licensees under certain circumstances;

(10) Prohibit the distribution by the department of information on investigations, audits, applications, reports or other items except under certain circumstances;

(11) Delete provisions addressing gross income; and

(12) Amend current law on the funding mechanism for the Division of Banking.

FISCAL IMPACT:

Fiscal information is currently unavailable for this bill.