SYNOPSIS
“Digital Asset and Blockchain Technology Act.”

CURRENT VERSION OF TEXT
As reported by the Senate Commerce Committee on March 14, 2022, with amendments.
AN ACT concerning digital assets and blockchain technology,
amending P.L.2005, c.199, and supplementing Title 17 of the
Revised Statutes and chapter 6 of Title 54A of the New Jersey
Statutes.

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

1. This act shall be known and may be cited as the “Digital
Asset and Blockchain Technology Act.”

2. ‘As used in this act,’

“Agent” means a separate business entity from the principal that
the principal authorizes, through a written agreement or otherwise,
to sell its instruments or, in the case of funds transmission, to sell
its send and receive transfer services.

“Control” means the ownership of, or the power to vote, 25
percent or more of the outstanding voting interest of a licensee or
controlling person. For purposes of determining the percentage of a
licensee controlled by any person, there shall be aggregated with
the person’s interest the interest of any other person controlled by
that person or by any spouse, parent, or child of that person.

“Controlling person” means any person in control of a licensee.

“Department” means the Department of Banking and Insurance.

“Digital asset” means 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, and includes digital consumer
assets and virtual currency. “Digital asset” shall not include
securities, whether in digital form or otherwise, as defined pursuant
to subsection m. of section 2 of P.L.1967, c.93 (C.49:3-49), or as
defined pursuant to paragraph (1) of subsection (a) in the federal
“Securities Act of 1933,” 15 U.S.C. s.77b(a)(1), or paragraph (10)
of subsection (a) of the federal “Securities Exchange Act of 1934,”

“Digital asset business” means a business that engages in the
activities listed in subsection b. of section 3 of this act.

“Digital consumer asset” means a digital asset that is used or
bought primarily for consumptive, personal, or household purposes
and includes any other digital asset that does not fall within the
term virtual currency.

“Issuing” means being the person who has authority over the
initial creation and dissemination of a digital asset.

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:

*Senate SCM committee amendments adopted March 14, 2022.
“Key individual” means any individual ultimately responsible
for establishing or directing policies and procedures of the licensee,
such as the licensee’s president, chairperson of the executive
committee, senior officer responsible for the business of the
licensee in the State, chief financial officer, an executive manager,
director, trustee and any other person who performs similar
functions.

“Licensee” means a person licensed under this act or an applicant
for licensure under this act.

“Nationwide Multistate Licensing System” means the licensing
system owned and operated by the State Regulatory Registry LLC,
a wholly-owned subsidiary of the Conference of State Bank
Supervisors, which functions as a system of record for non-
depository, financial services licensing or registration in
participating state agencies, including the District of Columbia and
the United States Territories of Puerto Rico, the US Virgin Islands,
and Guam, where it is the official system for companies and
individuals seeking to apply for, amend, renew, and surrender
license authorities.

“Resident” means a person that is: domiciled in New Jersey;
physically located in New Jersey for more than 183 days of the
previous 365 days; or a limited partnership, limited liability
partnership, limited liability company, or corporation formed or
incorporated in New Jersey.

“Responsible individual” means an individual who has
managerial authority with respect to a licensee’s digital asset
business activity with or on behalf of a resident.

“Transmission” means to engage in the business of receiving
monetary value for transmission to a location inside or outside of
the United States by any means, including, but not limited to, wire,
facsimile, or electronic transfer.

“Virtual currency” means a digital asset that is used as a medium
of exchange, unit of account, or store of value, and is not
recognized as legal tender by the United States government.

3. a. A person shall 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, or has filed a pending
license with the department.

b. The department may license a person to carry on one or
more of the following digital asset business activities:
(1) receiving a digital asset for transmission or transmitting a
digital asset, except where the transaction is undertaken for non-
financial purposes and does not involve the transfer of more than a
nominal amount of a digital asset;

(2) storing, holding, or maintaining custody of a digital asset on
behalf of others, exempting all custodians otherwise regulated as a
bank, trust, broker-dealer, or credit union in any state or by the
United States, or money transmitter licensed in this State;
(3) buying and selling digital assets as a customer business;
(4) performing exchange services of digital assets as a customer
business;
(5) issuing a digital asset; or
(6) borrowing or lending of, or facilitating the borrowing or
lending of, customer digital assets.
c. A person who violates this section shall be 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.

4. a. An application for a license under this act shall be
submitted through the Nationwide Multistate Licensing System made
in the form and medium to be prescribed by the department by
regulation, utilizing the Nationwide Multistate Licensing System. The
department shall require each application to be accompanied by a
nonrefundable fee.
b. An applicant shall provide the following information relevant
to the applicant’s proposed digital asset business activity:
(1) the legal name of the applicant, each current or proposed
business address of the applicant, and any fictitious or trade name the
applicant uses or plans to use in conducting its digital asset business
activity with or on behalf of a resident;
(2) the legal name, any former or fictitious name, and the
residential and business address of each key individual and responsible individual of the applicant, and each
controlling person of the applicant;
(3) a concise description of the current and former business of the
applicant for the five years before the application is submitted or if the
business has operated for less than five years, for the time the business
has operated, including its products and services and the digital asset
business services that the applicant seeks to provide in this State;
(4) the name, address, and telephone number of a person who
manages each server the applicant expects to use in conducting its
digital asset business activity with or on behalf of a resident;
(5) a list of all other states in which the applicant is licensed to
engage in the digital asset business and any license revocation, license
suspension, or other disciplinary action taken against the licensee in
another state and any license applications rejected by another state;
(6) a list of any criminal conviction, deferred prosecution
agreement, and pending criminal proceeding in any jurisdiction against
the applicant, any key individual, responsible individual, and controlling person of the applicant, and each person
over which the applicant has control;
(7) a list of any litigation, arbitration, or administrative proceeding
in any jurisdiction in which the applicant, or any executive officer a
key individual,

responsible individual, or controlling person of the applicant has been a party to for the five years before the application is submitted, determined to be material in accordance with generally accepted accounting principles and, to the extent the applicant would be required to disclose the litigation, arbitration, or administrative proceeding in the applicant’s audited financial statements, reports to equity owners, and similar statements or reports;

(8) a list of any bankruptcy or receivership proceeding in any jurisdiction for the 10 years prior to the application’s submission in which the applicant, any executive officer, key individual,

responsible individual, or controlling person of the applicant, or person over which the applicant has control, was a debtor;

(9) the United States Postal Service address and electronic mail address to which communications from the department may be sent;

(10) the name, United States Postal Service address, and electronic mail address of the registered agent of the applicant in this State, if applicable;

(11) a copy of any certificate of coverage for each liability, casualty, business-interruption, or cyber-security insurance policy maintained by the applicant for itself or the applicant’s users;

(12) a description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(13) if applicable, the date on which and the state in which the applicant is formed, and a copy of a current certificate of good standing issued by that state;

(14) policies and procedures to be adopted by the applicant to meet any obligations required by anti-money laundering and anti-terror financing laws;

(15) a copy of the applicant’s audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application;

(16) a copy of the applicant’s unconsolidated financial statements for the current fiscal year, whether audited or not, and if available, for the two-year period next preceding the submission of the application;

(17) if a corporation has control of the applicant and the corporation’s equity interests are publicly traded in the United States, a copy of the audited financial statement of the corporation for the most recent fiscal year or most recent report of the corporation filed under section 13 of the “Securities Exchange Act of 1934,” 15 U.S.C. s.78m;

(18) if a corporation has control of the applicant and the corporation’s equity interests are publicly traded outside the United States, a copy of the audited financial statement of the corporation for the most recent documentation similar to that required in paragraph (17) of this subsection, filed with the foreign regulator in the domicile of the corporation;

(19) if available, for each executive officer, key individual,

responsible individual, or controlling person of the applicant, for the
three years before the application is submitted, the employment
history, and the history of any enforcement action against the
individual or legal proceeding to which the individual was a party;
(20) a sample form of receipt for transactions that involve money
received for the digital asset business;
(21) disclosure of who maintains control, ownership or access to
any private key related to a digital assets consumer’s account and
information where the private key is held and the manner in which the
private key is held; and
(22) a list of all agents authorized to represent or conduct business
on behalf of the digital asset business.
c. At the time of application and within 45 days after the end of
each calendar quarter, each digital asset business shall file with the
department in writing a list of all agents that have been added or
terminated by the licensee, if any. The list shall include the name and
business address of each location.
d. The department may conduct a criminal history records check
of the applicant, any controlling persons, "executive officers" key
individuals, and responsible individuals of the applicant and require
the applicant to submit the fingerprints of those persons as part of the
application. The department is authorized to exchange fingerprint data
with and receive criminal history record information from the State
Bureau of Identification in the Division of State Police and the Federal
Bureau of Investigation consistent with applicable State and federal
laws, rules and regulations, for the purposes of facilitating
determinations concerning licensure eligibility for the applicant, any
controlling persons, "executive officers" key individuals, and
responsible individuals of the applicant. The applicant shall bear the
cost for the criminal history record background check, including all
costs of administering and processing the check. The Division of State
Police shall promptly notify the department in the event any person
who was the subject of a criminal history record background check
pursuant to this section, is arrested for a crime or offense in this State
after the date the background check was performed, whether the
person is a prospective new licensee, or subsequently, a current license
holder.
e. No license shall 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.

5. a. The department shall grant or deny any digital asset
business license application within 120 days of completed
application.
b. The department may refuse an application for a digital asset
business license or license reciprocity application if:
(1) the application is incomplete in a material respect;
(2) the application includes false, misleading, or inaccurate information;
(3) any applicant, controlling person, key individual, or responsible individual of an applicant has engaged in dishonest or unethical practices in a digital asset business or in the securities commodities, banking, insurance, or investment advisory business; or
(4) Any material aspect of the license application as represented by the application requirements contained in section 4 of this act.

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

6. a. A licensee may apply for an annual renewal of a license by:
(1) paying a renewal fee in an amount determined by the department pursuant to regulation;
(2) submitting to the department through the Nationwide Multistate Licensing System the renewal report required pursuant to subsection b. of this section.

b. A license renewal report required pursuant to this section shall be submitted in a form and medium prescribed by the department by regulation. The report shall contain an update of all information required at initial licensing and a description of any:
(1) material change in the financial condition of the licensee;
(2) material litigation involving the licensee or [an executive officer] a key individual, responsible individual, or controlling person of the licensee;
(3) license suspension or revocation proceeding commenced, or other action taken, involving a license to conduct digital asset business activity issued by another state on which reciprocal licensing is based;
(4) federal or state action involving the licensee;
(5) material change in the business of the licensee; and
(6) changes to the [executive officers] key individuals of the licensee.

c. If a license is suspended for failure to file an annual renewal, the license shall be reinstated if the licensee files a renewal report and pays a fee, in an amount determined by the department pursuant to regulation.

7. a. The department may suspend or revoke a digital asset business license upon finding that:
(1) the department has been provided with false, misleading, or inaccurate information by or on behalf of the licensee;
(2) the clients of a licensee have been provided with false, misleading, or inaccurate information by or on behalf of the licensee;
(3) any controlling person, responsible individual, key individual, or agent of a licensee has engaged in dishonest or
unethical practice in a digital asset business or in the securities,
commodities, banking, insurance, or investment advisory business;
(4) the licensee fails to provide documents requested by the
department;
(5) the licensee fails to renew its license; or
(6) the licensee fails safety and soundness as prescribed by the
department.
c. The department may provide a warning notice to a licensee
if the department suspects that a condition permitting suspension or
revocation has occurred.
d. Any warning notice, suspension, or revocation issued by the
department shall state the reasons for which it is given.
e. The department may issue general guidance to industry
participants on how to best protect the interests of clients.
f. (1) Whenever it appears to the department that any person
has violated, is violating or is about to violate any of the provisions
of this act, or any regulation adopted pursuant to this act, or any
licensee or any owner, director, officer, member, partner,
shareholder, trustee, employee or agent of a licensee has committed
any fraud, engaged in dishonest activities or made any
misrepresentation, the department may bring a civil suit in a court
of competent jurisdiction to enjoin the violation or potential
violation, seek civil penalties pursuant to paragraph (2) of this
subsection, or both.
(2) Any person who violates any provision of this act shall be
liable, in a civil action brought by the department in a court of
competent jurisdiction, for a penalty of not more than $10,000 for
the first violation, and $20,000 for the second and each subsequent
offense. The penalty shall be paid to the department to be used in
accordance with this act and shall be collected pursuant to the
10 et seq.). The court shall also award court costs and reasonable
attorneys' fees to the department.
g. Each licensee 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
licensee’s board of directors or an equivalent governing body.
8. Any denial, suspension, or revocation of a license, or
warning notice issued by the department shall prominently indicate
that a right of appeal is available. A licensee or prospective
licensee which 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.
9. a. (1) A licensee shall provide to the department in a
reasonable amount of time any document relating to the operations
of the licensee upon receiving a written request from the
department.

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

b. A licensee shall give written notice to the department within
five days if there are any changes in the identities of the licensee’s
[key individuals], responsible individuals, or
controlling persons.

c. A licensee shall maintain a record of all client transactions
for a period of not less than six years from the date the transaction
occurred.

10. a. The terms and conditions of a digital asset business
involving a consumer’s account shall be disclosed as part of
establishing a relationship with a customer and prior to entering into
an initial transaction with the customer at the time the consumer
contracts for a digital asset business service. A disclosure shall be
full and complete, contain no material misrepresentations, be in
readily understandable language and may include, as appropriate
and to the extent applicable:

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

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

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

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

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

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

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

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

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

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

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

(12) that losing private key information may result in permanent
loss of access to digital assets;

(13) under what circumstances the digital asset business will in
the ordinary course of business disclose information concerning the
consumer’s account to third parties; and

(14) any other material investment risks.
b. All disclosures required by this act shall be displayed and individually agreed to by a consumer before any digital asset transaction at an electronic kiosk. Any fee to be charged shall be displayed and individually agreed to by a consumer before any digital asset transaction or digital asset balance inquiry at an electronic kiosk.

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

d. Each licensee shall establish and maintain written policies and procedures to fairly and timely resolve customer complaints.

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

   1) the licensee’s mailing address, e-mail 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; and
   3) the department’s mailing address, website, and telephone number.

f. The department may audit a licensee’s compliance with this section.

11. Authority of department.

   a. The department shall have the authority to conduct investigations and examinations as follows:

      (1) for purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this act, the department may access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to:

         (a) criminal, civil and administrative history information;
         (b) financial statements and any other records of financial condition of the licensee, any control person of the licensee, and any business entity exerting control over the licensee;
         (c) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the “Fair Credit Reporting Act” 15 U.S.C. s.1681a(p); and
         (d) any other documents, information or evidence the department deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of the documents, information or evidence; and

      (2) for the purposes of investigating violations or complaints arising under this act, or for the purposes of examination, the department may review, investigate, or examine any digital asset
business licensee or person subject to this act as often as necessary in order to carry out the purposes of this act. The commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about digital assets, digital consumer assets, virtual currency or the business or subject matter of any examination or investigation, and may direct, subpoena or order the person to produce books, accounts, records, files and any other documents the department deems relevant to the inquiry.

b. A digital asset business licensee or any person subject to this act shall make or compile reports or prepare other information as directed by the department in order to carry out the purposes of this section including accounting compilations, information lists and data concerning digital asset, digital consumer asset, or virtual currency transactions in a format prescribed by the commissioner or any other information the department deems necessary to carry out the purposes of this act.

c. In making an examination or investigation authorized by this section, the department may control access to any documents and records of the digital asset business or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the department. Unless the commissioner has reasonable grounds to believe the documents or records of the digital asset business or person have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this act, the digital asset business or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

12. a. Notwithstanding any other provision of law, all information or reports obtained by the department from an applicant, licensee or agent, whether obtained through reports, applications, examinations, audits, investigations, or otherwise, including, but not limited to: (1) all information contained in or related to examination, investigation, operating, or condition reports prepared by, or on behalf of, or for the use of the department; or (2) financial statements, balance sheets, or authorized delegate information, are confidential and may not be disclosed or distributed outside the department by the department or any officer or employee of the department. The department, however, may provide for the release of information to representatives of state or federal agencies and foreign countries having regulatory or
supervisory authority over the activities of the licensee or similar licensees if those representatives, upon request of the commissioner, disclose similar information respecting those licensees under their regulation or supervision, or to those representatives who state in writing under oath that they shall maintain the confidentiality of that information.

b. The department may:
   (1) disclose the fact of filing of applications with the department pursuant to this act, give notice of a hearing, if any, regarding those applications, and announce an action thereon;
   (2) disclose final decisions in connection with proceedings for the suspension or revocation of licenses issued pursuant to this act;
   (3) prepare and circulate reports reflecting the assets and liabilities of digital asset businesses in general, including other information considered pertinent to the purpose of each report for general statistical information; and
   (4) prepare and circulate reports as provided by law.

c. Every official report of the department is prima facie evidence of the facts therein stated in any action or proceeding wherein the department is a party.

d. Nothing in this section shall be construed to prevent the disclosure of information that is admissible in evidence in any civil or criminal proceeding brought by or at the request of the department or this State to enforce or prosecute violations of this act or the rules, regulations or orders issued or promulgated pursuant to this act.

13. Section 2 of P.L.2005, c.199 (C.17:1C-34) is amended to read as follows:

   2. For the purposes of this act:

   "Assessment" means the assessment imposed pursuant to section 3 of this act for the special functions of the division as provided in that section.

   "Commissioner" means the Commissioner of Banking and Insurance.

   "Department" means the Department of Banking and Insurance.

   "Depository institution" means any entity holding a state charter for a bank, savings bank, savings and loan association or credit union, irrespective of whether the entity accepts deposits.

   "Division" means the Division of Banking in the Department of Banking and Insurance.

   ["Nationwide Mortgage Licensing System and Registry" means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successors, and utilized in this State pursuant to the provisions of the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).]
"Nationwide Multistate Licensing System" means the licensing system owned and operated by the State Regulatory Registry, LLC, a wholly-owned subsidiary of the Conference of State Bank Supervisors, which functions as a system of record for non-depository, financial services licensing or registration in participating state agencies, including the District of Columbia and the United States Territories of Puerto Rico, the US Virgin Islands, and Guam, where it is the official system for companies and individuals seeking to apply for, amend, renew, and surrender license authorities.


"Regulated entity" means a depository institution, other financial entity or person chartered, licensed or registered by the Division of Banking or who should be chartered, licensed or registered.

(cf: P.L.2019, c.200, s.17)

14. This act shall take effect on the first day of the sixth month next following enactment, except the commissioner may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.