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STATE OF NEW JERSEY

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SYNOPSIS

 “Digital Asset and Blockchain Technology Act.”

CURRENT VERSION OF TEXT

 As amended by the Senate on June 30, 2023.



An Act concerning digital assets and blockchain technology, **1[**amending P.L.2005, c.199, and**]1** **2[**supplementing Title 17 of the Revised Statutes**]2** and **1[**chapter 6 of**]1** **2[**Title 54A of the New Jersey Statutes**1**, and amending P.L.2005, c.199**1]** supplementing P.L.1967, c.93 (C.49:3-47 et seq.)**2**.

 Be It Enacted by the Senate and General Assembly of the State of New Jersey:

 1. **2[1** (New section)**]2** **3**a.**3** This act shall be known and may be cited as the “Digital Asset and Blockchain Technology Act.”

 **3**b. P.L. , c. (C. ) (pending before the Legislature as this bill) shall be administered by the Bureau of Securities in the Division of Consumer Affairs in the Department of Law and Public Safety.

 c. P.L. , c. (C. ) (pending before the Legislature as this bill), shall apply to activity that occurs within this State, is directed toward persons in this State, or is directed from this State.**3**

 2. **2[1** (New section)**]2** As used in P.L. , c. (C. ) (pending before the Legislature as this bill):**1**

 “Agent” means a separate **3[**business entity**]** person**3** 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.

 **3**“Bureau chief” means the principal executive officer of the bureau, or such officer’s designee.**3**

 **2**“Bureau” means the Bureau of Securities in the Division of Consumer Affairs in the Department of Law and Public Safety.**2**

 “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.

 **2[**“Department” means the Department of Banking and Insurance.**]2**

 “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 **3[**mathematically verifiable process**]** mechanism consistent with the underlying protocol**3**, and includes**3**, but is not limited to,**3** 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,” 15 U.S.C. s.78c(a)(10).

 “Digital asset business” means a business that engages in the activities listed in subsection b. of section 3 of **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1**.

 “Digital consumer asset” means a digital asset that is **3[**used or bought**]3** primarily for consumptive, personal, or household purposes **3[**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**]3**.

 “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 **1**,**1** and any other person who performs similar functions.

 “Licensee” means a person licensed under **1[**this act**]** P.L. , c.    (C. ) (pending before the Legislature as this bill)**1**or an applicant for licensure under **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1**.

 “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 **1[**,**]1** 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.

 **3[**“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.**]**

 “Person” means, whether foreign or domestic, any individual, corporation, company, association, society, firm, partnership, trust, unincorporated organization, joint-stock company, government entity, or any other entity however organized.

 “Prepaid card” means an electronic payment device that: is 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; is issued in and for a specified amount of fiat currency; can be reloaded in and for only fiat currency, if at all; is issued or reloaded on a prepaid basis for the future purchase or delivery of goods or services; is honored upon presentation; and can be redeemed in and for only fiat currency, if at all.**3**

 “Responsible individual” means an individual who has managerial authority with respect to a licensee’s digital asset business activity **3[**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**]3**.

 “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. **2[1**(New section)**1]2** 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**3[**, with or on behalf of a resident**]3** **1**,**1** unless the person is licensed in this State by the **2[**department, or has filed a pending license with the department**]** bureau**2**.

 b. The **2[**department**]** bureau**2** 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 **3**to a location inside or outside of the United States by any means, including but not limited to wire, facsimile, or electronic transfer**3**, except where**3**:

 (a)**3** the transaction is undertaken for non-financial purposes and does not involve the transfer of more than a nominal amount of a digital asset; **3**or

 (b) the transmission is otherwise governed under the “New Jersey Money Transmitters Act,” P.L.1998, c.14, (C.17:15C-1 et seq.), is conducted by a person or entity licensed under that act, and is conducted into the country that has authorized or adopted the digital asset as part of its currency and in which the digital asset is customarily used and accepted as a medium of exchange;**3**

 (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 **3**, where the person has authority over its initial dissemination or offering**3**; or

 (6) borrowing or lending of, or facilitating the borrowing or lending of, **3[**customer**]** a customer’s**3** digital assets.

 c. **3**(1)**3 2**The bureau shall have the authority to determine whether a person is required to be licensed pursuant to this section.

 **3**(2) A license shall not be required pursuant to this section if the subject of the digital asset business activity is a digital asset that:

 (a) is a digital consumer asset;

 (b) (i) is used solely within online gaming platforms;

 (ii) has no market or application outside of those gaming platforms; and

 (iii) cannot be converted into, or redeemed for, fiat currency or virtual currency;

 (c) can be redeemed for goods, services, discounts, or purchases as part of a customer affinity or rewards program with the issuer or other designated merchants or can be redeemed for digital assets in another customer affinity or rewards program, but cannot be converted into, or redeemed for, fiat currency or virtual currency; or

 (d) is used as part of prepaid cards.**3**

 d.**2** **3[**A**]** In addition to any other applicable penalties, a**3** person who violates this section shall be liable for a penalty of $500 per day, from the first day the **2[**department**]** bureau**2** issues a notice of failure to apply **3**for**3** a license until a license application is filed with the **2[**department**]** bureau**2**. **3**Such person shall be liable for a violation of any provision of P.L. , c. (C. ) (pending before the Legislature as this bill) for which the person would otherwise be liable had the person properly been licensed.**3**

 4. **2[1**(New section)**1]2** a. An application for a license under **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1** shall be submitted **2**in a form and manner set forth by the bureau, which may include, if the bureau so designates,**2** through the Nationwide Multistate Licensing System **2[**made in the form and medium to be prescribed by the department by regulation, utilizing the Nationwide Multistate Licensing System**]2**. The **2[**department**]** bureau**2** 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 **3[**with or on behalf of a resident**]3**;

 (2) the legal name, any former or fictitious name, and the residential and business address of each **1[**executive officer**]** key individual**1** 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 **3[**in this State**]3**;

 (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 **3[**with or on behalf of a resident**]3**;

 (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 **1[**executive officer**]** key individual**1**, 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 **3[**in**]** to**3** which the applicant, or **1[**an executive officer**]** a key individual**1**, responsible individual, or controlling person of the applicant has been a party **3[**to**]3** for the **3[**five**]** 10**3** 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 **3[**the application’s**]3** submission **3**of the application**3** in which the applicant, any **1[**executive officer**]** key individual**1**, 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 **2[**department**]** bureau**2** 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 **1**company**1** or subsidiary of the applicant, and whether any parent **1**company**1** 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 **3**preceding**3** 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 **3**preceding**3** 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 **1[**executive officer**]** key individual**1**, 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 **3**customer’s**3** digital **3[**assets consumer’s**]** asset**3** account and information where the private key is held and the manner in which the private key is held; **2[**and**]2**

 (22) a list of all agents authorized to represent or conduct business on behalf of the digital asset business **2**; and

 (23) such additional information as the bureau may require**2**.

 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 **2[**department**]** bureau**2** 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 **2[**department**]** bureau**2 3**, or its designee,**3** may conduct a criminal history records check of the applicant, any controlling persons, **1[**executive officers**]** key individuals**1**, and responsible individuals of the applicant and require the applicant to submit the fingerprints of those persons as part of the application. The **2[**department**]** bureau**2 3**, or its designee,**3** 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, **1[**executive officers**]** key individuals**1**, 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 **2[**department**]** bureau**2** 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. **3**The bureau may also utilize the Nationwide Multistate Licensing System or similar system or entity to carry out the purposes of this subsection, as authorized by section 13 of P.L. , c. (C. ) (pending before the Legislature as this bill).**3**

 e. **3[**No license shall be issued by the **2[**department**]** bureau**2** 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.**]** Information provided to the bureau pursuant to an application for a license under P.L. ,

c. (C. ) (pending before the Legislature as this bill) shall be protected from public disclosure, including, but not limited to, disclosure under P.L.1963, c.73 (C.47:1A-1 et seq.), provided that nothing in this subsection shall be construed to prevent public disclosure of the name, address, phone number, and email address of a licensee, or information concerning the status of any application for a license or license issued under P.L. ,

c. (C. ) (pending before the Legislature as this bill).**3**

 5. **2[1**(New section)**1]2** a. The **2[**department**]**bureau**2** **3**shall have the authority to grant or deny any digital asset business license application. Beginning with applications received on or after the first day of the 36th month next following enactment, the bureau**3** shall grant or deny any digital asset business license application within **3[**120**]** 180**3** days of **2**receipt of a**2** completed application.

 b. The **2[**department**]** bureau**2** may refuse an application for a digital asset business license **3[**or license reciprocity application**]3** if:

 (1) the application is incomplete in a material respect;

 (2) the application includes false, misleading, or inaccurate information; **2**or**2**

 (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 **2[**; or

 (4) any material aspect of the license application as represented by the application requirements contained in section 4 of **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1]2**.

 c. A license issued pursuant to **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1** shall not be transferrable or assignable.

 6. **2[1**(New section)**1]2** a. A licensee may apply for an annual renewal of a license by:

 (1) paying a renewal fee in an amount determined by the **2[**department**]** bureau**2** pursuant to regulation; **3**and**3**

 (2) submitting to the **2[**department through the Nationwide Multistate Licensing System**]** bureau, in a form and manner set forth by the bureau,**2** 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 **2[**department**]** bureau**2** 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 **1[**an executive officer**]** a key individual**1**, 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 **3[**on which reciprocal licensing is based**]3**;

 (4) federal or state action involving the licensee;

 (5) material change in the business of the licensee; and

 (6) changes to the **1[**executive officers**]** key individuals**1** 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 **2[**department**]** bureau**2** pursuant to regulation.

 7. **2[1**(New section)**1]2** a. The **2[**department**]** bureau**2** may **2**deny,**2** suspend or revoke a digital asset business license upon finding that:

 (1) the **2[**department has been provided with**]** denial, suspension, or revocation is in the public interest; and;

 (2) the licensee, or any controlling person, responsible individual, key individual, or agent of a licensee, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the digital asset business:

 (a) has filed an application for licensure that, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement or information that, in the light of the circumstances under which it was made, was**2** false, misleading, or inaccurate **2[**information by or on behalf of the licensee**]2**;

 **2[**(2)**]**  (b) has provided**2** **3[**the clients of a licensee**]** consumers**3** **2[**have been provided**]2** with false, misleading, or inaccurate information **2[**by or on behalf of the licensee**]2**;

 **2[**(3) any controlling person, responsible individual, key individual, or agent of a licensee**]** (c)**2** has engaged in dishonest or unethical practice in a digital asset business or in the securities, commodities, banking, insurance, or investment advisory business;

 **2[**(4) the licensee**]** (d)**2** fails to provide documents requested by the **2[**department**]** bureau**2**;

 **2[**(5) the licensee**]** (e)2 fails to renew its license; **2[**or

 (6) the licensee fails safety and soundness as prescribed by the department**]2**

 **2**(f) has violated or failed to comply with any provision of P.L.    , c. (C. ) (pending before the Legislature as this bill), or any rule or order authorized by P.L. , c. (C. ) (pending before the Legislature as this bill) or has aided others in such conduct;

 (g) has been convicted of a crime involving a digital asset or any aspect of the securities, commodities, banking, insurance or investment advisory business**3**, embezzlement, forgery, fraud, theft,**3** or any crime involving moral turpitude; provided however, that where the licensee can show by proof satisfactory to the bureau that during the 10-year period preceding the application the licensee has conducted itself in such a manner as to **3[**warrant**]** render**3** the **3[**license**]** licensure**3** consistent with all other provisions of P.L. , c. (C. ) (pending before the Legislature as this bill), the conviction need not be a bar to **3[**license**]** licensure**3**;

 (h) is permanently **3**enjoined**3** or **3**has in the past 10 years been**3** temporarily enjoined**3**,**3** by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the digital assets, securities, commodities, banking, insurance or investment advisory business;

 (i) is the subject of an effective order of the bureau denying, suspending, or revoking the license of a digital asset business, or registration as a broker-dealer, agent, investment adviser, investment adviser representative, securities offering registrant, or Internet site operator;

 (j) is the subject of an order entered within the past **3[**five**]** 10**3** years by any federal or state digital asset, securities, commodities, banking, insurance or investment advisory administrator or self-regulatory organization denying or revoking a digital asset, securities, commodities, banking, insurance or investment advisory license or registration under federal or state securities, commodities, banking, insurance or investment advisory law, including, but not limited to registration as a broker-dealer, agent, investment adviser, investment adviser representative or issuer, or the substantial equivalent of those terms as defined in P.L. ,

c. (C. ) (pending before the Legislature as this bill), or is the subject of an order of the Securities and Exchange Commission, a self-regulatory organization, the Commodity Futures Trading Commission, an insurance regulator, or a federal or state banking regulator, suspending or expelling the applicant or licensee from a national securities or commodities exchange or national securities or commodities association registered under the "Securities Exchange Act of 1934," or the "Commodity Exchange Act," or from engaging in the banking or insurance business, or is the subject of a United States Post Office fraud order; provided however that the bureau may not institute a revocation or suspension proceeding under this subparagraph more than two years from the date of the order relied on and the bureau may not deny, suspend, or revoke under this subparagraph on the basis of an order under another state’s act unless that order was based on facts which would currently constitute a ground for an order under New Jersey law;

 (k) is insolvent, either in the sense that its liabilities exceed its assets or in the sense that it cannot meet its obligations as they mature;

 (l) is not qualified on the basis of such factors as character, training, experience, or knowledge of the digital asset business; or

 (m) has failed to pay the proper fees**2**.

     b.    The **2[**department**]** bureau**2** may provide a warning notice to a licensee if the **2[**department**]** bureau**2** suspects that a condition permitting suspension or revocation has occurred.

     c.     Any warning notice, suspension, or revocation issued by the **2[**department**]** bureau**2** shall state the reasons for which it is given.

 **2**d. The bureau chief, for good cause shown, may by order summarily suspend, revoke or deny any license pending final determination of any proceeding under this section. The suspension or revocation of a license issued by the bureau shall prominently indicate that a right to a hearing is available. Upon entry of such an order, the bureau chief shall promptly notify each person subject thereto that it has been entered and of the reasons therefor.

 The bureau chief shall entertain on no less than three days' notice an application to lift the summary order on written application of the person subject thereto and in connection therewith may, but need not, hold a hearing and hear testimony, but shall provide to the person subject thereto a written statement of the reasons for the summary order.

 Upon service of notice of the order issued by the bureau chief, each person subject thereto shall have up to 15 days to respond to the bureau in the form of a written answer and written request for a hearing. The bureau chief shall, within five days of receiving the answer and request for a hearing, either transmit the matter to the Office of Administrative Law for a hearing, or schedule a hearing at the Bureau of Securities. Orders issued pursuant to this section shall be subject to an application to vacate upon 10 days' notice, and in any event a preliminary hearing on the order shall be held within 20 days after it is requested, and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

 If a person subject to the order fails to respond by either filing a written answer and written request for a hearing with the bureau or moving to vacate the order within the 15-day prescribed period, that person shall have waived the opportunity to be heard and the order shall remain in effect as to that person until modified or vacated by the bureau chief.**2**

 **3**e. The bureau chief may by order summarily revoke a license or deny an application if the bureau chief finds that a licensee is no longer in existence, has ceased to do business as a digital asset business, or cannot be located after a reasonable search.

 f. (1) A licensee may submit an application to withdraw from licensure. The withdrawal shall become effective on the 31st day following receipt by the bureau of the application to withdraw or within such other period of time as the bureau may determine by rule or order.

 (2) The bureau may institute any revocation or suspension proceeding within two years after a withdrawal becomes effective and may enter a revocation or suspension order effective as of the last date on which the license was effective.**3**

     **2[**d**]** **3[**e.**2]** g.**3** The **2[**department**]** bureau**2** may issue general guidance to industry participants on how to best protect the interests of **3[**clients**]** customers**3**.

     **2[**e**]** **3[**f.**2]** h.**3**  (1)  Whenever it appears to the **2[**department**]** bureau**2** that any person has violated, is violating or is about to violate any of the provisions of **1[**this act**]** P.L.     , c.    (C.      ) (pending before the Legislature as this bill)**1**, or any regulation adopted pursuant to **1[**this act**]** P.L.     , c.    (C.      ) (pending before the Legislature as this bill)**1**, **3[**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,**]3** the **2[**department**]** bureau**2** may **3**take administrative action or**3** bring a civil **3[**suit in a court of competent jurisdiction**]** action**3** to enjoin the violation or potential violation, seek **3[**civil**]3** penalties pursuant to paragraph (2) of this subsection, or both.

     (2)   Any person who violates any provision of **1[**this act**]** P.L.     , c.    (C.      ) (pending before the Legislature as this bill)**1** shall be liable, in a civil **3**or administrative**3** action brought by the **2[**department**]** bureau**2 3[**in a court of competent jurisdiction,**]3** 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 **3[**paid to the**]3** **2[**department**]** **3[**bureau**2** to be used in accordance with **1[**this act**]** P.L.     , c.    (C.      ) (pending before the Legislature as this bill)**1** and shall be**]** entered, with the requisite notice, and recovered by and in the name of the bureau chief and shall be**3** collected **3**and enforced by summary proceeding**3** pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.)**3**, or administratively**3**.  The court shall also award court costs and reasonable attorneys' fees to the **2[**department**]** bureau**2**.

     **2[**f**]** **3[**g.**2]** i.**3** Each licensee shall maintain and enforce **2[**confidential,**]2** 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.

 **3**j. It shall be unlawful for any person, in conducting digital business activity or otherwise in connection with the offer, sale, purchase, or trade of any digital asset, directly or indirectly, to:

 (1) employ any device, scheme, or artifice to defraud;

 (2) make any untrue statement of a material fact or to omit a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

 (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.**3**

 **2[**8. **1**(New section)**1** 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.**]2**

 **2[**9. **1**(New section)**1]** 8.**2**  a.  **3[**(1)**]3**  A licensee shall provide to the **2[**department**]** bureau**2** in a reasonable amount of time any document **3**or record**3** relating to the operations of the licensee upon receiving a written request from the **2[**department**]** bureau**2**.

     **3[**(2)      Any notice requiring the production of documents pursuant to this section shall include the reasons for which it is given.**]3**

     b.    A licensee shall give written notice to the **2[**department**]** bureau**2** within five days if there are any changes in the identities of the licensee’s **1[**executive officers**]** key individuals**1**, responsible individuals, or controlling persons.

     c.     A licensee shall maintain a record of all **3[**client**]** customer**3** transactions **2**, and any accounts, correspondence, memoranda, and other records as the bureau may prescribe,**2** for a period of not less than six years from the date the transaction occurred **2**, unless the bureau by rule prescribes otherwise**2**. **3**A licensee shall make any records available for inspection by the bureau.

 d. The bureau may conduct examinations to determine a licensee’s compliance with P.L. , c. (C. ) (pending before the Legislature as this bill).**3**

 **2[**10.  **1**(New section)**1]** 9.**2** a.  The terms and conditions of a **3**licensee’s**3** digital asset business **3**activity**3** involving a **3[**consumer’s**]** customer’s**3** 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 **3[**consumer**]** customer**3** contracts for a digital asset business service. A disclosure shall be full and complete, contain no material misrepresentations, be in readily understandable language and **3[**may**]** shall, at a minimum,**3** 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 **3[**consumer’s**]** customer’s**3** 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 **3[**consumers**]** customers**3** 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 total 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 **3[**consumer’s**]** customer’s**3** account to third parties; and

 (14) any other material investment risks.

 b. All disclosures required by **1[**this act**]** P.L.     , c.    (C.      ) (pending before the Legislature as this bill)**1** 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 **3[**assets**]** asset**3** 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 **2[**department**]** bureau**2**; and

 (3) the **2[**department**]** bureau**2** mailing address, website, and telephone number.

 **3[**f. The **2[**department**]** bureau**2** may audit a licensee’s compliance with this section.**]3**

 **2**10. **3**a.**3** It shall be unlawful 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 P.L. , c. (C. ) (pending before the Legislature as this 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.**2**

 **3**b. It shall be unlawful for any officer or employee of the bureau to use for personal benefit any information which is filed with or obtained by the bureau that is not made public.**3**

 **2[**11. **1**(New section)**1** 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 **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1**, 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, **1[**,**]1** 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 **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1**, or for the purposes of examination, the department may review, investigate, or examine any digital asset business licensee or person subject to **1[**this act**]** P.L. , c.    (C.      ) (pending before the Legislature as this bill)**1** as often as necessary in order to carry out the purposes of **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1**. 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 **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1** 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 **1[**this act**]** P.L. , c.    (C.      ) (pending before the Legislature as this bill)**1**.

 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 **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1**, 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.

 **1[**d. For purposes of conducting the authority of the department, addition of required resources as follows: 4 examiners, 2 licensing investigators and 2 enforcement investigators.**]1]2**

 **2[**12. **1**(New section)**1** 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[**,**]** :**1** (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 **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1**, 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 **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1**;

 (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 **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1** or the rules, regulations or orders issued or promulgated pursuant to **1[**this act**]** P.L. , c. (C. ) (pending before the Legislature as this bill)**1**.**]2**

 **2[**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.

 "Other financial entity" means a person who is licensed or registered pursuant to: the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.); the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53

(C.17:11C-51 et seq.), other than a financial entity with respect to the payment of required fees to the Nationwide **[**Mortgage**]** Multistate Licensing System **[**and Registry**]** as set forth by that nationwide system and registry; "The Check Cashers Regulatory Act of 1993," P.L.1993, c.383 (C.17:15A-30 et seq.); the "New Jersey Money Transmitters Act," P.L.1998, c.14 (C.17:15C-1 et seq.); the "Insurance Premium Finance Company Act," P.L.1968, c.221 (C.17:16D-1 et seq.); the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.); the "Door-to-Door Retail Installment Sales Act of 1968," P.L.1968, c.223

(C.17:16C-61.1 et seq.); the "Home Repair Financing Act," P.L.1960, c.41 (C.17:16C-62 et seq.); the "Door-to-Door Home Repair Sales Act of 1968," P.L.1968, c.224 (C.17:16C-95 et seq.); P.L.1979, c.16 (C.17:16G-1 et seq.); the "Foreclosure Rescue Fraud Prevention Act," P.L.2011, c.146 (C.46:10B-53 et al.); the “Mortgage Servicers Licensing Act,” P.L.2019, c.65 (C.17:16F-27 et al.); the provisions of P.L.2019, c.200 (C.17:16ZZ-1 et al.); or the "pawnbroking law," R.S.45:22-1 et seq; or the “Digital Asset and Blockchain Technology **1[**Act”**]** Act,”**1** P.L. , c. (C.        ) (pending before the Legislature as this bill).

 "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)**]2**

**2**11. a. The bureau chief in the bureau chief’s discretion may:

 (1) make such private investigations within or outside of this State as the bureau chief deems necessary to determine whether any person has violated or is about to violate any provision of

P.L. , c. (C. ) (pending before the Legislature as this bill) or any rule or order hereunder, or to aid in the enforcement of P.L. , c. (C.        ) (pending before the Legislature as this bill) or in the prescribing of rules and forms hereunder;

 (2) require or permit any person to file a statement in writing, under oath or otherwise as the bureau chief determines, as to all the facts and circumstances concerning the matter to be investigated; and

 (3) publish information concerning any violation of

P.L. , c. (C. ) (pending before the Legislature as this bill) or any rule or order hereunder.

 b. For the purpose of any investigation or proceeding under P.L.    , c. (C. ) (pending before the Legislature as this bill), the bureau chief or any officer designated by the bureau chief may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the bureau chief deems relevant or material to the inquiry. At the bureau chief’s discretion, the bureau chief may make available private investigative materials to representatives of domestic or foreign governmental authorities, self-regulatory organizations, state or federal law enforcement officers, state securities, banking and insurance administrators, and trustees in bankruptcy.

 The bureau may also disclose that information:

 (1) in court proceedings;

 (2) if ordered to do so by a court of competent jurisdiction; or

 (3) if appropriate, in furtherance of any ongoing investigation or proceeding. The bureau chief may also request and use private investigative materials provided to it by other federal and state authorities, including authorities of other states and foreign countries.

 c. In case of contumacy by, or refusal to obey a subpoena or order issued to, any person, the Superior Court, upon application by the bureau chief, may issue to the person an order requiring the person to appear before the bureau chief, or the officer designated by the bureau chief, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. The court may grant injunctive relief restraining engaging in any digital asset business activity, or holding itself out as being able to engage in any digital asset business activity by a person, licensee, controlling person, responsible individual, key individual, or agent of a licensee until such person has fully complied with such subpoena or order and the bureau has completed its investigation. The court may proceed in the action in a summary manner or otherwise.

 d. No person is excused from attending and testifying or from producing any document or record before the bureau or in obedience to the subpoena or order of the bureau chief or any officer designated by the bureau chief, or in any proceeding instituted by the bureau, on the ground that the testimony or evidence (documentary or otherwise) required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; but the testimony or evidence (documentary or otherwise) compelled from an individual who has claimed their privilege against self-incrimination, or the fruits thereof, shall not be used to prosecute that individual or to subject that individual to any penalty or forfeiture, except that the individual testifying is not exempt from prosecution and punishment for perjury, false swearing or contempt committed in testifying.

 e. When it appears to the bureau chief that the testimony of any person is essential to an investigation instituted by the bureau chief as provided by P.L. , c. (C. ) (pending before the Legislature as this bill), and that the failure of such person to appear and testify may defeat the proper and effective conduct thereof, the bureau chief, in addition to the other remedies provided for herein, may, by petition verified generally, setting forth the facts, apply to the Superior Court for a writ of ne exeat against such person. The court shall thereupon direct the issuance of the writ against such person requiring the person to give sufficient bail conditioned to insure the person’s appearance before the bureau chief for examination under oath in such investigation and that the person will continue their appearance therein from time to time until the completion of the investigation and will appear before the court if the bureau chief shall institute any proceeding therein as a result of the bureau chief’s investigation.

 The court shall cause to be indorsed on the writ of ne exeat, in words at length, a suitable amount of bail upon which the person named in the writ shall be freed, having a due regard to the nature of the case and the value of the digital assets involved. All applications to be freed on bail shall be on notice to the bureau chief and the sufficiency of the bail given on the writ shall be approved by the court. All recognizances shall be to the State and all forfeitures thereof shall be declared by the court. The proceeds of the forfeitures shall be paid into the State treasury.**2**

 **2**12. Restraints ordered by bureau chief.

 a. In case of contumacy by, or refusal to obey a subpoena or order issued to, any person, the bureau chief may, in the bureau chief’s discretion, summarily order restraints on engaging in any digital asset business activity, or holding itself out as being able to engage in any digital asset business activity by a person, licensee, controlling person, responsible individual, key individual, or agent of a licensee, until that person has fully complied with that subpoena or order and the bureau has completed its investigation. The bureau chief may proceed in an action in a summary manner or otherwise, by issuing a cease and desist order, by denying, revoking or suspending any license under P.L. , c. (C. ) (pending before the Legislature as this bill), by assessing civil monetary penalties, or by any combination of these actions the bureau chief deems appropriate. Upon entry of such an order, the bureau chief shall promptly notify each person subject thereto that it has been entered and of the reasons therefor.

 b. The bureau chief shall entertain on no less than three days' notice an application to lift the summary order on written application of the person subject thereto and in connection therewith may, but need not, hold a hearing and hear testimony, but shall provide to the person subject thereto a written statement of the reasons for the summary order.

 c. Upon service of notice of the order issued by the bureau chief, each person subject thereto shall have up to 15 days to respond to the bureau in the form of a written answer and written request for a hearing. The bureau chief shall, within five days of receiving the answer and request for a hearing, either transmit the matter to the Office of Administrative Law for a hearing, or schedule a hearing at the Bureau of Securities. Orders issued pursuant to this section shall be subject to an application to vacate upon 10 days' notice, and in any event a preliminary hearing on the order shall be held within 20 days after it is requested, and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

 d. If a person subject to the order fails to respond by either filing a written answer and written request for a hearing with the bureau or moving to vacate the order within the 15-day prescribed period, that person shall have waived the opportunity to be heard and the order shall remain in effect as to that person until modified or vacated by the bureau chief.**2**

 **3**13. a. In order to carry out the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill), the bureau is authorized to establish relationships or to contract with the Nationwide Multistate Licensing System, or similar system or entity, and other entities designated thereby to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to P.L. , c. (C. ) (pending before the Legislature as this bill).

 b. The bureau may require any person subject to the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill), including any applicant, key individual, responsible individual, controlling person, or person over whom the applicant has control, to participate in a multistate licensing system, including, if so designated, the Nationwide Multistate Licensing System.

 c. The bureau is authorized to waive or modify, in whole or in part, by rule, regulation, or order, any requirement set forth in

P.L. , c. (C. ) (pending before the Legislature as this bill), and to establish new requirements, as reasonably necessary for the purpose of participation in the Nationwide Multistate Licensing System or similar system or entity including: payment of nonrefundable fees to apply for, maintain, and renew licenses through the system; renewal or reporting dates; procedures for amending or surrendering a license; and requirements pertaining to any other activity necessary for participation in the system.**3**

 **3[2**13.**]** 14.**3** There is established in the Division of Consumer Affairs in the Department of Law and Public Safety the “Digital Asset Enforcement Fund,” which shall continue as a dedicated, nonlapsing, revolving fund. All fees, penalties, costs, fines and other moneys collected pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), shall be deposited in the fund. Moneys in the fund shall be appropriated for use by the Director of the Division of Consumer Affairs to administer and enforce the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) and to conduct any investigations related thereto. There shall be made available from the General Fund such additional amounts as may be required to carry out the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).**2**

 **3[2**14.**]** 15. a.**3** The bureau may adopt, amend, or rescind any **3**guidance, guidelines,**3** forms and orders and, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations as are necessary to effectuate the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill), including those governing applications **3**, forms,**3** and reports, and defining any terms, whether or not used in

P.L. , c. (C. ) (pending before the Legislature as this bill), insofar as the definitions are not inconsistent with the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).**2**

 **3**b. The bureau may prescribe the form, manner, and medium in which any application, form, report, statement, or any other document shall be prepared, including whether in accordance with generally accepted accounting principles or practices.

 c. The bureau may set fees by order, which shall remain in effect until applicable rules and regulations are promulgated.**3**

 **3[2**15.**]** 16.**3** P.L. , c. (C. ) (pending before the Legislature as this bill) shall not be construed to limit the authority of the Department of Banking and Insurance over any financial institution, insurance company or other entity chartered, licensed or regulated by the department pursuant to Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes.**2**

 **2[**14.**]** **3[**16.**2]** 17.**3**  This act shall take effect **3**immediately, except that section 3 shall take effect**3** on the first day of the **2[**sixth**]** **3[**tenth**2]** 25th**3** month next following enactment, **3[**except**]** but**3** the **2[**commissioner**]** Director of the Division of Consumer Affairs and the bureau chief**2** may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.