

**Alert | Blockchain/Financial Regulatory & Compliance**



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## **New Jersey Considers A Licensing Framework for Digital Asset Business Activities**

On Feb. 20, 2020, New Jersey Assemblywoman [Yvonne Lopez](#) introduced the [Digital Asset and Blockchain Technology Act](#) (Assembly, No. 2891) (DABTA or the “Bill”) in the New Jersey General Assembly. The Bill has now been referred to the Assembly’s Financial Institutions and Insurance Committee. The Bill, if passed by the New Jersey General Assembly and the New Jersey Senate, and signed by the governor, would require persons who engage in “**digital asset business activity**” or hold themselves out as being able to engage in “digital asset business activity” with or on behalf of New Jersey residents to either: (i) be licensed by [the New Jersey Department of Banking and Insurance](#) (DBI) (or have a pending license filed with the DBI); or (iii) be licensed to conduct digital asset business activity in another state with which New Jersey has a reciprocity agreement.

The Bill defines “digital asset business activities” as:

1. receiving a digital asset for transmission or transmitting a digital asset (except for transactions undertaken for non-financial purposes and transactions that do 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 financial institution in any state or by the United States);

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.

The Bill provides for a penalty of \$500 per day for engaging in unlicensed digital asset business activity.<sup>1</sup>

Currently, in the United States, there is no uniformity with respect to state licensing requirements for firms dealing in virtual currency. Some states require the licensing of virtual currency activities under their money transmitter laws; other states do not license virtual currency activities at all, or their laws are otherwise silent. New Jersey's Money Transmitter Act does not explicitly address virtual currency, and the DBI has not issued guidance on this matter.<sup>2</sup> If the Bill is enacted into law, New Jersey will be joining New York in enacting a specific licensing framework for virtual currency activities.<sup>3</sup>

### **Application Requirements**

Applicants for the New Jersey license would be required to provide certain information relevant to their digital asset business activities including:

1. the applicant's legal name, its current or proposed business address, and any fictitious or trade name the applicant uses or plans to use in conducting its digital asset business activity;
2. the legal name, any former or fictitious name, and the residential and business address of each executive officer 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;
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;
5. a list of 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 executive officer, responsible individual, and controlling person of the applicant, and each person over which the applicant has control;
7. a list of any material litigation, arbitration, or administrative proceeding in any jurisdiction in which the applicant, or an executive officer, responsible individual, or controlling person of the applicant has been a party to for the five years before the application is submitted and, to the

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<sup>1</sup> The penalty is calculated from the first day the DBI issues a notice of a failure to apply for a license until a license application is filed with the DBI.

<sup>2</sup> New Jersey Money Transmitters Act, N.J.S.A.17:15C-1, *et. seq.*

<sup>3</sup> In June 2015, the New York Department of Financial Services (NYDFS) published its [final rules for licensing of virtual currency business activities](#) (also known as Bit License).

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, responsible individual, or controlling person of the applicant, or person over which the applicant has control, was a debtor;
9. if applicable, the name, address, and electronic mail address of the registered agent of the applicant in New Jersey;
10. a copy of any certificate of coverage for each liability, casualty, business-interruption, or cybersecurity insurance policy maintained by the applicant for itself or the applicant's users;
11. 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;
12. policies and procedures to be adopted by the applicant to meet any obligations required by anti-money laundering and anti-terror financing laws;
13. 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. § 78m;
14. 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 (13) above, filed with the foreign regulator in the domicile of the corporation; and
15. if available, for each executive officer, responsible individual, or controlling person of the applicant, for the three years before the application is submitted, the employment history, and history of any investigation of the individual or legal proceeding to which the individual was a party.

For good cause, the DBI may waive any information required above and permit an applicant to submit other information instead.

Persons intending to rely on reciprocal licensing must satisfy the following requirements to engage in digital asset business activity in New Jersey:

1. the DBI must determine that the state in which the person is licensed has in force laws regulating digital asset business activity that are substantially similar to, or more protective of users than, the Bill; and
2. the person must submit to the DBI:
  - a. a notice containing a statement that the person will rely on reciprocal licensing;
  - b. a copy of the license to conduct digital asset business activity issued by the other state;

- c. a nonrefundable reciprocal license fee (as determined by the DBI by regulation);
- d. a certification of license history from the agency responsible for issuing the license to conduct digital asset business activity in the other state; and
- e. a certification signed by the executive officer of the applicant affirming that the applicant will conduct its digital asset business activity with or on behalf of a New Jersey resident in compliance with DABTA.

The Bill provides that the DBI will have 30 days from its receipt of a complete license application or license reciprocity application to either grant or deny the application.

### **Consumer Disclosures and Protections**

In addition to a licensing framework to engage in digital asset business activity in New Jersey, the Bill provides for consumer protections and disclosure requirements. Specifically, the Bill provides that terms and conditions of service must be delivered to consumers at the time the consumer contracts for the digital asset business services. The Bill provides for a considerable number of disclosures to be made, as appropriate and applicable, including:

1. fees and charges that may be assessed, 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 the 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. who maintains control, ownership and/or access to any private key related to a digital assets consumer's account;
13. that losing private key information may result in permanent total loss of access to digital assets;
14. 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
15. any other material investment risks.

The Bill had three sponsors in the Assembly. However, it is currently unclear whether the Bill will pass in the New Jersey Assembly and Senate.

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