SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1756

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 14, 2022

The Senate Commerce Committee reports favorably Senate Bill No. 1756, with committee amendments.

As amended, this bill, the "Digital Asset and Blockchain Technology Act," regulates digital asset business activity. The bill defines "digital asset" to mean a representation of economic, proprietary, or access rights that is stored in a machine-readable format, has a transaction history that is recorded in a distributed, digital ledger or digital data structure in which consensus is achieved through a mathematically verifiable process. Examples of digital assets include digital consumer assets, digital securities, and virtual currency. "Digital asset" does not include securities, 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).

The bill provides that a person may not engage in a digital asset business activity, or hold itself out as being able to engage in a digital asset business activity, with or on behalf of a resident unless the person is licensed in this State by the Department of Banking and Insurance (department), or has filed a pending license with the department.

The bill provides the department may license a person to carry on one or more digital asset business activities described in the bill.

The bill provides that a person who violates the provisions requiring licensure is liable for a penalty of $500 per day, from the first day the department issues a notice of failure to apply for a license until a license application is filed with the department.

The bill provides that an application for a license is to be submitted through the Nationwide Multistate Licensing System, and made in the form and medium to be prescribed by the department by regulation. Each application is to be accompanied by a nonrefundable fee.

Applicants are to provide certain information relevant to the applicant's proposed digital asset business activity, submitting the

information through the Nationwide Multistate Licensing System. The bill provides that no license may be issued by the department to an individual who has, within the five years preceding the submission of an application for a license, been convicted of embezzlement, forgery, fraud, or theft.

The bill requires the department to grant or deny any digital asset business license application or license reciprocity application within 120 days of its receipt. The department may refuse an application for a digital asset business license or license reciprocity application if a licensee or applicant fails to meet certain standards specified in the bill.

Licensees are required to submit a renewal report, through the Nationwide Multistate Licensing System, that contains an update of all information required at initial licensing and a description of certain information described in the bill.

The bill provides that the department may audit any digital asset business licensee. The bill stipulates that each licensee is to maintain and enforce confidential, written compliance policies which are to be reviewed and approved by the licensee's board of directors or an equivalent governing body. The department may suspend or revoke a digital asset business license upon certain findings that are provided in the bill.

Under the bill, any denial, suspension, or revocation of a license, or warning notice issued by the department, is to prominently indicate that a right of appeal is available. A licensee or prospective licensee that is aggrieved by a decision of the department may appeal the decision by filing a request for a hearing before the Office of Administrative Law. The department may issue written requests for information to a licensee regarding the operations of the licensee. A record on all client transactions is to be maintained by the licensee for not less than six years.

The bill requires the terms and conditions of a digital asset business involving a consumer's account to be disclosed at the time the consumer contracts for a digital asset business service. The disclosure is to be full and complete, contain no material misrepresentations, be in readily understandable language and may include, as appropriate and to the extent applicable, certain information concerning fees and charges, risks to the consumer, and any protections or securities that are in place.

The disclosures required by the bill are to be displayed and individually agreed to by a consumer before any digital asset transaction at an electronic kiosk. Any fee to be charged is required to be displayed and individually agreed to by a consumer before any digital asset transaction or digital asset balance inquiry at an electronic kiosk.

COMMITTEE AMENDMENTS

The committee amended the bill to:

(1) add language introducing section 2 of the bill on definitions;

(2) replace references to "executive officer" with "key individual;" and

(3) remove a provision on additional resources for the department to perform its work.