
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 901 Session of
2023

INTRODUCED BY WAXMAN, BURGOS, MADDEN, GIRAL, SANCHEZ, BRENNAN,
JAMES AND OTTEN, APRIL 12, 2023

REFERRED TO COMMITTEE ON COMMERCE, APRIL 12, 2023

AN ACT

1 Amending the act of December 5, 1972 (P.L.1280, No.284),
2 entitled "An act relating to securities; prohibiting
3 fraudulent practices in relation thereto; requiring the
4 registration of broker-dealers, agents, investment advisers,
5 and securities; and making uniform the law with reference
6 thereto," providing for digital assets and blockchain
7 technology registration; and imposing penalties.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. The act of December 5, 1972 (P.L.1280, No.284),
11 known as the Pennsylvania Securities Act of 1972, is amended by
12 adding a part to read:

13 PART IV-A

14 DIGITAL ASSETS AND BLOCKCHAIN TECHNOLOGY REGISTRATION

15 Section 401-A. Definitions.

16 The following words and phrases when used in this part shall
17 have the meanings given to them in this section unless the
18 context clearly indicates otherwise:

19 "Agent." A separate business entity from the principal that
20 the principal authorizes, through a written agreement or

1 otherwise, to sell the principal's instruments or, in the case
2 of funds transmission, to sell the principal's send and receive
3 transfer services.

4 "Control." The ownership of, or the power to vote, 25% or
5 more of the outstanding voting interest of a licensee or
6 controlling person. For purposes of determining the percentage
7 of a licensee controlled by any person, the aggregate interest
8 of the principal's spouse, parent, child of the principal or
9 another individual whose interest is controlled by the principal
10 shall be included under this definition.

11 "Controlling person." A person in control of a licensee.

12 "Department." The Department of Banking and Securities of
13 the Commonwealth.

14 "Digital asset." A representation of economic, proprietary
15 or access rights that is stored in a machine-readable format,
16 has a transaction history that is recorded in a distributed,
17 digital ledger or digital data structure in which consensus is
18 achieved through a mathematically verifiable process, and
19 includes digital consumer assets and virtual currency.

20 "Digital asset business." A business that engages in the
21 activities listed in section 404-A(b).

22 "Digital consumer asset." A digital asset that is used or
23 bought primarily for consumptive, personal or household purposes
24 and includes any other digital asset that does not fall within
25 the term, virtual currency.

26 "Forked networks." A digital asset that undergoes a protocol
27 change resulting in a permanent diversion from the legacy or
28 existing distributed ledger which may result in the creation of
29 a new digital asset on a new distributed ledger in addition to
30 the legacy digital asset on the legacy distributed ledger.

1 "Issuing." The person who has authority over the initial
2 creation and dissemination of a digital asset.

3 "Key individual." An individual ultimately responsible for
4 establishing or directing policies and procedures of the
5 licensee, including the licensee's president, chairperson of the
6 executive committee, senior officer responsible for the business
7 of the licensee in the State, chief financial officer, an
8 executive manager, director, trustee and any other person who
9 performs similar functions.

10 "Licensee." A person licensed under this part or an
11 applicant for licensure under this part.

12 "Nationwide Multistate Licensing System." The licensing
13 system, which functions as a system of record for nondepository,
14 financial services licensing or registration in participating
15 state agencies, owned and operated by the State Regulatory
16 Registry LLC, a wholly owned subsidiary of the Conference of
17 State Bank Supervisors.

18 "Resident." A person that is:

19 (1) domiciled in this Commonwealth;

20 (2) physically located in this Commonwealth for more
21 than 183 days of the previous 365 days; or

22 (3) a limited partnership, limited liability
23 partnership, limited liability company or corporation formed
24 or incorporated in this Commonwealth.

25 "Responsible individual." An individual who has managerial
26 authority with respect to a licensee's digital asset business
27 activity with or on behalf of a resident.

28 "Secretary." The Secretary of Banking and Securities of the
29 Commonwealth or a designee.

30 "Transmission." Engaging in the business of receiving

1 monetary value for transmission to a location inside or outside
2 of the United States by any means, including wire, facsimile or
3 electronic transfer.

4 "Virtual currency." A digital asset that is used as a medium
5 of exchange, unit of account or store of value, and is not
6 recognized as legal tender by the Federal Government.

7 Section 402-A. Licensed digital asset business activity.

8 (a) Prohibition.--No person may engage in a digital asset
9 business activity, or hold itself out as being able to engage in
10 a digital asset business activity, with or on behalf of a
11 resident, unless the person is licensed in this Commonwealth by
12 the department or has filed a pending license with the
13 department.

14 (b) Licensure.--The department may license a person to carry
15 on one or more of the following digital asset business
16 activities:

17 (1) receiving a digital asset for transmission or
18 transmitting a digital asset, except where the transaction is
19 undertaken for nonfinancial purposes and does not involve the
20 transfer of more than a nominal amount of a digital asset;

21 (2) storing, holding or maintaining custody of a digital
22 asset on behalf of others, exempting all custodians otherwise
23 regulated as a bank, trust, broker-dealer or financial
24 institution in the United States or money transmitter
25 licensed in this Commonwealth;

26 (3) buying and selling digital assets as a customer
27 business;

28 (4) performing exchange services of digital assets as a
29 customer business;

30 (5) issuing a digital asset; or

1 (6) borrowing or lending of, or facilitating the
2 borrowing or lending of, customer digital assets.

3 (c) Penalty.--A person who violates this section shall be
4 liable for a penalty of \$500 per day, from the first day the
5 department issues a notice of failure to apply a license until a
6 license application is filed with the department.

7 Section 403-A. Application for licensure.

8 (a) Nationwide Multistate Licensing System.--An application
9 for a license under this part shall be submitted through the
10 Nationwide Multistate Licensing System on a form determined by
11 the department by regulation. The department shall require each
12 application to be accompanied by a nonrefundable fee.

13 (b) Information.--An applicant shall provide the following
14 information relevant to the applicant's proposed digital asset
15 business activity:

16 (1) the legal name of the applicant, each current or
17 proposed business address of the applicant and any fictitious
18 or trade name the applicant uses or plans to use in
19 conducting the applicant's digital asset business activity
20 with or on behalf of a resident;

21 (2) the legal name, any former or fictitious name and
22 the residential and business address of each key individual
23 and responsible individual of the applicant, including each
24 controlling person of the applicant;

25 (3) a concise description of the current and former
26 business of the applicant for the five years prior to the
27 submission of the application or, if the business has
28 operated for less than five years, for the time the business
29 has operated, including the products and services and the
30 digital asset business services that the applicant seeks to

1 provide in this Commonwealth;

2 (4) the name, address and telephone number of a person
3 who manages each server the applicant expects to use in
4 conducting digital asset business activity with or on behalf
5 of a resident;

6 (5) a list of all other states in which the applicant is
7 licensed to engage in the digital asset business and any
8 license revocation, license suspension or other disciplinary
9 action taken against the licensee in another state and any
10 license applications rejected by another state;

11 (6) a list of any criminal conviction, deferred
12 prosecution agreement or pending criminal proceeding in any
13 jurisdiction against the applicant, any key individual,
14 responsible individual or controlling person of the
15 applicant, including each person over which the applicant has
16 control;

17 (7) a list of any litigation, arbitration or
18 administrative proceeding in any jurisdiction in which the
19 applicant or a key individual, responsible individual or
20 controlling person of the applicant has been a party to for
21 the five years prior to the submission of the application
22 which is determined to be material in accordance with
23 generally accepted accounting principles and, to the extent
24 the applicant would be required to disclose the litigation,
25 arbitration or administrative proceeding in the applicant's
26 audited financial statements, reports to equity owners and
27 similar statements or reports;

28 (8) a list of any bankruptcy or receivership proceeding
29 in any jurisdiction for the 10 years prior to the submission
30 of the application in which the applicant, any key

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

4 (9) the United States Postal Service address and email
5 address to which communications from the department may be
6 sent;

7 (10) the name, United States Postal Service address and
8 email address of the registered agent of the applicant in
9 this Commonwealth, if applicable;

10 (11) a copy of any certificate of coverage for each
11 liability, casualty, business interruption or cybersecurity
12 insurance policy maintained by the applicant for the
13 applicant or the applicant's users;

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

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

21 (14) policies and procedures to be adopted by the
22 applicant to meet any obligations required by antimoney
23 laundering and antiterror financing laws;

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

28 (16) a copy of the applicant's unconsolidated financial
29 statements for the current fiscal year, whether audited or
30 not, and if available, for the two-year period next preceding

1 the submission of the application;

2 (17) if a corporation has control of the applicant and
3 the corporation's equity interests are publicly traded in the
4 United States, a copy of the audited financial statement of
5 the corporation for the most recent fiscal year or most
6 recent report of the corporation filed under 15 U.S.C. § 78m
7 (relating to periodical and other reports);

8 (18) if a corporation has control of the applicant and
9 the corporation's equity interests are publicly traded
10 outside of the United States, a copy of the audited financial
11 statement of the corporation for the most recent
12 documentation similar to that required in paragraph (17),
13 filed with the foreign regulator in the domicile of the
14 corporation;

15 (19) if available, for each key individual, responsible
16 individual or controlling person of the applicant, for the
17 three years before the application is submitted, the
18 employment history and the history of any investigation of
19 the individual or legal proceeding to which the individual
20 was a party;

21 (20) a sample form of receipt for transactions that
22 involve money received for the digital asset business;

23 (21) disclosure of who maintains control, ownership or
24 access to any private key related to a digital assets
25 consumer's account and information where the private key is
26 held and the manner in which the private key is held; and

27 (22) a list of all agents authorized to represent or
28 conduct business on behalf of the digital asset business.

29 (c) List of agents.--At the time of application and within
30 45 days after the end of each calendar quarter, each digital

1 asset business shall file with the department in writing a list
2 of all agents that have been added or terminated by the
3 licensee, if any. The list shall include the name and business
4 address of each location.

5 (d) Background check.--The department may conduct a criminal
6 history records check of the applicant, any controlling persons,
7 key individuals or responsible individuals of the applicant and
8 require the applicant to submit the fingerprints of those
9 persons as part of the application. The department may exchange
10 fingerprint data with and receive criminal history record
11 information from the Pennsylvania State Police and the Federal
12 Bureau of Investigation consistent with applicable Federal and
13 State laws, rules and regulations, for the purposes of
14 facilitating determinations concerning licensure eligibility for
15 the applicant, any controlling persons, key individuals or
16 responsible individuals of the applicant. The applicant shall
17 bear the cost for the criminal history record background check,
18 including all costs of administering and processing the check.
19 The Division of State Police shall promptly notify the
20 department in the event any person who was the subject of a
21 criminal history record background check under this section is
22 arrested for a crime or offense in this Commonwealth after the
23 date the background check was performed, whether the person is a
24 prospective new licensee or a current license holder.

25 (e) Limitation.--No license shall be issued by the
26 department to an individual who has, within the five years
27 preceding the submission of an application for a license, been
28 convicted of embezzlement, forgery, fraud or theft.

29 Section 404-A. Licensure application and discretion.

30 (a) License determination.--The department shall grant or

1 deny any digital asset business license application within 120
2 days of receipt of the completed application.

3 (b) Refusal.--The department may refuse an application for a
4 digital asset business license or license reciprocity
5 application if:

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

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

9 (3) any applicant, controlling person, key individual or
10 responsible individual of an applicant has engaged in
11 dishonest or unethical practices in a digital asset business
12 or in the securities commodities, banking, insurance or
13 investment advisory business; or

14 (4) any material aspect of the license application as
15 represented by the application requirements contained in
16 section 403-A is incomplete or false.

17 (c) Transfer prohibited.--A license issued under this part
18 may not be transferrable or assignable.

19 Section 405-A. Renewal and reports.

20 (a) Renewal.--A licensee may apply for an annual renewal of
21 a license by:

22 (1) paying a renewal fee in an amount determined by the
23 department pursuant to regulation; and

24 (2) submitting to the department through the Nationwide
25 Multistate Licensing System the renewal report required under
26 subsection (b).

27 (b) Report submission.--A license renewal report required
28 under this section shall be submitted on a form determined by
29 the department. The report shall contain an update of all
30 information required at initial licensing and a description of

1 any:

2 (1) material change in the financial condition of the
3 licensee;

4 (2) material litigation involving the licensee or a key
5 individual, responsible individual or controlling person of
6 the licensee;

7 (3) license suspension or revocation proceeding
8 commenced, or other action taken, involving a license to
9 conduct digital asset business activity issued by another
10 state on which reciprocal licensing is based;

11 (4) Federal or State investigation involving the
12 licensee;

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

14 (6) changes to the key individuals of the licensee.

15 (c) Reinstatement.--If a license is suspended for failure to
16 file an annual renewal, the license shall be reinstated if the
17 licensee files a renewal report and pays a fee, in an amount
18 determined by the department.

19 Section 406-A. Suspension and notice.

20 (a) Suspension or revocation.--The department may suspend or
21 revoke a digital asset business license upon finding that:

22 (1) the department has been provided with false,
23 misleading or inaccurate information by or on behalf of the
24 licensee;

25 (2) the clients of a licensee have been provided with
26 false, misleading or inaccurate information by or on behalf
27 of the licensee;

28 (3) any controlling person, responsible individual, key
29 individual or agent of a licensee has engaged in dishonest or
30 unethical practice in a digital asset business or in the

1 securities, commodities, banking, insurance or investment
2 advisory business;

3 (4) the licensee fails to provide documents requested by
4 the department;

5 (5) the licensee fails to renew the licensee's license;
6 or

7 (6) the licensee fails safety and soundness as
8 prescribed by the department.

9 (b) Warning notice.--The department may provide a warning
10 notice to a licensee if the department suspects that a condition
11 permitting suspension or revocation has occurred.

12 (c) Information in notice.--Any warning notice, suspension
13 or revocation issued by the department shall state the reasons
14 for which it is given. The department may issue general guidance
15 to industry participants on how to best protect the interests of
16 clients.

17 (d) Civil action.--If it appears to the department that any
18 person has violated, is violating or has any public intentions
19 of violating any of the provisions of this part, or any
20 regulation adopted under this part, or any licensee or any
21 owner, director, officer, member, partner, shareholder, trustee,
22 employee or agent of a licensee has committed any fraud, engaged
23 in dishonest activities or made any misrepresentation, the
24 department may bring a civil suit in a court of competent
25 jurisdiction to enjoin the violation or potential violation or
26 seek civil penalties, or both.

27 (e) Compliance.--Each licensee shall maintain and enforce
28 confidential, written compliance policies, including policies
29 with respect to antifraud, anti-money laundering, cyber
30 security, privacy and information security, which shall be

1 reviewed and approved by the licensee's board of directors or an
2 equivalent governing body.

3 Section 407-A. Appeal.

4 Any denial, suspension or revocation of a license or warning
5 notice issued by the department shall prominently indicate that
6 a right of appeal is available. A licensee or prospective
7 licensee which is aggrieved by a decision of the department may
8 appeal the decision by filing a request for a hearing before a
9 court of common pleas for the judicial district where the
10 licensee is found or transacts business.

11 Section 408-A. Records.

12 A licensee shall provide to the department in a reasonable
13 amount of time any document relating to the operations of the
14 licensee upon receiving a written request from the department.
15 Any notice requiring the production of documents under this
16 section shall include the reasons for which notice is given. A
17 licensee shall give written notice to the department within five
18 days if there are any changes in the identities of the
19 licensee's key individuals, responsible individuals or
20 controlling persons and shall maintain a record of all client
21 transactions for a period of not less than six years from the
22 date the transaction occurred.

23 Section 409-A. Terms and consent.

24 (a) Terms and conditions.--The terms and conditions of a
25 digital asset business involving a consumer's account shall be
26 disclosed as part of establishing a relationship with a customer
27 and prior to entering into an initial transaction with the
28 customer at the time the consumer contracts for a digital asset
29 business service. A disclosure shall be full and complete,
30 contain no material misrepresentations, be in readily

1 understandable language and may include, as appropriate and to
2 the extent applicable:

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

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

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

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

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

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

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

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

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

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

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

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

29 (13) under what circumstances the digital asset business
30 will in the ordinary course of business disclose information

1 concerning the consumer's account to third parties; and

2 (14) any other material investment risks.

3 (b) Informed consent.--All disclosures required by this part
4 shall be displayed and individually agreed to by a consumer
5 before any digital asset transaction at an electronic kiosk. Any
6 fee to be charged shall be displayed and individually agreed to
7 by a consumer before any digital asset transaction or digital
8 asset balance inquiry at an electronic kiosk.

9 (c) Cost cover.--A licensee or registrant that has custody
10 of digital assets for one or more persons shall maintain in the
11 licensee's custody an amount of each type of digital asset
12 sufficient to satisfy the aggregate entitlements of the persons
13 to the type of digital asset.

14 (d) Written policies.--Each licensee shall establish and
15 maintain written policies and procedures to fairly and timely
16 resolve customer complaints.

17 (e) Disclosures.--Each licensee shall provide, in a clear
18 and conspicuous manner, on the licensee's publicly accessible
19 Internet website or websites and in all physical locations, the
20 following disclosures:

21 (1) the licensee's mailing address, email address and
22 telephone number for the receipt of complaints;

23 (2) a statement that the complainant may also bring a
24 complaint to the attention of the department; and

25 (3) the department's mailing address, website and
26 telephone number.

27 (f) Audit.--The department may audit a licensee's compliance
28 with this section.

29 Section 410-A. Authority of department.

30 (a) Investigations.--The department shall have the authority

1 to conduct investigations and examinations as follows:

2 (1) for purposes of initial licensing, license renewal,
3 license suspension, license conditioning, license revocation
4 or termination or general or specific inquiry or
5 investigation to determine compliance with this part, the
6 department may access, receive and use any books, accounts,
7 records, files, documents, information or evidence,
8 including:

9 (i) criminal, civil and administrative history
10 information;

11 (ii) financial statements and any other records of
12 financial condition of the licensee, any control person
13 of the licensee and any business entity exerting control
14 over the licensee;

15 (iii) personal history and experience information,
16 including independent credit reports obtained from a
17 consumer reporting agency described in 15 U.S.C. §
18 1681a(p) (relating to definitions and rules of
19 construction); and

20 (iv) any other documents, information or evidence
21 that the department deems relevant to the inquiry or
22 investigation regardless of the location, possession,
23 control or custody of the documents, information or
24 evidence; and

25 (2) for the purposes of investigating violations or
26 complaints arising under this part, or for the purposes of
27 examination, the department may review, investigate or
28 examine any digital asset business licensee or person subject
29 to this part as often as necessary in order to carry out the
30 purposes of this part. The secretary may direct, subpoena or

1 order the attendance of and examine under oath all persons
2 whose testimony may be required about digital assets, digital
3 consumer assets, virtual currency or the business or subject
4 matter of any examination or investigation, and may direct,
5 subpoena or order the person to produce books, accounts,
6 records, files and any other documents the department deems
7 relevant to the inquiry.

8 (b) Reports.--A digital asset business licensee or any
9 person subject to this part shall make or compile reports or
10 prepare other information as directed by the department in order
11 to carry out the purposes of this section, including accounting
12 compilations, information lists and data concerning digital
13 asset, digital consumer asset or virtual currency transactions
14 in a format prescribed by the secretary or any other information
15 the department deems necessary to carry out the purposes of this
16 part.

17 (c) Possession.--In making an examination or investigation
18 authorized by this section, the department may control access to
19 any documents and records of the digital asset business or
20 person under examination or investigation. The secretary may
21 take possession of the documents and records or place a person
22 in exclusive charge of the documents and records in the place
23 where they are usually kept. During the period of control, no
24 person shall remove or attempt to remove any of the documents
25 and records except in accordance with a court order or with the
26 consent of the department. Unless the secretary has reasonable
27 grounds to believe the documents or records of the digital asset
28 business or person have been, or are at risk of being, altered
29 or destroyed for purposes of concealing a violation of this
30 part, the digital asset business or owner of the documents and

1 records shall have access to the documents or records as
2 necessary to conduct ordinary business affairs.

3 Section 411-A. Confidentiality and disclosure.

4 (a) Confidentiality.--Notwithstanding any other provision of
5 law, all information or reports obtained by the department from
6 an applicant, licensee or agent, whether obtained through
7 reports, applications, examinations, audits, investigations or
8 otherwise, are confidential, including, but not limited to:

9 (1) all information contained in or related to
10 examination, investigation, operating or condition reports
11 prepared by, or on behalf of, or for the use of the
12 department; or

13 (2) financial statements, balance sheet or authorized
14 delegate information are confidential and may not be
15 disclosed or distributed outside of the department by the
16 department or any officer or employee of the department. The
17 department, however, may provide for the release of
18 information to representatives of Federal or State agencies
19 and foreign countries having regulatory or supervisory
20 authority over the activities of the licensee or similar
21 licensees if those representatives, upon request of the
22 secretary, disclose similar information respecting those
23 licensees under their regulation or supervision, or to those
24 representatives who state in writing under oath that the
25 representative shall maintain the confidentiality of that
26 information.

27 (b) Departmental discretion.--The department may:

28 (1) disclose the fact of filing of applications with the
29 department under this part, give notice of a hearing, if any,
30 regarding an application and announce an action relating to

1 this paragraph;

2 (2) disclose final decisions in connection with
3 proceedings for the suspension or revocation of licenses
4 issued pursuant to this part;

5 (3) prepare and circulate reports reflecting the assets
6 and liabilities of digital asset businesses in general,
7 including other information considered pertinent to the
8 purpose of each report for general statistical information;
9 and

10 (4) prepare and circulate reports as provided by law.

11 (c) Evidence.--Every official report of the department is
12 prima facie evidence of the facts in any action or proceeding
13 where the department is a party.

14 (d) Disclosure.--Nothing in this section shall be construed
15 to prevent the disclosure of information that is admissible in
16 evidence in any civil or criminal proceeding brought by or at
17 the request of the department or this Commonwealth to enforce or
18 prosecute violations of this part or the rules, regulations or
19 orders issued or promulgated in accordance with this part.

20 Section 2. This act shall take effect in 180 days.