

New Jersey Introduces a Virtual Currency and Blockchain Bill

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On November 22, the New Jersey State Senate [introduced](#) Senate Bill No. 4163 (NJ S4163), titled “Virtual Currency and Blockchain Regulation Act.” The bill, sponsored by Senators Thomas Kean, Jr. (R) and Robert Singer (R), if enacted, would establish a regulatory framework for New Jersey virtual currency businesses, create provisions governing the use of blockchain with certain business entities, and create incentives for virtual currency businesses in the state. NJ S4163 addresses eight topics:

1. Open Blockchain Tokens Are Intangible Personal Property and Not Securities

NJ S4163 provides that certain open blockchain tokens are intangible personal property, rather than securities, if the token’s predominant purpose is consumptive and the developer or seller did not market the token to the initial buyer as a financial investment, among other factors. “Consumptive” is defined as a token being exchangeable for services, software, content, or real or tangible personal property.

Additionally, NJ S4163 requires that, before making an open blockchain token available for sale, its developer or seller must file a notice of intent with the Department of Banking and Insurance and pay a \$1,000 filing fee.

2. Digital Assets Classified as Property

The bill would classify all digital assets as property. Digital consumer assets would be classified as general intangible property, digital securities as securities, and virtual currency as money.

The bill further provides that financial institutions could provide custodial services for digital assets—provided the institution follows the Securities and Exchange Commission rules regarding custodial services. Perfection of a security interest in digital assets would be obtained by control and would not require physical possession. The bill clarifies that such digital assets held in the bank’s custody would not be depository liabilities or assets of the bank. Finally, the bill would prohibit the bank from engaging in any discretionary authority relating to digital assets unless it had the customer’s instructions to do so.

3. Decentralized Autonomous Organizations

NJ S4163 would allow the formation of decentralized autonomous organizations (DAO) under New Jersey’s limited liability company (LLC) law and provide similar protections afforded to LLCs. DAOs are organizations controlled by their members with no central authority where the organization’s rules are maintained by smart

contracts on the blockchain. The smart contracts automate the decision-making process that is often reserved for upper-level management.

4. Blockchain Filing System

The bill gives the Department of Revenue and Enterprise Services the authority to build a filing system using the blockchain through which filings may be submitted.

5. Exemption from Money Transmission Laws

The bill would exempt virtual currency from current law governing money transmitters. “Virtual currency” would be added to the law to mean any type of digital representation that: (1) is used as a medium of exchange, unit of account, or store of value; and (2) is not recognized as legal tender by the U.S. government.

6. Authorization to Issue Stock as Certificate Token

The bill would also authorize business entities to issue stock certificates in the form of electronic certificate tokens. A “certificate token” is defined in the bill as “an electronic representation of a share of stock which contains certain information required under existing law for stock certificates and which is entered into a blockchain or other secure, auditable database.”

7. Business Incentives for Virtual Currency Businesses

As it relates to various virtual currency business incentives, NJ S4163 exempts receipts from retail sales of energy and utility services to a virtual currency servicer or registrant for use or consumption directly and primarily in the creation of virtual currency, including mining, from the tax imposed under New Jersey’s Sales and Use Tax Act. Additionally, the bill would designate virtual currency servicers as a “targeted industry” and “technology startup companies” for the purposes of the Grow New Jersey Assistance Act—a law that provides certain business and insurance premium tax credits for job creation and retention in New Jersey. Under such designations, a virtual currency servicer would be eligible for the incentives with a minimum of 10 new or 25 retained full-time jobs, which is less than is required for other business types.

8. Use of Virtual Currency to Pay State Taxes

Current law allows the Director of the Division of Taxation to establish an electronic funds transfer (EFT) system for payment of New Jersey taxes. The bill would amend the definition of an EFT to include any transfer of virtual currency.

Our Take. The states currently are not uniform in how they treat virtual currency businesses, including their application of existing state money transmitter rules to the sale or exchange of virtual currencies. Some states have issued guidance on the issue, while others have enacted piecemeal legislation. On the other end of the spectrum, some states—such as New Jersey—have crafted innovative, crypto-friendly regulations. We expect over the next few years more states will follow suit, successfully balancing consumer protection and overregulation concerns.