

Crypto Council for Innovation

December 20, 2023

The Honorable Phil Murphy
New Jersey Governor
225 W State St
Trenton, NJ 08625

RE: *Digital Asset and Blockchain Technology Act (A2371/S1756)*

Governor Murphy,

Thank you for the opportunity to provide feedback on the *Digital Asset and Blockchain Technology Act (A2371/S1756)*. The Crypto Council for Innovation (CCI) respectfully urges you to conditionally veto this legislation if it comes to your desk this legislative session. To that end, we write to request several amendments that will provide increased clarity for future licensees and allow New Jersey to continue fostering innovation in the digital asset space.

The Crypto Council for Innovation (CCI) is a global alliance of industry leaders in the digital asset and Web3 sectors that serves to educate consumers and policymakers and advocate for policy that spurs responsible innovation. We use an evidence-based approach to support governments worldwide that are shaping and encouraging inclusive regulation of this innovative technology.

Digital assets and blockchain applications more generally are significant and evolving technological innovations with many use cases developed under a variety of business models. These innovations have the potential to bring increased transparency, security, efficiency, and inclusion not only to financial services, but to other sectors as well. As you consider A2371/S1756, CCI encourages the following amendments to promote responsible digital asset innovation and New Jersey's leadership in this space:

Definitions and Categorization - Section 3 grants broad discretion to the Chief of the New Jersey Bureau of Securities (the "Bureau") to determine what constitutes "digital asset business activities," and includes functions such as "transmitting," "issuing," "borrowing and lending," and providing "exchange services," without properly defining these activities. This overly broad authority would capture, among others, validators, software developers, NFT artists, NFT owners and traders, internet service providers, internet browsers, and almost any other non-financial/business ecosystem participant. Unintentionally capturing virtually every developer, coder, and digital artist in New Jersey could lead to devastating consequences for the ecosystem and its users, including small businesses, entrepreneurs, and artists throughout the state.

Web3 gaming, a burgeoning, \$10 billion industry estimated to host almost a million daily users, should be explicitly excluded from the bill's scope. Applying onerous licensing requirements to game developers as the bill proposes to do will result in game developers foregoing giving players true ownership of their assets. That's bad for consumers. Ultimately, it does not make sense to regulate video games the same way we regulate financial institutions.

The bill should also be amended to clarify that the scope of "digital asset business activities" is limited to business activities that directly engage a significant number of New Jersey state residents. We urge you to consider providing exemptions to this definition modeled on those outlined in the California Digital Financial Assets Law (AB 39) to avoid unintentionally pigeonholing a wide range of unrelated activity, such as smart contract protocols or storage providers, into the bill's licensing requirements. This includes an applicability exclusion for software and technology, which for purposes of comparison, are also provided under New York law.¹ The legislature should further provide additional clarity on the definition of a "record," which can have multiple nuanced meanings in the digital asset space. Failure to do so could result in circumstances where licensees expend unnecessary resources interpreting ambiguity or over-disclose non-pertinent and overly technical information.

Pending Licenses - The bill has been amended to prevent companies from engaging in "digital asset business activity" until their license is approved. Previous versions of the bill provided that a company only needed to have "filed a pending license." The current version requires full approval. Section 3 should provide flexibility for companies undergoing the licensing process to continue operating during their review process.

Reciprocity and Harmonizing Licensing Standards - We appreciate the legislature's efforts to harmonize standards with similar state licensing regimes, including utilization of the Nationwide Multistate Licensing System (NMLS) and license reciprocity measures. A 50-state patchwork of regulations for this developing industry will stifle innovation and promote offshoring. The legislature should also consider additional means to promote harmonization, including entering into memoranda of understanding with other state governments to facilitate information sharing and other means by which to recognize full reciprocity with similar state licensing regimes.

Application Contents - While we support the need to provide adequate disclosure to regulators, we would recommend removing requirements to provide names of individuals who manage each server used in the business (Clause 4) and a description of how the private keys of the organization are held (Clause 21). This information is unlikely to be valuable to regulators, but could be very dangerous in the hands of bad actors that might otherwise gain access through security breaches, public disclosures, or other means. Such information could be used to jeopardize the security of the applicant.

Application Timelines - CCI commends the legislature for providing that the Bureau has 120 days to accept or reject an application once it is deemed complete. Timelines help to ensure

¹ See [23 CRR-NY 200.2\(g\)](#) and [§3103\(c\)\(6\)\(A\)](#) respectively.

regulated entities are best positioned to compete in a crowded marketplace and mutually benefit regulators, by facilitating better communication and a closer alignment of expectations. Section 5 should also provide clear guidance on: what constitutes a complete application; when the timeline actually begins; and whether the process is measured in business or calendar days. If the Bureau fails to make a determination within 120 days, applications should be approved by default. We also encourage the legislature to provide clearly-defined timelines for records requests and reviews.

Material Change - Given the rapid pace of innovation in the industry and the need for regulatory certainty among licensed entities, Section 6 should be amended to provide a clear definition of “material change” with respect to license renewals. Defining the concept would allow licensees to better provide the information the Bureau needs when it comes to assessing renewals.

Denial, Suspension or Revocation - The level of discretion given to the Bureau to deny, suspend or revoke a license in Section 7 is too significant and will likely lead to unpredictable results. For instance, the terms “public interest”, “incomplete” and “dishonest” should be clarified and qualified by materiality. The current language is overly broad and vague, which fails to provide needed clarity as to when a licensee can expect a license to be denied, suspended, or revoked. Providing such clarity will better allow for licensees to ensure they are meeting expectations.

Investigations - Section 11 grants broad discretion to the Chief of the Bureau of Securities to conduct long arm investigations. The legislation should provide appropriate guardrails to prevent overreach in this area. For example, such investigations should be narrowed to address only the licensees’ digital asset business activity. This should similarly apply to Section 8 regarding the Bureau's ability to request any document from a licensee.

Clarifications - There are several concepts in the bill which require further clarification. These include clarifying “business days” vs. simply “days” and aligning “responsible individual” and “key individual.” These terms are found throughout and appear to be used interchangeably.

We appreciate the opportunity to provide input on this important legislation.

Sincerely,



Sheila Warren, Esq.
Chief Executive Officer
Crypto Council for Innovation



Ji Hun Kim
General Counsel & Head of Global Policy, Digital Assets
Crypto Council for Innovation

Cc: The Honorable Nellie Pou
New Jersey State Senate
100 Hamilton Plaza, Suite 1405
Paterson, NJ 07505

The Honorable Andrew Zwicker
New Jersey State Senate
2 Clerico Lane, Building 1
Hillsborough, NJ 08844

The Honorable Yvonne Lopez
New Jersey State Assembly
211 Front Street
Perth Amboy, NJ 08861