

STATE OF NEW YORK

8839

IN SENATE

April 22, 2022

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing certain offenses relating to crypto fraud

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Title K of the penal law is amended by adding a new article 191 to read as follows:

ARTICLE 191
CRYPTO FRAUD

Section 191.00 Definitions.

191.05 Penalties.

191.10 Virtual token fraud.

191.15 Illegal rug pulls.

191.20 Private key fraud.

191.25 Fraudulent failure to disclose interest in virtual tokens.

§ 191.00 Definitions.

For purposes of this article, the following terms shall have the following meanings:

1. "Virtual tokens" shall mean security tokens and stablecoins;

2. "Security tokens" shall mean any form of fungible and non-fungible computer code by which all such forms of ownership of said computer code is determined through verification of transactions or any derivative method, and that is stored on a peer-to-peer computer network or any other such computerized system or through any derivative means of storage, and which conforms to one of the following:

(a) such class of virtual tokens are advertised by the developer or an agent of the developer at the developer's direction to be bought and sold for the purpose of profit, whether or not such purpose is advertised as the sole purpose;

(b) such class of virtual tokens are reasonably understood by members of the public to be bought and sold for the purpose of profit;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 (c) the value of such class of virtual tokens is determined by the
2 supply and demand of the virtual token; and

3 (d) such class of virtual tokens: (i) are not pegged to an external
4 source, whether or not such external source is volatile, (ii) are pegged
5 to another virtual token, or (iii) such class of virtual tokens do not
6 employ technology which prevents large fluctuations in its price and
7 such technology fails to prevent the same;

8 3. "Stablecoin" shall mean any form of fungible and non-fungible
9 computer code by which all such forms of ownership of said computer code
10 is determined through verification of transactions or any derivative
11 method, and that is stored on a peer-to-peer computer network or any
12 other such computerized system or through any derivative means of stor-
13 age, and which conforms to all of the following:

14 (a) such class of virtual tokens are not advertised by the developer
15 or an agent of the developer at the developer's direction to be bought
16 and sold for the purpose of profit, whether or not such purpose is
17 advertised as the sole purpose;

18 (b) such class of virtual tokens cannot be reasonably understood by
19 members of the public to be bought and sold for the purpose of profit;
20 and

21 (c) the value of such class of virtual tokens is not determined by the
22 supply and demand of the class of virtual token; and

23 (d) such class of virtual tokens are pegged to an external source
24 other than another class of virtual tokens, whether or not such external
25 source is volatile, or such class of virtual tokens do employ technology
26 which prevents large fluctuations in its price and such technology
27 succeeds in preventing the same;

28 4. "Class" shall mean a group of fungible or non-fungible tokens,
29 irrespective of the amount created, that is intended by the developer to
30 be:

31 (a) in the case of fungible tokens, valued and exchanged together; or
32 (b) in the case of non-fungible tokens, regarded as part of the same
33 group of digital or physical items or valued together with the develop-
34 ers' other non-fungible tokens based on the fact that the non-fungible
35 tokens were created by a certain developer, taking into account the
36 developer's notoriety, sale volume, and how he or she is regarded within
37 virtual token communities;

38 5. "Developer" shall mean the person or persons, whether natural or
39 otherwise, and any agent or employee thereof who either create in whole
40 or in part, maintain in whole or in part, or own more than ten percent
41 of a class of virtual tokens utilizing any technical standard and who
42 offers them for purchase in the state of New York or, where the sale of
43 their tokens in the state of New York is prohibited, such person does
44 not use reasonable efforts to prevent such class of virtual tokens from
45 being made available for purchase in the state of New York;

46 6. "Technical standard" shall mean the rules that a class of virtual
47 tokens shall comply with in order to use the blockchain network or any
48 derivative means thereof;

49 7. "Non-fungible token" shall mean a virtual token used to denote on
50 the blockchain ownership of any digital or physical item or any deriva-
51 tive means thereof;

52 8. "Fungible token" shall mean any virtual token stored on the block-
53 chain other than non-fungible tokens;

54 9. "Own", "owning" and "ownership" shall mean the means by which
55 possession of a digital asset is noted on the blockchain or any deriva-
56 tive means thereof;

1 10. "Token" shall mean the technical standard used to create a fungi-
2 ble or non-fungible piece of computer code;

3 11. "Wallet" shall mean a device, program, or service which stores the
4 public and/or private keys for virtual token transactions;

5 12. "Burning" shall mean any method of someone making tokens inacces-
6 sible to any person including himself or herself with the intention of
7 doing so;

8 13. "Rug pull" shall mean the act of a developer developing a class of
9 virtual tokens, owning more than ten percent of the supply of such class
10 of virtual tokens, and selling more than ten percent of the total supply
11 of such class of virtual tokens within a five-year period from the date
12 of the last sale of the same;

13 14. "Blockchain" shall mean any type of technology which stores code
14 on a database of which said database represents the record of trans-
15 actions that make up virtual tokens or any derivative technology; and

16 15. "Private key" shall mean the unique identifier of a wallet, or any
17 substantially similar analogue, that is paired with a publicly available
18 identifier and associated with an algorithm that is necessary to carry
19 out an encryption or decryption required to execute a transaction.

20 § 191.05 Penalties.

21 Any person, partnership, corporation, company, trust or association,
22 developer, or any agent or employee thereof who violates the provisions
23 of this article shall be subject to a civil fine of not more than five
24 million dollars or imprisoned not more than twenty years, or both,
25 except that where such a person is a person other than a natural person,
26 a fine not exceeding twenty-five million dollars.

27 § 191.10 Virtual token fraud.

28 A person, whether natural or otherwise, is guilty of virtual token
29 fraud when such person engages in deceptive or fraudulent practice with
30 the intent to deceive another in relation to the purchase, sale,
31 exchange, transfer, offering, storage, destruction, or any relevant act
32 related thereto of virtual tokens.

33 § 191.15 Illegal rug pulls.

34 1. A developer, whether natural or otherwise, is guilty of illegal rug
35 pulls when such developer develops a class of virtual token and sells
36 more than ten percent of such tokens within five years from the date of
37 the last sale of such tokens.

38 2. This section shall not apply to non-fungible tokens where a devel-
39 oper has created less than one hundred non-fungible tokens that are
40 regarded as part of the same series or class of non-fungible tokens or
41 where such non-fungible tokens regarded as part of the same series or
42 class are valued at less than twenty thousand dollars at the time the
43 rug pull occurs.

44 § 191.20 Private key fraud.

45 1. A person, whether natural or otherwise, is guilty of private key
46 fraud when such person obtains or discloses to another person or misuses
47 another's private key without their affirmative consent, provided howev-
48 er that where the person created the private key, such a person shall
49 only be prohibited from disclosing to another or misusing the private
50 key without the owner of the private key's affirmative consent.

51 2. Consent is deemed affirmative only where it is obtained by a
52 request independent from any other request or information provided to
53 another, it is conspicuous, and it informs the person of the conse-
54 quences associated with disclosing their private key to another.

55 § 191.25 Fraudulent failure to disclose interest in virtual tokens.

1 1. A developer of a class of virtual tokens is guilty of fraudulent
2 failure to disclose interest in virtual tokens when such developer does
3 not publicly and conspicuously disclose the number of tokens they own in
4 such class of virtual tokens they developed on the landing page of such
5 developer's primary website.

6 2. For the purposes of this section, the term developer shall not
7 include a person whether natural or otherwise, and any agent or employee
8 thereof who owns more than ten percent of a class of virtual tokens who
9 does not create or maintain, in whole or in part, a virtual token that
10 is offered for purchase in the state of New York.

11 § 2. This act shall take effect on the thirtieth day after it shall
12 have become a law. Effective immediately, the addition, amendment and/or
13 repeal of any rule or regulation necessary for the implementation of
14 this act on its effective date are authorized to be made and completed
15 on or before such effective date.