

STATE OF NEW YORK

9275

IN SENATE

May 12, 2022

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Internet and Technology

AN ACT to amend the general business law, in relation to requiring certain disclosures in advertisements involving virtual tokens

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

1 Section 1. The general business law is amended by adding a new section
2 350-b-2 to read as follows:

3 § 350-b-2. Disclosures required in advertisements involving security
4 tokens. 1. As used in this section the following terms shall have the
5 following meanings:

6 (a) "virtual tokens" shall mean security tokens and stablecoins;

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

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

17 (ii) such virtual tokens can be reasonably understood by members of
18 the public to be bought and sold for the purpose of profit;

19 (iii) the value of such class of virtual tokens is determined by the
20 supply and demand of the virtual token;

21 (iv) such class of virtual tokens: (i) are not pegged to an external
22 source, whether or not such external source is volatile, (ii) are pegged
23 to another class of virtual tokens, or such class of virtual tokens do
24 not employ technology which prevents large fluctuations in its price, or
25 such technology fails to prevent the same;

26 (c) "stablecoin" shall mean any form of fungible and non-fungible
27 computer code by which all such forms of ownership of said computer code
28 is determined through verification of transactions or any derivative

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

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1 method, and that is stored on a peer-to-peer computer network or any
2 other such computerized system or through any derivative means of stor-
3 age, and which conforms to all of the following:

4 (i) such class of virtual tokens are not advertised by the developer
5 or another at the developer's direction to be bought and sold for the
6 purpose of profit, whether or not such purpose is advertised as the sole
7 purpose;

8 (ii) such class of virtual tokens cannot be reasonably understood by
9 members of the public to be bought and sold for the purpose of profit;

10 (iii) the value of such class of virtual tokens is not determined by
11 the supply and demand of the class of virtual token; and

12 (iv) such class of virtual tokens are pegged to an external source,
13 other than another class of virtual tokens, whether or not such external
14 source is volatile, or such class of virtual tokens do employ technology
15 which prevents large fluctuations in its price, or such technology
16 succeeds in preventing the same;

17 (d) "class" shall mean a group of fungible or non-fungible tokens,
18 irrespective of the amount created, that is intended by the developer to
19 be:

20 (i) in the case of fungible tokens, valued and exchanged together; or
21 (ii) in the case of non-fungible tokens, regarded as part of the same
22 group of digital or physical items or valued together with the develop-
23 er's other non-fungible tokens based on the fact that the non-fungible
24 tokens were created by a certain developer, taking into account the
25 developer's notoriety, sale volume, and how he or she is regarded within
26 virtual token communities;

27 (e) "developer" shall mean the person or persons, whether natural or
28 otherwise, and any agent or employee thereof who either create in whole
29 or in part, maintain in whole or in part, or own more than ten percent
30 of a class of virtual tokens utilizing any technical standard and who
31 offers them for purchase in the state of New York or, where the sale of
32 their tokens in the state of New York is prohibited, such person does
33 not use reasonable efforts to prevent such virtual tokens from being
34 made available for purchase in the state of New York;

35 (f) "technical standard" shall mean the rules that a class of virtual
36 tokens shall comply with in order to use the blockchain network or any
37 derivative means thereof;

38 (g) "non-fungible token" shall mean a virtual token used to denote on
39 the blockchain ownership of any digital or physical item or any deriva-
40 tive means thereof;

41 (h) "fungible token" shall mean any virtual token stored on the block-
42 chain other than non-fungible tokens;

43 (i) "owned" and "ownership" shall mean the means by which ownership of
44 a digital asset is noted on the blockchain or any derivative means ther-
45 eof;

46 (j) "token" shall mean the technical standard used to create a fungi-
47 ble or non-fungible piece of computer code;

48 (k) "wallet" shall mean a device, program, or service which stores the
49 public and/or private keys for virtual token transactions;

50 (l) "blockchain" shall mean any type of technology which stores code
51 on a database of which said database represents the record of trans-
52 actions that make up virtual tokens or any derivative technology;

53 (m) "private key" shall mean the unique identifier of a wallet, or any
54 substantially similar analogue, that is paired with a publicly available
55 identifier and associated with an algorithm that is necessary to carry
56 out an encryption or decryption required to execute a transaction; and

1 (n) "advertisement" shall mean and include but not be limited to any
2 public notice, circular, advertisement, newspaper, article, letter,
3 investment service or communication to more than one person whether
4 directly or indirectly.

5 2. It shall be unlawful for any person, whether natural or otherwise,
6 or any agent or employee thereof to give publicity to, or circulate any
7 advertisement which, though not purporting to offer a class of security
8 tokens for sale, describes such class of security tokens that is created
9 by a developer seeking such advertisement for consideration, whether
10 directly or indirectly, without fully disclosing the receipt, whether
11 past or prospective, of the amount thereof.

12 3. The form of disclosure shall be written on each advertisement in a
13 sufficiently readable typeface or, where such advertisement is auditory
14 in nature, stated in a clear and understandable tone prior to the audi-
15 tory statement.

16 § 2. This act shall take effect immediately.