

# 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:

1 Section 1. Title K of the penal law is amended by adding a new article  
2 191 to read as follows:

3 ARTICLE 191  
4 CRYPTO FRAUD

5 Section 191.00 Definitions.

6 191.05 Penalties.

7 191.10 Virtual token fraud.

8 191.15 Illegal rug pulls.

9 191.20 Private key fraud.

10 191.25 Fraudulent failure to disclose interest in virtual  
11 tokens.

12 § 191.00 Definitions.

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

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

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

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

26 (b) such class of virtual tokens are reasonably understood by members  
27 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.