STATE OF NEW YORK

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359

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023
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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 Assem-
bly, 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

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

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1 sold for the purpose of profit, whether or not such purpose is adver-
2 tised as the sole purpose;
3 (b) such class of virtual tokens are reasonably understood by members
4 of the public to be bought and sold for the purpose of profit;
5 (c) the value of such class of virtual tokens is determined by the
6 supply and demand of the virtual token; and
7 (d) such class of virtual tokens: (i) are not pegged to an external
8 source, whether or not such external source is volatile, (ii) are pegged
9 to another virtual token, or (iii) such class of virtual tokens do not
10 employ technology which prevents large fluctuations in its price and
11 such technology fails to prevent the same;
12 3. "Stablecoin" shall mean any form of fungible and non-fungible
13 computer code by which all such forms of ownership of said computer code
14 is determined through verification of transactions or any derivative
15 method, and that is stored on a peer-to-peer computer network or any
16 other such computerized system or through any derivative means of stor-
17 age, and which conforms to all of the following:
18 (a) such class of virtual tokens are not advertised by the developer
19 or an agent of the developer at the developer's direction to be bought
20 and sold for the purpose of profit, whether or not such purpose is
21 advertised as the sole purpose;
22 (b) such class of virtual tokens cannot be reasonably understood by
23 members of the public to be bought and sold for the purpose of profit;
24 and
25 (c) the value of such class of virtual tokens is not determined by the
26 supply and demand of the class of virtual token; and
27 (d) such class of virtual tokens are pegged to an external source
28 other than another class of virtual tokens, whether or not such external
29 source is volatile, or such class of virtual tokens do employ technology
30 which prevents large fluctuations in its price and such technology
31 succeeds in preventing the same;
32 4. "Class" shall mean a group of fungible or non-fungible tokens,
33 irrespective of the amount created, that is intended by the developer to
34 be:
35 (a) in the case of fungible tokens, valued and exchanged together; or
36 (b) in the case of non-fungible tokens, regarded as part of the same
37 group of digital or physical items or valued together with the develop-
38 ers' other non-fungible tokens based on the fact that the non-fungible
39 tokens were created by a certain developer, taking into account the
40 developer's notoriety, sale volume, and how he or she is regarded within
41 virtual token communities;
42 5. "Developer" shall mean the person or persons, whether natural or
43 otherwise, and any agent or employee thereof who either create in whole
44 or in part, maintain in whole or in part, or own more than ten percent
45 of a class of virtual tokens utilizing any technical standard and who
46 offers them for purchase in the state of New York or, where the sale of
47 their tokens in the state of New York is prohibited, such person does
48 not use reasonable efforts to prevent such class of virtual tokens from
49 being made available for purchase in the state of New York;
50 6. "Technical standard" shall mean the rules that a class of virtual
51 tokens shall comply with in order to use the blockchain network or any
52 derivative means thereof;
53 7. "Non-fungible token" shall mean a virtual token used to denote on
54 the blockchain ownership of any digital or physical item or any deriva-
55 tive means thereof;

1   8. "Fungible token" shall mean any virtual token stored on the block-
2 chain other than non-fungible tokens;
3   9. "Own", "owning" and "ownership" shall mean the means by which
4 possession of a digital asset is noted on the blockchain or any deriva-
5 tive means thereof;
6   10. "Token" shall mean the technical standard used to create a fungi-
7 ble or non-fungible piece of computer code;
8   11. "Wallet" shall mean a device, program, or service which stores the
9 public and/or private keys for virtual token transactions;
10   12. "Burning" shall mean any method of someone making tokens inacces-
11 sible to any person including himself or herself with the intention of
12 doing so;
13   13. "Rug pull" shall mean the act of a developer developing a class of
14 virtual tokens, owning more than ten percent of the supply of such class
15 of virtual tokens, and selling more than ten percent of the total supply
16 of such class of virtual tokens within a five-year period from the date
17 of the last sale of the same;
18   14. "Blockchain" shall mean any type of technology which stores code
19 on a database of which said database represents the record of trans-
20 actions that make up virtual tokens or any derivative technology; and
21   15. "Private key" shall mean the unique identifier of a wallet, or any
22 substantially similar analogue, that is paired with a publicly available
23 identifier and associated with an algorithm that is necessary to carry
24 out an encryption or decryption required to execute a transaction.
25 § 191.05 Penalties.
26   Any person, partnership, corporation, company, trust or association,
27 developer, or any agent or employee thereof who violates the provisions
28 of this article shall be subject to a civil fine of not more than five
29 million dollars or imprisoned not more than twenty years, or both,
30 except that where such a person is a person other than a natural person,
31 a fine not exceeding twenty-five million dollars.
32 § 191.10 Virtual token fraud.
33   A person, whether natural or otherwise, is guilty of virtual token
34 fraud when such person engages in deceptive or fraudulent practice with
35 the intent to deceive another in relation to the purchase, sale,
36 exchange, transfer, offering, storage, destruction, or any relevant act
37 related thereto of virtual tokens.
38 § 191.15 Illegal rug pulls.
39   1. A developer, whether natural or otherwise, is guilty of illegal rug
40 pulls when such developer develops a class of virtual token and sells
41 more than ten percent of such tokens within five years from the date of
42 the last sale of such tokens.
43   2. This section shall not apply to non-fungible tokens where a devel-
44 oper has created less than one hundred non-fungible tokens that are
45 regarded as part of the same series or class of non-fungible tokens or
46 where such non-fungible tokens regarded as part of the same series or
47 class are valued at less than twenty thousand dollars at the time the
48 rug pull occurs.
49 § 191.20 Private key fraud.
50   1. A person, whether natural or otherwise, is guilty of private key
51 fraud when such person obtains or discloses to another person or misuses
52 another's private key without their affirmative consent, provided howev-
53 er that where the person created the private key, such a person shall
54 only be prohibited from disclosing to another or misusing the private
55 key without the owner of the private key's affirmative consent.

1   **2. Consent is deemed affirmative only where it is obtained by a**
2   **request independent from any other request or information provided to**
3   **another, it is conspicuous, and it informs the person of the conse-**
4   **quences associated with disclosing their private key to another.**
5   **§ 191.25 Fraudulent failure to disclose interest in virtual tokens.**
6   **1. A developer of a class of virtual tokens is guilty of fraudulent**
7   **failure to disclose interest in virtual tokens when such developer does**
8   **not publicly and conspicuously disclose the number of tokens they own in**
9   **such class of virtual tokens they developed on the landing page of such**
10   **developer's primary website.**
11   **2. For the purposes of this section, the term developer shall not**
12   **include a person whether natural or otherwise, and any agent or employee**
13   **thereof who owns more than ten percent of a class of virtual tokens who**
14   **does not create or maintain, in whole or in part, a virtual token that**
15   **is offered for purchase in the state of New York.**
16   § 2. This act shall take effect on the thirtieth day after it shall
17   have become a law. Effective immediately, the addition, amendment and/or
18   repeal of any rule or regulation necessary for the implementation of
19   this act on its effective date are authorized to be made and completed
20   on or before such effective date.