STATE OF NEW YORK

359

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

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

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

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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;

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

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

3. "Stablecoin" 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 all of the following:

(a) such class of virtual tokens are not 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 cannot be reasonably understood by members of the public to be bought and sold for the purpose of profit; and

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

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

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

(a) in the case of fungible tokens, valued and exchanged together; or

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

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

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

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

8. "Fungible token" shall mean any virtual token stored on the blockchain other than non-fungible tokens;

9. "Own", "owning" and "ownership" shall mean the means by which possession of a digital asset is noted on the blockchain or any derivative means thereof;

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

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

12. "Burning" shall mean any method of someone making tokens inaccessible to any person including himself or herself with the intention of doing so;

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

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

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

§ 191.05 Penalties.

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

§ 191.10 Virtual token fraud.

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

§ 191.15 Illegal rug pulls.

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

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

§ 191.20 Private key fraud.

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

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

§ 191.25 Fraudulent failure to disclose interest in virtual tokens.

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

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

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