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SENATE BILL NO. 148

Offered January 10, 2024

Prefiled January 5, 2024

A BILL to amend the Code of Virginia by adding a section numbered 13.1-514.3, relating to Securities Act; digital tokens; exemption.

Patron—Head

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 13.1-514.3 as follows:

§ 13.1-514.3. Digital tokens; exemption.

A. As used in this section:

"Blockchain" means a digital ledger or database that is chronological, consensus based, decentralized, and mathematically verified in nature.

"Consumptive" means the circumstance whereby a digital token is provided in exchange for the receipt of or access to goods, services, or content.

"Digital token" means a digital unit that is:

1. Created (i) in response to the verification or collection of a specified number of transactions relating to a digital ledger or database; (ii) by deploying computer code to a digital ledger or database, which may include a blockchain, that allows for the creation of digital tokens or other units; or (iii) using any combination of the methods described in clauses (i) and (ii);

2. Recorded to a digital ledger or database, which may include a blockchain; and

3. Capable of being traded or transferred between persons without an intermediary or custodian of value.

"Investment contract" means a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, regardless of the manner in which shares in the enterprise are evidenced.

B. An issuer or seller of a digital token shall be exempt from the securities registration requirements of this chapter if:

1. The digital token cannot be considered an investment contract;

2. The primary purpose of the digital token is consumptive;

3. The issuer or seller of the digital token did not market the digital token to the initial buyer as a financial investment; and

4. At least one of the following is satisfied:

a. The issuer or seller reasonably believed that the digital token was sold to the initial buyer for a consumptive purpose;

b. The digital token can be used for a consumptive purpose at or near the time of sale;

c. The initial buyer of the digital token is prohibited by the issuer or seller from reselling the digital token until it can be used for a consumptive purpose; or

d. The issuer or seller takes other reasonable precautions to prevent an initial buyer from purchasing the digital token as a financial investment.

C. An issuer or seller of a digital token that is engaged in the business of affecting or attempting to affect the purchase, sale, or transfer of digital tokens shall file a notice of intent with the Commission before the issuer or seller may qualify for an exemption under this section. The Commission shall make a form easily available for such purpose on its website. If the information contained in the notice of intent becomes inaccurate in any material respect at any time, the issuer or seller shall file an amendment to the notice with the Commission within 30 days of the change.

D. Nothing in this section shall be construed to suggest that the use of a digital token for a consumptive purpose requires any form of registration, notice of intent, or any other license, certification, or notice.

E. An issuer or seller of a digital token shall not be presumed to have violated this section solely by reason of the issuer or seller's participation in the business of affecting or attempting to affect the purchase, sale, or transfer of any digital token or other virtual currency, as defined by § 6.2-818.1. No presumption shall arise that an issuer or seller's securities offerings permitted under this chapter will be integrated with an issuer or seller's digital token offering permitted under this section.

F. The Commission may promulgate rules as necessary to implement the provisions of this section.

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