

NY AG Proposes Comprehensive Crypto Regulations

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As part of Carter Ledyard's Crypto, Digital Assets, and Blockchain Practice Group Advisory Series, this advisory summarizes the Crypto Regulation, Protection, Transparency and Oversight (CRPTO) Act proposed by the New York Attorney General, Letitia James on May 5, 2023. This groundbreaking [proposed legislation](#)^[1] aims to tighten regulation of the crypto industry to protect investors, consumers, and the broader economy through increased transparency and oversight. Calling out the "rampant fraud and dysfunction" in the cryptocurrency industry, James has proposed the strongest and most comprehensive set of crypto regulations in the U.S.

The proposed legislation, adding Article 23-C (Digital Assets) to New York's General Business Law, would impact crypto issuers, brokers, and investors, as well others involved in the cryptocurrency industry, in several ways.

Licensing and Oversight: The CRPTO Act would require all cryptocurrency businesses operating in New York to obtain a license from the state's Department of Financial Services. This would apply to entities that buy, sell, transfer, or store cryptocurrencies, as well as those that provide financial services related to cryptocurrencies. The Attorney General would be empowered to impose civil penalties of the greater of \$10,000 per violation per individual, or \$100,000 per violation per firm, or the gain obtained or loss sustained as a result of the violation.

Consumer Protections: The CRPTO Act would prohibit material misstatements or omissions or other fraudulent activities in connection with the offering or sale of cryptocurrency and would require that investors have access to material information. In order to control potential conflicts of interest, the legislation prohibits "stacking" of different functions through common ownership or participation in ownership of crypto issuers, exchanges, brokers, or investment advisors. In addition, issuers would be required to distribute a prospectus with specified disclosures about the issuer and the assets, including clear and concise disclosures about the business's financial condition and the fees and risks associated with crypto transactions.

The CRPTO Act would impose certain minimum capital requirements on cryptocurrency businesses and would require them to maintain and establish policies and procedures (e.g., relating to segregation and prohibition against use of customer assets) to protect customer assets from theft or loss. Also, crypto platforms would be required to reimburse customers who have lost assets due to fraudulent transfers made by wrongdoers breaching personal accounts. The regulations would further require companies to comply with know your customer and anti-money laundering regulations, maintain books and records and proper custody of customer property, and maintain effective cybersecurity programs. The CRPTO Act also would regulate the activities of "influencers" (such as those celebrities that have faced fraud allegations and scrutiny for their involvement in crypto marketing), requiring disclosure concerning their financial interests in the assets they promote.

Proposal Insight: Potential Impacts on State and Federal Laws

The proposed CRPTO Act in New York will likely have an impact on other states' regulation of cryptocurrencies. New York is a major financial hub, and its regulatory frameworks have historically been influential in shaping regulatory policy across the country. The CRPTO Act could serve as a model for other states looking to develop their own regulatory frameworks for cryptocurrencies.

At the federal level, the CRPTO Act could also impact proposals to regulate the cryptocurrency industry. While the Securities and Exchange Commission and other regulators have taken actions to regulate and restrain illegal activity in the crypto sector, there is no comprehensive federal regulation of cryptocurrencies and regulators have taken a largely piecemeal approach to the industry. The CRPTO Act could spur the development of comprehensive federal regulations.

However, there may also be challenges to implementing and enforcing the CRPTO Act. Cryptocurrencies are a decentralized and borderless technology, and it may be difficult to enforce state-level regulations on businesses that operate across multiple jurisdictions. Additionally, there may be concerns around regulatory fragmentation if other states or the federal government have differing regulatory frameworks, which could create confusion and inefficiencies for businesses operating in the industry.

The CRPTO Act represents an important step forward in the regulation of the cryptocurrency industry. While there may be challenges to its passage and implementation, the development of comprehensive and consistent regulatory frameworks should benefit both businesses and consumers by promoting greater stability and transparency in the industry. The bill is slated to be submitted to the New York legislature for its consideration this year.

For further information concerning the CRPTO Act or other developments relating to crypto and digital assets, contact any member of the firm's Crypto, Digital Assets, and Blockchain Practice Group or your regular Carter Ledyard contact.

[1] Available at <https://ag.ny.gov/press-release/2023/attorney-general-james-proposes-nation-leading-regulations-cryptocurrency>.

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