

HB 1503-FN - AS INTRODUCED

2022 SESSION

22-2784

08/04

HOUSE BILL ***1503-FN***

AN ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws.

SPONSORS: Rep. Ammon, Hills. 40; Rep. Alexander Jr., Hills. 6; Rep. Osborne, Rock. 4; Rep. Warden, Hills. 15; Rep. Edwards, Rock. 4; Rep. Berezhny, Graf. 9; Rep. Baxter, Rock. 20; Rep. White, Merr. 20; Sen. Avard, Dist 12

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT exempting the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Open Blockchain Token Exemption. Amend RSA 421-B by inserting after
2 section 2-204 the following new section:

3 421-B:2-205 Open Blockchain Token Exemption.

4 (a) Except as otherwise provided by subsection (c) of this section, a developer or seller of
5 an open blockchain token shall not be deemed the issuer of a security and shall not be subject to the
6 provisions of RSA 421-B:3-301 through RSA 421-B:4-412 and RSA 421-B:5-504 if all of the following
7 are met:

8 (1) The developer or seller of the token, or the registered agent of the developer or
9 seller, files a notice of intent with the secretary of state, as specified in subsection (d) of this section;

10 (2) The purpose of the token is for a consumptive purpose, which shall only be
11 exchangeable for, or provided for the receipt of, goods, services or content, including rights of access
12 to goods, services or content; and

13 (3) The developer or seller of the token did not sell the token to the initial buyer as a
14 financial investment. This paragraph shall only be satisfied if:

15 (A) The developer or seller did not market the token as a financial investment;
16 and

17 (B) At least one of the following is true:

18 (i) The developer or seller of the token reasonably believed that it sold the
19 token to the initial buyer for a consumptive purpose;

20 (ii) The token has a consumptive purpose that is available at the time of sale
21 and can be used at or near the time of sale for use for a consumptive purpose;

22 (iii) If the token does not have a consumptive purpose available at the time
23 of sale, the initial buyer of the token is prevented from reselling the token until the token is
24 available for use for a consumptive purpose; or

25 (iv) The developer or seller takes other reasonable precautions to prevent
26 buyers from purchasing the token as a financial investment.

27 (b) Except as otherwise provided by subsection (c) of this section, a person who
28 facilitates the exchange of an open blockchain token shall not be deemed a broker-dealer or a person
29 who otherwise deals in securities under this chapter and shall not be subject to the provisions of
30 RSA 421-B:3-301 through RSA 421-B:4-412 and RSA 421-B:5-504 if all of the following are met:

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1 (1) The person, or the registered agent of the person, files a notice of intent with the
2 secretary of state, as specified in subsection (d) of this section;

3 (2) The person has a reasonable and good faith belief that a token subject to
4 exchange conforms to the requirements of paragraphs (a)(1), (2) and (3) of this section; and

5 (3) The person takes reasonably prompt action to terminate the exchange of a token
6 that does not conform to the requirements of this subsection.

7 (c) Notwithstanding any other provision of law, a developer, seller or a person who
8 facilitates the exchange of an open blockchain token is subject to the provisions of RSA 421-B:5-501
9 through RSA 421-B:5-503 and RSA 421-B:5-505 through RSA 421-B:5-510 only to the extent
10 necessary to carry out those sections. The secretary of state shall have the authority provided under
11 RSA 421-B:6-601 through RSA 421-B:6-613 to determine compliance with the provisions of this
12 section, including whether a person qualifies for the exemptions set forth in this section. The
13 evidentiary burdens specified in RSA 421-B:5-503 shall apply in any proceeding initiated by the
14 secretary of state pursuant to this subsection.

15 (d) A developer, seller or a person who facilitates the exchange of an open blockchain
16 token, or the registered agent of the applicable person, shall electronically file a notice of intent with
17 the secretary of state before the person shall qualify for an exemption under this section. The notice
18 of intent shall contain the name of the person acting as a developer, seller or facilitator, the contact
19 information of the person or the registered agent of the person and specify whether the person will
20 be acting as a developer, seller or facilitator. A secure form shall be made available by the office of
21 the secretary of state on its internet website for this purpose.

22 (e) As used in this section, "open blockchain token" means a digital unit which is:

23 (1) Created:

24 (A) In response to the verification or collection of a specified number of
25 transactions relating to a digital ledger or database;

26 (B) By deploying computer code to a blockchain network that allows for the
27 creation of digital tokens or other units; or

28 (C) Using any combination of the methods specified in subparagraphs (A) and
29 (B) of this paragraph.

30 (2) Recorded in a digital ledger or database which is chronological, consensus-based,
31 decentralized and mathematically verified in nature, especially relating to the supply of units and
32 their distribution; and

33 (3) Capable of being traded or transferred between persons without an intermediary
34 or custodian of value.

35 2 Broker-dealer; Open Blockchain Token. Amend RSA 421-B:1-102(6)(D)-(E) to read as follows:

36 (D) An international banking institution; ~~[-or]~~

37 (E) A person excluded by order issued under this chapter; **or** [-]

1 ***(F) A person who facilitates the exchange of an open blockchain token, as***
2 ***defined in RSA 421-B:2-205(e) and subject to RSA 421-B:2-205(c).***

3 3 Issuer; Open Blockchain Token. Amend the introductory paragraph of RSA 421-B:1-102(33) to
4 read as follows:

5 (33) "Issuer" means a person that issues or proposes to issue a security, subject to
6 ***RSA 421-B:2-205(a) and*** the following:

7 4 Securities; Open Blockchain Token. Amend RSA 421-B:1-102(53)(C)-(D) to read as follows:

8 (C) Receives a cash fee for such solicitation or referral; ~~and~~

9 (D) Operates pursuant to a written agreement with the investment adviser that:

10 (i) Describes the solicitation activities to be engaged in on behalf of the
11 investment adviser and the compensation to be received therefor;

12 (ii) Contains an undertaking to perform the duties under the agreement in a
13 manner consistent with the instructions of the investment adviser and the provisions of this chapter;
14 and

15 (iii) Requires that at the time of any solicitation activities for which
16 compensation is paid or to be paid by the investment adviser, that the client be provided with a
17 current copy of the investment adviser's written disclosure statement that describes the solicitation
18 arrangement; ***and*** [-]

19 ***(E) Does not include an open blockchain token, as defined in RSA 421-B:2-***
20 ***205(e), except as provided by that section.***

21 5 Effective Date. This act shall take effect July 1, 2022.

**HB 1503-FN- FISCAL NOTE
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FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws. To be exempt the developer, seller or a person who facilitates the exchange of an open blockchain token, or the registered agent of the applicable person, shall electronically file a notice of intent with the Secretary of State.

The Department of State indicates to date they have not received an application for registration for "open blockchain tokens", therefore the fiscal impact on state revenue and expenditures is indeterminable. The Department is unable to determine if they would receive any future applications to determine the impact on state revenues. The Department also indicates there would be an indeterminable increase on state expenditures for the electronic filing of the notice of intents as currently the Bureau of Securities Regulation does not have a system for the receipt, recording and maintenance of such electronic filings and in turn would need to purchase and/or develop such an electronic filing system.

AGENCIES CONTACTED:

Department of State