

NY Bill Elevates Criminal Risk For 'Shadow' Crypto Firms

By **Carlton Greene, Anand Sithian and Allison Fleming** (March 26, 2026, 4:14 PM EDT)

On Jan. 14, New York state Sen. Zellnor Myrie proposed legislation in the New York State Senate that would amend New York law to make it a criminal offense to operate a virtual currency business in the state without the proper license.[1]

By introducing the possibility of criminal penalties, S.B. 8901 — the Cryptocurrency Regulation Yields Protections, Trust and Oversight, or CRYPTO, Act — would mark a significant regulatory shift in how New York regulates virtual currency businesses.[2]

For virtual currency businesses operating in New York and their counsel, the CRYPTO Act presents significant implications. If enacted, the legislation would expose unlicensed operators to graduated criminal penalties ranging from state misdemeanor charges to felony convictions, carrying sentences of up to 15 years, and could simultaneously trigger federal criminal liability under Title 18 of the U.S. Code, Section 1960(b)(1)(A), for unlicensed money transmission.

Given these meaningful risks, market participants should monitor the CRYPTO Act and related federal developments, and may wish to consider taking proactive steps now, such as the following:

- Assess whether their activities constitute virtual currency business activity subject to New York State Department of Financial Services jurisdiction;
- Evaluate whether they need to apply in New York for a BitLicense or limited purpose trust charter if they have not already done so;
- Review existing compliance programs to ensure alignment with both state and federal anti-money laundering requirements; and
- Evaluate risks and exposure, and develop a risk-based approach tailored to their operations.



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Background and Policy Motivation

Myrie jointly announced the proposed legislation with Manhattan District Attorney Alvin Bragg, who

stated it was "long past time for businesses that operate without a virtual currency license ... to face criminal penalties." [3]

Both Myrie and Bragg claimed a need for enhanced enforcement tools to crack down on the "shadow financial system created by the explosion of cryptocurrency," specifically citing a surge in cryptocurrency-related fraud, money laundering and schemes targeting vulnerable populations.

Key Provisions of the Proposed Legislation

New York currently requires entities that engage in virtual currency business activity involving New York or a New York resident to obtain either a license from the NYDFS, commonly referred to as a BitLicense, or a limited purpose trust charter under the New York Banking Law. [4]

If enacted, the CRYPTO Act would make New York the 19th state to criminalize unlicensed virtual currency business activity, which could also trigger the applicability of one prong of Title 18 of the U.S. Code, Section 1960(b)(1)(A) — the federal criminal unlicensed money transmission statute — for such activity.

Historically, this federal statute has not applied to unlicensed virtual currency businesses in New York under the state's civil enforcement regime, because such unlicensed activity is a civil offense and does not provide the necessary criminal predicate for a federal charge under Section 1960(b)(1)(A).

In addition to potential civil penalties, the bill introduces a graduated system of criminal penalties, including:

- A Class A misdemeanor for any unlicensed activity;
- A Class E felony if the unlicensed activity involves \$25,000 or more in 30 days, or \$250,000 or more in one year, or if the person knows the virtual currency is criminal and proceeds;
- A Class D felony if the unlicensed activity involves \$50,000 or more in 30 days, or \$500,000 or more in one year; and
- A Class C felony if the unlicensed activity involves \$100,000 or more in 30 days, or \$1 million or more in one year.

Each of the offenses can be punishable by potential prison sentences, with less than one year for misdemeanors and, according to the announcement, five-to-15-year sentences for a Class C felony conviction.

These proposed provisions represent a material development in enforcement risk in New York, and potentially at the federal level. The shift from civil penalties to potential criminal penalties — with collateral consequences, including potential bars from future licensure for companies and their associated directors and officers — fundamentally alters the risk calculus for market participants.

Notably, the volume thresholds for felony-level charges are relatively modest in the context of commercial virtual currency operations, meaning even small and midsized digital asset businesses could face felony exposure, especially if digital asset prices increase suddenly.

The dual-sovereignty implications compound this risk: Because the CRYPTO Act would supply the state

law criminal predicate necessary to trigger federal prosecution under Section 1960(b)(1)(A), an unlicensed operator could face concurrent state and federal criminal proceedings arising from the same underlying conduct, or possible federal prosecution if state authorities decide not to pursue criminal charges.

Implications

The proposed CRYPTO Act and accompanying vocal support from Bragg signal that New York may seek to ramp up enforcement against unlicensed virtual currency businesses operating in the state.

The day before he announced the proposed CRYPTO Act, Bragg warned of the risks of various crypto enterprises, such as crypto ATMs in local stores, peer-to-peer exchanges and mixers.[5]

The CRYPTO Act's relationship to the federal criminal prohibition at Section 1960(b)(1)(A) is important, because the latter law currently contains no knowledge requirement with respect to the licensing obligation itself, meaning that an individual or entity need not know they were required to obtain a money transmission license, nor that operating without one was a criminal offense, in order to face federal prosecution.

Thus, a violation of the CRYPTO Act also has the potential to open the door to additional federal prosecution for operation of unlicensed virtual currency businesses.

The April 2025 Blanche Memorandum and Its Limits

While possible, a wave of federal prosecutions based on violations of the CRYPTO Act is unlikely under the current administration.

Prosecutions of individuals in the digital assets sector under Section 1960 have been controversial, with critics arguing that the statute has been used as a tool of regulatory overreach and regulation by enforcement, rather than enforcement of criminal law with fair notice.

On April 7, 2025, U.S. Deputy Attorney General Todd Blanche issued a memorandum in which he directed federal prosecutors not to charge, among other things, criminal unlicensed money transmission violations of Sections 1960(b)(1)(A) or (B) "unless there is evidence that the defendant knew of the licensing or registration requirement at issue and violated such a requirement willfully." [6]

The Blanche memo notes this new approach is a matter of prosecutorial discretion and highlights the Biden administration's "particularly uncertain regulatory environment" around digital assets that resulted in the U.S. Department of Justice's position regarding potential enforcement of Sections 1960(b)(1)(A) and (B).

In August 2025, then-acting Assistant Attorney General Matthew R. Galeotti of the DOJ's Criminal Division echoed the Blanche memo and stated that "the Justice Department will not charge regulatory violations in cases involving digital assets — like unlicensed money transmitting under 1960(b)(1)(A) or (B) — in the absence of evidence that a defendant knew of the specific legal requirement and willfully violated it." [7]

Furthermore, members of Congress appear to have since formed the view that software developers — as opposed to businesses or individuals engaged in money transmission — should not face criminal

liability under Section 1960 simply for developing code, which was a key industry objection to criminal prosecutions of individuals involved in the digital assets sector.

This view from legislators is consistent with Galeotti's August remarks, in which he said that the DOJ's "view is that merely writing code, without ill-intent, is not a crime. Innovating new ways for the economy to store and transmit value and create wealth, without ill-intent, is not a crime."

To this end, a cryptocurrency decentralized finance nonprofit organization, the DeFi Education Fund, publicly reported^[8] on Feb. 26, 2026, that U.S. Reps. Scott Fitzgerald, R-Wis.; Ben Cline, R-Va.; and Zoe Lofgren, D-Calif., introduced a bill, H.B. 7732, that would insert the words "exercises control over currency, funds, or other value that substitute for currency" after "knowingly" in the text of Section 1960(a).^[9]

This proposed federal legislation attempts to shield software developers from liability under this criminal statute in certain circumstances.

That said, it is unclear if this federal bill will pass both houses of Congress and be signed into law. Moreover, even if it were enacted, the proposed federal bill would not shield individuals or entities from potential liability under Section 1960 if they knowingly have control over currency, funds or other value.

Further, the Blanche memo does not alter the underlying statutory text of Section 1960 or existing case law interpreting it, meaning potential criminal exposure remains under a future federal administration, and the CRYPTO Act, if enacted, could supply the predicate state law violation that triggers federal liability under Section 1960(b)(1)(A).

Considerations for Individuals or Entities Planning to Do or Currently Doing Business in New York

The NYDFS takes an expansive view of what constitutes virtual currency activity subject to jurisdiction in New York, with the potential to sweep in many digital assets market participants who may not consider themselves to be operating in the state.

The NYDFS' approach, in turn, may affect the potential reach of criminal liability under the CRYPTO Act, even though the NYDFS is a civil, not criminal, regulator.

Thus, individuals or entities involved in virtual currency transactions to or from persons in New York may wish to assess their compliance with NYDFS regulations, given the potential risk for criminal prosecution in the future, even if such operations are registered at the federal level under the Bank Secrecy Act and otherwise comply with the laws of other states and jurisdictions.

And despite the Blanche memo, entities operating in New York should monitor how the federal government approaches Section 1960(b)(1)(A) in local federal courts.

While license applications to the NYDFS for a BitLicense or a limited purpose trust charter may be costly and time-consuming processes (well beyond the application fee), the possibility of criminal penalties in the near future may change the calculus for whether to obtain them.

Accordingly, individuals and businesses operating in the state without a license, or organizations planning to expand into New York, may wish to consider the legal risk regarding NYDFS regulations and potential civil and criminal enforcement risks.

Conclusion

The proposed CRYPTO Act suggests that New York, already considered one of the most aggressive regulators of virtual currency businesses, will continue robust enforcement against noncompliant virtual asset companies operating in New York.

With the potential for criminal penalties, digital asset compliance takes on heightened importance. Market participants should monitor the CRYPTO Act's progress closely and consider taking action now to mitigate legal, operational and reputational risks.

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[1] <https://www.nysenate.gov/newsroom/in-the-news/2026/zellnor-myrie/unlicensed-crypto-businesses-could-face-criminal-charges>.

[2] <https://legislation.nysenate.gov/pdf/bills/2025/s8901>.

[3] <https://manhattanda.org/d-a-bragg-senator-myrie-announce-new-bill-to-combat-use-of-cryptocurrency-to-commit-crimes/>.

[4] <https://www.crowell.com/en/insights/client-alerts/new-law-gives-nydfs-authority-to-make-virtual-currency-business-activities-in-new-york-more-expensive>.

[5] <https://www.youtube.com/watch?v=9SmQa8E64is>.

[6] <https://www.justice.gov/dag/media/1395781/dl?inline>.

[7] <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-matthew-r-galeotti-delivers-remarks-american>.

[8] <https://www.defieducationfund.org/promotinginnovationinblockchaindevelopmentact/>.

[9] <https://www.congress.gov/bill/119th-congress/house-bill/7732/text?s=3&r=3>.