

April 11, 2023

Senator Laura Ellman  
Vice Chair  
Financial Institutions Committee  
Illinois General Assembly  
Springfield, IL 62706

Representative Mark Walker  
Member  
Financial Institutions & Licensing Committee  
Illinois General Assembly  
Springfield, IL 62706

Dear Senator Ellman and Representative Walker:

Blockchain Association (the “Association”) is the leading nonprofit membership organization dedicated to promoting a pro-innovation policy environment for the digital asset economy. The Association endeavors to achieve regulatory clarity and educate policymakers, regulators, and the courts about how blockchain technology can pave the way for a more secure, competitive, and consumer-friendly digital marketplace. The Association represents nearly 100 member companies reflecting the wide range of the dynamic blockchain industry, including software developers, infrastructure providers, exchanges, custodians, investors, and others supporting the public blockchain ecosystem.

The purpose of this letter is to respectfully state our opposition to HB 3479’s Digital Assets Regulation Act (the “Act” or “DARA”).<sup>1</sup>

To date, Illinois has been an important hub for crypto market innovation. However, the passage of DARA would be detrimental to Illinois’s efforts to support innovation in the crypto and Web3 ecosystem throughout the state. We agree that a reporting framework tailored to the digital asset ecosystem—one that leverages its novel characteristics and addresses its novel challenges—will be best-equipped to promote consumer protection for activities involving digital assets. However, the Act does not sufficiently account for the unique qualities of digital assets. In fact, the bill would effectively outlaw all of the crypto businesses that are currently thriving in Illinois unless they are able to navigate an onerous, uncertain, and likely expensive licensing regime. And intended or not, it would outright ban certain critical and exciting parts of crypto markets that clearly cannot comply. We strongly urge you to reconsider this bill.

We fundamentally agree with the bill’s premise that there should be robust protection for consumers. Unfortunately, DARA would not achieve the laudable goal of increased financial security for Illinois residents. Rather, it would likely drive innovation in the crypto and Web3 space to other states, just as the state of New York unfortunately did after it implemented its “BitLicense” regime in 2015. Since the implementation of the BitLicense, New York has approved only thirty-one entities to engage in digital asset activities. The requirements of obtaining a BitLicense, which bear many similarities to those DARA would create, have proven unworkable for many crypto companies, particularly for smaller startups that lack the resources to compete

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<sup>1</sup> H.B. 3479, 103rd Gen. Assemb. § 101-1 (Ill. 2023),  
<https://ilga.gov/legislation/103/HB/PDF/10300HB3479lv.pdf>.

with incumbent financial institutions on the regime’s deeply onerous compliance costs.<sup>2</sup> The BitLicense has created an environment where only the biggest and most wealthy entities can manage to comply, while those who are just getting off the ground are left in the cold. Many jobs and opportunities that would have benefited New York are now benefiting states such as Colorado, Texas, and Wyoming. California recently passed legislation that mirrored the New York regulation; however, Governor Newsom wisely vetoed the bill as his administration continues to explore how to effectively and safely implement blockchain technology in the state through responsible, thoughtful regulation.<sup>3</sup>

The Association and the blockchain industry have significant concerns with the policies and definitions proposed in DARA. The scope of actors and assets to which the Act applies is so broad that it would be devastating to a burgeoning crypto industry that has seen significant growth. Additionally, the Act grants the Illinois Department of Financial and Professional Regulation (IDFPR) with such sweeping interpretive, rulemaking, and enforcement powers that IDFPR could choose to ban all crypto companies from the state without any meaningful checks on that power.

#### **A. DARA’s Sweeping Definitions Will Hurt Individual Creators, New Businesses, and Residents in Illinois.**

The definition of “digital asset” is so encompassing that it can capture every existing and future crypto asset, as virtually any asset can be construed as acting as a “store of value.”<sup>4</sup> Similarly the equally expansive definition of “digital asset business” could cover any number of existing and future uses of crypto, particularly because it gives IDFPR the ability to add any activity by rule.<sup>5</sup> These definitions would make activity as simple as creating digital art in the form of a non-fungible token (“NFT”) require licensing. For example, an artist who creates an NFT could face a significant regulatory burden in order to sell their art because some would consider it a “store of value,” simply because—like any piece of artwork—it can be bought or sold on a secondary market. That hurdle could act as a de facto ban for persons without the financial or legal resources to complete the licensing process.

The all-encompassing scope of the Act does not only affect creators, small businesses, and individual developers: this Act could prevent ordinary Illinois residents from enjoying other products and services in the crypto ecosystem, since DARA applies to any person doing digital

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<sup>2</sup> Michael Del Castillo, *The next ‘BitLicense’ will impact all of Wall Street*, New York Business Journal (Jan. 26, 2016), [Coin Center writes ‘framework’ for regulators of bitcoin technology built into Wall Street - New York Business Journal \(bizjournals.com\)](https://bizjournals.com/new-york/article/2016/01/26/coin-center-writes-framework-for-regulators-of-bitcoin-technology-built-into-wall-street); Kollen Post, *DFS chief Adrienne Harris explains how - and why - New York is speeding up the BitLicense pipeline*, THE BLOCK (May 20, 2022), [The Block: DFS chief Adrienne Harris explains how — and why — New York is speeding up the BitLicense pipeline](https://theblock.co/news/dfs-chief-adrienne-harris-explains-how-and-why-new-york-is-speeding-up-the-bitlicense-pipeline).

<sup>3</sup> Shiyin Chen, *Newsom Vetoes ‘Premature’ Crypto Oversight Bill for California*, Bloomberg (Sept. 24, 2022), [https://www.bloomberg.com/news/articles/2022-09-24/newsom-vetoes-premature-crypto-oversight-bill-for-california?utm\\_source=website&utm\\_medium=share&utm\\_campaign=copy](https://www.bloomberg.com/news/articles/2022-09-24/newsom-vetoes-premature-crypto-oversight-bill-for-california?utm_source=website&utm_medium=share&utm_campaign=copy).

<sup>4</sup> H.B. 3479, 103rd Gen. Assemb. § 101-5(a) (Ill. 2023), <https://ilga.gov/legislation/103/HB/PDF/10300HB3479lv.pdf>.

<sup>5</sup> *Id.*

asset business activity with an Illinois resident.<sup>6</sup> As a result, non-Illinois service providers will be forced to block Illinois residents in order to safeguard against potential violations of DARA.

## **B. DARA Could Ban Illinois Residents from Accessing Decentralized Protocols.**

Decentralized finance (“DeFi”) protocols join the United States’ long history of innovative approaches to conducting well-established financial activities. DeFi protocols do not change *why* people and businesses seek certain services, but they do fundamentally change *how* people and businesses can access and conduct certain activities. Policymakers around the world have recognized that DeFi protocols’ “peer-to-peer nature and resulting ability to create alternatives to traditional and centralized financial market infrastructures, products or services”<sup>7</sup> represent “a paradigmatic shift in financial services provisioning and promises to be one of the most disruptive applications of blockchain-fuelled decentralization.”<sup>8</sup>

It is crucial to understand that DeFi protocols are not the same as traditional businesses; they are open-source lines of code that perform certain functions when different conditions are met. There is no individual or company acting as an intermediary to facilitate transactions or operate the protocol. Instead, it is possible for anyone with an internet connection to make use of the open-source code and engage in the activities they enable. While we applaud DARA’s amended definition of “digital asset business activity” for excluding the “development and dissemination of software in and of itself,” this is not enough, as it does not account for different ways individuals may engage with DeFi protocols.<sup>9</sup> The means by which individuals use and engage with DeFi protocols can still be caught by the definition of “digital asset business activity”; thus, access to such protocols could still be prohibited due to DARA’s sweeping definitions and applications.

DeFi protocols can solve regulatory problems through technology that previously could only be solved by imposing compliance obligations on trusted third parties. When replacing the use of trusted third parties with open-source code, there are new, unique considerations for how individuals use and access such services. Before enacting this bill, we urge you to gather more information on the ways in which individuals use and engage with DeFi protocols and reconsider DARA’s definition of “digital asset business activity” to account for these unique aspects of the decentralized digital asset ecosystem.

## **C. DARA Will Ban the Use of Popular and Safe Stablecoins.**

DARA’s stablecoin provisions will ban Illinois residents and businesses from using a broad swath of existing stablecoins. The definition of “stablecoin” is restricted to digital assets that are denominated in U.S. dollars or another national currency, issued by a central licensed entity, and backed by only the specified “reserve assets.”<sup>10</sup> This type of stablecoin is commonly known as a

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<sup>6</sup> *Id.* at § 101-10(a).

<sup>7</sup> Int’l Org. of Sec. Comm’ns, *IOSCO Decentralized Finance Report 2* (Mar. 2022), <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD699.pdf>.

<sup>8</sup> EU Blockchain Observatory and Forum, *Decentralised Finance (DeFi) 38* (2022), [https://www.eublockchainforum.eu/sites/default/files/reports/DeFi%20Report%20EUBOF%20-%20Final\\_0.pdf](https://www.eublockchainforum.eu/sites/default/files/reports/DeFi%20Report%20EUBOF%20-%20Final_0.pdf).

<sup>9</sup> H.B. 3479, 103rd Gen. Assemb. § 101-5(a) (Ill. 2023), <https://ilga.gov/legislation/103/HB/PDF/10300HB3479lv.pdf>.

<sup>10</sup> *Id.* at § 125-5(a)-(b).

“custodial stablecoin”: custodial stablecoins are issued by a central operator and backed by collateral held in a bank or other institution. Custodial stablecoins are fully collateralized—\$1 of assets held in reserve for every unit of stablecoin in circulation—and seek to maintain their value based on the operator’s promise to maintain the reserve and pay redemptions on demand. However, only providing legal pathways for using custodial stablecoins would ban other types of stablecoins, most notably commodity-backed stablecoins (backed by assets such as gold) and decentralized stablecoins (backed by crypto assets).

It would be a mistake to limit the types of stablecoins that Illinois businesses and residents can exchange and store. Commodity-backed stablecoins are important for individuals wanting to hold certain assets, like gold or oil, but do not wish to actually custody those assets or buy them through convoluted spot market processes. Decentralized stablecoins also play an important role: they allow users to obtain stablecoins without selling crypto assets that fluctuate in value. Decentralized stablecoins consist of autonomous software protocols on public blockchains that seek to maintain stable value without relying on a trusted central issuer and are backed by digital assets held in transparent smart contracts rather than in a bank or other institution. They are typically overcollateralized—more than \$1 of digital assets held in reserve for each unit of stablecoin in circulation—and maintain their value based on the holder’s ability to audit and redeem collateral at any time without relying on a third party.

These commodity-backed and decentralized stablecoins are fundamentally different from the “stablecoins” that DARA would legalize, and they should not be banned merely because they operate differently. Rather than pick winners and losers, DARA ought to be amended to take into account the broad range of stablecoins that exist today and those future business models we cannot foresee.

#### **D. DARA Grants IDFPF Virtually Unfettered Interpretive, Rulemaking, and Enforcement Authority that is Ripe for Abuse and Can Hurt Small Business Owners.**

Under DARA, the IDFPF would be vested with broad discretion on the rulemaking, administration, investigation, and enforcement of the Act’s provisions. In effect, DARA allows an unelected regulatory body to interpret and set the terms that pick winners and losers. Among the IDFPF’s powers is the power to issue or refuse licenses, revoke or suspend any license based on nebulous and arbitrary judgments, investigate and act upon received complaints, subpoena any documents and witnesses relevant to any authorized inquiry, and to perform any other action necessary to carry out the purposes and provisions of the Act.<sup>11</sup>

The Act prescribes an extensively burdensome licensing application that is based on unclear and subjective criteria. Upon receipt of a completed application, the IDFPF is directed to investigate standards such as the “responsibility,” “character,” “general fitness,” and “competence” of applicants, any affiliates of the applicant, and executive officers, among others.<sup>12</sup> These standards are overly vague, giving applicants little sense of what will be required to obtain a license, and giving IDFPF the unchecked power to reject applicants with little or no basis beyond subjective judgment. This allows the IDFPF overbroad discretion, subject to change based on the IDFPF

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<sup>11</sup> *Id.* at § 101-15(c).

<sup>12</sup> *Id.* at § 115-10(b)(1)(a)-(c).

agents' mood or agenda, when evaluating license applications and creates a difficult set of standards for applicants to follow.

Additionally, DARA's provisions create a burdensome regulatory regime that favors large businesses who can afford high compliance costs. On top of an extensive initial application process, DARA requires annual renewal of licenses.<sup>13</sup> Ultimately, compliance measures such as annual renewal and customer assistance services are costly, resource-intensive efforts that threaten the often limited resources of small businesses, even though in many cases, these efforts are neither necessary nor helpful for protecting consumers. By adopting these compliance measures, the state of Illinois would be sacrificing investment and growth for no additional benefit.

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Critically, DARA does not fully address the unique nature of the decentralized digital asset ecosystem, and it would treat large crypto exchanges with thousands of employees handling hundreds of millions of dollars in customer investments the same as small startups. In effect, the Act would prohibit all unlicensed digital asset business activities, box out Illinois residents from using exciting new technology, and force smaller companies without the resources to apply for a license to halt their operations in Illinois.

We have seen how licensing regimes such as this one have been anti-competitive and driven innovation out of a state: New York's Bitlicense process remains so onerous and cost prohibitive that only a handful of companies have actually received a license, causing many companies to avoid the state altogether. Should DARA become law, it would immediately become the most restrictive and anti-competitive regulation in the country, and would likely cause a mass exodus of many promising startups from Illinois.

For these reasons, we urge the Illinois State Assembly to exercise restraint and not advance this legislation without further examination of its impact. Indeed, imposing such a restrictive regulatory regime on a growing industry will have an adverse effect on the state as it seeks to remain competitive in the innovation and technology space.

Sincerely,



Kristin Smith  
CEO



Jake Chervinsky  
Chief Policy Officer

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<sup>13</sup> *Id.* at § 115-15(a).