Introduced by Blood, 3.
Read first time January 03, 2018
Committee: Judiciary

A BILL FOR AN ACT relating to financial crimes; to amend sections 8-2701
and 8-2715, Revised Statutes Cumulative Supplement, 2016, and
section 28-101, Revised Statutes Supplement, 2017; to adopt the
Nebraska Virtual Currency Money Laundering Act; to provide
penalties; to define and redefine terms under the Nebraska Money
Transmitters Act; to harmonize provisions; and to repeal the
original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 17 of this act shall be known and may be cited as the Nebraska Virtual Currency Money Laundering Act.

Sec. 2. For purposes of the Nebraska Virtual Currency Money Laundering Act:

(1) Conducts includes initiating, concluding, or participating in initiating or concluding a transaction;

(2) Distributed ledger technology means an electronic record of transactions or other data which is: (a) Uniformly ordered; (b) redundantly maintained or processed by one or more computers or machines to guarantee the consistency or nonrepudiation of the recorded transactions or other data; and (c) validated by the use of cryptography;

(3) Financial transaction means a transaction involving the movement of virtual currency, which in any way or degree affects commerce, or a transaction involving the transfer of title to any real or personal property;

(4) Knowing means that a person knew or, with respect to any transaction involving more than ten thousand dollars in virtual currency, as calculated at the time of the transaction, should have known after reasonable inquiry, unless the person has a duty to file a federal currency transaction report, IRS Form 8300, or a like report under state law and has complied with that reporting requirement in accordance with law;

(5) Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law, regardless of whether or not such activity is a specified unlawful activity;

(6) Petitioner means any local, county, state, or federal law enforcement agency; the Attorney General; or any county attorney;

(7) Specified unlawful activity means any racketeering activity as
defined in section 28-1354;

(8) Transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition; and

(9) Virtual currency means a medium of exchange in electronic or digital format, including distributed ledger technology, which is not a coin or currency of the United States or another country.

Sec. 3. It is unlawful for a person:

(1) Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, to conduct or attempt to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity:

(a) With the intent to promote the carrying on of specified unlawful activity; or

(b) Knowing that the financial transaction is designed in whole or in part:

(i) To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) To avoid a financial transaction reporting requirement or money transmitters' registration requirement under state law.

(2) To conduct or attempt to conduct a financial transaction which involves property or proceeds which an investigative or law enforcement officer, or any person acting under such officer's direction, represents as being derived from, or as being used to conduct or facilitate, specified unlawful activity, when the person's conduct or attempted conduct is undertaken with the intent:

(a) To promote the carrying on of specified unlawful activity;

(b) To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds or property believed to be the proceeds of specified unlawful activity; or

(c) To avoid a transaction reporting requirement under state law.
(3) For the purposes of this section, investigative or law enforcement officer means any officer of the State of Nebraska or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, who is empowered by law to conduct, on behalf of the government, investigations of, or to make arrests for, offenses enumerated in this section or similar federal offenses.

Sec. 4. (1) It does not constitute a defense to a prosecution for any violation of the Nebraska Virtual Currency Money Laundering Act that:

(a) Any stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;

(b) A facility or an opportunity to engage in conduct in violation of this act was provided; or

(c) A law enforcement officer, or person acting under direction of a law enforcement officer, solicited a person predisposed to engage in conduct in violation of any provision of the Nebraska Virtual Currency Money Laundering Act to commit a violation of the act in order to gain evidence against that person, if such solicitation would not induce an ordinary law-abiding person to violate the act.

(2) This section does not preclude the defense of entrapment.

Sec. 5. (1) A person who violates section 3 of this act, if the violation involves:

(a) Financial transactions of five thousand dollars or more, as calculated at the time of the transaction, in any twelve-month period, is guilty of a Class IIA felony;

(b) Financial transactions of one thousand five hundred dollars or more but less than five thousand dollars, as calculated at the time of the transaction, in any twelve-month period, is guilty of a Class IV felony;

(c) Financial transactions of more than five hundred dollars but less than one thousand five hundred dollars, as calculated at the time of
the transaction, in any twelve-month period, is guilty of a Class I misdemeanor; or

(d) Financial transactions of five hundred dollars or less, as calculated at the time of the transaction, in any twelve-month period, is guilty of a Class II misdemeanor.

(2) For any second or subsequent conviction under subdivision (1)(c) of this section, any person so offending shall be guilty of a Class IV felony.

(3) For any second conviction under subdivision (1)(d) of this section, any person so offending shall be guilty of a Class I misdemeanor, and for any third or subsequent conviction under subdivision (1)(d) of this section, the person so offending shall be guilty of a Class IV felony.

Sec. 6. A person who violates section 3 of this act is also liable for a civil penalty of not more than the value of the financial transactions involved or twenty-five thousand dollars, whichever is greater. All money collected as a civil penalty under this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sec. 7. (1) If a person is alienating or disposing of virtual currency, or appears likely to or demonstrates an intent to alienate or dispose of virtual currency, used in violation of section 3 of this act, the Nebraska Money Transmitters Act, or any specified unlawful activity, or virtual currency traceable to any such violation, the petitioner may commence a civil action in any district court having jurisdiction where such virtual currency is located for a temporary injunction to prohibit any person from withdrawing, transferring, removing, dissipating, or disposing of any other such virtual currency of equivalent value. This section governs all temporary injunctions obtained pursuant to the Nebraska Virtual Currency Money Laundering Act and supersedes all other provisions that may be inconsistent with this section. The court shall
take into account any anticipated impact the temporary injunction will have on innocent third parties or businesses, balanced against the petitioner's need to preserve the virtual currency.

(2) A temporary injunction shall be granted without bond to the petitioner. However, the court may authorize a respondent to post a bond equal to the amount to be enjoined and to have the injunction dissolved.

(3) A temporary injunction shall be entered upon application of the petitioner, ex parte and without notice or opportunity for a hearing with respect to the virtual currency.

(4) Such a temporary injunction expires not more than ten days after the date on which the order is served, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period.

(5) If at any time the petitioner discovers that the funds sought to be enjoined total less than ten thousand dollars, the petitioner shall immediately inform the court and the court shall immediately dissolve the temporary injunction.

(6) At the termination of the temporary injunction or at any time before the termination of the temporary injunction, the petitioner may:

(a) Obtain a warrant or other court order and seize the virtual currency and initiate a forfeiture action under section 25-21,303;

(b) Obtain a warrant or other court order and seize the virtual currency for any subsequent criminal prosecution; or

(c) Petition the court to extend the injunction for a period not longer than ten days from the original order's termination date. At the end of the termination of the ten-day extension, the petitioner may take either of the steps outlined in subdivision (a) or (b) of this subsection. However, the court shall not grant any additional extensions.

(7)(a) Upon service of the temporary injunction entered pursuant to this section, the petitioner shall immediately notify by certified mail, return receipt requested, or by personal service, both the person or
entity in possession of the virtual currency and the owner of the
monetary instruments or funds if known, of the injunction entered
pursuant to this section and that the lawful owner of the virtual
currency being enjoined may request a hearing to contest and modify the
injunction entered pursuant to this section by petitioning the court that
issued the injunction, so that such notice is received within seventy-two
hours.

(b) The notice shall advise that the hearing shall be held within
three days after the request, and the notice must state that the hearing
will be set and noticed by the person against whom the injunction is
served.

(c) The notice shall specifically state that the lawful owner has
the right to produce evidence of legitimate business expenses,
obligations, and liabilities, including, but not limited to, employee
payroll expenses verified by current reemployment assistance records,
employee workers' compensation insurance, employee health insurance,
state and federal taxes, and regulatory or licensing fees only as may
become due before the expiration of the temporary injunction.

(d) Upon determination by the court that the expenses are valid,
payment of such expenses may be effected by the owner of the enjoined
virtual currency only to the court-ordered payees through court-reviewed
payment methods, issued by the owner of, and the person or entity in
possession of, the enjoined virtual currency. The person or entity in
possession of the enjoined virtual currency shall only honor payment to
the court-ordered payee.

(8) Only the lawful owner or the account holder of the virtual
currency being enjoined may request a hearing to contest the injunction
entered pursuant to this section by petitioning the court that issued the
injunction. A hearing must be held within three days after the request or
as soon as practicable thereafter and before the expiration of the
temporary injunction. The hearing must be set and noticed by the lawful
owner of the virtual currency or his or her attorney. Notice of the
hearing must be provided to the petitioner who procured the temporary
injunction not less than twenty-four hours before the scheduled hearing.
The court may receive and consider at a hearing held pursuant to this
subsection evidence and information that would be inadmissible under the
Nebraska Evidence Rules.

Sec. 8. The petitioner may request issuance of a warrant
authorizing the seizure of virtual currency subject to forfeiture as
provided under section 25-21,303.

Sec. 9. Any licensed money services business or other person served
with and complying with the terms of a warrant, temporary injunction, or
other court order obtained in furtherance of an investigation of any
crime in the Nebraska Virtual Currency Money Laundering Act, including
any specified unlawful activity or any violation of the Nebraska Money
Transmitters Act, has immunity from criminal liability and is not liable
to any person for any lawful action taken in complying with the warrant,
temporary injunction, or other court order. If any subpoena contains a
nondisclosure provision, any licensed money services business, employee
or officer of a financial institution or licensed money services
business, or any other person may not notify, directly or indirectly, any
customer of that money services business whose records are being sought
by the subpoena, or any other person named in the subpoena, about the
existence or the contents of that subpoena or about information that has
been furnished to the county attorney who issued the subpoena or other
law enforcement officer named in the subpoena in response to the
subpoena.

Sec. 10. In any prosecution brought pursuant to the Nebraska
Virtual Currency Money Laundering Act, the common law corpus delicti rule
does not apply. The defendant's confession or admission is admissible
during trial without the state's having to prove the corpus delicti if
the court finds in a hearing conducted outside the presence of the jury
that the defendant's confession or admission is trustworthy. Before the
court admits the defendant's confession or admission, the state must
prove by a preponderance of the evidence that there is sufficient
corroborating evidence that tends to establish the trustworthiness of the
statement by the defendant. Hearsay evidence is admissible during the
presentation of evidence at the hearing. In making its determination, the
court may consider all relevant corroborating evidence, including the
defendant's statements.

Sec. 11. (1) All persons engaged in a trade or business who receive
more than ten thousand dollars in virtual currency, in one transaction,
as calculated at the time of the transaction, or who receive this amount
through two or more related transactions, must complete and file with the
Department of Revenue the information required pursuant to 26 U.S.C.
6050I, as such section existed on January 1, 2018, concerning returns
relating to currency received in trade or business. Any person who
willfully fails to comply with the reporting requirements of this
subsection is guilty of a Class I misdemeanor or shall be punished by a
fine not exceeding two hundred fifty thousand dollars or twice the value
of the amount of the virtual currency transaction involved, whichever is
greater, or by both such imprisonment and fine. For a second or
subsequent conviction of a violation of the provisions of this
subsection, the maximum fine that may be imposed is five hundred thousand
dollars or quintuple the value of the amount of the currency transaction
involved, whichever is greater.

(2) The Department of Revenue shall enforce compliance with the
provisions of subsection (1) of this section and shall be the custodian
of all information and documents filed pursuant to such subsection. Such
information and documents are confidential and shall not be a public
record subject to disclosure by the Tax Commissioner pursuant to sections
84-712 to 84-712.09. However, the department must provide any report
filed under this section, or information contained therein, to federal,
state, and local law enforcement and prosecutorial agencies, to the
Department of Banking and Finance, and to the Attorney General.

(3) The Department of Revenue may adopt and promulgate rules and
regulations to administer and enforce the reporting requirements.

Sec. 12. Notwithstanding any other provision of law, for purposes
of this section and sections 3 to 11 of this act, each individual virtual
currency transaction exceeding ten thousand dollars which is made in
violation of subsection (1) of section 11 of this act or each financial
transaction in violation of section 3 of this act which involves the
movement of funds in excess of ten thousand dollars shall constitute a
separate, punishable offense.

Sec. 13. A court may, in its discretion, and in accordance with the
Nebraska Evidence Rules, recognize, authenticate, or take judicial notice
of records and data stored via a distributed ledger technology.

Sec. 14. (1) For purposes of this section, the terms structure or
structuring mean that a person, acting alone, in conjunction with, or on
behalf of other persons, conducts or attempts to conduct one or more
transactions in virtual currency, in any amount, on one or more days, in
any manner, for the purpose of evading virtual currency transaction
reporting requirements provided by state or federal law. In any manner
includes, but is not limited to, the breaking down of a single sum of
currency exceeding ten thousand dollars into smaller sums, including sums
at or below ten thousand dollars, or the conduct of a transaction, or
series of virtual currency transactions, at or below ten thousand
dollars. The transaction or transactions need not exceed the ten-
thousand-dollar reporting threshold on any single day in order to meet
the definition of structure or structuring provided in this subsection.

(2) A person shall not, for the purpose of evading the reporting and
registration requirements of the Nebraska Virtual Currency Money
Laundering Act, the Nebraska Money Transmitters Act, or any rules or
regulations adopted under such acts, when some portion of the activity by
that person occurs in this state:

(a) Cause or attempt to cause a person in this state to fail to file an applicable report or registration required under such acts or any rule or regulation adopted and promulgated under such acts, if applicable; or

(b) Cause or attempt to cause a person in this state to file an applicable report required under such acts or any rule or regulation adopted and promulgated under such acts, if applicable, which contains a material omission or misstatement of fact.

(3) A person shall not, for the purpose of evading the reporting or registration requirements of the Nebraska Virtual Currency Money Laundering Act or the Nebraska Money Transmitters Act, when some portion of the activity by that person occurs in this state:

(a) Fail to file an applicable registration or report required by such acts, or cause or attempt to cause a person to fail to file such a report;

(b) File or cause or attempt to cause a person to file an applicable registration or report required under such acts which contains a material omission or misstatement of fact; or

(c) Structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of virtual currency in this state.

(4)(a) A person who violates this section, if the violation involves:

(i) Financial transactions of five thousand dollars or more, as calculated at the time of the transaction, in any twelve-month period, is guilty of a Class IIA felony;

(ii) Financial transactions of one thousand five hundred dollars or more but less than five thousand dollars, as calculated at the time of the transaction, in any twelve-month period, is guilty of a Class IV felony;

(iii) Financial transactions of more than five hundred dollars but
less than one thousand five hundred dollars, as calculated at the time of
the transaction, in any twelve-month period, is guilty of a Class I
misdemeanor; or

(iv) Financial transactions of five hundred dollars or less, as
calculated at the time of the transaction, in any twelve-month period, is
guilty of a Class II misdemeanor.

(b) For any second or subsequent conviction under subdivision (4)(a)
(iii) of this section, any person so offending shall be guilty of a Class
IV felony.

(c) For any second conviction under subdivision (4)(a)(iv) of this
section, any person so offending shall be guilty of a Class I
misdemeanor, and for any third or subsequent conviction under subdivision
(4)(a)(iv) of this section, the person so offending shall be guilty of a
Class IV felony.

(d) A person who violates this section is also liable for a civil
penalty of not more than the value of the financial transactions
involved, as calculated at the time of the transaction, or twenty-five
thousand dollars, whichever is greater. All money collected as a civil
penalty under this section shall be remitted to the State Treasurer for
distribution in accordance with Article VII, section 5, of the
Constitution of Nebraska.

(5) Proof that a person engaged for monetary consideration in the
business of money transmission, as defined in the Nebraska Money
Transmitters Act, and who is transporting more than ten thousand dollars
in virtual currency, as calculated at the time of the transaction, witho
without being licensed under the Nebraska Money Transmitters Act, gives
rise to an inference that the transportation was done with knowledge of
the licensure requirements of the Nebraska Money Transmitters Act and the
reporting requirements of the Nebraska Virtual Currency Money Laundering
Act.

(6) This section may not be construed to require any new or
additional reporting requirements on any entity obligated to file reports under state or federal law.

Sec. 15. The penalty provisions of the Nebraska Virtual Currency Money Laundering Act, including those directed at reporting violations or the conduct or attempted conduct of unlawful financial transactions, and the concealment of unlawful proceeds or their ownership are not applicable to law enforcement officers who engage in aspects of such activity for bona fide authorized undercover law enforcement purposes in the course of or in relation to an active criminal investigation, active criminal intelligence gathering, or active prosecution.

Sec. 16. A person may not use the resources of the courts of this state in furtherance of a claim in any related civil forfeiture action or a claim in a third-party proceeding in any related forfeiture action if that person purposely leaves the jurisdiction of this state or the United States, declines to enter or reenter this state to submit to its jurisdiction, or otherwise evades the jurisdiction of the court in which a criminal case is pending against the person.

Sec. 17. (1) A law enforcement agency conducting any investigation of a violation of the Nebraska Virtual Currency Money Laundering Act may enter into agreements and pay a reward to an individual who provides original information that leads to a recovery of a criminal fine, civil penalty, or forfeiture based in whole or in part upon a violation of federal law or the laws of this state.

(2)(a) The head of the law enforcement agency shall determine the amount of a reward under this section. The law enforcement agency may not pay more than the amount of reward authorized for similar activity by any federal law or guideline in effect at the time the information described in subsection (1) of this section was provided.

(b) The head of the law enforcement agency may, with the written approval of the Attorney General, exceed the limits of rewards provided in subdivision (2)(a) of this in section, when the criminal fine, civil
penalty, or forfeiture amount received by the state warrants an upward
departure from such limits.

(c) Notwithstanding any other provision of law, rewards paid under
this section shall be paid only from seized assets awarded by the court.

(3) An officer or employee of the United States, of a state or local
government, or of a foreign government who in the performance of official
duties provides information described in subsection (1) of this section
is not eligible for a reward under this section.

(4) Payment of a reward does not affect the admissibility of
testimony in any court proceeding.

Sec. 18. Section 8-2701, Revised Statutes Cumulative Supplement, 2016, is amended to read:

8-2701 Sections 8-2701 to 8-2747 and section 19 of this act shall be
known and may be cited as the Nebraska Money Transmitters Act.

Sec. 19. Distributed ledger technology means an electronic record
of transactions or other data which is: (1) Uniformly ordered; (2)
redundantly maintained or processed by one or more computers or machines
to guarantee the consistency or nonrepudiation of the recorded
transactions or other data; and (3) validated by the use of cryptography.

Sec. 20. Section 8-2715, Revised Statutes Cumulative Supplement, 2016, is amended to read:

8-2715 Monetary value means a medium of exchange, regardless of
whether or not redeemable in money, and includes media that are in
electronic or digital format, including distributed ledger technology.

Sec. 21. Section 28-101, Revised Statutes Supplement, 2017, is
amended to read:

28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and
sections 1 to 17 of this act shall be known and may be cited as the
Nebraska Criminal Code.

Sec. 22. Original sections 8-2701 and 8-2715, Revised Statutes
Cumulative Supplement, 2016, and section 28-101, Revised Statutes
1. Supplement, 2017, are repealed.