LEGISLATIVE BILL 695

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

A BILL FOR AN ACT relating to electronic records and transactions; to amend sections 86-611, 86-612, 86-613, 86-617, 86-620, and 86-621, Reissue Revised Statutes of Nebraska, and section 64-302, Revised Statutes Cumulative Supplement, 2016; to authorize and define smart contracts; to authorize use of distributed ledger technology in the Electronic Notary Public Act and the Uniform Electronic Transactions Act and for purposes of digital and electronic signatures; to define and redefine terms; to harmonize provisions; to provide duties for the Revisor of Statutes; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. (1) Any contract as described in sections 36-105 and 36-107 which is a smart contract or which contains a smart contract provision may exist in commerce. Such contract shall not be denied legal effect, validity, or enforceability solely because such contract is a smart contract or contains a smart contract provision.

(2) For purposes of this section, smart contract means an event-driven program or computerized transaction protocol that runs on a distributed, decentralized, shared, and replicated ledger that executes a contract or any provision or provisions of a contract by taking custody over and instructing transfer of assets on the ledger.

Sec. 2. (1) A smart contract or a contract that contains a smart contract provision may exist in commerce. A contract shall not be denied legal effect, validity, or enforceability solely because the contract is a smart contract or contains a smart contract provision.

(2) For purposes of this section, smart contract means an event-driven program or computerized transaction protocol that runs on a distributed, decentralized, shared, and replicated ledger that executes the provisions of a contract by taking custody over and instructing transfer of assets on the ledger.

Sec. 3. Section 64-302, Revised Statutes Cumulative Supplement, 2016, is amended to read:

64-302 For purposes of the Electronic Notary Public Act:

(1) 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;

(2) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(3) Electronic document means information that is created,
generated, sent, communicated, received, or stored by electronic means;

(4) Electronic notarial act means an official act by an electronic notary public that involves electronic documents;

(5) Electronic notary public means a notary public registered with the Secretary of State that has the capability of performing electronic notarial acts in conformance with the Electronic Notary Public Act;

(6) Electronic notary seal means information within a notarized electronic document that includes the notary public's name, jurisdiction, and commission expiration date and generally corresponds to the data in notary seals used on paper documents;

(7) Electronic notary solution provider means a provider of any electronic notary seals or electronic signatures;

(8) Electronic signature means an electronic symbol or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document. Electronic signature includes a signature that is secured through distributed ledger technology; and

(9) Notary public's electronic signature means an electronic signature which has been approved by the Secretary of State in rules and regulations adopted and promulgated under section 64-316 as an acceptable means for an electronic notary public to attach or logically associate the notary public's official signature to an electronic document that is being notarized.

Sec. 4. Section 86-611, Reissue Revised Statutes of Nebraska, is amended to read:

86-611 (1) It is the intent of the Legislature to promote economic growth and the efficient operation of business and government in Nebraska through the electronic exchange of information and legally binding electronic transactions. In order to facilitate the electronic exchange of information, Nebraska must establish means to ensure that electronic
transactions are legally binding and enforceable, while ensuring that security measures are in place to prevent opportunities for fraud and misuse.

(2) In any written communication in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section. The use of a digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:

(a) It is unique to the person using it;
(b) It is capable of verification;
(c) It is under the sole control of the person using it;
(d) It is linked to data in such a manner that if the data is changed, the digital signature is invalidated; and
(e) It conforms to rules and regulations adopted and promulgated by the Secretary of State.

(3) In any communication in which a signature is required or used, a state agency or political subdivision may accept a digital signature or an electronic signature and may accept the communication in electronic format. Any use of a digital signature, an electronic signature, or an electronic communication by a court is subject to the rules of the Supreme Court.

(4) The Secretary of State shall adopt and promulgate rules and regulations to carry out this section which:

(a) Identify and define the type of signature which may be used in the electronic communications governed by the rules and regulations;
(b) Identify and define the type of electronic communications for which a digital signature or an electronic signature may be used; and
(c) Provide a degree of security reasonably related to the risks and consequences of fraud or misuse for the type of electronic communication which, at a minimum, shall require the maintenance of an audit trail of
the assignment or approval and the use of the unique access code or unique electronic identifier.

(5) This section shall not be construed to invalidate digital signatures, electronic signatures, or electronic communications which are valid under any other applicable law.

(6) Unless otherwise provided by law, the use or acceptance of a digital signature or an electronic signature shall be at the option of the parties to the communication. This section shall not be construed to require a person to use or permit the use of a digital signature or electronic signature.

(7) In developing the rules and regulations, the Secretary of State shall seek the advice of public and private entities, including the Department of Administrative Services.

(8) For purposes of this section:

(a) Distributed ledger technology means an electronic record of transactions or other data which is: (i) Uniformly ordered; (ii) 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 (iii) validated by the use of cryptography;

(b) (a) Electronic signature means a unique access code or other unique electronic identifier assigned or approved by the state agency for use in communications with the state agency. Electronic signature includes a signature that is secured through distributed ledger technology;

(c) (b) Digital signature means an electronic identifier, created by computer, intended by the person using it to have the same force and effect as a manual signature. Digital signature includes a signature that is secured through distributed ledger technology; and

(d) (c) State agency means any agency, board, court, or constitutional officer of the executive, judicial, and legislative
branches of state government, except individual members of the Legislature.

Sec. 5. Section 86-612, Reissue Revised Statutes of Nebraska, is amended to read:

86-612 Sections 86-612 to 86-643 and sections 7 and 11 of this act shall be known and may be cited as the Uniform Electronic Transactions Act.

Sec. 6. Section 86-613, Reissue Revised Statutes of Nebraska, is amended to read:

86-613 For purposes of the Uniform Electronic Transactions Act, the definitions found in sections 86-614 to 86-629 and sections 7 and 11 of this act apply.

Sec. 7. **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. 8. Section 86-617, Reissue Revised Statutes of Nebraska, is amended to read:

86-617 Contract means the total legal obligation resulting from the parties' agreement as affected by the Uniform Electronic Transactions Act and other applicable law. **Contract includes any contract secured through distributed ledger technology.** Contract also includes any smart contract.

Sec. 9. Section 86-620, Reissue Revised Statutes of Nebraska, is amended to read:

86-620 Electronic record means a record created, generated, sent, communicated, received, or stored by electronic means. **Electronic record includes any record secured through distributed ledger technology.**

Sec. 10. Section 86-621, Reissue Revised Statutes of Nebraska, is amended to read:

86-621 Electronic signature means an electronic sound, symbol, or
process attached to or logically associated with a record and executed or
adopted by a person with the intent to sign the record. _Electronic
signature includes a signature that is secured through distributed ledger
technology._

Sec. 11. _Smart contract means an event-driven program or
computerized transaction protocol that runs on a distributed,
decentralized, shared, and replicated ledger that executes the terms of a
contract by taking custody over and instructing transfer of assets on the
ledger._

Sec. 12. The Revisor of Statutes shall assign:
   (1) Section 1 of this act to Chapter 36, article 1; and
   (2) Section 2 of this act to Chapter 36, article 2.

Sec. 13. Original sections 86-611, 86-612, 86-613, 86-617, 86-620,
and 86-621, Reissue Revised Statutes of Nebraska, and section 64-302,
Revised Statutes Cumulative Supplement, 2016, are repealed.