

ENGROSSED LEGISLATIVE BILL 609

Introduced by Bostar, 29.

A BILL FOR AN ACT relating to financial transactions; to amend section 29-817, Reissue Revised Statutes of Nebraska; to adopt the Controllable Electronic Record Fraud Prevention Act; to require notice of potential fraud for purchasers of gift certificates and gift cards; to change provisions relating to search warrants; to provide severability; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 11 of this act shall be known and may be cited as the Controllable Electronic Record Fraud Prevention Act.

Sec. 2. For purposes of the Controllable Electronic Record Fraud Prevention Act:

(1) Blockchain analytics means the analysis of data from blockchains or public distributed ledgers, including associated transaction information;

(2) Blockchain analytics software means a software service that uses blockchain analytics data to provide risk-specific information about controllable electronic record addresses, among other things;

(3) Controllable electronic record has the same meaning as in section 8-3003;

(4) Controllable electronic record address means an alphanumeric identifier associated with a controllable electronic record wallet identifying the location to which a controllable electronic record transaction can be sent;

(5) Controllable electronic record kiosk means an electronic terminal acting as a mechanical agent of the controllable electronic record kiosk operator to enable the controllable electronic record kiosk operator to facilitate the exchange of controllable electronic records for money, bank credit, or other controllable electronic records, including, but not limited to, by (a) connecting directly to a separate controllable electronic record

exchange that performs the actual controllable electronic record transmission or (b) drawing upon the controllable electronic record in the possession of the electronic terminal's operator;

(6) Controllable electronic record kiosk operator means a person, or a third party acting on behalf of another person, that engages in controllable electronic record business activity via a controllable electronic record kiosk located in this state or a person that owns, operates, or manages a money transmission kiosk located in this state through which controllable electronic record business activity is offered;

(7) Controllable electronic record kiosk transaction means a transaction conducted or performed, in whole or in part, by electronic means via a controllable electronic record kiosk. Controllable electronic record kiosk transaction includes a transaction made at a controllable electronic record kiosk to purchase controllable electronic records with United States dollars or to sell controllable electronic records for United States dollars; and

(8) Controllable electronic record wallet means a software application or other mechanism providing a means to hold the keys necessary to access and transfer controllable electronic records;

(9) Customer means new customers and existing customers;

(10) Department means the Department of Banking and Finance;

(11) Existing customer means an individual whose first controllable electronic record kiosk transaction with the controllable electronic record kiosk operator was more than fourteen days prior;

(12) New customer means an individual during the fourteen-day period after such individual's first transaction with the controllable electronic record kiosk operator that the individual has never previously transacted with. The individual shall remain defined as a new customer during the fourteen-day period after the first controllable electronic record kiosk transaction with the controllable electronic record kiosk operator; and

(13) Transaction hash means a unique identifier made up of a string of characters that acts as a record of and provides proof that the transaction was

verified and added to the blockchain.

Sec. 3. (1) A controllable electronic record kiosk operator shall not engage in controllable electronic record kiosk transactions or hold itself out as being able to engage in such transactions with or on behalf of another person unless the kiosk operator has a license issued under the Nebraska Money Transmitters Act pursuant to section 8-2725.

(2) A controllable electronic record kiosk operator shall report each controllable electronic record kiosk as an authorized delegate under the Nebraska Money Transmitters Act pursuant to section 8-2730.

(3) In addition to the required reporting of authorized delegates pursuant to section 8-2730, each controllable electronic record kiosk operator shall submit to the department within forty-five days after the end of each calendar quarter a list of all associated controllable electronic record addresses utilized by each controllable electronic record kiosk, on a form as prescribed by the department.

Sec. 4. (1) A controllable electronic record kiosk operator shall disclose to a customer in a clear, conspicuous, and easily readable manner in the chosen language of the customer, all relevant terms and conditions generally associated with the products, services, and activities of the operator and controllable electronic record.

(2) The controllable electronic record kiosk operator shall require acknowledgment of receipt of all disclosures required by this section via confirmation of consent by the customer.

(3) The disclosures shall include a statement, written prominently and in bold type and provided separately from the other disclosures, warning customers about the potential for criminals to exploit controllable electronic record kiosks to commit illicit activity. The controllable electronic record kiosk operator may tailor the warning language to highlight evolving tactics and techniques. The warning language shall be similar to the following form:

WARNING: CONSUMER FRAUD OFTEN STARTS WITH CONTACT FROM A STRANGER WHO IS INITIATING A DISHONEST SCHEME. I UNDERSTAND THAT CRIMINAL ACTIVITY MAY APPEAR

IN MANY FORMS, INCLUDING, BUT NOT LIMITED TO:

- (1) Claims of a frozen bank account or credit card;
- (2) Fraudulent bank transactions;
- (3) Claims of identity theft or job offerings in exchange for payments;
- (4) Requests for payments to government agencies or companies;
- (5) Requests for disaster relief donations or loans;
- (6) Offers to purchase tickets for lotteries, sweepstakes, or drawings for vehicles;
- (7) Prompts to click on desktop pop-ups, such as virus warnings or communication from alleged familiar merchants; and
- (8) Communication from someone impersonating a representative of your bank or a law enforcement officer.

IF YOU BELIEVE YOU ARE BEING SCAMMED, CALL YOUR LOCAL LAW ENFORCEMENT AGENCY.

WARNING: TRANSACTIONS CONDUCTED ON THIS CONTROLLABLE ELECTRONIC RECORD KIOSK ARE IRREVERSIBLE. PROTECT YOURSELF FROM FRAUD. NEVER SEND MONEY TO SOMEONE YOU DON'T KNOW.

- (4) The disclosure shall also include:
 - (a) The material risks associated with controllable electronic records and controllable electronic record transactions, including:
 - (i) The operator's liability for unauthorized controllable electronic record transactions;
 - (ii) The customer's liability for unauthorized currency transactions;
 - (iii) A warning that controllable electronic records are not legal tender, are not backed or issued by the United States Government, and are not subject to protections by the Federal Deposit Insurance Corporation, National Credit Union Administration, or Securities Investor Protection Corporation;
 - (iv) A warning that there may be delays in the processing and confirmation of controllable electronic record transactions;
 - (v) A warning that the value of controllable electronic records is derived from supply and demand in the global marketplace which can rise or fall

independently of any fiat currency. Holding controllable electronic records carries exchange rate and other types of risk;

(vi) A warning that a person who accepts a controllable electronic record as payment today is not required to accept and might not accept controllable electronic records in the future;

(vii) A warning that the volatility and unpredictability of the price of controllable electronic records relative to fiat currency may result in a significant loss over a short period; and

(viii) A warning that any bond or trust maintained by the controllable electronic record kiosk operator for the benefit of a customer may not cover all losses;

(b) The amount of the customer's controllable electronic record kiosk transaction denominated in United States dollars as well as the applicable controllable electronic records;

(c) Any fees or expenses charged by the controllable electronic record kiosk operator;

(d) Any applicable exchange rates;

(e) The controllable electronic record transaction daily limit of two thousand dollars for new customers;

(f) The controllable electronic record transaction daily limit of ten thousand five hundred dollars for existing customers;

(g) The name, address, and telephone number of the operator of the controllable electronic record kiosk, the days, time, and means by which a customer can contact the operator for customer assistance, and any relevant state or local law enforcement agency or government agency for reporting fraud, all of which shall be displayed on or at the location of the controllable electronic record kiosk, or on the first screen of such kiosk; and

(h) Any other disclosures that are customarily given in connection with a controllable electronic record kiosk transaction.

(5) Upon the completion of a controllable electronic record kiosk transaction, the controllable electronic record kiosk operator shall provide

the customer with a receipt in the language chosen by such customer. The receipt shall be physical where possible. If necessary, the controllable electronic record kiosk operator may provide the receipt in multiple communications. The receipt shall contain the following information:

(a) The operator's name and contact information, including a telephone number to answer questions and register complaints;

(b) Relevant state law enforcement agencies and government agencies for reporting fraud;

(c) The type, value, date, and precise time of the transaction, the transaction hash, and each applicable controllable electronic record address;

(d) The name and contact information of the sender of the controllable electronic record transaction;

(e) The name and contact information of the designated recipient of the controllable electronic record transaction;

(f) All fees charged;

(g) The exchange rate of the controllable electronic record to United States dollars;

(h) The operator's liability for nondelivery or delayed delivery;

(i) The operator's refund policy; and

(j) Any additional information the department may require.

Sec. 5. (1) All controllable electronic record kiosk operators shall use blockchain analytics software to assist in the prevention of sending purchased controllable electronic records from an operator to a controllable electronic record wallet known to be affiliated with fraudulent activity at the time of a transaction. The department may request evidence from any controllable electronic record kiosk operator of current use of blockchain analytics.

(2) All controllable electronic record kiosk operators shall take reasonable steps to detect and prevent fraud, including establishing and maintaining a written antifraud policy. The antifraud policy shall, at a minimum, include:

(a) The identification and assessment of fraud-related risk areas;

- (b) Procedures and controls to protect against identified risks;
- (c) Allocation of responsibility for monitoring risks; and
- (d) Procedures for the periodic evaluation and revision of the antifraud procedures, controls, and monitoring mechanisms.

Sec. 6. (1) Each controllable electronic record kiosk operator shall designate and employ a compliance officer on a full-time basis.

(2) The compliance officer shall be qualified to coordinate and monitor compliance with the Controllable Electronic Record Fraud Prevention Act and all other applicable federal and state laws, rules, and regulations.

(3) The compliance officer shall not own more than twenty percent of the controllable electronic record kiosk operator.

(4) All compliance responsibilities required under federal and state laws, rules, and regulations shall be completed by full-time employees of the controllable electronic record kiosk operator or by approved outside vendors with compliance expertise supervised by full-time employees of such operator.

Sec. 7. (1) If a new customer has been fraudulently induced to engage in a controllable electronic record kiosk transaction and contacts the controllable electronic record kiosk operator and a law enforcement agency or government agency to inform the operator and agency of the fraudulent nature of the transaction within thirty days after the transaction, then, upon request of the customer, the operator shall issue a full refund for the fraudulently induced controllable electronic record transaction, including fees charged in association with the transaction.

(2) If an existing customer has been fraudulently induced to engage in a controllable electronic record kiosk transaction and contacts the controllable electronic record kiosk operator and a law enforcement agency or government agency to inform the operator and agency of the fraudulent nature of the transaction within thirty days after the transaction, then, upon request of the customer, the operator shall issue a full refund for the fees charged in association with the transaction.

Sec. 8. A controllable electronic record kiosk operator shall not accept

transactions in a day in connection with controllable electronic record kiosk transactions for a single customer in this state via one or more controllable electronic record kiosks exceeding:

(1) For new customers, two thousand United States dollars or the equivalent in controllable electronic records; or

(2) For existing customers, ten thousand five hundred dollars or the equivalent in controllable electronic records.

Sec. 9. The aggregate fees and charges, directly or indirectly, charged to a customer related to a single transaction or series of related transactions involving controllable electronic records effected through a controllable electronic record kiosk in this state, including any difference between the price charged to a customer to buy, sell, exchange, swap, or convert controllable electronic records and the prevailing market value of such controllable electronic records at the time of such transaction, shall not exceed eighteen percent of the value of the United States dollars involved in the transaction or transactions.

Sec. 10. All controllable electronic record kiosk operators performing business in the state shall, at a minimum, provide live customer service on Monday through Friday between the hours of 7:00 a.m. and 9:00 p.m. via a toll-free telephone number. The telephone number shall be displayed on the controllable electronic record kiosk or the kiosk screens.

Sec. 11. All controllable electronic record kiosk operators performing business in the state shall, at a minimum, have a dedicated method of contact for law enforcement to contact the controllable electronic record kiosk operator. This method of communications shall be monitored at least daily. The contact method shall be displayed and available on the controllable electronic record kiosk operator's website and shall be updated as necessary.

Sec. 12. (1) For purposes of this section, gift certificate or gift card means a certificate, electronic card, or other prefunded record that (a) is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, or is usable at multiple unaffiliated merchants or

service providers, (b) is issued in a specified amount, (c) may or may not be increased in value or reloaded, (d) is purchased or loaded on a prepaid basis for the future purchase or delivery of any goods or services, and (e) is honored upon presentation.

(2) Except as provided in subsection (7) of this section, if any person, firm, partnership, association, limited liability company, corporation, or other business entity sells one or more gift certificates or gift cards to a purchaser, the seller shall provide notice about the potential fraud to the purchaser.

(3) The Consumer Protection Division of the Office of the Attorney General shall release model notice language. Entities listed in subsection (2) of this section may use the model notice or a notice substantially in the same form to comply with such subsection.

(4) The notice required pursuant to subsection (2) of this section shall be provided conspicuously where gift certificates or gift cards are displayed or sold or at point of sale on an electronic payment system screen or in printed form.

(5) If the Attorney General has cause to believe this section has been violated, the Attorney General may provide a written citation to the violator. Any person, firm, partnership, association, limited liability company, corporation, or other business entity that receives more than one citation may be subject to a civil penalty of up to two hundred fifty dollars. The first written citation shall be considered a warning.

(6) Subsection (2) of this section does not apply to a person, firm, partnership, association, limited liability company, corporation, or other business entity which sells only gift cards redeemable for goods or services exclusively by the same person, firm, partnership, association, limited liability company, corporation, or other business entity.

(7) This section does not apply to a general-use, prepaid card issued by a financial institution as defined in section 8-101.03 in a predetermined amount, whether or not that amount can be increased or reloaded, which is usable at

multiple unaffiliated sellers of goods or services, automatic teller machines, or both.

Sec. 13. Section 29-817, Reissue Revised Statutes of Nebraska, is amended to read:

29-817 Sections 29-812 to 29-821 do not modify any act inconsistent with it relating to search warrants, their issuance, and the execution of search warrants and acts relating to disposition of seized property in circumstances for which special provision is made. The term property is used in sections 29-812 to 29-821 to include documents, books, papers, any other tangible objects, and controllable electronic records as defined in section 8-3003. Nothing in sections 29-812 to 29-821 shall be construed as restricting or in any way affecting the constitutional right of any officer to make reasonable searches and seizures as an incident to a lawful arrest nor to restrict or in any way affect reasonable searches and seizures authorized or consented to by the person being searched or in charge of the premises being searched, or in any other manner or way authorized or permitted to be made under the Constitution of the United States and the Constitution of the State of Nebraska.

All search warrants shall be issued with all practicable secrecy and the complaint, affidavit, or testimony upon which it is based shall not be filed with the clerk of the court or made public in any way until the warrant is executed. Whoever discloses, prior to its execution, that a warrant has been applied for or issued, except so far as may be necessary to its execution, shall be guilty of a Class III misdemeanor, or he or she may be punished as for a criminal contempt of court.

Sec. 14. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 15. Original section 29-817, Reissue Revised Statutes of Nebraska, is repealed.

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 609 was passed by the One Hundred Ninth Legislature of Nebraska at its First Session on the day of 20.....

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR