

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 691

Introduced by Blood, 3.

Read first time January 03, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to financial crimes; to amend sections 8-2701
- 2 and 8-2715, Revised Statutes Cumulative Supplement, 2016, and
- 3 section 28-101, Revised Statutes Supplement, 2017; to adopt the
- 4 Nebraska Virtual Currency Money Laundering Act; to provide
- 5 penalties; to define and redefine terms under the Nebraska Money
- 6 Transmitters Act; to harmonize provisions; and to repeal the
- 7 original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 17 of this act shall be known and may be
2 cited as the Nebraska Virtual Currency Money Laundering Act.

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

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

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

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

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

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

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

31 (7) Specified unlawful activity means any racketeering activity as

1 defined in section 28-1354;

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

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

7 Sec. 3. It is unlawful for a person:

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

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

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

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

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

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

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

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

31 (c) To avoid a transaction reporting requirement under state law.

1 (3) For the purposes of this section, investigative or law
2 enforcement officer means any officer of the State of Nebraska or
3 political subdivision thereof, of the United States, or of any other
4 state or political subdivision thereof, who is empowered by law to
5 conduct, on behalf of the government, investigations of, or to make
6 arrests for, offenses enumerated in this section or similar federal
7 offenses.

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

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

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

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

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

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

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

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

30 (c) Financial transactions of more than five hundred dollars but
31 less than one thousand five hundred dollars, as calculated at the time of

1 the transaction, in any twelve-month period, is guilty of a Class I
2 misdemeanor; or

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

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

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

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

20 Sec. 7. (1) If a person is alienating or disposing of virtual
21 currency, or appears likely to or demonstrates an intent to alienate or
22 dispose of virtual currency, used in violation of section 3 of this act,
23 the Nebraska Money Transmitters Act, or any specified unlawful activity,
24 or virtual currency traceable to any such violation, the petitioner may
25 commence a civil action in any district court having jurisdiction where
26 such virtual currency is located for a temporary injunction to prohibit
27 any person from withdrawing, transferring, removing, dissipating, or
28 disposing of any other such virtual currency of equivalent value. This
29 section governs all temporary injunctions obtained pursuant to the
30 Nebraska Virtual Currency Money Laundering Act and supersedes all other
31 provisions that may be inconsistent with this section. The court shall

1 take into account any anticipated impact the temporary injunction will
2 have on innocent third parties or businesses, balanced against the
3 petitioner's need to preserve the virtual currency.

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

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

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

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

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

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

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

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

29 (7)(a) Upon service of the temporary injunction entered pursuant to
30 this section, the petitioner shall immediately notify by certified mail,
31 return receipt requested, or by personal service, both the person or

1 entity in possession of the virtual currency and the owner of the
2 monetary instruments or funds if known, of the injunction entered
3 pursuant to this section and that the lawful owner of the virtual
4 currency being enjoined may request a hearing to contest and modify the
5 injunction entered pursuant to this section by petitioning the court that
6 issued the injunction, so that such notice is received within seventy-two
7 hours.

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

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

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

26 (8) Only the lawful owner or the account holder of the virtual
27 currency being enjoined may request a hearing to contest the injunction
28 entered pursuant to this section by petitioning the court that issued the
29 injunction. A hearing must be held within three days after the request or
30 as soon as practicable thereafter and before the expiration of the
31 temporary injunction. The hearing must be set and noticed by the lawful

1 owner of the virtual currency or his or her attorney. Notice of the
2 hearing must be provided to the petitioner who procured the temporary
3 injunction not less than twenty-four hours before the scheduled hearing.
4 The court may receive and consider at a hearing held pursuant to this
5 subsection evidence and information that would be inadmissible under the
6 Nebraska Evidence Rules.

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

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

27 Sec. 10. In any prosecution brought pursuant to the Nebraska
28 Virtual Currency Money Laundering Act, the common law corpus delicti rule
29 does not apply. The defendant's confession or admission is admissible
30 during trial without the state's having to prove the corpus delicti if
31 the court finds in a hearing conducted outside the presence of the jury

1 that the defendant's confession or admission is trustworthy. Before the
2 court admits the defendant's confession or admission, the state must
3 prove by a preponderance of the evidence that there is sufficient
4 corroborating evidence that tends to establish the trustworthiness of the
5 statement by the defendant. Hearsay evidence is admissible during the
6 presentation of evidence at the hearing. In making its determination, the
7 court may consider all relevant corroborating evidence, including the
8 defendant's statements.

9 Sec. 11. (1) All persons engaged in a trade or business who receive
10 more than ten thousand dollars in virtual currency, in one transaction,
11 as calculated at the time of the transaction, or who receive this amount
12 through two or more related transactions, must complete and file with the
13 Department of Revenue the information required pursuant to 26 U.S.C.
14 6050I, as such section existed on January 1, 2018, concerning returns
15 relating to currency received in trade or business. Any person who
16 willfully fails to comply with the reporting requirements of this
17 subsection is guilty of a Class I misdemeanor or shall be punished by a
18 fine not exceeding two hundred fifty thousand dollars or twice the value
19 of the amount of the virtual currency transaction involved, whichever is
20 greater, or by both such imprisonment and fine. For a second or
21 subsequent conviction of a violation of the provisions of this
22 subsection, the maximum fine that may be imposed is five hundred thousand
23 dollars or quintuple the value of the amount of the currency transaction
24 involved, whichever is greater.

25 (2) The Department of Revenue shall enforce compliance with the
26 provisions of subsection (1) of this section and shall be the custodian
27 of all information and documents filed pursuant to such subsection. Such
28 information and documents are confidential and shall not be a public
29 record subject to disclosure by the Tax Commissioner pursuant to sections
30 84-712 to 84-712.09. However, the department must provide any report
31 filed under this section, or information contained therein, to federal,

1 state, and local law enforcement and prosecutorial agencies, to the
2 Department of Banking and Finance, and to the Attorney General.

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

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

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

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

28 (2) A person shall not, for the purpose of evading the reporting and
29 registration requirements of the Nebraska Virtual Currency Money
30 Laundering Act, the Nebraska Money Transmitters Act, or any rules or
31 regulations adopted under such acts, when some portion of the activity by

1 that person occurs in this state:

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

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

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

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

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

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

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

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

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

31 (iii) Financial transactions of more than five hundred dollars but

1 less than one thousand five hundred dollars, as calculated at the time of
2 the transaction, in any twelve-month period, is guilty of a Class I
3 misdemeanor; or

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

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

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

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

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

31 (6) This section may not be construed to require any new or

1 additional reporting requirements on any entity obligated to file reports
2 under state or federal law.

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

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

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

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

29 (b) The head of the law enforcement agency may, with the written
30 approval of the Attorney General, exceed the limits of rewards provided
31 in subdivision (2)(a) of this in section, when the criminal fine, civil

1 penalty, or forfeiture amount received by the state warrants an upward
2 departure from such limits.

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

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

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

11 Sec. 18. Section 8-2701, Revised Statutes Cumulative Supplement,
12 2016, is amended to read:

13 8-2701 Sections 8-2701 to 8-2747 and section 19 of this act shall be
14 known and may be cited as the Nebraska Money Transmitters Act.

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

20 Sec. 20. Section 8-2715, Revised Statutes Cumulative Supplement,
21 2016, is amended to read:

22 8-2715 Monetary value means a medium of exchange, regardless of
23 whether ~~or not~~ redeemable in money, and includes media that are in
24 electronic or digital format, including distributed ledger technology.

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

27 28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and
28 sections 1 to 17 of this act shall be known and may be cited as the
29 Nebraska Criminal Code.

30 Sec. 22. Original sections 8-2701 and 8-2715, Revised Statutes
31 Cumulative Supplement, 2016, and section 28-101, Revised Statutes

1 Supplement, 2017, are repealed.