

E AND R AMENDMENTS TO LB 609

Introduced by Guereca, 7, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

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

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

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

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

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

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

19 (5) Controllable electronic record kiosk means an electronic
20 terminal acting as a mechanical agent of the controllable electronic
21 record kiosk operator to enable the controllable electronic record kiosk
22 operator to facilitate the exchange of controllable electronic records
23 for money, bank credit, or other controllable electronic records,
24 including, but not limited to, by (a) connecting directly to a separate
25 controllable electronic record exchange that performs the actual
26 controllable electronic record transmission or (b) drawing upon the
27 controllable electronic record in the possession of the electronic

1 terminal's operator;

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

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

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

19 (9) Customer means new customers and existing customers;

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

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

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

31 (13) Transaction hash means a unique identifier made up of a string

1 of characters that acts as a record of and provides proof that the
2 transaction was verified and added to the blockchain.

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

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

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

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

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

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

1 WARNING: CONSUMER FRAUD OFTEN STARTS WITH CONTACT FROM A STRANGER
2 WHO IS INITIATING A DISHONEST SCHEME. I UNDERSTAND THAT CRIMINAL ACTIVITY
3 MAY APPEAR IN MANY FORMS, INCLUDING, BUT NOT LIMITED TO:

4 (1) Claims of a frozen bank account or credit card;

5 (2) Fraudulent bank transactions;

6 (3) Claims of identity theft or job offerings in exchange for
7 payments;

8 (4) Requests for payments to government agencies or companies;

9 (5) Requests for disaster relief donations or loans;

10 (6) Offers to purchase tickets for lotteries, sweepstakes, or
11 drawings for vehicles;

12 (7) Prompts to click on desktop pop-ups, such as virus warnings or
13 communication from alleged familiar merchants; and

14 (8) Communication from someone impersonating a representative of
15 your bank or a law enforcement officer.

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

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

21 (4) The disclosure shall also include:

22 (a) The material risks associated with controllable electronic
23 records and controllable electronic record transactions, including:

24 (i) The operator's liability for unauthorized controllable
25 electronic record transactions;

26 (ii) The customer's liability for unauthorized currency
27 transactions;

28 (iii) A warning that controllable electronic records are not legal
29 tender, are not backed or issued by the United States Government, and are
30 not subject to protections by the Federal Deposit Insurance Corporation,
31 National Credit Union Administration, or Securities Investor Protection

1 Corporation;

2 (iv) A warning that there may be delays in the processing and
3 confirmation of controllable electronic record transactions;

4 (v) A warning that the value of controllable electronic records is
5 derived from supply and demand in the global marketplace which can rise
6 or fall independently of any fiat currency. Holding controllable
7 electronic records carries exchange rate and other types of risk;

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

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

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

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

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

22 (d) Any applicable exchange rates;

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

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

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

1 the controllable electronic record kiosk, or on the first screen of such
2 kiosk; and

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

5 (5) Upon the completion of a controllable electronic record kiosk
6 transaction, the controllable electronic record kiosk operator shall
7 provide the customer with a receipt in the language chosen by such
8 customer. The receipt shall be physical where possible. If necessary, the
9 controllable electronic record kiosk operator may provide the receipt in
10 multiple communications. The receipt shall contain the following
11 information:

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

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

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

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

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

23 (f) All fees charged;

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

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

27 (i) The operator's refund policy; and

28 (j) Any additional information the department may require.

29 **Sec. 5. (1)** All controllable electronic record kiosk operators
30 shall use blockchain analytics software to assist in the prevention of
31 sending purchased controllable electronic records from an operator to a

1 controllable electronic record wallet known to be affiliated with
2 fraudulent activity at the time of a transaction. The department may
3 request evidence from any controllable electronic record kiosk operator
4 of current use of blockchain analytics.

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

9 (a) The identification and assessment of fraud-related risk areas;
10 (b) Procedures and controls to protect against identified risks;
11 (c) Allocation of responsibility for monitoring risks; and
12 (d) Procedures for the periodic evaluation and revision of the
13 antifraud procedures, controls, and monitoring mechanisms.

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

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

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

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

27 **Sec. 7.** (1) If a new customer has been fraudulently induced to
28 engage in a controllable electronic record kiosk transaction and contacts
29 the controllable electronic record kiosk operator and a law enforcement
30 agency or government agency to inform the operator and agency of the
31 fraudulent nature of the transaction within ninety days after the

1 transaction, then, upon request of the customer, the operator shall issue
2 a full refund for the fraudulently induced controllable electronic record
3 transaction, including fees charged in association with the transaction.

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

11 **Sec. 8.** A controllable electronic record kiosk operator shall not
12 accept transactions in a day in connection with controllable electronic
13 record kiosk transactions for a single customer in this state via one or
14 more controllable electronic record kiosks exceeding:

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

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

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

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

1 shall be displayed on the controllable electronic record kiosk or the
2 kiosk screens.

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

10 **Sec. 12.** (1) For purposes of this section, gift certificate or gift
11 card means a certificate, electronic card, or other prefunded record that
12 (a) is usable at a single merchant or an affiliated group of merchants
13 that share the same name, mark, or logo, or is usable at multiple
14 unaffiliated merchants or service providers, (b) is issued in a specified
15 amount, (c) may or may not be increased in value or reloaded, (d) is
16 purchased or loaded on a prepaid basis for the future purchase or
17 delivery of any goods or services, and (e) is honored upon presentation.

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

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

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

31 (5) If the Attorney General has cause to believe this section has

1 been violated, the Attorney General may provide a written citation to the
2 violation. Any person, firm, partnership, association, limited liability
3 company, corporation, or other business entity that receives more than
4 one citation may be subject to a civil penalty of up to two hundred fifty
5 dollars. The first written citation shall be considered a warning.

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

11 (7) This section does not apply to a general-use, prepaid card
12 issued by a financial institution as defined in section 8-101.03 in a
13 predetermined amount, whether or not that amount can be increased or
14 reloaded, which is usable at multiple unaffiliated sellers of goods or
15 services, automatic teller machines, or both.

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

18 29-817 Sections 29-812 to 29-821 do not modify any act inconsistent
19 with it relating to search warrants, their issuance, and the execution of
20 search warrants and acts relating to disposition of seized property in
21 circumstances for which special provision is made. The term property is
22 used in sections 29-812 to 29-821 to include documents, books, papers,
23 ~~and~~ any other tangible objects, and controllable electronic records as
24 defined in section 8-3003. Nothing in sections 29-812 to 29-821 shall be
25 construed as restricting or in any way affecting the constitutional right
26 of any officer to make reasonable searches and seizures as an incident to
27 a lawful arrest nor to restrict or in any way affect reasonable searches
28 and seizures authorized or consented to by the person being searched or
29 in charge of the premises being searched, or in any other manner or way
30 authorized or permitted to be made under the Constitution of the United
31 States and the Constitution of the State of Nebraska.

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

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

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

13 2. On page 1, strike beginning with "fraud" in line 1 through line
14 11 and insert "financial transactions; to amend section 29-817, Reissue
15 Revised Statutes of Nebraska; to adopt the Controllable Electronic Record
16 Fraud Prevention Act; to require notice of potential fraud for purchasers
17 of gift certificates and gift cards; to change provisions relating to
18 search warrants; to provide severability; and to repeal the original
19 section."