

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 695

Introduced by Blood, 3.

Read first time January 03, 2018

Committee:

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

1 Section 1. (1) Any contract as described in sections 36-105 and
2 36-107 which is a smart contract or which contains a smart contract
3 provision may exist in commerce. Such contract shall not be denied legal
4 effect, validity, or enforceability solely because such contract is a
5 smart contract or contains a smart contract provision.

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

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

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

20 Sec. 3. Section 64-302, Revised Statutes Cumulative Supplement,
21 2016, is amended to read:

22 64-302 For purposes of the Electronic Notary Public Act:

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

28 (2) ~~(1)~~ Electronic means relating to technology having electrical,
29 digital, magnetic, wireless, optical, electromagnetic, or similar
30 capabilities;

31 (3) ~~(2)~~ Electronic document means information that is created,

1 generated, sent, communicated, received, or stored by electronic means;

2 (4) (3) Electronic notarial act means an official act by an
3 electronic notary public that involves electronic documents;

4 (5) (4) Electronic notary public means a notary public registered
5 with the Secretary of State that has the capability of performing
6 electronic notarial acts in conformance with the Electronic Notary Public
7 Act;

8 (6) (5) Electronic notary seal means information within a notarized
9 electronic document that includes the notary public's name, jurisdiction,
10 and commission expiration date and generally corresponds to the data in
11 notary seals used on paper documents;

12 (7) (6) Electronic notary solution provider means a provider of any
13 electronic notary seals or electronic signatures;

14 (8) (7) Electronic signature means an electronic symbol or process
15 attached to or logically associated with an electronic document and
16 executed or adopted by a person with the intent to sign the document.
17 Electronic signature includes a signature that is secured through
18 distributed ledger technology; and

19 (9) (8) Notary public's electronic signature means an electronic
20 signature which has been approved by the Secretary of State in rules and
21 regulations adopted and promulgated under section 64-316 as an acceptable
22 means for an electronic notary public to attach or logically associate
23 the notary public's official signature to an electronic document that is
24 being notarized.

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

27 86-611 (1) It is the intent of the Legislature to promote economic
28 growth and the efficient operation of business and government in Nebraska
29 through the electronic exchange of information and legally binding
30 electronic transactions. In order to facilitate the electronic exchange
31 of information, Nebraska must establish means to ensure that electronic

1 transactions are legally binding and enforceable, while ensuring that
2 security measures are in place to prevent opportunities for fraud and
3 misuse.

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

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

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

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

- 25 (a) Identify and define the type of signature which may be used in
26 the electronic communications governed by the rules and regulations;
- 27 (b) Identify and define the type of electronic communications for
28 which a digital signature or an electronic signature may be used; and
- 29 (c) Provide a degree of security reasonably related to the risks and
30 consequences of fraud or misuse for the type of electronic communication
31 which, at a minimum, shall require the maintenance of an audit trail of

1 the assignment or approval and the use of the unique access code or
2 unique electronic identifier.

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

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

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

14 (8) For purposes of this section:

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

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

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

30 (d) ~~(c)~~ State agency means any agency, board, court, or
31 constitutional officer of the executive, judicial, and legislative

1 branches of state government, except individual members of the
2 Legislature.

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

5 86-612 Sections 86-612 to 86-643 and sections 7 and 11 of this act
6 shall be known and may be cited as the Uniform Electronic Transactions
7 Act.

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

10 86-613 For purposes of the Uniform Electronic Transactions Act, the
11 definitions found in sections 86-614 to 86-629 and sections 7 and 11 of
12 this act apply.

13 Sec. 7. Distributed ledger technology means an electronic record of
14 transactions or other data which is: (1) Uniformly ordered; (2)
15 redundantly maintained or processed by one or more computers or machines
16 to guarantee the consistency or nonrepudiation of the recorded
17 transactions or other data; and (3) validated by the use of cryptography.

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

20 86-617 Contract means the total legal obligation resulting from the
21 parties' agreement as affected by the Uniform Electronic Transactions Act
22 and other applicable law. Contract includes any contract secured through
23 distributed ledger technology. Contract also includes any smart contract.

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

26 86-620 Electronic record means a record created, generated, sent,
27 communicated, received, or stored by electronic means. Electronic record
28 includes any record secured through distributed ledger technology.

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

31 86-621 Electronic signature means an electronic sound, symbol, or

1 process attached to or logically associated with a record and executed or
2 adopted by a person with the intent to sign the record. Electronic
3 signature includes a signature that is secured through distributed ledger
4 technology.

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

10 Sec. 12. The Revisor of Statutes shall assign:

11 (1) Section 1 of this act to Chapter 36, article 1; and

12 (2) Section 2 of this act to Chapter 36, article 2.

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