

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1447

Introduced by

Representatives Swiontek, Christy, Hanson, Heinert, Schauer, J. Olson, Richter

Senators Hogan, Klein, Lee, Rummel, Sickler

1 A BILL for an Act to create and enact sections 13-09.1-50, 13-09.1-51, 13-09.1-52, 13-09.1-53,
2 and 13-09.1-54 of the North Dakota Century Code, relating to virtual-currency kiosks; and to
3 amend and reenact section 13-09.1-44 of the North Dakota Century Code, relating to virtual-
4 currency kiosks.

5 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

6 **SECTION 1. AMENDMENT.** Section 13-09.1-44 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **13-09.1-44. Definitions.**

9 For the purposes of sections 13-09.1-44 through ~~13-09.1-49~~13-09.1-54, the following
10 definitions apply:

11 1. "Blockchain analytics" means the analysis of data from blockchains or publicly
12 distributed ledgers, including associated transaction information.

13 ~~2. "Blockchain analytics software" means a software service that uses blockchain~~
14 ~~analytics data~~ to provide risk-specific information about virtual-currency
15 ~~wallet~~transactions and virtual currency addresses.

16 ~~3.2.~~ "Control of virtual currency", when used in reference to a transaction or relationship
17 involving virtual currency, means the power to execute unilaterally or prevent
18 indefinitely a virtual-currency transaction.

19 ~~2.4.3.~~ "Exchange", used as a verb, means to assume control of virtual currency from or on
20 behalf of a person, at least momentarily, to sell, trade, or convert:

1 a. Virtual currency for money, bank credit, or one or more forms of virtual currency;
2 or

3 b. Money or bank credit for one or more forms of virtual currency.

4 ~~5.4.~~ "Transaction hash" means a unique identifier made up of a string of characters that act
5 as a record and provide proof the transaction was verified and added to the
6 blockchain.

7 ~~3.6.5.~~ "Transfer" means to assume control of virtual currency from or on behalf of a person
8 and to:

9 a. Credit the virtual currency to the account of another person;

10 b. Move the virtual currency from one account of a person to another account of the
11 same person; or

12 c. Relinquish control of virtual currency to another person.

13 ~~4.7.6.~~ "United States dollar equivalent of virtual currency" means the equivalent value of a
14 particular virtual currency in United States dollars shown on a virtual-currency
15 exchange based in the United States for a particular date or period specified in this
16 chapter.

17 ~~5.8.7.~~ "Virtual currency":

18 a. Means a digital representation of value that:

19 (1) Is used as a medium of exchange, unit of account, or store of value; and

20 (2) Is not money, whether or not denominated in money; and

21 b. Does not include:

22 (1) A transaction in which a merchant grants, as part of an affinity or rewards
23 program, value that cannot be taken from or exchanged with the merchant
24 for money, bank credit, or virtual currency; or

25 (2) A digital representation of value issued by or on behalf of a publisher and
26 used solely within an online game, game platform, or family of games sold
27 by the same publisher or offered on the same game platform.

28 ~~9.8.~~ "Virtual-currency address" means an alphanumeric identifier associated with a
29 virtual-currency wallet identifying the location to which a virtual-currency transaction
30 may be sent.

6-10.9. "Virtual-currency administration" means issuing virtual currency with the authority to redeem the currency for money, bank credit, or other virtual currency.

7-11.10. "Virtual-currency business activity" means:

- a. Exchanging, transferring, or storing virtual currency or engaging in virtual-currency administration, whether directly or through an agreement with a virtual-currency control-services vendor;
- b. Holding electronic precious metals or electronic certificates representing interests in precious metals on behalf of another person or issuing shares or electronic certificates representing interests in precious metals; or
- c. Exchanging one or more digital representations of value used within one or more online games, game platforms, or family of games for:
 - (1) Virtual currency offered by or on behalf of the same publisher from which the original digital representation of value was received; or
 - (2) Money or bank credit outside the online game, game platform, or family of games offered by or on behalf of the same publisher from which the original digital representation of value was received.

8-12.11. "Virtual-currency control-services vendor" means a person that has control of virtual currency solely under an agreement with a person that, on behalf of another person, assumes control of virtual currency.

13.12. "Virtual-currency kiosk" means an electronic terminal acting as a mechanical agent of the virtual-currency kiosk operator to enable the virtual-currency kiosk operator to facilitate the exchange of virtual currency for money, bank credit, or other virtual currency, including by:

- a. Connecting directly to a separate virtual-currency exchange that performs the actual virtual-currency transmission; or
- b. Drawing upon the virtual currency in the possession of the electronic terminal's operator.

14.13. "Virtual-currency kiosk operator" means a person that ~~engages in virtual-currency business activity via a money transmission kiosk located in this state or a person that owns, operates, or manages a money transmission kiosk located in this state through~~

~~which virtual-currency business activity is offered~~operates a virtual currency kiosk in this state.

~~15.14.~~ "Virtual-currency kiosk transaction" means:

- a. A transaction conducted or performed, in whole or in part, by electronic means via a virtual-currency kiosk.
- b. A transaction made at a virtual-currency kiosk to purchase virtual currency with fiat currency or to sell virtual currency for fiat currency.

~~16.15.~~ "Virtual-currency wallet" means a software application or other mechanism providing a means to hold, store, or transfer virtual currency.

SECTION 2. Section 13-09.1-50 of the North Dakota Century Code is created and enacted as follows:

13-09.1-50. Virtual-currency kiosks.

- 1. A kiosk operator may not engage in virtual-currency business activity or hold itself out as being able to engage in virtual-currency business activity with or on behalf of another person unless the kiosk operator is licensed in this state as a money transmitter.
- 2. A virtual-currency kiosk operator shall comply with all requirements of a money transmitter under this chapter.
- 3. A virtual-currency kiosk operator may not locate, or allow a third party to locate, a virtual-currency kiosk in this state unless the virtual-currency kiosk:
 - a. Is placed in a commercially accessible area;
 - b. Is accessible to users with sufficient space to account for mobility limitations of users; and
 - c. Is subject to security features, including sufficient lighting and surveillance.
- 4. Each virtual-currency kiosk operator shall submit a quarterly report of the location of each virtual-currency kiosk located within the state to the commissioner within forty-five days of the end of the calendar quarter. The location report must include:
 - a. The company's legal name;
 - b. Any fictitious or trade name;
 - c. The physical address;
 - d. The start date of operation of the virtual-currency kiosk at the location;

- 1 e. The end date of operation of the virtual-currency kiosk at the location, if
2 applicable; and
3 f. The virtual-currency addresses associated with the virtual-currency kiosk.

4 **SECTION 3.** Section 13-09.1-51 of the North Dakota Century Code is created and enacted
5 as follows:

6 **13-09.1-51. Disclosures.**

- 7 1. A virtual-currency kiosk operator shall disclose in a clear, conspicuous, and easily
8 readable manner in the chosen language of the customer, all relevant terms and
9 conditions generally associated with the products, services, and activities of the
10 virtual-currency kiosk operator and virtual currency.
11 2. The virtual-currency kiosk operator must receive acknowledgment of receipt of all
12 disclosures required under this section via confirmation of consent.
13 3. Each virtual-currency kiosk must include a warning written prominently and in bold
14 type, stated in substantially the following form:
15 a. WARNING: CONSUMER FRAUD OFTEN STARTS WITH CONTACT FROM A
16 STRANGER WHO IS INITIATING A DISHONEST SCHEME. I UNDERSTAND
17 THAT CRIMINAL ACTIVITY MAY APPEAR IN MANY FORMS, INCLUDING:
18 (1) Claims of a frozen bank account or credit card.
19 (2) Fraudulent bank transactions.
20 (3) Claims of identity theft or job offerings in exchange for payments.
21 (4) Requests for payments to government agencies or companies.
22 (5) Requests for disaster relief donations or loans.
23 (6) Offers to purchase tickets for lotteries, sweepstakes, or drawings for
24 vehicles.
25 (7) Prompts to click on desktop popups, such as virus warnings or
26 communication from alleged familiar merchants.
27 (8) Communication from someone impersonating a representative of your bank
28 or a law enforcement officer.
29 (9) IF YOU BELIEVE YOU ARE BEING SCAMMED, CALL A LOCAL LAW
30 ENFORCEMENT OFFICER BEFORE ANY TRANSACTION.

b. WARNING: FUNDS LOST DUE TO USER ERROR OR FRAUD MAY NOT BE RECOVERABLE. TRANSACTIONS CONDUCTED ON THIS VIRTUAL-CURRENCY KIOSK ARE IRREVERSIBLE. I UNDERSTAND THESE RISKS AND WISH TO CONTINUE WITH CONDUCTING MY VIRTUAL-CURRENCY KIOSK TRANSACTION. PROTECT YOURSELF FROM FRAUD. NEVER SEND MONEY TO SOMEONE YOU DO NOT KNOW.

4. The commissioner shall require the disclosure of material risks associated with virtual currency and virtual-currency transactions, including:

a. The transaction may not be reversed;

b. The virtual-currency kiosk operator's liability for unauthorized virtual currency transactions;

c. The virtual-currency kiosk customer's liability for unauthorized currency transactions;

d. Virtual currency is not legal tender, backed or insured by the government, and accounts and value balances are not subject to federal deposit insurance corporation, national credit union administration, or securities investor protection corporation protections;

e. Some virtual currency transactions are deemed to be made when recorded on a public ledger which may not be the date or time when the individual initiates the transaction;

f. Virtual currency's value may be derived from market participants' continued willingness to exchange fiat currency for virtual currency, which may result in the permanent and total loss of a particular virtual currency's value if the market for virtual currency disappears;

g. An individual who accepts a virtual currency as payment today is not required to accept and might not accept virtual currency in the future;

h. The volatility and unpredictability of the price of virtual currency relative to fiat currency may result in a significant loss over a short period;

i. The nature of virtual currency means any technological difficulties experienced by virtual-currency kiosk operators may prevent access to or use of an individual's virtual currency; and

j. Any bond maintained by the virtual-currency kiosk operator for the benefit of an individual may not cover all losses an individual incurs.

5. The commissioner shall require disclosure of:

a. The amount of the transaction denominated in United States dollars as well as the applicable virtual currency.

b. Any fees or expenses charged by the virtual-currency kiosk operator.

c. Any applicable exchange rates.

d. A daily virtual-currency transaction limit of no more than two thousand dollars ~~for the first five transactions within the first thirty-day period~~ per day.

e. Notice of a change in the virtual-currency kiosk operator's rules or policies.

f. The name, address, and telephone number of the owner of the kiosk and the days, time, and means by which a consumer may contact the owner for consumer assistance. Any relevant state and local law enforcement agency for reporting fraud must be displayed on or at the location of the virtual-currency kiosk or on the first screen of the kiosk.

g. Under what circumstances the virtual-currency kiosk operator, without a court or government order, discloses a person's account information to third parties.

h. Other disclosures customarily given in connection with a virtual currency transaction.

6. After the completion of each transaction, the virtual-currency kiosk operator shall provide an individual with a choice of a physical or digital receipt secured with two-factor identification in the language chosen by the customer containing the following:

a. The virtual-currency kiosk operator's name and contact information, including a telephone number to answer questions and register complaints;

b. The relevant state and local law enforcement or government agency for reporting fraud;

c. The type, value, date, and precise time of the transaction, transaction hash, and each applicable virtual-currency address;

d. A unique transaction number able to be linked to the sender during a fraud investigation;

- e. A unique transaction number able to be linked to the designated recipient during a fraud investigation;
- f. All fees charged;
- g. The exchange rate of the virtual currency to United States dollars;
- h. A statement of the virtual-currency kiosk operator's liability for nondelivery or delayed delivery; and
- i. A statement of the virtual-currency kiosk operator's refund policy.

SECTION 4. Section 13-09.1-52 of the North Dakota Century Code is created and enacted as follows:

13-09.1-52. Prevention of fraudulent activity.

- 1. A virtual-currency kiosk operator shall use blockchain analytics software to assist in the detection and prevention of suspicious activity, including sending purchased virtual currency from a virtual-currency kiosk operator to a virtual-currency wallet known to be affiliated with fraudulent activity at the time of a transaction and identifying patterns that reflect money laundering or other illicit activity. The commissioner may request evidence from any virtual-currency kiosk operator of use of blockchain analytics.
- 2. A virtual-currency kiosk operator shall take reasonable steps to detect and prevent fraud, including establishing and maintaining a written antifraud policy. The antifraud policy must 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.
- 3. Each virtual-currency kiosk operator shall designate and employ a compliance officer with the following requirements:
 - a. The individual must be qualified to coordinate and monitor compliance with this chapter and all other applicable federal and state laws and rules;
 - b. The individual must be employed full-time by the virtual-currency kiosk operator;
 - and

c. The designated compliance officer may not be an individual who owns more than twenty percent of the virtual-currency kiosk operator by whom the individual is employed.

4. Compliance responsibilities required under federal and state laws and rules must be completed by full-time employees of the virtual-currency kiosk operator.

5. A virtual-currency kiosk operator shall maintain, implement, and enforce a written enhanced due diligence policy. The policy must be reviewed and approved by the virtual-currency kiosk operator's board of directors or equivalent governing body.

6. A virtual-currency kiosk operator shall designate and employ a consumer protection officer. The consumer protection officer:

a. Must be qualified to coordinate and monitor compliance with state and federal law;

b. Must be employed full-time by the virtual-currency kiosk operator; and

c. May not own more than twenty percent of the virtual-currency kiosk operator.

SECTION 5. Section 13-09.1-53 of the North Dakota Century Code is created and enacted as follows:

13-09.1-53. Daily transaction limit.

A virtual-currency kiosk operator may not accept transactions of more than two thousand dollars of cash or the equivalent in virtual currency per calendar day ~~for the first five virtual-currency kiosk transactions occurring within the first thirty days of the first transaction~~ with a single customer in this state via one or more virtual-currency kiosks operated by the same virtual-currency operator.

SECTION 6. Section 13-09.1-54 of the North Dakota Century Code is created and enacted as follows:

13-09.1-54. Customer service.

A virtual-currency kiosk operator performing business in this state shall provide live customer service at a minimum on Monday through Friday between eight a.m. central time and ten p.m. central time. The customer service toll-free number must be displayed on the virtual-currency kiosk or the virtual-currency kiosk screens.