Illinois Embraces Smart Contracts with New Blockchain Legislation

Blockchain and the Law   on **January 24, 2020**

As we highlighted in our recent Practical Law Practice Note, Smart Contracts: Best Practices, various state lawmakers are paving the way for widespread use of blockchains and smart contracts in commerce. For example, on January 1, 2020, the Illinois Blockchain Technology Act (BTA) went into effect, resolving some legal uncertainties around the legal status of blockchains and smart contracts in Illinois.

"Smart Contracts," as defined by the BTA, are contracts stored as electronic records which are verified by the use of a blockchain. Smart Contracts can be deployed in a variety of legal and non-legal contexts, ranging from car rentals to supply chain management. However, one question that has loomed over smart contracts is how courts will review their enforceability, given that smart contracts may not resemble typical, written agreements. Some legislatures, and now Illinois, have sought to address this issue head-on, rather than waiting for courts to decide.

The BTA provides four permitted uses for blockchain and smart contracts:

1. A smart contract, record, or signature may not be denied legal effect or enforceability solely because a blockchain was used to create, store, or verify the smart contract, record, or signature.

2. In a proceeding, evidence of a smart contract, record, or signature must not be excluded solely because a blockchain was used to create, store, or verify the smart contract, record, or signature.

3. If a law requires a record to be in writing, submission of a blockchain which electronically contains the record satisfies the law.

4. If a law requires a signature, submission of a blockchain which electronically contains the signature or verifies the intent of a person to provide the signature satisfies the law.

In effect, these permitted uses prevent a court from denying smart contracts contractual or evidentiary effect solely by virtue of their status as a smart contract or electronic record stored on a blockchain, though courts will still have to review on a case by case basis. Tennessee and Arizona, among other states, passed similar legislation regarding contractual enforceability of smart contracts. Vermont passed a similar law handling the evidentiary effect of digital records such as smart contracts. Wyoming has also been active in adopting regulations related to digital assets, smart contracts, and blockchains.

Unlike other state laws, however, the BTA also provides a number of limitations:

- If any law requires a contract to be in writing to be enforceable, a smart contract may be denied enforceability unless it is capable of being retained and accurately reproduced later by all parties. This provision may address personal service contracts or agreements subject to a statute of frauds, which may require that the agreement be in writing to be enforceable.

- If any other law requires a record to be posted or sent in a specific manner, the record must still comply with that law to be enforceable.

- If a person inhibits the ability of another person to store or retrieve information contained in a blockchain, such information is not enforceable by the person who inhibited the storage or retrieval. This provision may assist parties to smart contracts that were not privy to drafting of the smart contract code.

- Notice or confirmation of receipt of notice may not be sent over blockchain in certain situations of public policy, such as cancelling a public utility, notice of default or eviction, cancellation of health benefits, or recall of products.

- A writing requirement is not satisfied by use of a blockchain in cases regarding the transportation of hazardous materials.

- The requirements of the BTA may not be altered by agreement, except when another law imposes certain writing requirements or first-class mailing requirements but permits parties to vary those requirements by agreement.

Lastly, the BTA provides that local governments may not impose any limits or requirements on the use of blockchains or smart contracts, including taxes, fees, or certification requirements. These prohibitions closely resemble Nevada's recent update to its Uniform Electronic Transactions Act.

Overall, the Illinois BTA is one of the more comprehensive laws on smart contracts and blockchain enforceability to date. While other state laws handling smart contracts generally address contractual enforceability, evidentiary standards, or local regulations separately, the BTA covers all three topics. The BTA may not open the floodgates of smart contract usage in Illinois, but it does provide some much needed certainty around how smart contracts and blockchains will be enforced and reviewed by courts in the future.

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