

LEGISLATIVE BILL 628

Approved by the Governor April 6, 2000

Introduced by Brashear, 4; Bruning, 3

AN ACT relating to records; to amend sections 84-712, 84-712.01, 84-712.03, and 86-1701, Reissue Revised Statutes of Nebraska; to provide requirements for the provision of copies of public records; to change provisions relating to public records and digital signatures; to provide for electronic signatures; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 84-712, Reissue Revised Statutes of Nebraska, is amended to read:

84-712. (1) Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in section 84-712.01, are hereby fully empowered and authorized to (a) examine the same, and ~~to~~ make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

(2) Copies made by citizens or other persons using their own copying or photocopying equipment pursuant to subdivision (1)(a) of this section shall be made on the premises of the custodian of the public record or at a location mutually agreed to by the requester and the custodian.

(3)(a) Copies may be obtained pursuant to subdivision (1)(b) of this section only if the custodian has copying equipment reasonably available. Such copies may be obtained in any form designated by the requester in which the public record is maintained or produced, including, but not limited to, printouts, electronic data, discs, tapes, and photocopies.

(b) Except as otherwise provided by statute, the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not exceed the actual cost of making the copies available. For purposes of this subdivision, (i) for photocopies, the actual cost of making the copies available shall not exceed the amount of the reasonably calculated actual cost of the photocopies, (ii) for printouts of computerized data on paper, the actual cost of making the copies available shall include the reasonably calculated actual cost of computer run time and the cost of materials for making the copy, and (iii) for electronic data, the actual cost of making the copies available shall include the reasonably calculated actual cost of the computer run time, any necessary analysis and programming, and the production of the report in the form furnished to the requester. State agencies which provide electronic access to public records through a gateway service shall obtain approval of their proposed reasonable fees for such records pursuant to sections 84-1205.02 and 84-1205.03, if applicable, and the actual cost of making the copies available may include the approved fee for the gateway service.

(c) This section shall not be construed to require a public body or custodian of a public record to produce or generate any public record in a new or different form or format modified from that of the original public record.

(d) If copies requested in accordance with subdivision (1)(b) of this section are estimated by the custodian of such public records to cost more than fifty dollars, the custodian may require the requester to furnish a deposit prior to fulfilling such request.

(4) Upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the

request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

Sec. 2. Section 84-712.01, Reissue Revised Statutes of Nebraska, is amended to read:

84-712.01. (1) Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

(2) When a custodian of a public record of a county ~~which has a population of one hundred thousand inhabitants or more as determined by the most recent federal decennial census~~ provides to a member of the public, upon request, a copy of the public record by transmitting it from a modem to an outside modem, a reasonable fee may be charged for such specialized service. Such fee may include a reasonable amount representing a portion of the amortization of the cost of computer equipment, including software, necessarily added in order to provide such specialized service. This subsection shall not be construed to require a governmental entity to acquire computer capability to generate public records in a new or different form when that new form would require additional computer equipment or software not already possessed by the governmental entity.

(3) Sections 84-712 to 84-712.03 shall be liberally construed whenever any state, county, or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt, or other record of receipt, cash, or expenditure involving public funds is involved in order that the citizens of this state shall have the full right to know of and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

Sec. 3. Section 84-712.03, Reissue Revised Statutes of Nebraska, is amended to read:

84-712.03. Any person denied any rights granted by sections 84-712 to 84-712.03 may elect to:

(1) ~~file~~ File for speedy relief by a writ of mandamus in the district court within whose jurisdiction the state, county, or political subdivision officer who has custody of ~~said~~ the public record can be served; or

(2) ~~petition~~ Petition the Attorney General to review the ~~record matter~~ to determine whether ~~it~~ a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections. This determination shall be made within fifteen calendar days of the submission of the petition. If the Attorney General determines that the record may not be withheld or that the public body is otherwise not in compliance, the public body shall be ordered to disclose the record immediately or otherwise comply. If the public body continues to withhold the record or remain in noncompliance, the person seeking disclosure or compliance may (a) bring suit in the trial court of general jurisdiction or (b) demand in writing that the Attorney General bring suit in the name of the state in the trial court of general jurisdiction for the same purpose. If such demand is made, the Attorney General shall bring suit within fifteen calendar days of its receipt. The requester shall have an absolute right to intervene as a full party in the suit at any time.

In any suit filed under this section, the court has jurisdiction to enjoin the public body from withholding records, to order the disclosure, and to grant such other equitable relief as may be proper. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and in the discretion of the court other persons, including the requester, counsel, and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders.

Proceedings arising under this section, except as to the cases the court considers of greater importance, shall take precedence on the docket over all other cases and shall be assigned for hearing, trial, or argument at the earliest practicable date and expedited in every way.

Sec. 4. Section 86-1701, Reissue Revised Statutes of Nebraska, is amended to read:

86-1701. (1) It is the intent of the Legislature to promote economic growth and the efficient operation of business and government in Nebraska through the electronic exchange of information and legally binding electronic transactions. In order to facilitate the electronic exchange of

information, Nebraska must establish means to ensure that electronic transactions are legally binding and enforceable, while ensuring that security measures are in place to prevent opportunities for fraud and misuse.

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

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

~~(2)~~ (3) In any communication in which a signature is required or used, a state agency or political subdivision may accept a digital signature or an electronic signature and may accept the communication in electronic format. Any use of a digital signature, an electronic signature, or an electronic communication by a court is subject to the rules of the Supreme Court.

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

- (a) Identify and define the type of signature which may be used in the electronic communications governed by the rules and regulations;
- (b) Identify and define the type of electronic communications for which a digital signature or an electronic signature may be used; and
- (c) Provide a degree of security reasonably related to the risks and consequences of fraud or misuse for the type of electronic communication which, at a minimum, shall require the maintenance of an audit trail of the assignment or approval and the use of the unique access code or unique electronic identifier.

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

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

(7) The Secretary of State shall adopt and promulgate rules and regulations to carry out this section. The initial rules and regulations shall be adopted no later than January 17, 1999. In developing the rules and regulations, the Secretary of State shall seek the advice of public and private entities, including the Department of Administrative Services.

~~(3)~~ The use or acceptance of a digital signature shall be at the option of the parties to the communication. Nothing in this section shall require a person to use or permit the use of a digital signature.

~~(4)~~ (8) For purposes of this section:

- (a) Electronic signature means a unique access code or other unique electronic identifier assigned or approved by the state agency for use in communications with the state agency;
- (b) Digital ~~digital~~ signature means an electronic identifier, created by computer, intended by the person using it to have the same force and effect as a manual signature; and
- (c) State agency means any agency, board, court, or constitutional officer of the executive, judicial, and legislative branches of state government, except individual members of the Legislature.

Sec. 5. Original sections 84-712, 84-712.01, 84-712.03, and 86-1701, Reissue Revised Statutes of Nebraska, are repealed.