

AMENDMENTS TO LB934

(Amendments to Standing Committee amendments, AM2706)

Introduced by Armendariz, 18.

1 1. Insert the following new amendments:

2 1. Insert the following new sections:

3 Sec. 4. Section 87-302, Revised Statutes Cumulative Supplement,
4 2022, is amended to read:

5 87-302 (a) A person engages in a deceptive trade practice when, in
6 the course of his or her business, vocation, or occupation, he or she:

7 (1) Passes off goods or services as those of another;

8 (2) Causes likelihood of confusion or of misunderstanding as to the
9 source, sponsorship, approval, or certification of goods or services;

10 (3) Causes likelihood of confusion or of misunderstanding as to
11 affiliation, connection, or association with, or certification by,
12 another;

13 (4) Uses deceptive representations or designations of geographic
14 origin in connection with goods or services;

15 (5) Represents that goods or services have sponsorship, approval,
16 characteristics, ingredients, uses, benefits, or quantities that they do
17 not have or that a person has a sponsorship, approval, status,
18 affiliation, or connection that he or she does not have;

19 (6) Represents that goods or services do not have sponsorship,
20 approval, characteristics, ingredients, uses, benefits, or quantities
21 that they have or that a person does not have a sponsorship, approval,
22 status, affiliation, or connection that he or she has;

23 (7) Represents that goods are original or new if they are
24 deteriorated, altered, reconditioned, reclaimed, used, or secondhand,
25 except that sellers may repair damage to and make adjustments on or
26 replace parts of otherwise new goods in an effort to place such goods in

1 compliance with factory specifications;

2 (8) Represents that goods or services are of a particular standard,
3 quality, or grade, or that goods are of a particular style or model, if
4 they are of another;

5 (9) Disparages the goods, services, or business of another by false
6 or misleading representation of fact;

7 (10) Advertises goods or services with intent not to sell them as
8 advertised or advertises the price in any manner calculated or tending to
9 mislead or in any way deceive a person;

10 (11) Advertises goods or services with intent not to supply
11 reasonably expectable public demand, unless the advertisement discloses a
12 limitation of quantity;

13 (12) Makes false or misleading statements of fact concerning the
14 reasons for, existence of, or amounts of price reductions;

15 (13) Uses or promotes the use of or establishes, operates, or
16 participates in a pyramid promotional scheme in connection with the
17 solicitation of such scheme to members of the public. This subdivision
18 shall not be construed to prohibit a plan or operation, or to define a
19 plan or operation as a pyramid promotional scheme, based on the fact that
20 participants in the plan or operation give consideration in return for
21 the right to receive compensation based upon purchases of goods,
22 services, or intangible property by participants for personal use,
23 consumption, or resale so long as the plan or operation does not promote
24 or induce inventory loading and the plan or operation implements an
25 appropriate inventory repurchase program;

26 (14) With respect to a sale or lease to a natural person of goods or
27 services purchased or leased primarily for personal, family, household,
28 or agricultural purposes, uses or employs any referral or chain referral
29 sales technique, plan, arrangement, or agreement;

30 (15) Knowingly makes a false or misleading statement in a privacy
31 policy, published on the Internet or otherwise distributed or published,

1 regarding the use of personal information submitted by members of the
2 public;

3 (16) Uses any scheme or device to defraud by means of:

4 (i) Obtaining money or property by knowingly false or fraudulent
5 pretenses, representations, or promises; or

6 (ii) Selling, distributing, supplying, furnishing, or procuring any
7 property for the purpose of furthering such scheme;

8 (17) Offers an unsolicited check, through the mail or by other
9 means, to promote goods or services if the cashing or depositing of the
10 check obligates the endorser or payee identified on the check to pay for
11 goods or services. This subdivision does not apply to an extension of
12 credit or an offer to lend money;

13 (18) Mails or causes to be sent an unsolicited billing statement,
14 invoice, or other document that appears to obligate the consumer to make
15 a payment for services or merchandise he or she did not order;

16 (19)(i) Installs, offers to install, or makes available for
17 installation or download a covered file-sharing program on a computer not
18 owned by such person without providing clear and conspicuous notice to
19 the owner or authorized user of the computer that files on that computer
20 will be made available to the public and without requiring intentional
21 and affirmative activation of the file-sharing function of such covered
22 file-sharing program by the owner or authorized user of the computer; or

23 (ii) Prevents reasonable efforts to block the installation,
24 execution, or disabling of a covered file-sharing program;

25 (20) Violates any provision of the Nebraska Foreclosure Protection
26 Act;

27 (21) In connection with the solicitation of funds or other assets
28 for any charitable purpose, or in connection with any solicitation which
29 represents that funds or assets will be used for any charitable purpose,
30 uses or employs any deception, fraud, false pretense, false promise,
31 misrepresentation, unfair practice, or concealment, suppression, or

1 omission of any material fact;~~or~~

2 (22)(i) ~~(22)~~ In the manufacture, production, importation,
3 distribution, promotion, display for sale, offer for sale, attempt to
4 sell, or sale of a substance:

5 (A) ~~(i)~~ Makes a deceptive or misleading representation or
6 designation, or omits material information, about a substance or fails to
7 identify the contents of the package or the nature of the substance
8 contained inside the package; or

9 (B) ~~(ii)~~ Causes confusion or misunderstanding as to the effects a
10 substance causes when ingested, injected, inhaled, or otherwise
11 introduced into the human body.

12 (ii) A person shall be deemed to have committed a violation of the
13 Uniform Deceptive Trade Practices Act for each individually packaged
14 product that is either manufactured, produced, imported, distributed,
15 promoted, displayed for sale, offered for sale, attempted to sell, or
16 sold in violation of this section. A violation under this subdivision (a)
17 (22) shall be treated as a separate and distinct violation from any other
18 offense arising out of acts alleged to have been committed while the
19 person was in violation of this section; or -

20 (23)(i) Manufactures, produces, publishes, distributes, monetizes,
21 promotes, or otherwise makes publicly available any visual depiction of
22 sexually explicit conduct, any obscene material, or any material that is
23 harmful to minors in which any person depicted as a participant or
24 observer:

25 (A) Is under eighteen years of age;

26 (B) Is a trafficking victim;

27 (C) Has not expressly and voluntarily consented to such person's
28 depiction; or

29 (D) Participated in any act depicted without consent.

30 (ii) This subdivision (a)(23) does not apply to any
31 telecommunications service.

1 (iii) For purposes of this subdivision (a)(23):

2 (A) Harmful to minors has the same meaning as in 47 U.S.C. 254, as
3 such section existed on January 1, 2024;

4 (B) Obscene material has the same meaning as in section 28-807;

5 (C) Promote means to use any mechanism or publication, or take any
6 action, that suggests, highlights, advertises, markets, curates,
7 backlinks, hashtags, or otherwise directs, attempts to direct, or
8 encourages traffic toward specific materials, including acts carried out
9 affirmatively, through automation, algorithmically, and via other
10 technical means both known and unknown at this time;

11 (D) Publish means to communicate or make information available to
12 another person via an Internet website, regardless of whether the person
13 consuming, viewing, or receiving the material gives any consideration for
14 the published material;

15 (E) Trafficking victim has the same meaning as in section 28-830;

16 (F) Visual depiction of sexually explicit conduct has the same
17 meaning as in section 28-1463.02; and

18 (G) Without consent has the same meaning as in section 28-318.

19 (b) In order to prevail in an action under the Uniform Deceptive
20 Trade Practices Act, a complainant need not prove competition between the
21 parties.

22 (c) This section does not affect unfair trade practices otherwise
23 actionable at common law or under other statutes of this state.

24 Sec. 6. Section 87-303.11, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 87-303.11 (1) Any person who violates section 87-302 or 87-303.01
27 or who willfully violates the terms of an injunction or declaratory
28 judgment of a district court or the terms of a written assurance of
29 voluntary compliance entered into pursuant to the Uniform Deceptive Trade
30 Practices Act shall be subject to a civil penalty of not more than two
31 thousand dollars for each violation. The Attorney General, acting in the

1 name of the state, may seek recovery of such civil penalties in a civil
2 action.

3 (2) For purposes of this section, the district court which issues
4 any injunction shall retain jurisdiction and the cause shall be continued
5 while the Attorney General seeks the recovery of such civil penalties.

6 (3) Any civil penalties collected under this section shall be
7 remitted to the State Treasurer for distribution in accordance with
8 Article VII, section 5, of the Constitution of Nebraska.

9 6. Renumber the remaining sections, correct internal references, and
10 correct the repealer accordingly.

11 2. Renumber the remaining amendments accordingly.