

E AND R AMENDMENTS TO LB 934

Introduced by Ballard, 21, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Section 59-1608.01, Reissue Revised Statutes of Nebraska,
4 is amended to read:

5 59-1608.01 (1) In the enforcement of the Consumer Protection Act,
6 the Attorney General may bring an action in the name of the state in the
7 district court of:

8 (a) The ~~the~~ county in which the alleged violator resides or has his
9 or her principal place of business;

10 (b) A county in which the Attorney General brings a related claim
11 arising under the Uniform Deceptive Trade Practices Act; or

12 (c) ~~in~~ Lancaster County.

13 (2) The Attorney General or defendant may demand that any claim
14 under the Consumer Protection Act be tried by a jury.

15 Sec. 2. Section 59-1611, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 59-1611 (1) Whenever the Attorney General believes that any person
18 may be in possession, custody, or control of any original or copy of any
19 book, record, report, memorandum, paper, communication, tabulation, map,
20 chart, photograph, mechanical transcription, or other tangible document
21 or recording, wherever situated, which he or she believes to be relevant
22 to the subject matter of an investigation of a possible violation of
23 sections 59-1602 to 59-1606, the Attorney General may, prior to the
24 institution of a civil proceeding thereon, execute in writing and cause
25 to be served upon such a person a civil investigative demand requiring
26 such person to produce such documentary material and permit inspection
27 and copying thereof. This section shall not be applicable to criminal

1 prosecutions.

2 (2) Each such demand shall:

3 (a) State the statute and section or sections thereof the alleged
4 violation of which is under investigation, and the general subject matter
5 of the investigation;

6 (b) Describe the class or classes of documentary material to be
7 produced thereunder with reasonable specificity so as fairly to indicate
8 the material demanded;

9 (c) Prescribe a return date within which the documentary material
10 shall be produced; and

11 (d) Identify the members of the Attorney General's staff to whom
12 such documentary material shall be made available for inspection and
13 copying.

14 (3) No such demand shall:

15 (a) Contain any requirement which would be unreasonable or improper
16 if contained in a subpoena duces tecum issued by a court of this state;
17 or

18 (b) Require the disclosure of any documentary material which would
19 be privileged, or which for any other reason would not be required by a
20 subpoena duces tecum issued by a court of this state.

21 (4) Service of any such demand may be made by:

22 (a) Delivering a duly executed copy thereof to the person to be
23 served, or, if such person is not a natural person, to any officer of the
24 person to be served;

25 (b) Delivering a duly executed copy thereof to the principal place
26 of business in this state of the person to be served; or

27 (c) Mailing by certified mail a duly executed copy thereof addressed
28 to the person to be served at the principal place of business in this
29 state, or, if such person has no place of business in this state, to his
30 or her principal office or place of business.

31 (5) Documentary material demanded pursuant to the provisions of this

1 section shall be produced for inspection and copying during normal
2 business hours at the principal office or place of business of the person
3 served, or at such other times and places as may be agreed upon by the
4 person served and the Attorney General.

5 (6) No documentary material produced pursuant to a demand, or copies
6 thereof, shall, unless otherwise ordered by a district court for good
7 cause shown, be produced for inspection or copying by, nor shall the
8 contents thereof be disclosed to, other than an authorized employee of
9 the Attorney General, without the consent of the person who produced such
10 material, except that:

11 (a) Under such reasonable terms and conditions as the Attorney
12 General shall prescribe, the copies of such documentary material shall be
13 available for inspection and copying by the person who produced such
14 material or any duly authorized representative of such person;

15 (b) The Attorney General may provide copies of such documentary
16 material to an official of this or any other state, or an official of the
17 federal government, who is charged with the enforcement of federal or
18 state antitrust or consumer protection laws, if such official agrees in
19 writing to not disclose such documentary material to any person other
20 than the official's authorized employees, except as such disclosure is
21 permitted under subdivision (c) of this subsection; and

22 (c) The Attorney General or any assistant attorney general or an
23 official authorized to receive copies of documentary material under
24 subdivision (b) of this subsection may use such copies of documentary
25 material as he or she determines necessary in the enforcement of the
26 Consumer Protection Act or any state or federal consumer protection laws
27 that any state or federal official has authority to enforce, including
28 presentation before any court, except that any such material which
29 contains trade secrets shall not be presented except with the approval of
30 the court in which action is pending after adequate notice to the person
31 furnishing such material.

1 (7) At any time before the return date specified in the demand, or
2 within twenty days after the demand has been served, whichever period is
3 shorter, a petition to extend the return date for or to modify or set
4 aside a demand issued pursuant to subsection (1) of this section, stating
5 good cause, may be filed in the district court for Lancaster County, or
6 in such other county where the parties reside. A petition by the person
7 on whom the demand is served, stating good cause, to require the Attorney
8 General or any person to perform any duty imposed by the provisions of
9 this section, and all other petitions in connection with a demand, may be
10 filed in the district court for Lancaster County or in the county where
11 the parties reside.

12 (8) Whenever any person fails to comply with any civil investigative
13 demand for documentary material duly served upon him or her under this
14 section, or whenever satisfactory copying or reproduction of any such
15 material cannot be done and such person refuses to surrender such
16 material, the Attorney General may file, in the district court of the
17 county in which such person resides, is found, or transacts business, and
18 serve upon such person a petition for an order of such court for the
19 enforcement of this section, except that if such person transacts
20 business in more than one county such petition shall be filed in the
21 county in which such person maintains his or her principal place of
22 business or in such other county as may be agreed upon by the parties to
23 such petition. Whenever any petition is filed in the district court of
24 any county under this section, such court shall have jurisdiction to hear
25 and determine the matter so presented and to enter such order as may be
26 required to carry into effect the provisions of this section.
27 Disobedience of any order entered under this section by any court shall
28 be punished as a contempt thereof.

29 (9) When the Attorney General has reasonable cause to believe that
30 any person has engaged in or is engaging in any violation of sections
31 59-1602 to 59-1606, the Attorney General may:

1 (a) Require such person to file a statement or report in writing
2 under oath or otherwise, on such forms as shall be prescribed by the
3 Attorney General, as to all facts and circumstances concerning the sale,
4 offer, or advertisement of property or services by such person, and such
5 other data and information as the Attorney General deems necessary;

6 (b) Examine under oath any person in connection with the sale or
7 advertisement of any property or services;

8 (c) Examine any property or sample thereof, record, book, document,
9 account, or paper as the Attorney General deems necessary;

10 (d) Pursuant to an order of any district court, impound any record,
11 book, document, account, paper, or sample of property which is material
12 to such violation and retain the same in his or her possession until the
13 completion of all proceedings undertaken under the Consumer Protection
14 Act; or

15 (e) Obtain an order freezing or impounding connected accounts or
16 assets as provided in subsection (10) of this section.

17 (10)(a) For purposes of this subsection, connected accounts or
18 assets means any bank account, other financial account, money, asset, or
19 property connected with any alleged violation of sections 59-1602 to
20 59-1606.

21 (b) In order to ensure the availability of resources needed to
22 provide restitution or any other remedy available to a consumer by law,
23 the Attorney General may request an ex parte order from the district
24 court temporarily freezing or impounding connected accounts or assets. If
25 granted, such order shall be effective for a period of fourteen days, and
26 the court shall set the matter for a hearing. The Attorney General shall
27 provide notice of the order and hearing to the owner of the connected
28 account or asset. Such notice may be made by publication.

29 (c) Following such hearing, the court may extend the temporary order
30 for any period up to the completion of all proceedings undertaken under
31 the Consumer Protection Act unless earlier canceled or modified at the

1 request of the Attorney General.

2 Sec. 3. Section 59-1623, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 59-1623 Sections 59-1601 to 59-1623 ~~59-1622~~ shall be known and may
5 be cited as the Consumer Protection Act.

6 Sec. 4. Section 87-302, Revised Statutes Cumulative Supplement,
7 2022, is amended to read:

8 87-302 (a) A person engages in a deceptive trade practice when, in
9 the course of his or her business, vocation, or occupation, he or she:

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

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

13 (3) Causes likelihood of confusion or of misunderstanding as to
14 affiliation, connection, or association with, or certification by,
15 another;

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

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

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

26 (7) Represents that goods are original or new if they are
27 deteriorated, altered, reconditioned, reclaimed, used, or secondhand,
28 except that sellers may repair damage to and make adjustments on or
29 replace parts of otherwise new goods in an effort to place such goods in
30 compliance with factory specifications;

31 (8) Represents that goods or services are of a particular standard,

1 quality, or grade, or that goods are of a particular style or model, if
2 they are of another;

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

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

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

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

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

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

28 (15) Knowingly makes a false or misleading statement in a privacy
29 policy, published on the Internet or otherwise distributed or published,
30 regarding the use of personal information submitted by members of the
31 public;

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

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

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

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

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

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

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

23 (20) Violates any provision of the Nebraska Foreclosure Protection
24 Act;

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

31 (22)(i) ~~(22)~~ In the manufacture, production, importation,

1 distribution, promotion, display for sale, offer for sale, attempt to
2 sell, or sale of a substance:

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

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

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

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

23 (A) Is under eighteen years of age;

24 (B) Is a trafficking victim;

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

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

28 (ii) This subdivision (a)(23) does not apply to any
29 telecommunications service.

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

31 (A) Harmful to minors has the same meaning as in 47 U.S.C. 254, as

1 such section existed on January 1, 2024;

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

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

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

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

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

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

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

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

22 Sec. 5. Section 87-303.02, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 87-303.02 (a) When the Attorney General has reasonable cause to
25 believe that any person has engaged in or is engaging in any deceptive
26 trade practice or unconscionable act listed in section 87-302 or
27 87-303.01, the Attorney General may:

28 (1) (a) Require any such person to file a statement or report in
29 writing under oath or otherwise, on such forms as shall be prescribed by
30 the Attorney General, as to all facts and circumstances concerning any
31 deceptive trade practice or unconscionable act listed in section 87-302

1 ~~or 87-303.01 known the sale, offer, or advertisement of property~~ by such
2 person, and such other data and information as the Attorney General deems
3 necessary;

4 (2) (b) Examine under oath any person in connection with any
5 deceptive trade practice or unconscionable act listed in section 87-302
6 or 87-303.01 the sale or advertisement of any property;

7 (3) (c) Examine any property or sample thereof, record, book,
8 document, account, or paper as the Attorney General deems necessary;~~or~~

9 (4) (d) Pursuant to an order of any district court, impound any
10 record, book, document, account, paper, or sample of property which is
11 material to such practice and retain the same in his or her possession
12 until the completion of all proceedings undertaken under the Uniform
13 Deceptive Trade Practices Act; or -

14 (5) Obtain an order freezing or impounding connected accounts or
15 assets as provided in subsection (b) of this section.

16 (b)(1) For purposes of this subsection, connected accounts or assets
17 means any bank account, other financial account, money, asset, or
18 property connected with any alleged deceptive trade practice or
19 unconscionable act listed in section 87-302 or 87-303.01.

20 (2) In order to ensure the availability of resources needed to
21 provide restitution or any other remedy available to a consumer by law,
22 the Attorney General may request an ex parte order from the district
23 court temporarily freezing or impounding connected accounts or assets. If
24 granted, such order shall be effective for a period of fourteen days, and
25 the court shall set the matter for a hearing. The Attorney General shall
26 provide notice of the order and hearing to the owner of the connected
27 account or asset. Such notice may be made by publication.

28 (3) Following such hearing, the court may extend the temporary order
29 for any period up to the completion of all proceedings undertaken under
30 the Uniform Deceptive Trade Practices Act unless earlier canceled or
31 modified at the request of the Attorney General.

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

3 87-303.11 (1) Any person who violates section 87-302 or 87-303.01
4 or who willfully violates the terms of an injunction or declaratory
5 judgment of a district court or the terms of a written assurance of
6 voluntary compliance entered into pursuant to the Uniform Deceptive Trade
7 Practices Act shall be subject to a civil penalty of not more than two
8 thousand dollars for each violation. The Attorney General, acting in the
9 name of the state, may seek recovery of such civil penalties in a civil
10 action.

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

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

17 Sec. 7. The Attorney General or defendant may demand that any claim
18 under the Uniform Deceptive Trade Practices Act be tried by a jury.

19 Sec. 8. Section 87-306, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 87-306 Sections 87-301 to 87-306 and section 7 of this act shall be
22 known and may be cited as the Uniform Deceptive Trade Practices Act.

23 Sec. 9. If any section in this act or any part of any section is
24 declared invalid or unconstitutional, the declaration shall not affect
25 the validity or constitutionality of the remaining portions.

26 Sec. 10. Original sections 59-1608.01, 59-1611, 59-1623, 87-303.02,
27 87-303.11, and 87-306, Reissue Revised Statutes of Nebraska, and section
28 87-302, Revised Statutes Cumulative Supplement, 2022, are repealed.

29 2. On page 1, strike beginning with "and" in line 2 through line 8
30 and insert "87-303.11, and 87-306, Reissue Revised Statutes of Nebraska,
31 and section 87-302, Revised Statutes Cumulative Supplement, 2022; to

1 change provisions relating to venue for actions under the Consumer
2 Protection Act; to change enforcement and investigation powers of the
3 Attorney General for violations of such act and the Uniform Deceptive
4 Trade Practices Act; to provide for jury trials; to designate certain
5 activity as a deceptive trade practice that makes certain sexually
6 explicit, obscene, or harmful material publicly available; to harmonize
7 provisions; to provide severability; and to repeal the original
8 sections."