

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 757

FINAL READING

Introduced by Morfeld, 46.

Read first time January 03, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to consumer protection; to amend sections
2 87-801 and 87-806, Reissue Revised Statutes of Nebraska, and
3 sections 8-2602, 8-2603.01, 8-2608.02, 8-2609, and 8-2609.01,
4 Revised Statutes Cumulative Supplement, 2016; to prohibit certain
5 fees under the Credit Report Protection Act; to change provisions
6 relating to the Financial Data Protection and Consumer Notification
7 of Data Security Breach Act of 2006; to require additional
8 reasonable security procedures and practices regarding personal
9 information; to provide applicability for certain provisions; to
10 harmonize provisions; and to repeal the original sections.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-2602, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 8-2602 For purposes of the Credit Report Protection Act:

4 (1) Consumer reporting agency means any person which, for monetary
5 fees, for dues, or on a cooperative nonprofit basis, regularly engages in
6 whole or in part in the practice of assembling or evaluating consumer
7 credit information or other information on consumers for the purpose of
8 furnishing consumer reports to third parties and which uses any means or
9 facility of interstate commerce for the purpose of preparing or
10 furnishing consumer reports;

11 (2) Credit report has the same meaning as consumer report as defined
12 in 15 U.S.C. 1681a(d);

13 (3) File, when used in connection with information on any consumer
14 or protected consumer, means all of the information on that consumer or
15 protected consumer recorded and retained by a consumer reporting agency
16 regardless of how the information is stored. File does not include a
17 record;

18 (4) Protected consumer means an individual who is (a) under sixteen
19 years of age at the time a request for the placement of a security freeze
20 is made or (b) an incapacitated person for whom a guardian or guardian ad
21 litem has been appointed;

22 (5) Record means a compilation of information that (a) identifies a
23 protected consumer, (b) is created by a consumer reporting agency solely
24 for the purpose of complying with section 8-2603.01, and (c) may not be
25 created or used to consider the protected consumer's credit worthiness,
26 credit standing, credit capacity, character, general reputation, personal
27 characteristics, or mode of living;

28 (6) Representative means a person who provides to a consumer
29 reporting agency sufficient proof of authority to act on behalf of a
30 protected consumer;

31 (7) Security freeze means:

1 (a) A notice placed in a consumer's file as provided in section
2 8-2603 that prohibits the consumer reporting agency from releasing a
3 credit report, or any other information derived from the file, in
4 connection with the extension of credit or the opening of a new account,
5 without the express authorization of the consumer;

6 (b) If a consumer reporting agency does not have a file pertaining
7 to a protected consumer, a restriction that:

8 (i) Is placed on the protected consumer's record in accordance with
9 section 8-2603.01; and

10 (ii) Prohibits the consumer reporting agency from releasing the
11 protected consumer's record except as provided in the Credit Report
12 Protection Act; or

13 (c) If a consumer reporting agency has a file pertaining to the
14 protected consumer, a restriction that:

15 (i) Is placed on the protected consumer's credit report in
16 accordance with section 8-2603.01; and

17 (ii) Prohibits the consumer reporting agency from releasing the
18 protected consumer's credit report or any information derived from the
19 protected consumer's credit report except as provided in section
20 8-2608.01;

21 (8) Substantially similar type of security product means any product
22 that provides the same level of protection to a consumer's or protected
23 consumer's credit report as that provided under the Credit Report
24 Protection Act regardless of the contact method used by a consumer or
25 protected consumer to request, temporarily lift, or remove a restriction
26 placed on the consumer's or protected consumer's credit report;

27 (9) (8) Sufficient proof of authority means documentation that shows
28 a representative has authority to act on behalf of a protected consumer.
29 Sufficient proof of authority includes, but is not limited to, an order
30 issued by a court of law, a lawfully executed and valid power of
31 attorney, or a written notarized statement signed by a representative

1 that expressly describes the authority of the representative to act on
2 behalf of a protected consumer. A representative who is a parent may
3 establish sufficient proof of authority by providing a certified or
4 official copy of the protected consumer's birth certificate;

5 ~~(10)~~ (9) Sufficient proof of identification means information or
6 documentation that identifies a consumer, a protected consumer, or a
7 representative of a protected consumer. Sufficient proof of
8 identification includes, but is not limited to, a social security number
9 or a copy of a social security card, a certified or official copy of a
10 birth certificate, a copy of a valid driver's license, or any other
11 government-issued identification; and

12 ~~(11)~~ (10) Victim of identity theft means a consumer or protected
13 consumer who has a copy of an official police report evidencing that the
14 consumer or protected consumer has alleged to be a victim of identity
15 theft.

16 Sec. 2. Section 8-2603.01, Revised Statutes Cumulative Supplement,
17 2016, is amended to read:

18 8-2603.01 (1) A consumer reporting agency shall place a security
19 freeze for a protected consumer if:

20 (a) The consumer reporting agency receives a request from the
21 representative for the placement of the security freeze under this
22 section; and

23 (b) The representative:

24 (i) Submits the request to the consumer reporting agency at the
25 address or other point of contact and in the manner specified by the
26 consumer reporting agency; and

27 (ii) Provides to the consumer reporting agency:

28 (A) Sufficient proof of identification of the protected consumer and
29 the representative; and

30 (B) Sufficient proof of authority to act on behalf of the protected
31 consumer. ~~and~~

1 ~~(iii) Pays to the consumer reporting agency a fee as provided in~~
2 ~~section 8-2609.01.~~

3 (2) If a consumer reporting agency does not have a file pertaining
4 to a protected consumer when the consumer reporting agency receives a
5 request described in subdivision (1)(a) of this section, the consumer
6 reporting agency shall create a record for the protected consumer.

7 (3) Within thirty days after receiving a request that meets the
8 requirements of this section, a consumer reporting agency shall place a
9 security freeze for the protected consumer.

10 Sec. 3. Section 8-2608.02, Revised Statutes Cumulative Supplement,
11 2016, is amended to read:

12 8-2608.02 If a protected consumer or the representative wishes to
13 remove a security freeze placed under section 8-2603.01 for the protected
14 consumer, the protected consumer or the representative shall:

15 (1) Submit a request for the removal of the security freeze to the
16 consumer reporting agency at the address or other point of contact and in
17 the manner specified by the consumer reporting agency; and

18 (2) Provide to the consumer reporting agency:

19 (a) ~~(a)(i)~~ In the case of a request by the protected consumer:

20 (i) ~~(A)~~ Proof that the sufficient proof of authority for the
21 representative to act on behalf of the protected consumer is no longer
22 valid; and

23 (ii) ~~(B)~~ Sufficient proof of identification of the protected
24 consumer; or

25 (b) ~~(ii)~~ In the case of a request by the representative:

26 (i) ~~(A)~~ Sufficient proof of identification of the protected consumer
27 and the representative; and

28 (ii) ~~(B)~~ Sufficient proof of authority to act on behalf of the
29 protected consumer. ~~;~~ ~~and~~

30 ~~(b) Payment of a fee as provided in section 8-2609.01.~~

31 Within thirty days after receiving a request that meets the

1 requirements of this section, the consumer reporting agency shall remove
2 the security freeze for the protected consumer.

3 Sec. 4. Section 8-2609, Revised Statutes Cumulative Supplement,
4 2016, is amended to read:

5 8-2609 (1) A consumer reporting agency ~~shall not~~ may charge any a
6 fee of three dollars for placing, temporarily lifting, or removing a
7 security freeze placed under section 8-2603 or for placing, temporarily
8 lifting, or removing any other substantially similar type of security
9 product. This subsection does not apply if the substantially similar type
10 of security product, alone or in combination with another product,
11 provides greater protection to the consumer than a security freeze.
12 ~~unless:~~

13 ~~(a) The consumer is a victim of identity theft; and~~

14 ~~(b) The consumer provides the consumer reporting agency with a copy~~
15 ~~of an official police report documenting the identity theft.~~

16 (2) A consumer reporting agency shall reissue the same or a new
17 personal identification number or password required under section 8-2605
18 one time without charge and may charge a fee of no more than five dollars
19 for subsequent reissuance of the personal identification number or
20 password.

21 Sec. 5. Section 8-2609.01, Revised Statutes Cumulative Supplement,
22 2016, is amended to read:

23 8-2609.01 ~~(1)~~ A consumer reporting agency ~~shall not~~ may charge any
24 a fee of three dollars for each placement or removal of a security freeze
25 or for placement or removal of any other substantially similar type of
26 security product for a protected consumer. This section does not apply if
27 the substantially similar type of security product, alone or in
28 combination with another product, provides greater protection to the
29 protected consumer than a security freeze.

30 ~~(2) A consumer reporting agency shall not charge any fee under this~~
31 ~~section if:~~

1 ~~(a)(i) The protected consumer is a victim of identity theft; and~~
2 ~~(ii) The protected consumer's representative provides the consumer~~
3 ~~reporting agency with a copy of an official police report documenting the~~
4 ~~identity theft; or~~

5 ~~(b)(i) A request for the placement or removal of a security freeze~~
6 ~~is for a protected consumer who is under the age of sixteen years at the~~
7 ~~time of the request; and~~

8 ~~(ii) The consumer reporting agency has a credit report pertaining to~~
9 ~~the protected consumer.~~

10 Sec. 6. Section 87-801, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 87-801 Sections 87-801 to 87-807 and section 7 of this act shall be
13 known and may be cited as the Financial Data Protection and Consumer
14 Notification of Data Security Breach Act of 2006.

15 Sec. 7. (1) To protect personal information from unauthorized
16 access, acquisition, destruction, use, modification, or disclosure, an
17 individual or a commercial entity that conducts business in Nebraska and
18 owns, licenses, or maintains computerized data that includes personal
19 information about a resident of Nebraska shall implement and maintain
20 reasonable security procedures and practices that are appropriate to the
21 nature and sensitivity of the personal information owned, licensed, or
22 maintained and the nature and size of, and the resources available to,
23 the business and its operations, including safeguards that protect the
24 personal information when the individual or commercial entity disposes of
25 the personal information.

26 (2)(a) An individual or commercial entity that discloses
27 computerized data that includes personal information about a Nebraska
28 resident to a nonaffiliated, third-party service provider shall require
29 by contract that the service provider implement and maintain reasonable
30 security procedures and practices that:

31 (i) Are appropriate to the nature of the personal information

1 disclosed to the service provider; and

2 (ii) Are reasonably designed to help protect the personal
3 information from unauthorized access, acquisition, destruction, use,
4 modification, or disclosure.

5 (b) This subsection does not apply to any contract entered into
6 before the effective date of this act. Any such contract renewed on or
7 after the effective date of this act shall comply with the requirements
8 of this subsection.

9 (3) An individual or a commercial entity complies with subsections
10 (1) and (2) of this section if the individual or commercial entity:

11 (a) Complies with a state or federal law that provides greater
12 protection to personal information than the protections that this section
13 provides; or

14 (b) Complies with the regulations promulgated under Title V of the
15 Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., or the Health Insurance
16 Portability and Accountability Act of 1996, 42 U.S.C. 1320d to 1320d-9,
17 as such acts and sections existed on January 1, 2018, if the individual
18 or commercial entity is subject to either or both of such acts or
19 sections.

20 Sec. 8. Section 87-806, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 87-806 (1) For purposes of the Financial Data Protection and
23 Consumer Notification of Data Security Breach Act of 2006, the Attorney
24 General may issue subpoenas and seek and recover direct economic damages
25 for each affected Nebraska resident injured by a violation of section
26 87-803 the act.

27 (2) A violation of section 7 of this act shall be considered a
28 violation of section 59-1602 and be subject to the Consumer Protection
29 Act and any other law which provides for the implementation and
30 enforcement of section 59-1602. A violation of section 7 of this act does
31 not give rise to a private cause of action.

1 Sec. 9. Original sections 87-801 and 87-806, Reissue Revised
2 Statutes of Nebraska, and sections 8-2602, 8-2603.01, 8-2608.02, 8-2609,
3 and 8-2609.01, Revised Statutes Cumulative Supplement, 2016, are
4 repealed.