

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 934**

FINAL READING

Introduced by Bosn, 25; Halloran, 33; Albrecht, 17; DeBoer, 10.

Read first time January 04, 2024

Committee: Judiciary

1 A BILL FOR AN ACT relating to consumer protection; to amend sections  
2 59-1608.01, 59-1611, 59-1623, 87-303.02, 87-303.11, and 87-306,  
3 Reissue Revised Statutes of Nebraska, and section 87-302, Revised  
4 Statutes Cumulative Supplement, 2022; to change provisions relating  
5 to venue for actions under the Consumer Protection Act; to change  
6 enforcement and investigation powers of the Attorney General for  
7 violations of such act and the Uniform Deceptive Trade Practices  
8 Act; to provide for jury trials; to designate certain activity as a  
9 deceptive trade practice that makes certain sexually explicit,  
10 obscene, or harmful material publicly available; to harmonize  
11 provisions; to provide severability; to repeal the original  
12 sections; and to declare an emergency.  
13 Be it enacted by the people of the State of Nebraska,

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

3 59-1608.01 (1) In the enforcement of the Consumer Protection Act,  
4 the Attorney General may bring an action in the name of the state in the  
5 district court of:

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

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

10 (c) in Lancaster County.

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

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

15 59-1611 (1) Whenever the Attorney General believes that any person  
16 may be in possession, custody, or control of any original or copy of any  
17 book, record, report, memorandum, paper, communication, tabulation, map,  
18 chart, photograph, mechanical transcription, or other tangible document  
19 or recording, wherever situated, which he or she believes to be relevant  
20 to the subject matter of an investigation of a possible violation of  
21 sections 59-1602 to 59-1606, the Attorney General may, prior to the  
22 institution of a civil proceeding thereon, execute in writing and cause  
23 to be served upon such a person a civil investigative demand requiring  
24 such person to produce such documentary material and permit inspection  
25 and copying thereof. This section shall not be applicable to criminal  
26 prosecutions.

27 (2) Each such demand shall:

28 (a) State the statute and section or sections thereof the alleged  
29 violation of which is under investigation, and the general subject matter  
30 of the investigation;

31 (b) Describe the class or classes of documentary material to be

1 produced thereunder with reasonable specificity so as fairly to indicate  
2 the material demanded;

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

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

8 (3) No such demand shall:

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

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

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

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

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

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

25 (5) Documentary material demanded pursuant to the provisions of this  
26 section shall be produced for inspection and copying during normal  
27 business hours at the principal office or place of business of the person  
28 served, or at such other times and places as may be agreed upon by the  
29 person served and the Attorney General.

30 (6) No documentary material produced pursuant to a demand, or copies  
31 thereof, shall, unless otherwise ordered by a district court for good

1 cause shown, be produced for inspection or copying by, nor shall the  
2 contents thereof be disclosed to, other than an authorized employee of  
3 the Attorney General, without the consent of the person who produced such  
4 material, except that:

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

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

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

26 (7) At any time before the return date specified in the demand, or  
27 within twenty days after the demand has been served, whichever period is  
28 shorter, a petition to extend the return date for or to modify or set  
29 aside a demand issued pursuant to subsection (1) of this section, stating  
30 good cause, may be filed in the district court for Lancaster County, or  
31 in such other county where the parties reside. A petition by the person

1 on whom the demand is served, stating good cause, to require the Attorney  
2 General or any person to perform any duty imposed by the provisions of  
3 this section, and all other petitions in connection with a demand, may be  
4 filed in the district court for Lancaster County or in the county where  
5 the parties reside.

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

23 (9) When the Attorney General has reasonable cause to believe that  
24 any person has engaged in or is engaging in any violation of sections  
25 59-1602 to 59-1606, the Attorney General may:

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

31 (b) Examine under oath any person in connection with the sale or

1 advertisement of any property or services;

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

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

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

11 (10)(a) For purposes of this subsection, connected accounts or  
12 assets means any bank account, other financial account, money, asset, or  
13 property connected with any alleged violation of sections 59-1602 to  
14 59-1606.

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

23 (c) Following such hearing, the court may extend the temporary order  
24 for any period up to the completion of all proceedings undertaken under  
25 the Consumer Protection Act unless earlier canceled or modified at the  
26 request of the Attorney General.

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

29 59-1623 Sections 59-1601 to 59-1623 ~~59-1622~~ shall be known and may  
30 be cited as the Consumer Protection Act.

31 Sec. 4. Section 87-302, Revised Statutes Cumulative Supplement,

1 2022, is amended to read:

2 87-302 (a) A person engages in a deceptive trade practice when, in  
3 the course of his or her business, vocation, or occupation, he or she:

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

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

7 (3) Causes likelihood of confusion or of misunderstanding as to  
8 affiliation, connection, or association with, or certification by,  
9 another;

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

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

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

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

25 (8) Represents that goods or services are of a particular standard,  
26 quality, or grade, or that goods are of a particular style or model, if  
27 they are of another;

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

30 (10) Advertises goods or services with intent not to sell them as  
31 advertised or advertises the price in any manner calculated or tending to

1 mislead or in any way deceive a person;

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

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

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

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

22 (15) Knowingly makes a false or misleading statement in a privacy  
23 policy, published on the Internet or otherwise distributed or published,  
24 regarding the use of personal information submitted by members of the  
25 public;

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

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

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

31 (17) Offers an unsolicited check, through the mail or by other



1 means, to promote goods or services if the cashing or depositing of the  
2 check obligates the endorser or payee identified on the check to pay for  
3 goods or services. This subdivision does not apply to an extension of  
4 credit or an offer to lend money;

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

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

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

17 (20) Violates any provision of the Nebraska Foreclosure Protection  
18 Act;

19 (21) In connection with the solicitation of funds or other assets  
20 for any charitable purpose, or in connection with any solicitation which  
21 represents that funds or assets will be used for any charitable purpose,  
22 uses or employs any deception, fraud, false pretense, false promise,  
23 misrepresentation, unfair practice, or concealment, suppression, or  
24 omission of any material fact; ~~or~~

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

28 (A) ~~(i)~~ Makes a deceptive or misleading representation or  
29 designation, or omits material information, about a substance or fails to  
30 identify the contents of the package or the nature of the substance  
31 contained inside the package; or

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

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

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

17           (A) Is under eighteen years of age;

18           (B) Is a trafficking victim;

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

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

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

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

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

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

28           (C) Promote means to use any mechanism or publication, or take any  
29 action, that suggests, highlights, advertises, markets, curates,  
30 backlinks, hashtags, or otherwise directs, attempts to direct, or  
31 encourages traffic toward specific materials, including acts carried out

1 affirmatively, through automation, algorithmically, and via other  
2 technical means both known and unknown at this time;

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

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

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

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

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

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

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

18 87-303.02 (a) When the Attorney General has reasonable cause to  
19 believe that any person has engaged in or is engaging in any deceptive  
20 trade practice or unconscionable act listed in section 87-302 or  
21 87-303.01, the Attorney General may:

22 (1) ~~(a)~~ Require any such person to file a statement or report in  
23 writing under oath or otherwise, on such forms as shall be prescribed by  
24 the Attorney General, as to all facts and circumstances concerning any  
25 deceptive trade practice or unconscionable act listed in section 87-302  
26 or 87-303.01 known the sale, offer, or advertisement of property by such  
27 person, and such other data and information as the Attorney General deems  
28 necessary;

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

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

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

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

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

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

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

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

28           87-303.11 (1) Any person who violates section 87-302 or 87-303.01  
29 or who willfully violates the terms of an injunction or declaratory  
30 judgment of a district court or the terms of a written assurance of  
31 voluntary compliance entered into pursuant to the Uniform Deceptive Trade

1 Practices Act shall be subject to a civil penalty of not more than two  
2 thousand dollars for each violation. The Attorney General, acting in the  
3 name of the state, may seek recovery of such civil penalties in a civil  
4 action.

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

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

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

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

15 87-306 Sections 87-301 to 87-306 and section 7 of this act shall be  
16 known and may be cited as the Uniform Deceptive Trade Practices Act.

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

20 Sec. 10. Original sections 59-1608.01, 59-1611, 59-1623, 87-303.02,  
21 87-303.11, and 87-306, Reissue Revised Statutes of Nebraska, and section  
22 87-302, Revised Statutes Cumulative Supplement, 2022, are repealed.

23 Sec. 11. Since an emergency exists, this act takes effect when  
24 passed and approved according to law.