

LEGISLATIVE BILL 934

Approved by the Governor April 15, 2024

Introduced by Bosn, 25; Halloran, 33; Albrecht, 17; DeBoer, 10; Ballard, 21.

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

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

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

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

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

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

(c) ~~in~~ Lancaster County.

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

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

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

(2) Each such demand shall:

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

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

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

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

(3) No such demand shall:

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

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

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

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

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

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

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

(6) No documentary material produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a district court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof

be disclosed to, other than an authorized employee of the Attorney General, without the consent of the person who produced such material, except that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

59-1623 Sections 59-1601 to 59-1623 ~~59-1622~~ shall be known and may be

cited as the Consumer Protection Act.

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

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

- (1) Passes off goods or services as those of another;
- (2) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) Uses deceptive representations or designations of geographic origin in connection with goods or services;
- (5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;
- (6) Represents that goods or services do not have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they have or that a person does not have a sponsorship, approval, status, affiliation, or connection that he or she has;
- (7) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand, except that sellers may repair damage to and make adjustments on or replace parts of otherwise new goods in an effort to place such goods in compliance with factory specifications;
- (8) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (9) Disparages the goods, services, or business of another by false or misleading representation of fact;
- (10) Advertises goods or services with intent not to sell them as advertised or advertises the price in any manner calculated or tending to mislead or in any way deceive a person;
- (11) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (12) Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (13) Uses or promotes the use of or establishes, operates, or participates in a pyramid promotional scheme in connection with the solicitation of such scheme to members of the public. This subdivision shall not be construed to prohibit a plan or operation, or to define a plan or operation as a pyramid promotional scheme, based on the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale so long as the plan or operation does not promote or induce inventory loading and the plan or operation implements an appropriate inventory repurchase program;
- (14) With respect to a sale or lease to a natural person of goods or services purchased or leased primarily for personal, family, household, or agricultural purposes, uses or employs any referral or chain referral sales technique, plan, arrangement, or agreement;
- (15) Knowingly makes a false or misleading statement in a privacy policy, published on the Internet or otherwise distributed or published, regarding the use of personal information submitted by members of the public;
- (16) Uses any scheme or device to defraud by means of:
 - (i) Obtaining money or property by knowingly false or fraudulent pretenses, representations, or promises; or
 - (ii) Selling, distributing, supplying, furnishing, or procuring any property for the purpose of furthering such scheme;
- (17) Offers an unsolicited check, through the mail or by other means, to promote goods or services if the cashing or depositing of the check obligates the endorser or payee identified on the check to pay for goods or services. This subdivision does not apply to an extension of credit or an offer to lend money;
- (18) Mails or causes to be sent an unsolicited billing statement, invoice, or other document that appears to obligate the consumer to make a payment for services or merchandise he or she did not order;
- (19)
 - (i) Installs, offers to install, or makes available for installation or download a covered file-sharing program on a computer not owned by such person without providing clear and conspicuous notice to the owner or authorized user of the computer that files on that computer will be made available to the public and without requiring intentional and affirmative activation of the file-sharing function of such covered file-sharing program by the owner or authorized user of the computer; or
 - (ii) Prevents reasonable efforts to block the installation, execution, or disabling of a covered file-sharing program;
- (20) Violates any provision of the Nebraska Foreclosure Protection Act;
- (21) In connection with the solicitation of funds or other assets for any charitable purpose, or in connection with any solicitation which represents that funds or assets will be used for any charitable purpose, uses or employs any deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or concealment, suppression, or omission of any material fact; ~~or~~

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

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

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

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

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

(A) Is under eighteen years of age;

(B) Is a trafficking victim;

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

(D) Participated in any act depicted without consent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) In order to ensure the availability of resources needed to provide restitution or any other remedy available to a consumer by law, the Attorney General may request an ex parte order from the district court temporarily freezing or impounding connected accounts or assets. If granted, such order shall be effective for a period of fourteen days, and the court shall set the

matter for a hearing. The Attorney General shall provide notice of the order and hearing to the owner of the connected account or asset. Such notice may be made by publication.

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

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

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

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

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

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

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

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

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

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

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