

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 781

FINAL READING

Introduced by Rogert, 16; McGill, 26; Pirsch, 4.

Read first time January 09, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Uniform Deceptive Trade Practices
2 Act; to amend sections 87-303.01, 87-303.02, 87-303.03,
3 87-303.04, 87-303.05, 87-303.06, 87-303.07, 87-304, and
4 87-305, Reissue Revised Statutes of Nebraska, and section
5 87-302, Revised Statutes Cumulative Supplement, 2006; to
6 change provisions relating to deceptive trade practices;
7 to harmonize provisions; and to repeal the original
8 sections.

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

1 Section 1. Section 87-302, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

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

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

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

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

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

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

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

25 (7) Represents that goods or services are of a particular

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

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

5 (9) Advertises goods or services with intent not to sell
6 them as advertised;

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

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

13 (12) Uses or promotes the use of a chain distributor
14 scheme in connection with the solicitation of business or personal
15 investments from members of the public;

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

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

25 (15) Uses any scheme or device to defraud by means of:

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

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

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

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

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

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

20 Sec. 2. Section 87-303.01, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 87-303.01 (1) An unconscionable act or practice by a
23 supplier in connection with a consumer transaction shall be a
24 violation of ~~sections 87-301 to 87-306.~~ the Uniform Deceptive Trade
25 Practices Act.

1 (2) The unconscionability of an act or practice shall be
2 a question of law for the court. If it is claimed or appears to the
3 court that an act or practice may be unconscionable, the parties
4 shall be given a reasonable opportunity to present evidence as to
5 its setting, purpose, and effect to aid the court in making its
6 determination.

7 Sec. 3. Section 87-303.02, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 87-303.02 When the Attorney General has cause to believe
10 that any person has engaged in or is engaging in any deceptive
11 trade practice or unconscionable act listed in section 87-302 or
12 87-303.01, ~~he~~ the Attorney General may:

13 (a) Require such person to file a statement or report
14 in writing under oath or otherwise, on such forms as shall be
15 prescribed by ~~him~~, the Attorney General, as to all facts and
16 circumstances concerning the sale, offer, or advertisement of
17 property by such person, and such other data and information as ~~he~~
18 ~~may deem~~ the Attorney General deems necessary;

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

21 (c) Examine any property or sample thereof, record, book,
22 document, account, or paper as ~~he may deem~~ the Attorney General
23 deems necessary; and

24 (d) Pursuant to an order of any district court, impound
25 any record, book, document, account, paper, or sample of property

1 which is material to such practice and retain the same in his or
2 her possession until the completion of all proceedings undertaken
3 under ~~sections 87-301 to 87-306.~~ the Uniform Deceptive Trade
4 Practices Act.

5 Sec. 4. Section 87-303.03, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 87-303.03 (1) The Attorney General, in addition to other
8 powers conferred upon him or her by sections 87-301 to 87-306,
9 the Uniform Deceptive Trade Practices Act, may issue subpoenas to
10 require the attendance of witnesses or the production of documents,
11 administer oaths, conduct hearings in aid of any investigation or
12 inquiry, and prescribe such forms and adopt and promulgate such
13 rules as may be necessary to administer the ~~provisions of sections~~
14 ~~87-301 to 87-306.~~ Uniform Deceptive Trade Practices Act.

15 (2) Service of any notice or subpoena may be made in the
16 manner prescribed by the rules of civil procedure.

17 Sec. 5. Section 87-303.04, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 87-303.04 (1) If any person fails or refuses to obey any
20 order of the Attorney General to file any statement or report,
21 or to obey any subpoena issued by the Attorney General, pursuant
22 to the ~~provisions of sections 87-301 to 87-306,~~ Uniform Deceptive
23 Trade Practices Act, the Attorney General may apply to any district
24 court in this state for relief until such person obeys such order
25 or subpoena or files such statement or report.

1 (2) The court, in its order, may:

2 (a) Grant injunctive relief restraining the sale or
3 advertisement of any property by such person;

4 (b) Require the attendance of or the production of
5 documents by such person, or both;

6 (c) Suspend or revoke any license, permit, or certificate
7 issued pursuant to law to any such person, which may be used to
8 further the alleged unlawful practice; or

9 (d) Grant such other or further relief as may be
10 necessary to obtain compliance by such person.

11 Sec. 6. Section 87-303.05, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 87-303.05 (1) Whenever the Attorney General has cause
14 to believe that a person has engaged in or is engaging in any
15 deceptive trade practice or unconscionable act listed in section
16 87-302 or 87-303.01, ~~he~~ the Attorney General may apply for and
17 obtain, in an action in any district court of this state, a
18 temporary restraining order, or injunction, or both, pursuant
19 to the rules of civil procedure, prohibiting such person from
20 continuing such practices, or engaging therein, or doing any act in
21 furtherance thereof. The court may make such orders or judgments as
22 may be necessary to prevent the use or employment by such person
23 of any such deceptive trade practice, or which may be necessary to
24 restore to any other person any money or real or personal property
25 which may have been acquired by means of any such practice.

1 (2) When the Attorney General has authority to institute
2 a civil action or other proceeding pursuant to the ~~provisions of~~
3 ~~sections 87-301 to 87-306,~~ Uniform Deceptive Trade Practices Act,
4 in lieu thereof, ~~he~~ the Attorney General may accept an assurance
5 of discontinuance of any deceptive trade practice or unconscionable
6 act listed in section 87-302 or 87-303.01. Such assurance may
7 include a stipulation for the voluntary payment by the alleged
8 violator of the costs of investigation by the Attorney General and
9 of any amount or amounts necessary to restore to any person any
10 money or real or personal property which may have been acquired by
11 such alleged violator by means of any such practice. Proof by a
12 preponderance of evidence of a violation of such assurance shall
13 constitute prima facie evidence of a deceptive practice as listed
14 in section 87-302 or 87-303.01 in any civil action or proceeding
15 thereafter commenced by the Attorney General.

16 Sec. 7. Section 87-303.06, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 87-303.06 ~~The provisions of sections 87-301 to 87-306~~
19 Uniform Deceptive Trade Practices Act shall not bar any claim
20 against any person who has acquired any money or real or personal
21 property by means of any deceptive trade practice or unconscionable
22 act listed in section 87-302 or 87-303.01.

23 Sec. 8. Section 87-303.07, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 87-303.07 If a buyer or lessee is induced by a violation

1 of section 87-302 or 87-303.01 to enter into a sale or lease, the
2 agreement is unenforceable by the seller or lessor and the buyer or
3 lessee, at his or her option, may rescind the agreement or retain
4 the merchandise delivered and the benefit of any services performed
5 without any obligation to pay for them.

6 Sec. 9. Section 87-304, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 87-304 (a) ~~Sections 87-301 to 87-306 of~~ The Uniform
9 Deceptive Trade Practices Act does not apply to:

10 (1) Conduct in compliance with the orders or rules of, or
11 a statute administered by, a federal, state, or local governmental
12 agency;

13 (2) Publishers, broadcasters, printers, or other persons
14 engaged in the dissemination of information or reproduction of
15 printed or pictorial matters who publish, broadcast, or reproduce
16 material without knowledge of its deceptive character; or

17 (3) Actions or appeals pending (a) on December 25, 1969,
18 under ~~sections 87-301 to 87-306 as they~~ the Uniform Deceptive
19 Trade Practices Act as such act existed immediately prior to March
20 25, 1974, or (b) under such ~~sections~~ act as amended and sections
21 87-303.01 to 87-303.09 on March 25, 1974.

22 (b) Subdivisions (a)(2) and (a)(3) of section 87-302 do
23 not apply to the use of a service mark, trademark, certification
24 mark, collective mark, trade name, or other trade identification
25 that was used and not abandoned before December 25, 1969, if the

1 use was in good faith and is otherwise lawful except for ~~sections~~
 2 ~~87-301 to 87-306~~, the Uniform Deceptive Trade Practices Act.

3 (c) The Uniform Deceptive Trade Practices Act shall apply
 4 to deceptive trade practices conducted in whole or in part within
 5 the State of Nebraska against residents or nonresidents of this
 6 state. The act shall also apply to deceptive trade practices
 7 conducted outside of Nebraska against residents of this state if
 8 there is a direct connection to any deceptive trade practices
 9 conducted in whole or in part within this state.

10 Sec. 10. Section 87-305, Reissue Revised Statutes of
 11 Nebraska, is amended to read:

12 87-305 ~~Sections 87-301 to 87-306~~ The Uniform Deceptive
 13 Trade Practices Act shall be construed to effectuate ~~their~~ its
 14 general purpose to make uniform the law of those states which enact
 15 ~~them.~~ it.

16 Sec. 11. Original sections 87-303.01, 87-303.02,
 17 87-303.03, 87-303.04, 87-303.05, 87-303.06, 87-303.07, 87-304, and
 18 87-305, Reissue Revised Statutes of Nebraska, and section 87-302,
 19 Revised Statutes Cumulative Supplement, 2006, are repealed.