

**ONE HUNDRED EIGHTH LEGISLATURE - SECOND SESSION - 2024**  
**COMMITTEE STATEMENT**  
**LB1074**

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**Hearing Date:** Tuesday January 30, 2024  
**Committee On:** Banking, Commerce and Insurance  
**Introducer:** Slama  
**One Liner:** Adopt changes to federal law regarding banking and finance and change provisions of the Commodity Code, the Credit Union Act, and the Securities Act of Nebraska

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, Slama, von Gillern  
**Nay:**  
**Absent:**  
**Present Not Voting:**

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**Testimony:**

**Proponents:**

Senator Julie Slama  
Darcy Bailar  
Brandon Luetkenhaus  
Robert Hallstrom  
Dexter Schrod

**Representing:**

Opening Presenter  
Nebraska Department of Banking and Finance  
Nebraska Credit Union League  
Nebraska Bankers Association  
Nebraska Independent Bankers Association

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

\* ADA Accommodation Written Testimony

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**Summary of purpose and/or changes:**

LB 1074 is a bill introduced at the request of the Nebraska Department of Banking and Finance to amend various Nebraska Statutes and the Uniform Commercial Code by adopting updates to federal law relating to banking and finance. Bills similar to this one are introduced yearly in our committee by the Nebraska Department of Banking and Finance and are intended to update "wildcard" statutes. State "wildcard" statutes enable state chartered financial institutions to engage in the same activities as their federally chartered counterparts and seek to preserve parity with federal institutions so that state institutions are not disadvantaged by state laws that are more restrictive than federal law.

Due to state constitutional restrictions on delegation of legislative authority, "wildcard" statutes



are amended annually.

LB 1074 will also change provisions relating to credit union examinations, receivership bonds, and remedies under the Commodity Code.

The bill provides, section by section, as follows:

Section 1 amends Section 8-135 of the Nebraska Banking Act, which authorizes minors to establish deposit accounts, to update a reference within Subsection (3) to the federal Electronic Fund Transfer Act as the Act existed on January 1, 2024 (currently January 1, 2023).

Section 2 amends Section 8-141 of the Nebraska Banking Act, which sets the lending limits for state-chartered banks, to update references within subsection (6) to 12 U.S.C. 1817(a)(3), the federal regulation relating to filing Reports of Condition, as the regulation existed on January 1, 2024 (currently January 1, 2023).

Section 3 amends Section 8-143.01 of the Nebraska Banking Act, which governs loans to bank insiders, to update a reference within subsection (7) to 12 CFR 215.4(a)(2), relating to extensions of credit to benefit and compensation programs, as the regulation existed on January 1, 2024 (currently January 1, 2023), and to similarly update references within Subsection (10) to 12 USC 84 and its implementing federal Regulation O, as such law and regulation existed on January 1, 2024 (currently January 1, 2023).

Section 4 amends Section 8-157.01 of the Nebraska Banking Act, which governs automated teller machines (ATMs) and electronic switches, to update a reference within Subsection (4) to the federal Electronic Fund Transfer Act as the Act existed on January 1, 2024 (currently January 1, 2023).

Section 5 amends Section 8-183.04 of the Nebraska Banking Act, which authorizes the conversion of certain mutual savings associations to state-chartered banks, to update a reference to 12 CFR 5.21, the federal regulation governing capital requirements for these associations, as such regulation existed on January 1, 2024 (currently January 1, 2023).

Section 6 amends Section 8-1,140 of the Nebraska Banking Act, which is the “wild-card” statute for state-chartered banks. This section is being amended to provide that state-chartered banks have the same rights, powers, privileges, and immunities as federally chartered banks doing business in Nebraska as of January 1, 2024 (currently January 1, 2023). Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

Section 7 amends Section 8-318, relating to customer accounts in building and loan associations, to update a reference within Subsection (1)(c) to the federal Electronic Fund Transfer Act as of January 1, 2024 (currently January 1, 2023).

Section 8 amends Section 8-355, which is the “wild-card” statute for state-chartered savings associations. This section is being amended to provide that state-chartered savings associations have the same rights, powers, privileges, and immunities as federally chartered savings associations doing business in Nebraska as of January 1, 2024 (currently January 1, 2023). Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.



Sections 9 amends Section 8-1101, which is the definitional section of the Securities Act of Nebraska. The amendment would update Subsection (14) to provide that references to the federal Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisers Act of 1940, Commodity Exchange Act, and the Interstate Land Sales Full Disclosure Act will be as the Acts existed on January 1, 2024 (currently January 1, 2023).

Section 10 amends Section 8-1101.01 of the Securities Act of Nebraska to:  
Provide, within Subsection (1), that references to federal rules and regulations adopted under the federal Investment Advisers Act of 1940 and the Securities Act of 1933 will be as those rules and regulations existed on January 1, 2024 (currently January 1, 2023), and  
Provide, within Subsection (2), that references to the fair practice and ethical standards adopted by the Securities and Exchange Commission or the Financial Industry Regulatory Authority will be as those standards existed on January 1, 2024 (currently January 1, 2023).

Section 11 amends Section 8-1116 of the Securities Act of Nebraska, which establishes civil remedies for the Department when it has determined a person is violating the Act, to provide that a receiver appointed by the court would not be required to post a bond.

Section 12 amends Section 8-1120 of the Securities Act of Nebraska, to repeal obsolete language within Subsection (7) relating to transfers from the Securities Act Cash Fund to the Financial Institution Cash Fund in 2021 and 2022, as the transfers have been made.

Section 13 amends Section 8-1704 of the Commodity Code, which defines the term “CFTC rule,” to update a reference to rules, regulations, or orders of the Commodity Futures Trading Commission in effect on January 1, 2024 (currently January 1, 2023).

Section 14 amends Section 8-1707 of the Commodity Code, which defines the term “Commodity Exchange Act,” to update a reference to the federal Commodity Exchange Act in effect on January 1, 2024 (currently January 1, 2023).

Section 15 amends Section 8-1726 of the Commodity Code, relating to administrative penalties for violations of the Code, to clarify and coordinate the terms “civil penalty,” “fine,” and “costs.”

Section 16 amends Section 8-2724 of the Nebraska Money Transmitters Act, which provides exemptions from the licensing requirements of the Act, to update a reference within Subsection (1)(e) to Consumer Financial Protection Bureau Regulation E, 12 C.F.R. part 1005, in effect on January 1, 2024 (currently January 1, 2023).

Section 17 amends Section 8-2903, relating to financial exploitation of a vulnerable adult or senior adult in the financial institutions sector, to update references within Subsection (7) to federal check clearing and collectability laws [12 U.S.C. 5001, 12 U.S.C. 4001, and 12 C.F.R. 31 part 229, as such laws and regulation existed on January 1, 2024 (currently, January 1, 2023).

Section 18 amends Section 8-3005 of the Nebraska Financial Innovation Act to update references within Subsection (5) to the federal Bank Secrecy Act, 12 C.F.R. 208.63, in effect on January 1, 2024 (currently January 1, 2023).

Section 19 amends Section 8-3007 of the Nebraska Financial Innovation Act to update



references within Subsection (3) to the federal Bank Secrecy Act, in effect on January 1, 2024 (currently January 1, 2023).

Section 20 amends Section 21-1736 of the Nebraska Credit Union Act to provide that the Department is to send a copy of its examination report to a credit union's President, Chief Executive Officer, or Manager rather than to the Chairperson of the Board of Directors.

Section 21 amends Section 21-17,115 of the Nebraska Credit Union Act, which is the "wild-card" statute for state-chartered credit unions. This section is being amended to provide that state-chartered credit unions have the same rights, powers, privileges, and immunities as federally chartered credit unions doing business in Nebraska as of January 1, 2024 (currently January 1, 2023). Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

Section 22 amends Section 59-1722 of the Seller-Assisted Marketing Plan Act, which provides limited exemptions to the Act for certain franchises, to update references to Federal Trade Commission disclosure rules for franchise offerings as such rules existed on January 1, 2024 (currently January 1, 2023).

Section 23 amends Section 69-2103(4) of the Consumer Rental Purchase Agreement Act, which defines the term "consumer rental purchase agreement," to update references to federal definitions contained in 12 CFR 1026.2(a)(16), 15 USC 1602(h), and 12 CFR 1013.2, relating to consumer leases and credit sales, as such regulations and law existed on January 1, 2024 (currently January 1, 2023).

Section 24 amends Section 69-2104 of the Consumer Rental Purchase Agreement Act, which requires disclosures to consumers, to update references within Subsection (2) to the federal Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such Act existed on January 1, 2024 (currently January 1, 2023) , and within Subsection (3) to the disclosure requirements of the federal Consumer Credit Protection Act, 15 U.S.C. 1667a, as such regulation existed on January 1, 2024 (currently January 1, 2023).

Section 25 amends Section 69-2112 of the Consumer Rental Purchase Agreement Act, which relates to advertisements for consumer rental purchase agreements, to update references within Subsection (4) to the federal Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such Act existed on January 1, 2024 (currently January 1, 2023).

Section 26 amends Section 4A-108 of the Uniform Commercial Code to update references within Subsections (a) and (b) to the federal Electronic Fund Transfer Act as it existed on January 1, 2024 (currently January 1, 2023).

Section 27 repeals the statutes amended.

Section 28 provides for the emergency clause for all provisions in the bill.

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### **Explanation of amendments:**

The committee amendment (AM2560) contains the provisions of LB1074 (Sections 31-45, 47, 51-53, 60, 67, 77-80, and 86 of AM2560) and also the provisions of five other bills that were heard by the Banking, Commerce and Insurance Committee and each made a part of the



committee amendments on an 8-0 vote. Those bills are as follows:

LB1075 (Slama) - Change provisions of the Delayed Deposit Services Licensing Act, the Nebraska Installment Loan Act, the Nebraska Installment Sales Act, the Nebraska Money Transmitters Act, and the Residential Mortgage Licensing Act (Section 48-50 and 68-76 of AM2560).

LB1075 was introduced at the request of the Nebraska Department of Banking and Finance ("Department") to update existing requirements for background checks of consumer finance licensees and to provide a requirement for those licensees to notify the Department of data security breaches. The bill provides, section by section, as follows:

Section 1 amends Section 8-2729 of the Nebraska Money Transmitters Act, to provide, within Subsections (1) and (3), statutory cross references to Section 8-2730 requiring background checks for insiders of corporations and other entities applying for a money transmitters license.

Section 2 amends Section 8-2730 of the Nebraska Money Transmitters Act to update, within Subsection (1), the requirement for background checks of insiders applying for, or holding, a money transmitters license by providing that fingerprints shall be submitted to the Federal Bureau of Investigation (FBI) and, to provide within Subsection (7) that the Department may use the Nationwide Licensing Mortgage Licensing System and Registry (NMLS) as a channeling agent.

Section 3 amends Section 8-2735 of the Nebraska Money Transmitters Act to require, within Subsection (3), money transmitter licensees to notify the Director of the Department within 3 business days of any data breaches, to provide exceptions, and to define relevant terms.

Section 4 amends Section 45-346 of the Nebraska Installment Sales Act to provide, within Subsection (3), a statutory cross reference to Section 45-354 requiring background checks for insiders of entities applying for an installment sales license.

Section 5 amends Section 45-346.01 of the Nebraska Installment Sales Act to require, within Subsection (3), installment sales licensees to notify the Director of the Department within 3 business days of any data breaches, to provide exceptions, and to define relevant terms.

Section 6 amends Section 45-354 of the Nebraska Installment Sales Act to update the requirement for background checks of insiders applying for, or holding, an installment sales company license by providing that fingerprints shall be submitted to the FBI and that the Department may use the Nationwide Mortgage Licensing System (NMLS) as a channeling agent.

Section 7 amends Section 45-737 of the Residential Mortgage Licensing Act, within Subsection (9), to require mortgage banker licensees to notify the Director of the Department within 3 business days of any data breaches, to provide exceptions, and to define relevant terms.

Section 8 amends Section 45-905.01 of the Delayed Deposit Services Licensing Act, within Subsection (7), to correct a cross-reference to another Subsection of the statute.

Sections 9 amends Section 45-912 of the Delayed Deposit Services Licensing Act, within Subsection (2), to require delayed deposit service licensees to notify the Director of the



Department within 3 business days of any data breaches, to provide exceptions, and to define relevant terms.

Section 10 amends Section 45-1005 of the Nebraska Installment Loan Act to provide a statutory cross reference to Section 45-1033.01 requiring background checks for insiders of entities applying for an installment loan license.

Section 11 amends Section 45-1018 of the Nebraska Installment Loan Act, within Subsection (3), to require installment loan licensees to notify the Director of the Department within 3 business days of any data breaches, to provide exceptions, and to define relevant terms.

Section 12 amends Section 45-1033.01 of the Nebraska Installment Loan Act, within Subsections (1) and (7), to update the requirement for background checks of insiders applying for, or holding, an installment loan license by providing that fingerprints shall be submitted to the FBI and that the Department may use the NMLS as a channeling agent.

Section 13 repeals the statutes amended.

Oral Testimony:

Proponents:

Senator Julie Slama, Introducer

Darcy Bailar, Nebraska Department of Banking and Finance

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

LB1122 (Ballard) - Change enforcement provisions relating to written solicitations for financial products or services (Section 46 of AM2560).

Neb. Rev. Stat. §§ 8-2501 to 8-2505 address a person's ability to use the name, trade name, logo, or symbol of a financial institution. Generally, under those laws, a person is restricted from such activity unless they have permission from the financial institution or have abided by stringent written solicitation notices to the individual being solicited. These laws are designed to prevent customers of financial institutions from being misled by solicitations that they mistakenly assume have come from the financial institution.

The Nebraska Department of Banking & Finance ("Department") is authorized by Neb. Rev. Stat. §§ 8-2503 to combat activity that violates Neb. Rev. Stat. §§ 8-2501 or 8-2502, and may even fine bad actors \$1,000 per violation of those statutes.

It has been alleged that there has been an increase in these misleading written solicitations, and that the current \$1,000 fine may no longer serve as an adequate deterrent to such activity.



The bill provides, section by section, as follows:

Section 1 amends Section 8-2504, a law that authorizes the Department to assess a fine of \$1,000 to a person for each violation of sections 8-2501 or 8-2502. The section will increase the amount the Department may fine to \$5,000 per violation.

Section 2 repeals the statutes amended.

Oral Testimony:

Proponents:

Senator Beau Ballard, Introducer

Bob Hallstrom, Nebraska Bankers Association

Kelly Lammers, Nebraska Department of Banking and Finance

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

LB872 (Clements) - Prohibit acceptance of central bank digital currency by state and local governments (Sections 54 and 84 of AM2560)

LB872 is a bill that was introduced by Senator Clements. It would amend Neb. Rev. Stat. §§ 13-609 and 81-118.01, two statutes that control what methods of payment county treasurers, county officials, political subdivisions, state officials, and state agencies may accept. The bill adds language that would prohibit those government entities and officials from accepting Central Bank Digital Currency (CBDC) as a form of payment during financial transactions.

The bill provides, section by section, as follows:

Section 1 amends Section 13-609 by adding language that prohibits a county treasurer, county official, or political subdivision official from accepting CBDC as a method of cash payment for any tax, levy, excise, duty, custom, toll, interest, penalty, fine, license, fee, or assessment of whatever kind or nature. The section also provides a definition for CBDC as used in the section.

Section 2 amends Section 81-118.01 by adding language that prohibits a state official or state agency from accepting CBDC as a method of cash payment for any tax, levy, excise, duty, custom, toll, interest, penalty, fine, license, fee, or assessment of whatever kind or nature. The section also provides a definition for CBDC as used in the section.

Section 3 repeals the statutes amended.

Oral Testimony:

Proponents:



Senator Robert Clements, Introducer  
Dexter Schrodt, Nebraska Independent Community Bankers  
Bob Hallstrom, Nebraska Bankers Association  
Guy Mills Jr., self  
Stacey Skold, self  
Cindy Miller, self  
Kathy Wilmot, Nebraska Eagle Forum  
Opponents: None  
Neutral: None

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

LB710 (Dungan) as amended by AM1387 - Change provisions of the Credit Union Act (Sections 55-59 and 61-66 of AM2560)

LB710 modernizes and updates the State Credit Union Act (Act) by clarifying language, removing obsolete and burdensome language, and adding language to improve the credit union charter.

The bill would provide, section by section, as follows:

Section 1 states the sections that will make up the Act if LB 710 were made law.

Section 2 expands the definitions used in the Act to include Section 3 of LB 710.

Section 3 adds a definition of Associate Director.

Section 4 amends 21-1705 by replacing the word nonprofit with not-for-profit.

Section 5 amends 21-1725.01 by striking subsection (2) and replacing it with the ability of credit unions to establish one or more branches with the approval of the Nebraska Department of Banking and Finance (Department) and striking subsection (3) and replacing it with the ability of credit unions to open school savings branches.

Section 6 amends 21-1729 to allow credit unions to change their principal place of business by electronic mail.

Section 8 amends 21-1743 to eliminate references to more than one share or shares and codifies that credit union membership may include persons or organizations within a geographically defined community, neighborhood, or rural district.

Section 9 amends 21-1749 to provide the ability of credit unions to hold their required annual meeting of their membership virtually by which members can participate and interact.





Section 10 amends 21-1767 to allow credit unions to have six or more board meetings per year with at least one per financial quarter. It requires newly formed credit unions to have at least one board meeting per month. The monthly requirement for newly formed credit unions would remain for the first five years of the credit union's existence.

Section 11 is a new section under the Act that would allow a credit union board of directors to add the appointment of associate directors to the credit union board. Associate directors would be able to participate in board meetings but would not be voting members of the board of directors. Provides statutory authority for the Board of Directors to appoint Associate Directors.

Section 13 would amend 21-17,102 to enable credit unions to invest in "fintech companies" that provide financial products or financial services that are of current or prospective benefit to credit unions, members, and consumers eligible for membership.

The section states that credit unions may invest to fund an employee benefit plan obligation if the investment is directly related to the credit union's obligation under the employee benefit plan and the credit union holds the investment for the period of time that it has an actual or potential obligation under the employee benefit plan. Investments cannot exceed fifteen percent of a credit union's net worth from a single issuer or twenty five percent of a credit union's net worth in aggregate.

Section 14 would amend 21-17,109 by adding language to clarify that the continuing credit union in a merger is not required to conduct a membership vote on its participation of the merger plan.

Section 15 repeals those original sections being amended.

Section 16 outright repeals section 21-1788.

AM 1387 amends LB 710 as follows:

Sections 5, 7, and 12 removed entirely from LB 710.

All changes made to 21-17,102 by Section 13 removed, except for the following: "In insurance policies and other investment products to fund employee benefit plans for its employees not to exceed fifteen percent of the net worth of a credit union from a single issuer or twenty-five percent of the net worth of a credit union in aggregate. Employee benefit plan has the same meaning as in 29 U.S.C. 1002(3), as such section existed on January 1, 2023. If the employee benefits arrangement does not present a risk to the safety and soundness of the domestic credit union as determined by the director, the purchase of those investment products is not subject to the limitations of the Credit Union Act.

The language in Section 8 that expanded the membership of a credit union to include persons or organizations within a geographically defined community, neighborhood, or rural district is removed.

Subsection (5) of 21-17,109 repealed.



Oral Testimony:

Proponents:

Senator George Dungan, Introducer  
Angie Schreiner, Nebraska Credit Union/Liberty First Credit Union  
Frank Wilber, Liberty First Credit Union  
Linda Carter, Members Own Credit Union  
Ann Lotis, First Nebraska Credit Union  
Dale Kovar, First Nebraska Credit Union  
Brandon Luetkenhaus, Nebraska Credit Union League

Opponents:

Brian Morrow, Nebraska Independent Community Bankers  
Bob Hallstrom, Nebraska Bankers Association

Neutral:

Tag Herbek, Nebraska Department of Banking & Finance  
Jennifer Davidson, Nebraska Council on Economic Education  
Steve Edgerton, Centris Federal Credit Union

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

LB1294 (Bostar) as amended by AM 2538 - Adopt the Data Privacy Act, change provisions relating to certain certificates and information relating to vital records, and provide for certain records to be exempt from public disclosure (Sections 1-30, 81-83, and 85 of AM2560).

LB1294 would adopt the Data Privacy Act ("Act") and amend Neb. Rev. Stat. §§ 71-605.02, 71-612, 71-616, and 84-712.05. The Act provides for robust and comprehensive consumer data protections and gives exclusive authority of enforcement of the Act to the Nebraska Attorney General. This bill also provides businesses clear rules and guardrails for complying with the Act while giving Nebraskans meaningful privacy protections and control over their sensitive personal data.

Section 1 lists the sections that would make up the Act if LB 1294 were made law.

Section 2 provides definitions for thirty-four (34) terms that are used throughout the Act.

Section 3 states who the Act does and does not apply too.

Section 4 states what type of records, documents, and information are not subject to the Act.

Section 5 states that the Act does not apply to the processing of personal data by a person in the course of a purely personal or household activity.

Section 6 states that a controller or processor that complies with the verifiable parental consent requirements of the federal Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501 et



seq., as such act existed on January 1, 2024, with respect to data collected online is considered to be in compliance with any requirement to obtain parental consent under the Act.

Section 7 provides for how a consumer can exercise his/her rights under the Act.

Section 8 states how a controller must respond to a request from a consumer.

Section 9 places an affirmative duty on a controller to create a process by which a consumer may appeal the controller's refusal to take action on a request from the consumer.

Section 10 states that any provision of a contract or agreement that waives or limits in any way a consumer right described in sections 7 to 9 of this act is contrary to public policy and is void and unenforceable.

Section 11 states that a controller must establish two or more secure and reliable methods to enable a consumer to submit a request to exercise consumer rights under the Act, and provides for what factors must be considered in doing so. It also provides certain restrictions and user interface protections/conveniences that relate to how the systems must function.

Section 12 places a limitation on the collection of personal data by a controller. The section also requires a controller to establish, implement, and maintain reasonable administrative, technical, and physical data security measures. Provides a number of restrictions on controllers related to the processing of personal data and discrimination.

Section 13 states that a controller must provide each consumer with a reasonably accessible and clear privacy notice. The section goes on to detail what must be included in said notice.

Section 14 states that if a controller sells personal data to any third party or processes personal data for targeted advertising, the controller shall clearly and conspicuously disclose that process and the manner in which a consumer may exercise the right to opt out of that process.

Section 15 places a requirement on a processor to adhere to the instructions of a controller and to assist the controller in meeting or complying with the controller's duties or requirements under the Act. The section includes a list of assisting actions that a processor must do in compliance with the section.

Provides for how controllers and processors must contract to ensure compliance with the Act for work performed by the processor on behalf of the controller.

Allows processors to alternatively arrange for an audit process to ensure they are complying with the Act.

Clarifies that section 15 shall not be construed to relieve a controller or a processor from the liabilities imposed on the controller or processor by virtue of the role of the controller or processor in the processing relationship as described in the Act.

Provides a process for how to determine if an actor is acting as a controller or processor under the Act.



Section 16 places an affirmative duty on a controller to conduct and document a data protection assessment of certain, named activities that involve personal data. The section provides for what factors must be considered in completing the assessment, and what benefits must be identified and weighted.

A controller must make an assessment available to the Nebraska Attorney General upon request under Section 21 of the Act.

States that an assessment is confidential and exempt from disclosure as a public record pursuant to sections 84-712 to 84-712.09.

Disclosure of a data protection assessment in compliance with a request from the Nebraska Attorney General does not constitute a waiver of attorney-client privilege or work product protection with respect to the assessment and any information contained in the assessment.

Section 17 states what a controller who is in possession of deidentified data must do with said data, and also clarifies what the controller is not required to do with that data.

States that certain consumer rights and controller duties under the Act do not apply to pseudonymous data in any case in which the controller is able to demonstrate any information necessary to identify the consumer is kept separately and is subject to effective technical and organizational controls that prevent the controller from accessing the information.

Requires that a controller that discloses pseudonymous data or deidentified data must exercise reasonable oversight to monitor compliance with any contractual commitments to which the pseudonymous data or deidentified data is subject and shall take appropriate steps to address any breach of the contractual commitments.

Section 18 states a person described by subdivision (1)(c) of section 3 of Act shall not engage in the sale of personal data that is sensitive data without receiving prior consent from the consumer. Doing so may result in a penalty under the Act.

Section 19 states that the Nebraska Attorney General has exclusive authority to enforce the Act.

Section 20 places a duty upon the Nebraska Attorney General to post to their website the following information: The responsibilities of a controller under the Act; The responsibilities of a processor under the Act; and A consumer's rights under the Act. Also requires the Attorney General to create an online mechanism on their website for a consumer to make a complaint alleging violation of the Act.

Section 21 allows the Nebraska Attorney General the ability to investigate suspected violations of the Act.

Section 22 places an affirmative duty on the Nebraska Attorney General to allow a violator of the Act an opportunity to cure the violation. The section specifically lays out what things the violator must do to cure the violation.

Section 23 requires the Nebraska Attorney General to investigate and make a written demand for certain named materials/documents to confirm violations of the Act prior to the institution of a



civil proceeding under the Act. The section provides a list of things that must and must not be included in the written demand letter, and provides for how the demand is served on the alleged violator.

Provides guidance on how the Attorney General and the alleged violator will exchange the requested materials / documents.

Provides a course of action allowing the Attorney General to utilize the court system to force an alleged violator to comply with the demand.

Section 24 states what authority the Nebraska Attorney General has to enforce the Act by filing litigation.

Section 25 states that the Act shall not be construed as providing a basis for, or being subject to, a private right of action for a violation of the Act or any other law.

Section 26 identifies a list of controller, processor, or third-party actions that will not be inhibited or restricted by the Act. Examples include, complying with federal, state, or local laws, rules, or regulations and protecting trade secrets.

Section 27 identifies what collection, use, and retention actions of a controller or processor do not apply under the Act.

Section 28 states that a controller or processor that discloses personal data to a third-party controller or processor, in compliance with any requirement of the Act, does not violate the Act if the third-party controller or processor that receives and processes that personal data is in violation of the Act, if at the time of the data's disclosure the disclosing controller or processor did not have actual knowledge that the recipient intended to commit a violation.

Also states that a third-party controller or processor that receives personal data from a controller or processor in compliance with the requirements of the Act does not violate the Act for the transgressions of the controller or processor from which the third-party controller or processor received the personal data.

Section 29 states that personal data processed by a controller under sections 26 to 29 of the Act may not be processed for any purpose other than those purposes listed in said sections unless otherwise allowed by the Act.

Place the burden of proof on the controller to show that the processing of personal data under said sections qualifies for exemption and complies with this section.

Clarifies that the processing of personal data by an entity for the purposes described by section 26 of the Act does not solely make the entity a controller with respect to the processing of the data.

Section 30 states that the Act supersedes and preempts any ordinance, resolution, rule, or other regulation adopted by a political subdivision regarding the processing of personal data by a controller or processor.

Section 31 amends section 71-605.02 by removing the Department of Health and Human



Services duty to index all certificates received. The Department would only be required to preserve the documents, and would no longer be required to index said documents.

Section 32 amends section 71-612 by removing the Department of Health and Human Services duty to index all certificates received. The Department would only be required to preserve the documents, and would no longer be required to index said documents.

The section also clarifies that the Department's permitted disclosure of data from certificates or records to federal, state, county, or municipal agencies of government would only be for the limited purposes of preventing, identifying, or halting fraudulent activity or waste of government funding.

Section 33 amends section 71-616 by removing the Department of Health and Human Services duty to index all births, deaths, marriages, and divorces received. The Department would only be required to preserve and tabulate statistics on the documents, and would no longer be required to index said documents.

Section 34 amends section 84-712.05 by adding three (3) new record types to the list of records that may be withheld from the public by the lawful custodian of the records. They include: Vital event records, unless all information designated as confidential under the Vital Statistics Act or all personally identifiable information is redacted by the Department of Health and Human Services; Information or records from historical indexes within one hundred (100) years after the event date of the information or record; and the certificate number for any vital event certificate.

Section 35 states that the Act becomes operative on January 1, 2025.

Section 36 provides a severability clause should any portion of the Act be found unconstitutional.

Section 37 repeals original sections 71-605.02, 71-612, 71-616, and 84-712.05.

AM 2538 amends LB 1294 as follows:

The following definitions in Section 2 were modified: authenticate, biometric data, consent, sale of personal data, and trade secret.

Clarification language added expanding inapplicability of the Act to affiliates of financial institutions as well as financial institutions.

Section 6 expanded to also include the rules, regulations, and guidance adopted and promulgated under the federal Children's Online Privacy Protection Act of 1998.

Final two subsections of Section 13 removed.

In Section 22 the use of the term "person" is changed to "controller or processor."

Three additional exceptions added to how the Act may not be construed in Section 26.

Other minor technical clarifications.



Oral Testimony:

Proponents:

Senator Eliot Bostar, Introducer

Matthew Lenz, BSA/The Software Alliance & Microsoft

Charity Menefee, Nebraska Department of Health and Human Services

Robert Hallstrom, Nebraska Bankers Association

Bruce Bohrer, Lincoln Chamber of Commerce/Greater Omaha Chamber of Commerce

Kyle Skiermont, Nebraska Medicine

Jeff Davis, Burlington Northern Santa Fe (BNSF)

Opponents:

Andrea Neuzil, self

Neutral:

Rich Otto, Nebraska Retail Federation/Nebraska Grocery Industry Association

Korby Gilbertson, Media of Nebraska Inc.

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay: Absent:

Present Not Voting:

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Julie Slama, Chairperson

