

AMENDMENTS TO LB525

(Amendments to Standing Committee amendments, AM2221)

Introduced by Jacobson, 42.

1 1. Strike sections 1 to 10 and insert the following new sections:

2 **Section 1.** Sections 1 to 10 of this act shall be known and may be
3 cited as the Agricultural Data Privacy Act.

4 **Sec. 2.** The Legislature finds that agricultural data is a
5 proprietary business asset that originates from the farm, land, devices,
6 and equipment of agricultural producers. To protect the economic value of
7 this data and the autonomy of Nebraska producers, the sale of such data
8 shall be protected and the security of such data shall be maintained
9 through reasonable safeguards.

10 **Sec. 3.** For purposes of the Agricultural Data Privacy Act:

11 (1) Affiliate means a person or entity that directly or indirectly
12 controls, is controlled by, or is under common control with a controller
13 or processor;

14 (2) Aggregated data means agricultural data that has been combined
15 with other data from various sources and summarized so that the resulting
16 data cannot reasonably be linked to an identified or identifiable
17 agricultural producer, farm, parcel, device, or equipment;

18 (3) Agricultural data:

19 (a) Means any of the following that is collected, produced, or
20 generated in this state and is linked or reasonably linked to an
21 identified or reasonably identifiable agricultural producer: Agronomic
22 data, climate and weather data, land data, livestock data, management
23 data, and sustainability data; and

24 (b) Does not include any of the following:

25 (i) Aggregated data;

26 (ii) Derived data; and

1 (iii) Any data that is described under subdivision (3)(a) of this
2 section that would otherwise qualify as agricultural data, if such data
3 is made available to the general public by an agency as defined in
4 section 84-901;

5 (4) Agricultural producer means the person that is the owner,
6 lessee, or renter of the farm, livestock, land, device, or equipment from
7 which agricultural data originates;

8 (5) Agronomic data means information relating to soil management or
9 crop production, including data relating to any crop, field, planting
10 activity, seed type, yield, disease and pest management, fertilizer type
11 or application, or prescription;

12 (6) Climate and weather data means information regarding the
13 conditions of the atmosphere at a place and time and how such conditions
14 generally prevail in such place over a long period of time that is
15 collected, produced, or generated by the equipment of an agricultural
16 producer or by devices located on the land of an agricultural producer.
17 Climate and weather data:

18 (a) Includes the following information: Precipitation type and
19 amount, wind speed and direction, and temperature; and

20 (b) Does not include information that is made available to the
21 general public by a governmental entity or public source;

22 (7) Controller means a person who or entity that, alone or jointly
23 with others, determines the purpose and means of processing agricultural
24 data;

25 (8) Derived data means data that has been significantly modified,
26 processed, analyzed, or compiled. Derived data includes agronomic
27 insights, reports, and predictive models;

28 (9) Land data means information regarding the physical attributes of
29 a parcel of land, including the types and fertility of soils, the
30 topography, elevation, watershed, and drainage of such parcel, and
31 geospatial information regarding such parcel;

1 (10) Livestock data means information regarding the production of
2 animals by an agricultural producer, including animal identification
3 practices, pedigree information, genetic information, and feed
4 consumption information;

5 (11) Management data means information regarding the management of
6 an agricultural producer's agricultural operations. Farm management data
7 includes:

8 (a) The finances, taxes, and employment of the agricultural
9 producer;

10 (b) The price received or paid for any commodity;

11 (c) Data regarding the compliance of the agricultural producer with
12 any law;

13 (d) Data regarding the supply chain for a commodity that is produced
14 or used by the agricultural producer; and

15 (e) Information regarding the tillage and conservation practices of
16 the agricultural producer;

17 (12) Processor means a person who or entity that processes
18 agricultural data on behalf of a controller;

19 (13)(a) Sale of agricultural data means the exchange of agricultural
20 data for monetary or other valuable consideration by a controller or
21 processor to a third party; and

22 (b) Sale of agricultural data does not include any:

23 (i) Disclosure or transfer of agricultural data to a processor by a
24 controller;

25 (ii) Use of agricultural data by a processor, if such use is
26 authorized by a controller;

27 (iii) Disclosure, transfer, or use of agricultural data for the
28 purpose of a controller or processor providing a service to an
29 agricultural producer;

30 (iv) Disclosure, transfer, or use of agricultural data to an
31 affiliate of the controller or processor;

1 (v) Disclosure that is expressly directed, initiated, or authorized
2 in writing by an agricultural producer to a designated third party,
3 including any input provider, advisor, lender, insurer, cooperative, or
4 digital platform chosen by the producer;

5 (vi) Disclosure that is required by a state or federal law,
6 regulation, subpoena, investigative demand, or court order;

7 (vii) Disclosure that is required for compliance with a state or
8 federal safety, emissions, or environmental obligation;

9 (viii) Disclosure of information that an agricultural producer:

10 (A) Intentionally made available to the general public through a
11 mass media channel; and

12 (B) Did not restrict to a specific audience;

13 (ix) Disclosure or transfer of agricultural data by a controller to
14 a third party as an asset in which the third party assumes control of all
15 or a part of the controller's assets and that is part of a proposed or
16 actual:

17 (A) Merger;

18 (B) Acquisition;

19 (C) Bankruptcy; or

20 (D) Transaction; or

21 (x) Disclosure, transfer, or use that is reasonably necessary to
22 detect, prevent, or respond to any fraud, abuse, cybersecurity threat,
23 illegal conduct, data integrity issue, or equipment misuse;

24 (14) Service means any service that is provided by a controller or
25 processor to an agricultural producer and that may be used to maintain,
26 diagnose, repair, support, secure, improve, or provide any equipment,
27 software, device, technology, product, or service to the agricultural
28 producer, including any telematic service, remote diagnostic, predictive
29 maintenance, warranty administration, safety notification, recall
30 activity, cybersecurity service, product improvement, quality
31 improvement, system performance enhancement, internal algorithm training,

1 over-the-air update, or purchase of a commodity from the agricultural
2 producer; and

3 (15) Sustainability data means information regarding greenhouse-gas
4 emissions, carbon sequestration, and water-quality impact, and any other
5 environmental or conservation practice used to verify sustainability
6 claims.

7 **Sec. 4.** (1) For purposes of this section, control means a person
8 has the power to:

9 (a) Avail substantially all of the benefits from such agricultural
10 data;

11 (b) Prevent other persons from availing substantially all of the
12 benefits from such agricultural data; and

13 (c) Transfer a power described in subdivision (a) or (b) of this
14 subsection to another person.

15 (2) An agricultural producer is the owner, and has control, of the
16 agricultural data that originates from the farm, land, device, or
17 equipment of such agricultural producer.

18 (3) A controller or processor that collects, stores, or uses
19 agricultural data is deemed to have a nonexclusive right of control over
20 such agricultural data solely for the purpose of providing services,
21 maintaining equipment, or performing data processing authorized by the
22 agricultural producer.

23 (4) The nonexclusive right of control that is granted to a
24 controller or processor under this section does not include the power to
25 engage in the sale of such agricultural data.

26 **Sec. 5.** (1) A controller or processor shall not engage in the sale
27 of agricultural data without the express written consent of the
28 agricultural producer.

29 (2) Written consent for the sale of agricultural data shall be
30 obtained through a clear and conspicuous disclosure that is separate from
31 the primary terms of service or data use agreement.

1 **Sec. 6.** (1) Beginning on January 1, 2027, every new contract or
2 agreement involving the collection or processing of agricultural data in
3 this state shall contain a specific provision stating that the controller
4 or processor is prohibited from engaging in the sale of such agricultural
5 data without the express written consent of the agricultural producer.

6 (2) Any contract provision that waives or limits the requirements of
7 the Agricultural Data Privacy Act is contrary to public policy and is
8 void and unenforceable.

9 **Sec. 7.** (1) Any controller or processor in custody or possession of
10 agricultural data shall establish, implement, and maintain reasonable
11 administrative, technical, and physical data security practices to
12 protect the confidentiality, integrity, and accessibility of such
13 agricultural data.

14 (2) Such security practices shall be appropriate for the volume and
15 nature of the agricultural data and protect against unauthorized access,
16 use, disclosure, modification, or loss.

17 **Sec. 8.** (1) The Attorney General may bring an action in the
18 district court of Lancaster County against any controller or processor
19 that violates the Agricultural Data Privacy Act to:

20 (a) Seek injunctive relief; or

21 (b) Recover a civil penalty in the amount of one thousand dollars
22 for each separate violation. Any such civil penalty that is recovered
23 shall be remitted to the State Treasurer for distribution in accordance
24 with Article VII, section 5, of the Constitution of Nebraska.

25 (2) The Agricultural Data Privacy Act shall not be construed to
26 create any new private cause of action. The enforcement authority granted
27 to the Attorney General under this section shall be the exclusive remedy
28 for violations of the Agricultural Data Privacy Act.

29 **Sec. 9.** (1) Prior to bringing an action to recover a civil penalty
30 for a violation of section 6 or 7 of this act, the Attorney General shall
31 provide a controller or processor with a written notice that identifies

1 the specific provision of section 6 or 7 of this act that the Attorney
2 General alleges has been or is being violated.

3 (2) No such action for a civil penalty shall be initiated if, within
4 forty-five days after receiving the written notice, the controller or
5 processor:

6 (a) Cures each such alleged violation; and

7 (b) Provides the Attorney General with a written statement that
8 specifies that each such alleged violation has been cured and that such
9 controller or processor will refrain from further violations of the
10 Agricultural Data Privacy Act.

11 (3) This section shall not apply to any violation of section 5 of
12 this act.

13 **Sec. 10.** The Agricultural Data Privacy Act shall not be construed
14 to:

15 (1) Limit or supersede any duty or obligation that is imposed by any
16 federal law or any other law of the State of Nebraska;

17 (2) Relieve any person from any duty or obligation otherwise imposed
18 by law;

19 (3) Impair, supersede, or otherwise affect the terms of any private
20 contract that is in existence prior to the effective date of this act; or

21 (4) Limit or supersede any duty or obligation that is imposed by any
22 natural resources district that is operating pursuant to Chapter 2,
23 article 32, any state agency as defined in section 84-901, or any
24 employee or agent of such natural resources district or state agency when
25 acting in performance of a statutory duty.

26 **Sec. 11.** Section 84-712.05, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 84-712.05 The following records, unless publicly disclosed in an
29 open court, open administrative proceeding, or open meeting or disclosed
30 by a public entity pursuant to its duties, may be withheld from the
31 public by the lawful custodian of the records:

1 (1) Personal information in records regarding a student, prospective
2 student, or former student of any educational institution or exempt
3 school that has effectuated an election not to meet state approval or
4 accreditation requirements pursuant to section 79-1601 when such records
5 are maintained by and in the possession of a public entity, other than
6 routine directory information specified and made public consistent with
7 20 U.S.C. 1232g, as such section existed on February 1, 2013, and
8 regulations adopted thereunder;

9 (2) Medical records, other than records of births and deaths and
10 except as provided in subdivisions (5) and (27) of this section, in any
11 form concerning any person; records of elections filed under section
12 44-2821; and patient safety work product under the Patient Safety
13 Improvement Act;

14 (3) Trade secrets, academic and scientific research work which is in
15 progress and unpublished, and other proprietary or commercial information
16 which if released would give advantage to business competitors and serve
17 no public purpose;

18 (4) Records which represent the work product of an attorney and the
19 public body involved which are related to preparation for litigation,
20 labor negotiations, or claims made by or against the public body or which
21 are confidential communications as defined in section 27-503;

22 (5) Records developed or received by law enforcement agencies and
23 other public bodies charged with duties of investigation or examination
24 of persons, institutions, or businesses, when the records constitute a
25 part of the examination, investigation, intelligence information,
26 complaints or inquiries from residents of this state or other interested
27 persons, informant identification, or strategic or tactical information
28 used in law enforcement training, except that this subdivision shall not
29 apply to records so developed or received:

30 (a) Relating to the presence of and amount or concentration of
31 alcohol or drugs in any body fluid of any person; or

1 (b) Relating to the cause of or circumstances surrounding the death
2 of an employee arising from or related to his or her employment if, after
3 an investigation is concluded, a family member of the deceased employee
4 makes a request for access to or copies of such records. This subdivision
5 does not require access to or copies of informant identification, the
6 names or identifying information of members of the public making
7 complaints or inquiries, other information which would compromise an
8 ongoing criminal investigation, or information which may be withheld from
9 the public under another provision of law. For purposes of this
10 subdivision, family member means a spouse, child, parent, sibling,
11 grandchild, or grandparent by blood, marriage, or adoption;

12 (6) The identity and personal identifying information of an alleged
13 victim of sexual assault or sex trafficking as provided in section
14 29-4316;

15 (7) Appraisals or appraisal information and negotiation records
16 concerning the purchase or sale, by a public body, of any interest in
17 real or personal property, prior to completion of the purchase or sale;

18 (8) Personal information in records regarding personnel of public
19 bodies other than salaries and routine directory information;

20 (9) Information solely pertaining to protection of the security of
21 public property and persons on or within public property, such as
22 specific, unique vulnerability assessments or specific, unique response
23 plans, either of which is intended to prevent or mitigate criminal acts
24 the public disclosure of which would create a substantial likelihood of
25 endangering public safety or property; computer or communications network
26 schema, passwords, and user identification names; guard schedules; lock
27 combinations; or public utility infrastructure specifications or design
28 drawings the public disclosure of which would create a substantial
29 likelihood of endangering public safety or property, unless otherwise
30 provided by state or federal law;

31 (10) Information that relates details of physical and cyber assets

1 of critical energy infrastructure or critical electric infrastructure,
2 including (a) specific engineering, vulnerability, or detailed design
3 information about proposed or existing critical energy infrastructure or
4 critical electric infrastructure that (i) relates details about the
5 production, generation, transportation, transmission, or distribution of
6 energy, (ii) could be useful to a person in planning an attack on such
7 critical infrastructure, and (iii) does not simply give the general
8 location of the critical infrastructure and (b) the identity of personnel
9 whose primary job function makes such personnel responsible for (i)
10 providing or granting individuals access to physical or cyber assets or
11 (ii) operating and maintaining physical or cyber assets, if a reasonable
12 person, knowledgeable of the electric utility or energy industry, would
13 conclude that the public disclosure of such identity could create a
14 substantial likelihood of risk to such physical or cyber assets.
15 Subdivision (10)(b) of this section shall not apply to the identity of a
16 chief executive officer, general manager, vice president, or board member
17 of a public entity that manages critical energy infrastructure or
18 critical electric infrastructure. The lawful custodian of the records
19 must provide a detailed job description for any personnel whose identity
20 is withheld pursuant to subdivision (10)(b) of this section. For purposes
21 of subdivision (10) of this section, critical energy infrastructure and
22 critical electric infrastructure mean existing and proposed systems and
23 assets, including a system or asset of the bulk-power system, whether
24 physical or virtual, the incapacity or destruction of which would
25 negatively affect security, economic security, public health or safety,
26 or any combination of such matters;

27 (11) The security standards, procedures, policies, plans,
28 specifications, diagrams, access lists, and other security-related
29 records of the Lottery Division of the Department of Revenue and those
30 persons or entities with which the division has entered into contractual
31 relationships. Nothing in this subdivision shall allow the division to

1 withhold from the public any information relating to:

2 (a) Amounts paid persons or entities with which the division has
3 entered into contractual relationships;

4 (b) Amounts of prizes paid; or

5 (c) The name of any prize winner awarded a prize of less than two
6 hundred fifty thousand dollars, and the city, village, or county where
7 the prize winner resides;

8 (12) With respect to public utilities and except as provided in
9 sections 43-512.06 and 70-101, personally identified private customer
10 account payment and customer use information, credit information on
11 others supplied in confidence, and customer lists;

12 (13) Records or portions of records kept by a publicly funded
13 library which, when examined with or without other records, reveal the
14 identity of any library patron using the library's materials or services;

15 (14) Correspondence, memoranda, and records of telephone calls
16 related to the performance of duties by a member of the Legislature in
17 whatever form. The lawful custodian of the correspondence, memoranda, and
18 records of telephone calls, upon approval of the Executive Board of the
19 Legislative Council, shall release the correspondence, memoranda, and
20 records of telephone calls which are not designated as sensitive or
21 confidential in nature to any person performing an audit of the
22 Legislature. A member's correspondence, memoranda, and records of
23 confidential telephone calls related to the performance of his or her
24 legislative duties shall only be released to any other person with the
25 explicit approval of the member;

26 (15) Records or portions of records kept by public bodies which
27 would reveal the location, character, or ownership of any known
28 archaeological, historical, or paleontological site in Nebraska when
29 necessary to protect the site from a reasonably held fear of theft,
30 vandalism, or trespass. This section shall not apply to the release of
31 information for the purpose of scholarly research, examination by other

1 public bodies for the protection of the resource or by recognized tribes,
2 the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or
3 the federal Native American Graves Protection and Repatriation Act;

4 (16) Records or portions of records kept by public bodies which
5 maintain collections of archaeological, historical, or paleontological
6 significance which reveal the names and addresses of donors of such
7 articles of archaeological, historical, or paleontological significance
8 unless the donor approves disclosure, except as the records or portions
9 thereof may be needed to carry out the purposes of the Unmarked Human
10 Burial Sites and Skeletal Remains Protection Act or the federal Native
11 American Graves Protection and Repatriation Act;

12 (17) Library, archive, and museum materials acquired from
13 nongovernmental entities and preserved solely for reference, research, or
14 exhibition purposes, for the duration specified in subdivision (17)(b) of
15 this section, if:

16 (a) Such materials are received by the public custodian as a gift,
17 purchase, bequest, or transfer; and

18 (b) The donor, seller, testator, or transferor conditions such gift,
19 purchase, bequest, or transfer on the materials being kept confidential
20 for a specified period of time;

21 (18) Job application materials submitted by applicants, other than
22 finalists or a priority candidate for a position described in section
23 85-106.06 selected using the enhanced public scrutiny process in section
24 85-106.06, who have applied for employment by any public body as defined
25 in section 84-1409. For purposes of this subdivision, (a) job application
26 materials means employment applications, resumes, reference letters, and
27 school transcripts and (b) finalist means any applicant who is not an
28 applicant for a position described in section 85-106.06 and (i) who
29 reaches the final pool of applicants, numbering four or more, from which
30 the successful applicant is to be selected, (ii) who is an original
31 applicant when the final pool of applicants numbers less than four, or

1 (iii) who is an original applicant and there are four or fewer original
2 applicants;

3 (19)(a) Records obtained by the Public Employees Retirement Board
4 pursuant to section 84-1512 and (b) records maintained by the board of
5 education of a Class V school district and obtained by the board of
6 trustees or the Public Employees Retirement Board for the administration
7 of a retirement system provided for under the Class V School Employees
8 Retirement Act pursuant to section 79-989;

9 (20) Social security numbers; credit card, charge card, or debit
10 card numbers and expiration dates; and financial account numbers supplied
11 to state and local governments;

12 (21) Information exchanged between a jurisdictional utility and city
13 pursuant to section 66-1867;

14 (22) Draft records obtained by the Nebraska Retirement Systems
15 Committee of the Legislature and the Governor from Nebraska Public
16 Employees Retirement Systems pursuant to subsection (4) of section
17 84-1503;

18 (23) All prescription drug information submitted pursuant to section
19 71-2454, all data contained in the prescription drug monitoring system,
20 and any report obtained from data contained in the prescription drug
21 monitoring system;

22 (24) Information obtained by any government entity, whether federal,
23 state, county, or local, regarding firearm registration, possession,
24 sale, or use that is obtained for purposes of an application permitted or
25 required by law or contained in a permit or license issued by such
26 entity. Such information shall be available upon request to any federal,
27 state, county, or local law enforcement agency;

28 (25) The security standards, procedures, policies, plans,
29 specifications, diagrams, and access lists and other security-related
30 records of the State Racing and Gaming Commission, those persons or
31 entities with which the commission has entered into contractual

1 relationships, and the names of any individuals placed on the list of
2 self-excluded persons with the commission as provided in section 9-1118.
3 Nothing in this subdivision shall allow the commission to withhold from
4 the public any information relating to the amount paid any person or
5 entity with which the commission has entered into a contractual
6 relationship, the amount of any prize paid, the name of the prize winner,
7 and the city, village, or county where the prize winner resides;

8 (26) Records relating to the nature, location, or function of
9 cybersecurity by the State of Nebraska or any of its political
10 subdivisions or any other public entity subject to sections 84-712 to
11 84-712.09, including, but not limited to, devices, programs, or systems
12 designed to protect computer, information technology, or communications
13 systems against terrorist or other attacks. The Nebraska Information
14 Technology Commission shall adopt and promulgate rules and regulations to
15 implement this subdivision;

16 (27) Vital event records, unless all information designated as
17 confidential under the Vital Statistics Act or all personally
18 identifiable information is redacted by the Department of Health and
19 Human Services;

20 (28) Information or records from historical indexes within one
21 hundred years after the event date of the information or record; ~~and~~

22 (29) The certificate number for any vital event certificate; ~~and~~ -

23 (30) Agricultural data as defined in section 3 of this act, unless
24 prior written consent has been obtained from the owner of such
25 agricultural data under the Agricultural Data Privacy Act.

26 **Sec. 12.** Original section 84-712.05, Reissue Revised Statutes of
27 Nebraska, is repealed.