LEGISLATIVE BILL 746

Introduced by Blood, 3.

Read first time January 08, 2020

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to consumer protection; to adopt the Nebraska
2 Consumer Data Privacy Act.
3 Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 17 of this act shall be known and may be cited as the Nebraska Consumer Data Privacy Act.

Sec. 2. The purpose of the Nebraska Consumer Data Privacy Act is to enhance the protection of private online data.

Sec. 3. The Legislature hereby finds:

(1) That it is an important and substantial state interest to protect private, personal data in Nebraska;

(2) That with the expanding use of technology and information in everyday life, there is an increasing amount of personal information being shared by consumers with businesses as a part of everyday transactions and online and other activities;

(3) That the increasing collection, storage, use, and sale of personal information creates increased risks of identity theft, financial loss, and other misuse of personal information; and

(4) That many consumers do not know, understand, or have appropriate authority over the distribution, use, sale, or disclosure of their personal information.

Sec. 4. For purposes of the Nebraska Consumer Data Privacy Act:

(1) Business means:

(a) A sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that:

(i) Is organized or operated for the profit or financial benefit of its shareholders or other owners;

(ii) Collects consumers' personal information, or on the behalf of which such information is collected and that alone, or jointly with others, determines the purposes and means of the processing of consumers' personal information;

(iii) Does business in Nebraska; and

(iv) Satisfies one or more of the following thresholds:

(A) Has annual gross revenue in excess of ten million dollars;

(B) Alone or in combination, annually buys, receives for the
business's commercial purposes, sells, or shares for commercial purposes, the personal information of fifty thousand or more consumers, households, or devices; or

(C) Derives fifty percent or more of its annual revenue from selling consumers' personal information; or

(b) Any entity that controls or is controlled by a business as defined in subdivision (1)(a) of this section and that shares common branding with such business. For purposes of this subdivision, control or controlled means (i) ownership of, or the power to vote, more than fifty percent of the outstanding shares of any class of voting security of an entity; (ii) control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or (iii) the power to exercise a controlling influence over the management of an entity;

(2) Common branding means a shared name, servicemark, or trademark;

(3) Consumer means an identified person who is a resident of this state and acting only in an individual or household context. Consumer does not mean a person acting in a commercial or employment context; and

(4)(a) Personal information means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household, including, but not limited to:

(i) Identifiers such as a real name, alias, postal address, unique personal identifier, online identifier, Internet protocol address, email address, account name, social security number, driver's license number, passport number, or other similar identifiers;

(ii) Characteristics of protected classifications under state or federal law;

(iii) Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies;
(iv) Biometric information such as fingerprints or facial recognition information;
(v) Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer's interaction with an Internet web site, application, or advertisement;
(vi) Geolocation data;
(vii) Audio, electronic, visual, thermal, olfactory, or similar information;
(viii) Professional or employment-related information;
(ix) Education information, defined as information that is not publicly available personally identifiable information as defined in the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, and 34 C.F.R. part 99, as such law and regulations existed on January 1, 2020; or
(x) Inferences drawn from any of the information identified in subdivision (4)(a) of this section to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

(b) Personal information does not include publicly available information. For purposes of this definition, publicly available means information that is lawfully made available from federal, state, or local government records, as restricted by any conditions associated with such information. Publicly available does not mean biometric information collected by a business about a consumer without the consumer's knowledge. Personal information does not include consumer information that is deidentified or aggregate consumer information.

Sec. 5. Consumers shall have the right to:

(1) Know what personal information is being collected about them;
(2) Know whether their personal information is sold or disclosed and
to whom;

(3) Decline or opt out of the sale of their personal information;

(4) Access their personal information that has been collected; and

(5) Equal services and prices, even if they exercise the rights listed in this section.

Sec. 6. A consumer shall have the right to request that a business that collects personal information about the consumer disclose to the consumer the following:

(1) The categories of personal information it has collected about that consumer;

(2) The categories of sources from which the personal information is collected;

(3) The business or commercial purpose for collecting or selling personal information;

(4) The categories of third parties with whom the business shares personal information; and

(5) The specific pieces of personal information it has collected about that consumer.

Sec. 7. A business that collects personal information about a consumer shall disclose to the consumer the information specified in section 6 of this act upon receipt of a verifiable request from the consumer. A business shall not be required to (1) retain any personal information about a consumer collected for a single one-time transaction if, in the ordinary course of business, that information about the consumer is not retained, or (2) reidentify or otherwise link any data that, in the ordinary course of business, is not maintained in a manner that would be considered personal information.

Sec. 8. (1) A consumer shall have the right to request that a business that sells the consumer's personal information, or that discloses it for a business purpose, disclose to that consumer:

(a) The categories of personal information that the business
collected about the consumer;

(b) The categories of personal information that the business sold about the consumer and the categories of third parties to whom the personal information was sold, by category or categories of personal information for each third party to whom the personal information was sold; and

(c) The categories of personal information that the business disclosed about the consumer for a business purpose.

(2) A business that sells personal information about a consumer, or that discloses a consumer's personal information for a business purpose, shall disclose the information specified in subsection (1) of this section to the consumer upon receipt of a verifiable request from the consumer.

(3) A third party shall not sell personal information about a consumer that has been sold to the third party by a business unless the consumer has received explicit notice and is provided an opportunity to exercise the right to opt out.

(4) A consumer shall have the right, at any time, to direct a business that sells personal information about the consumer to third parties not to sell the consumer's personal information. This right may be referred to as the right to opt out.

(5) A business that sells consumers' personal information to third parties shall provide notice to consumers that this information may be sold and that consumers have the right to opt out of the sale of their personal information.

(6) A business that has received direction from a consumer not to sell the consumer's personal information or, in the case of a minor consumer's personal information under subsection (7) of this section has not received consent to sell the minor consumer's personal information, shall be prohibited from selling the consumer's personal information after its receipt of the consumer's direction, unless the consumer
subsequently provides express authorization for the sale of the consumer's personal information.

(7) Notwithstanding subsections (4) and (6) of this section, a business shall not sell the personal information of consumers if the business has actual knowledge that the consumer is less than sixteen years of age, unless the consumer, in the case of consumers between thirteen and sixteen years of age, or the consumer's parent or guardian, in the case of consumers who are less than thirteen years of age, has affirmatively authorized the sale of the consumer's personal information. A business that willfully disregards the consumer's age shall be deemed to have had actual knowledge of the consumer's age. This right may be referred to as the right to opt in.

Sec. 9. (1) A consumer shall have the right to request that a business delete any personal information about the consumer which the business has collected from the consumer.

(2) A business that collects personal information about consumers shall disclose the consumer's rights to request the deletion of the consumer's personal information.

(3) A business that receives a verifiable request from a consumer to delete the consumer's personal information shall delete the consumer's personal information from its records and direct any service providers to delete the consumer's personal information from their records.

(4) A business or a service provider shall not be required to comply with a consumer's request to delete the consumer's personal information if it is necessary for the business or service provider to maintain the consumer's personal information in order to:

(a)(i) Complete the transaction for which the personal information was collected, (ii) provide a good or service requested by the consumer, or reasonably anticipated within the context of a business's ongoing business relationship with the consumer, or (iii) otherwise perform a contract between the business and the consumer:
(b)(i) Detect security incidents, (ii) protect against malicious, deceptive, fraudulent, or illegal activity, or (iii) prosecute those responsible for that activity;

(c) Debug to identify and repair errors that impair existing intended functionality;

(d) Exercise free speech, ensure the right of another consumer to exercise his or her right of free speech, or exercise another right provided for by law;

(e) Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws, when the business's deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent;

(f) To enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business; or

(g) Comply with state or federal law.

Sec. 10. (1) A business shall not discriminate against a consumer because the consumer exercised any of the consumer's rights under the Nebraska Consumer Data Privacy Act, including, but not limited to, by:

(a) Denying goods or services to the consumer;

(b) Charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties;

(c) Providing a different level or quality of goods or services to the consumer; or

(d) Suggesting that the consumer will receive a different price or rate for goods or services or a different level or quality of goods or services.

(2) Nothing in this section prohibits a business from charging a
consumer a different price or rate, or from providing a different level
or quality of goods or services to the consumer, if that difference is
reasonably related to the value provided to the consumer by the
consumer's personal information.

Sec. 11. (1) In order to comply with disclosure and notice
requirements of the Nebraska Consumer Data Privacy Act, a business shall:

(a) In a form that is reasonably accessible to consumers, make
available to consumers two or more designated methods for submitting
requests for information required to be disclosed including, at a
minimum, a toll-free telephone number and, if the business maintains an
Internet web site, a web site address;

(b) In a form that is reasonably accessible to consumers, disclose
and deliver the required information to a consumer free of charge within
forty-five days after receiving a verifiable request from the consumer.
The time period to provide the required information may be extended once
by an additional forty-five days when reasonably necessary, provided the
consumer is provided notice of the extension within the first forty-five-
day period;

(c) In a form that is reasonably accessible to consumers, provide a
clear and conspicuous link on the business's Internet homepage, titled Do
Not Sell My Personal Information, to an Internet web page that enables a
consumer, or a person authorized by the consumer, to opt out of the sale
of the consumer's personal information. A business shall not require a
consumer to create an account in order to direct the business not to sell
the consumer's personal information;

(d) Include a description of a consumer's rights along with a
separate link to the Do Not Sell My Personal Information Internet web
page in:

(i) Its online privacy policy or policies if the business has an
online privacy policy or policies; and

(ii) Any Nebraska-specific description of consumers' privacy rights;
(e) Ensure that all individuals responsible for handling consumer inquiries about the business's privacy practices are informed of all requirements in the Nebraska Consumer Data Privacy Act and how to direct consumers to exercise their rights;

(f) For consumers who exercise their right to opt out of the sale of their personal information, refrain from selling personal information collected by the business about the consumer;

(g) For a consumer who has opted out of the sale of the consumer's personal information, respect the consumer's decision to opt out for at least twelve months before requesting that the consumer authorize the sale of the consumer's personal information; and

(h) Use any personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.

(2) Nothing in this section shall be construed to require a business to comply with disclosure and notice requirements of the act by including the required links and text on the homepage that the business makes available to the public generally, if the business maintains a separate and additional homepage that is dedicated to Nebraska consumers and that includes the required links and text, and the business takes reasonable steps to ensure that Nebraska consumers are directed to the homepage for Nebraska consumers and not the homepage made available to the public generally.

Sec. 12. The obligations imposed on businesses by the Nebraska Consumer Data Privacy Act shall not restrict a business's ability to:

(1) Comply with federal, state, or local laws;

(2) Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities;

(3) Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably
and in good faith believes may violate federal, state, or local law;

(4) Exercise or defend legal claims;

(5) Collect, use, retain, sell, or disclose consumer information
that is deidentified or is aggregate consumer information;

(6) Collect or sell a consumer's personal information if every
aspect of that commercial conduct takes place wholly outside of Nebraska.
For purposes of this section, commercial conduct takes place wholly
outside of Nebraska if the business collected that information while the
consumer was outside of Nebraska, no part of the sale of the consumer's
personal information occurred in Nebraska, and no personal information
collected while the consumer was in Nebraska is sold. This section shall
not permit a business to store, including on a device, personal
information about a consumer when the consumer is in Nebraska and then
collect that personal information when the consumer and stored personal
information is outside of Nebraska; or

(7) Sell the personal information of a consumer who has opted out of
the sale of the consumer's personal information to another person for the
sole purpose of detecting security incidents, protecting against
malicious, deceptive, fraudulent, or illegal activity, and prosecuting
those responsible for that activity, so long as the business and the
person do not further sell such information for any other purpose.

Sec. 13. Any business, service provider, or other person that
violates the Nebraska Consumer Data Privacy Act shall be liable for a
civil penalty in a civil action brought by the Attorney General of up to
seven thousand five hundred dollars for each violation.

Sec. 14. The Nebraska Consumer Data Privacy Act is a matter of
statewide concern and the act supersedes and preempts all rules,
regulations, codes, ordinances, and other laws adopted by a city, county,
city and county, municipality, local agency, or any other political
subdivision regarding the collection and sale of consumers' personal
information by businesses.
Sec. 15. The Nebraska Consumer Data Privacy Act shall not apply to:

(1) An activity involving personal information governed by the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., as such act existed on January 1, 2020, or otherwise used to generate a consumer report, by a consumer reporting agency, as defined by 15 U.S.C. 1681a(f), as such section existed on January 1, 2020, by a furnisher of information, or by a person procuring or using a consumer report;

(2) A financial institution or an affiliate of a financial institution that is subject to the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., or to any law, rule, or regulation adopted or promulgated pursuant to such act, as such act, law, and rules and regulations existed on the effective date of this act;

(3) Personal information collected, processed, sold, or disclosed pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., or to any rule or regulation adopted or promulgated pursuant to such act, as such act and rules or regulations existed on the effective date of this act;

(4) Protected health information collected by a covered entity or business associate acting on a covered entity's behalf subject to the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the Health Information Technology for Economic and Clinical Health Act, 42 U.S.C. 300jj; 17901 et seq., as such acts and regulations existed on January 1, 2020; or

(5) The sale of a consumer's personally identifiable information as authorized by the Uniform Motor Vehicle Records Disclosure Act.

Sec. 16. The Attorney General may adopt and promulgate rules and regulations to further the purpose and administration of the Nebraska Consumer Data Privacy Act.

Sec. 17. Any business or third party may seek the opinion of the
1 Attorney General for guidance on how to comply with the Nebraska Consumer
2 Data Privacy Act.