

AMENDMENTS TO LB788

Introduced by Schumacher

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 8-1401, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 8-1401 (1) No person organized under the Business
6 Corporation Act, the Credit Union Act, the Nebraska Banking Act,
7 the Nebraska Industrial Development Corporation Act, the Nebraska
8 Nonprofit Corporation Act, the Nebraska Professional Corporation
9 Act, the Nebraska Trust Company Act, or Chapter 8, article 3, or
10 otherwise authorized to conduct business in Nebraska or organized
11 under the laws of the United States, shall be required to disclose
12 any records or information, financial or otherwise, that it deems
13 confidential concerning its affairs or the affairs of any person
14 with which it is doing business to any person, party, agency, or
15 organization, unless:

16 (a) The disclosure relates to a lawyers trust account
17 and is required to be made to the Counsel for Discipline of the
18 Nebraska Supreme Court pursuant to a rule adopted by the Nebraska
19 Supreme Court;

20 (b) The disclosure is governed by rules for discovery
21 promulgated pursuant to section 25-1273.01;

22 (c) The disclosure is made pursuant to section 3 of this
23 act;

1 ~~(e)~~ (d) The request for disclosure is made by a law
2 enforcement agency regarding a crime, a fraud, or any other
3 unlawful activity in which the person to whom the request for
4 disclosure is made is or may be a victim of such crime, fraud, or
5 unlawful activity;

6 ~~(d)~~ (e) The request for disclosure is made by a
7 governmental agency which is a duly constituted supervisory
8 regulatory agency of the person to whom the request for disclosure
9 is made and the disclosure relates to examinations, audits,
10 investigations, or inquiries of such persons;

11 ~~(e)~~ (f) The request for disclosure is made pursuant to
12 subpoena issued under the laws of this state by a governmental
13 agency exercising investigatory or adjudicative functions with
14 respect to a matter within the agency's jurisdiction;

15 ~~(f)~~ (g) The production of records is pursuant to a
16 written demand of the Tax Commissioner under section 77-375;

17 ~~(g)~~ (h) There is first presented to such person a
18 subpoena, summons, or warrant issued by a court of competent
19 jurisdiction;

20 ~~(h)~~ (i) A statute by its terms or rules and regulations
21 adopted and promulgated thereunder requires the disclosure, other
22 than by subpoena, summons, warrant, or court order;

23 ~~(i)~~ (j) There is presented to such person an order of a
24 court of competent jurisdiction setting forth the exact nature and
25 limits of such required disclosure and a showing that all persons
26 to be affected by such order have had reasonable notice and an
27 opportunity to be heard upon the merits of such order;

1 ~~(j)~~ (k) The request for disclosure relates to information
2 or records regarding the balance due, monthly payments due, payoff
3 amounts, payment history, interest rates, due dates, or similar
4 information for indebtedness owed by a deceased person when the
5 request is made by a person having an ownership interest in real
6 estate or personal property which secures such indebtedness owed to
7 the person to whom the request for disclosure is made; or

8 ~~(k)~~ (l) There is first presented to such person the
9 written permission of the person about whom records or information
10 is being sought authorizing the release of the requested records or
11 information.

12 (2) Any person who makes a disclosure of records or
13 information as required by this section shall not be held civilly
14 or criminally liable for such disclosure in the absence of malice,
15 bad faith, intent to deceive, or gross negligence.

16 Sec. 2. Section 8-1402, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 8-1402 (1) Any person, party, agency, or organization
19 requesting disclosure of records or information pursuant to
20 section 8-1401 shall pay the costs of providing such records or
21 information, unless:

22 (a) The request for disclosure is made pursuant to
23 subdivision (1)(a) of section 8-1401 and a Nebraska Supreme Court
24 rule provides for the method of payment;

25 (b) The request is made pursuant to subdivision (1)(b) of
26 section 8-1401 and the rules for discovery provide for the method
27 of payment;

1 (c) The request for disclosure is made pursuant to
2 subdivision ~~(1)(e)~~ or ~~(1)(d)~~ (1)(d) or (1)(e) of section 8-1401;

3 (d) Otherwise ordered by a court of competent
4 jurisdiction; or

5 (e) The person making the disclosure waives any or all of
6 the costs.

7 (2) The requesting person, party, agency, or organization
8 shall pay five dollars per hour per person for the time actually
9 spent on the service or, if such person can show that its actual
10 expense in providing the records or information was greater than
11 five dollars per hour per person, it shall be paid the actual cost
12 of providing the records or information.

13 (3) No person authorized to receive payment pursuant to
14 subsection (1) of this section has an obligation to provide any
15 records or information pursuant to section 8-1401 until assurances
16 are received that the costs due under this section will be paid,
17 except for requests made pursuant to subdivisions ~~(1)(e)~~, ~~(1)(d)~~,
18 ~~(1)(e)~~, and ~~(1)(f)~~ (1)(d), (1)(e), (1)(f), and (1)(g) of section
19 8-1401.

20 Sec. 3. (1) This section does not apply to:

21 (a) Real property owned by a decedent; or

22 (b) The contents of a safe deposit box rented by a
23 decedent from a state-chartered or federally chartered bank,
24 savings bank, building and loan association, savings and loan
25 association, or credit union.

26 (2) After the death of a decedent, a person (a) indebted
27 to the decedent or (b) having possession of (i) personal property,

1 (ii) an instrument evidencing a debt, (iii) an obligation, (iv)
2 a chose in action, (v) a life insurance policy, (vi) a bank
3 account, (vii) a certificate of deposit, or (viii) intangible
4 property, including annuities, fixed income investments, mutual
5 funds, cash, money market accounts, or stocks, belonging to the
6 decedent, shall furnish the value of the indebtedness or property
7 on the date of death and the names of the known or designated
8 beneficiaries of property described in this subsection to a person
9 who is (A) an heir at law of the decedent, (B) a devisee of the
10 decedent or a person nominated as a personal representative in a
11 will of the decedent, or (C) an agent or attorney authorized in
12 writing by any such person described in subdivision (A) or (B) of
13 this subdivision, with a copy of such authorization attached to
14 the affidavit, and who also presents an affidavit containing the
15 information required by subsection (3) of this section.

16 (3) An affidavit presented under subsection (2) of this
17 section shall state:

18 (a) The name, address, social security number if
19 available, and date of death of the decedent;

20 (b) The name and address of the affiant and that the
21 affiant is (i) an heir at law of the decedent, (ii) a devisee of
22 the decedent or a person nominated as a personal representative in
23 a will of the decedent, or (iii) an agent or attorney authorized in
24 writing by any such person described in subdivision (i) or (ii) of
25 this subdivision;

26 (c) That the disclosure of the value on the date of
27 death is necessary to determine whether the decedent's estate can

1 be administered under the summary procedures set forth in section
2 30-24,125, to assist in the determination of the inheritance tax
3 in an estate that is not subject to probate, or to assist a
4 conservator or guardian in the preparation of a final accounting
5 subsequent to the death of the decedent;

6 (d) That the affiant is answerable and accountable for
7 the information received to the decedent's personal representative,
8 if any, or to any other person having a superior right to the
9 property or indebtedness;

10 (e) That the affiant swears or affirms that all
11 statements in the affidavit are true and material and further
12 acknowledges that any false statement may subject the person to
13 penalties relating to perjury under section 28-915; and

14 (f) That no application or petition for the appointment
15 of a personal representative is pending or has been granted in any
16 jurisdiction.

17 (4) A person presented with an affidavit under subsection
18 (2) of this section shall provide the requested information within
19 five business days after being presented with the affidavit.

20 (5) A person who acts in good faith reliance on an
21 affidavit presented under subsection (2) of this section is immune
22 from liability for the disclosure of the requested information.

23 Sec. 4. Section 8-1403, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 8-1403 For purposes of sections 8-1401 and 8-1402 and
26 section 3 of this act:

27 (1) Governmental agency means any agency, department, or

1 commission of this state or any authorized officer, employee, or
2 agent of such agency, department, or commission;

3 (2) Law enforcement agency means an agency or department
4 of this state or of any political subdivision of this state that
5 obtains, serves, and enforces arrest warrants or that conducts or
6 engages in prosecutions for violations of the law; and

7 (3) Person means any individual, corporation,
8 partnership, limited liability company, association, joint
9 stock association, trust, unincorporated organization, and any
10 other legal entity.

11 Sec. 5. Original sections 8-1401, 8-1402, and 8-1403,
12 Reissue Revised Statutes of Nebraska, are repealed.