

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 835

Introduced by Mello, 5; Coash, 27.

Read first time January 08, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to consumer protection; to amend sections
2 8-2603, 59-1611, 59-1614, 87-301, 87-302, 87-303, 87-802, 87-803,
3 and 87-804, Reissue Revised Statutes of Nebraska; to change
4 provisions relating to the Credit Report Protection Act, Consumer
5 Protection Act, Uniform Deceptive Trade Practices Act, and Financial
6 Data Protection and Consumer Notification of Data Security Breach
7 Act of 2006; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-2603, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 8-2603 (1) A consumer, including a minor at the request of a parent
4 or custodial parent or guardian if appointed, may elect to place a
5 security freeze on his or her file by making a request by certified mail
6 to the consumer reporting agency.

7 (2) If a consumer reporting agency does not have a file pertaining
8 to a minor when the consumer reporting agency receives a request under
9 subsection (1) of this section, the consumer reporting agency shall
10 create a file for the minor.

11 Sec. 2. Section 59-1611, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 59-1611 (1) Whenever the Attorney General believes that any person
14 may be in possession, custody, or control of any original or copy of any
15 book, record, report, memorandum, paper, communication, tabulation, map,
16 chart, photograph, mechanical transcription, or other tangible document
17 or recording, wherever situated, which he or she believes to be relevant
18 to the subject matter of an investigation of a possible violation of
19 sections 59-1602 to 59-1606, the Attorney General may, prior to the
20 institution of a civil proceeding thereon, execute in writing and cause
21 to be served upon such a person a civil investigative demand requiring
22 such person to produce such documentary material and permit inspection
23 and copying thereof. This section shall not be applicable to criminal
24 prosecutions.

25 (2) Each such demand shall:

26 (a) State the statute and section or sections thereof the alleged
27 violation of which is under investigation, and the general subject matter
28 of the investigation;

29 (b) Describe the class or classes of documentary material to be
30 produced thereunder with reasonable specificity so as fairly to indicate
31 the material demanded;

1 (c) Prescribe a return date within which the documentary material
2 shall be produced; and

3 (d) Identify the members of the Attorney General's staff to whom
4 such documentary material shall be made available for inspection and
5 copying.

6 (3) No such demand shall:

7 (a) Contain any requirement which would be unreasonable or improper
8 if contained in a subpoena duces tecum issued by a court of this state;
9 or

10 (b) Require the disclosure of any documentary material which would
11 be privileged, or which for any other reason would not be required by a
12 subpoena duces tecum issued by a court of this state.

13 (4) Service of any such demand may be made by:

14 (a) Delivering a duly executed copy thereof to the person to be
15 served, or, if such person is not a natural person, to any officer of the
16 person to be served;

17 (b) Delivering a duly executed copy thereof to the principal place
18 of business in this state of the person to be served; or

19 (c) Mailing by certified mail a duly executed copy thereof addressed
20 to the person to be served at the principal place of business in this
21 state, or, if such person has no place of business in this state, to his
22 or her principal office or place of business.

23 (5) Documentary material demanded pursuant to the provisions of this
24 section shall be produced for inspection and copying during normal
25 business hours at the principal office or place of business of the person
26 served, or at such other times and places as may be agreed upon by the
27 person served and the Attorney General.

28 (6) No documentary material produced pursuant to a demand, or copies
29 thereof, shall, unless otherwise ordered by a district court for good
30 cause shown, be produced for inspection or copying by, nor shall the
31 contents thereof be disclosed to, other than an authorized employee of

1 the Attorney General, without the consent of the person who produced such
2 material, except that:

3 (a) Under ~~under~~ such reasonable terms and conditions as the Attorney
4 General shall prescribe, the copies of such documentary material shall be
5 available for inspection and copying by the person who produced such
6 material or any duly authorized representative of such person; -

7 (b) The Attorney General may provide copies of such documentary
8 material to an official of this or any other state, or an official of the
9 federal government, who is charged with the enforcement of federal or
10 state antitrust or consumer protection laws, if such official agrees in
11 writing to not disclose such documentary material to any person other
12 than the official's authorized employees, except as such disclosure is
13 permitted under subdivision (c) of this subsection; and

14 (c) The Attorney General or any assistant attorney general or an
15 official authorized to receive copies of documentary material under
16 subdivision (b) of this subsection may use such copies of documentary
17 material as he or she determines necessary in the enforcement of the
18 Consumer Protection Act or any state or federal consumer protection laws
19 that any state or federal official has authority to enforce, including
20 presentation before any court, except that any such material which
21 contains trade secrets shall not be presented except with the approval of
22 the court in which action is pending after adequate notice to the person
23 furnishing such material.

24 (7) At any time before the return date specified in the demand, or
25 within twenty days after the demand has been served, whichever period is
26 shorter, a petition to extend the return date for or to modify or set
27 aside a demand issued pursuant to subsection (1) of this section, stating
28 good cause, may be filed in the district court for Lancaster County, or
29 in such other county where the parties reside. A petition by the person
30 on whom the demand is served, stating good cause, to require the Attorney
31 General or any person to perform any duty imposed by the provisions of

1 this section, and all other petitions in connection with a demand, may be
2 filed in the district court for Lancaster County or in the county where
3 the parties reside.

4 (8) Whenever any person fails to comply with any civil investigative
5 demand for documentary material duly served upon him or her under this
6 section, or whenever satisfactory copying or reproduction of any such
7 material cannot be done and such person refuses to surrender such
8 material, the Attorney General may file, in the district court of the
9 county in which such person resides, is found, or transacts business, and
10 serve upon such person a petition for an order of such court for the
11 enforcement of this section, except that if such person transacts
12 business in more than one county such petition shall be filed in the
13 county in which such person maintains his or her principal place of
14 business or in such other county as may be agreed upon by the parties to
15 such petition. Whenever any petition is filed in the district court of
16 any county under this section, such court shall have jurisdiction to hear
17 and determine the matter so presented and to enter such order as may be
18 required to carry into effect the provisions of this section.
19 Disobedience of any order entered under this section by any court shall
20 be punished as a contempt thereof.

21 Sec. 3. Section 59-1614, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 59-1614 Any person who violates section 59-1603 or 59-1604 or the
24 terms of any injunction issued as provided in the Consumer Protection Act
25 shall forfeit and pay a civil penalty of not more than five hundred
26 ~~twenty-five~~ thousand dollars.

27 Any person who violates section 59-1602 shall pay a civil penalty of
28 not more than two thousand dollars for each violation, except that such
29 penalty shall not apply to any radio or television broadcasting station
30 which broadcasts, or to any publisher, printer, or distributor of any
31 newspaper, magazine, billboard, or other advertising medium who

1 publishes, prints, or distributes advertising in good faith without
2 knowledge of its false, deceptive, or misleading character and no such
3 good faith publication, printing, or distribution shall be considered a
4 violation of section 59-1602.

5 For the purpose of this section, the district court which issues any
6 injunction shall retain jurisdiction, and the cause shall be continued,
7 and in such cases the Attorney General acting in the name of the state
8 may petition for the recovery of civil penalties.

9 With respect to violations of sections 59-1603 and 59-1604, the
10 Attorney General, acting in the name of the state, may seek recovery of
11 such penalties in a civil action.

12 Sec. 4. Section 87-301, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 87-301 For purposes of the Uniform Deceptive Trade Practices Act,
15 unless the context otherwise requires:

16 (1) Access software provider means a provider of software, including
17 client or server software, or enabling tools that do any one or more of
18 the following: (a) Filter, screen, allow, or disallow content; (b) pick,
19 choose, analyze, or digest content; or (c) transmit, receive, display,
20 forward, cache, search, subset, organize, reorganize, or translate
21 content;

22 (2) Appropriate inventory repurchase program means a program by
23 which a plan or operation repurchases, upon request and upon commercially
24 reasonable terms, when the salesperson's business relationship with the
25 company ends, current and marketable inventory in the possession of the
26 salesperson that was purchased by the salesperson for resale. Any such
27 plan or operation shall clearly describe the program in its recruiting
28 literature, sales manual, or contract with independent salespersons,
29 including the disclosure of any inventory that is not eligible for
30 repurchase under the program;

31 (3) Article means a product as distinguished from its trademark,

1 label, or distinctive dress in packaging;

2 (4) Attorney General means the Attorney General of the State of
3 Nebraska or the county attorney of any county with the consent and advice
4 of the Attorney General;

5 (5) Cable operator means any person or group of persons (a) who
6 provides cable service over a cable system and directly or through one or
7 more affiliates owns a significant interest in such cable system or (b)
8 who otherwise controls or is responsible for, through any arrangement,
9 the management and operation of such a cable system;

10 (6) Certification mark means a mark used in connection with the
11 goods or services of a person other than the certifier to indicate
12 geographic origin, material, mode of manufacture, quality, accuracy, or
13 other characteristics of the goods or services or to indicate that the
14 work or labor on the goods or services was performed by members of a
15 union or other organization;

16 (7) Collective mark means a mark used by members of a cooperative,
17 association, or other collective group or organization to identify goods
18 or services and distinguish them from those of others, or to indicate
19 membership in the collective group or organization;

20 (8) Commercially reasonable terms means the repurchase of current
21 and marketable inventory within twelve months from the date of purchase
22 at not less than ninety percent of the original net cost, less
23 appropriate setoffs and legal claims, if any;

24 (9) Compensation means a payment of any money, thing of value, or
25 financial benefit;

26 (10) Consideration means anything of value, including the payment of
27 cash or the purchase of goods, services, or intangible property. The term
28 does not include the purchase of goods or services furnished at cost to
29 be used in making sales and not for resale or time and effort spent in
30 pursuit of sales or recruiting activities;

31 (11) Covered file-sharing program means a computer program,

1 application, or software that enables the computer on which such program,
2 application, or software is installed to designate files as available for
3 searching by and copying to one or more other computers, to transmit such
4 designated files directly to one or more other computers, and to request
5 the transmission of such designated files directly from one or more other
6 computers. Covered file-sharing program does not mean a program,
7 application, or software designed primarily to operate as a server that
8 is accessible over the Internet using the Internet Domain Name System, to
9 transmit or receive email messages, instant messaging, real-time audio or
10 video communications, or real-time voice communications, or to provide
11 network or computer security, network management, hosting and backup
12 services, maintenance, diagnostics, technical support or repair, or to
13 detect or prevent fraudulent activities;

14 (12) Current and marketable has its plain and ordinary meaning but
15 excludes inventory that is no longer within its commercially reasonable
16 use or shelf-life period, was clearly described to salespersons prior to
17 purchase as seasonal, discontinued, or special promotion products not
18 subject to the plan or operation's inventory repurchase program, or has
19 been used or opened;

20 (13) Information content provider means any person or entity that is
21 responsible, in whole or in part, for the creation or development of
22 information provided through the Internet or any other interactive
23 computer service;

24 (14) Interactive computer service means any information service,
25 system, or access software provider that provides or enables computer
26 access by multiple users to a computer server, including specifically a
27 service or system that provides access to the Internet and such systems
28 operated or services offered by libraries or educational institutions;

29 (15) Inventory includes both goods and services, including company-
30 produced promotional materials, sales aids, and sales kits that the plan
31 or operation requires independent salespersons to purchase;

1 (16) Inventory loading means that the plan or operation requires or
2 encourages its independent salespersons to purchase inventory in an
3 amount which exceeds that which the salesperson can expect to resell for
4 ultimate consumption or to a consumer in a reasonable time period, or
5 both;

6 (17) Investment means any acquisition, for a consideration other
7 than personal services, of personal property, tangible or intangible, for
8 profit or business purposes, and includes, without limitation,
9 franchises, business opportunities, and services. It does not include
10 real estate, securities registered under the Securities Act of Nebraska,
11 or sales demonstration equipment and materials furnished at cost for use
12 in making sales and not for resale;

13 (18) Mark means a word, a name, a symbol, a device, or any
14 combination of a word, name, symbol, or device in any form or
15 arrangement;

16 (19) Person means a natural person, a corporation, a government, ~~or~~
17 a governmental subdivision or agency, a business trust, an estate, a
18 trust, a partnership, a joint venture, a limited liability company, an
19 unincorporated association, a sole proprietorship, or two or more of any
20 of such persons ~~the foregoing~~ having a joint or common interest, or any
21 other legal or commercial entity;

22 (20) Pyramid promotional scheme means any plan or operation in which
23 a participant gives consideration for the right to receive compensation
24 that is derived primarily from the recruitment of other persons as
25 participants in the plan or operation rather than from the sales of
26 goods, services, or intangible property to participants or by
27 participants to others. A limitation as to the number of persons who may
28 participate, or the presence of additional conditions affecting
29 eligibility, or upon payment of anything of value by a person whereby the
30 person obtains any other property in addition to the right to receive
31 consideration, does not change the identity of the scheme as a pyramid

1 promotional scheme;

2 (21) Referral or chain referral sales or leases means any sales
3 technique, plan, arrangement, or agreement whereby the seller or lessor
4 gives or offers to give a rebate or discount or otherwise pays or offers
5 to pay value to the buyer or lessee as an inducement for a sale or lease
6 in consideration of the buyer or lessee giving to the seller or lessor
7 the names of prospective buyers or lessees or otherwise aiding the seller
8 or lessor in making a sale or lease to another person if the earning of
9 the rebate, discount, or other value is contingent upon the occurrence of
10 an event subsequent to the time the buyer or lessee agrees to buy or
11 lease;

12 (22) Service mark means a mark used in the sale or advertising of
13 services to identify the services of one person and distinguish them from
14 the services of others;

15 (23) Telecommunications service means the offering of
16 telecommunications for a fee directly to the public, or to such classes
17 of users as to be effectively available directly to the public,
18 regardless of the facilities used;

19 (24) Trademark means a any word, a name, a symbol, a or device, or
20 any combination of a word, name, symbol, or device thereof adopted and
21 used by a person to identify goods made or sold by such person and to
22 distinguish such goods from goods made or sold by others;

23 (25) Trade name means a word, ~~or~~ a name, or any combination of a
24 word or name the foregoing in any form or arrangement used by a person to
25 identify such person's business, vocation, or occupation and distinguish
26 such business, vocation, or occupation from the business, vocation, or
27 occupation of others; and

28 (26) Use or promote the use of, for purposes of subdivision (a)(13)
29 (a)(12) of section 87-302, means contrive, prepare, establish, plan,
30 operate, advertise, or otherwise induce or attempt to induce another
31 person to participate in a pyramid promotional scheme, including a

1 pyramid promotional scheme run through the Internet, email, or other
2 electronic communications.

3 Sec. 5. Section 87-302, Reissue Revised Statutes of Nebraska, is
4 amended to read:

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

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

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

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

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

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

19 (6) Represents that goods or services do not have sponsorship,
20 approval, characteristics, ingredients, uses, benefits, or quantities
21 that they have or that a person does not have a sponsorship, approval,
22 status, affiliation, or connection that he or she has;

23 (7 6) Represents that goods are original or new if they are
24 deteriorated, altered, reconditioned, reclaimed, used, or secondhand,
25 except that sellers may repair damage to and make adjustments on or
26 replace parts of otherwise new goods in an effort to place such goods in
27 compliance with factory specifications;

28 (8 7) Represents that goods or services are of a particular
29 standard, quality, or grade, or that goods are of a particular style or
30 model, if they are of another;

31 (9 8) Disparages the goods, services, or business of another by

1 false or misleading representation of fact;

2 (10 9) Advertises goods or services with intent not to sell them as
3 advertised or advertises the price in any manner calculated or tending to
4 mislead or in any way deceive a person;

5 (11 10) Advertises goods or services with intent not to supply
6 reasonably expectable public demand, unless the advertisement discloses a
7 limitation of quantity;

8 (12 11) Makes false or misleading statements of fact concerning the
9 reasons for, existence of, or amounts of price reductions;

10 (13 12) Uses or promotes the use of or establishes, operates, or
11 participates in a pyramid promotional scheme in connection with the
12 solicitation of such scheme to members of the public. This subdivision
13 shall not be construed to prohibit a plan or operation, or to define a
14 plan or operation as a pyramid promotional scheme, based on the fact that
15 participants in the plan or operation give consideration in return for
16 the right to receive compensation based upon purchases of goods,
17 services, or intangible property by participants for personal use,
18 consumption, or resale so long as the plan or operation does not promote
19 or induce inventory loading and the plan or operation implements an
20 appropriate inventory repurchase program;

21 (14 13) With respect to a sale or lease to a natural person of goods
22 or services purchased or leased primarily for personal, family,
23 household, or agricultural purposes, uses or employs any referral or
24 chain referral sales technique, plan, arrangement, or agreement;

25 (15 14) Knowingly makes a false or misleading statement in a privacy
26 policy, published on the Internet or otherwise distributed or published,
27 regarding the use of personal information submitted by members of the
28 public;

29 (16 15) Uses any scheme or device to defraud by means of:

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

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

3 (~~17~~ 16) Offers an unsolicited check, through the mail or by other
4 means, to promote goods or services if the cashing or depositing of the
5 check obligates the endorser or payee identified on the check to pay for
6 goods or services. This subdivision does not apply to an extension of
7 credit or an offer to lend money;

8 (~~18~~ 17) Mails or causes to be sent an unsolicited billing statement,
9 invoice, or other document that appears to obligate the consumer to make
10 a payment for services or merchandise he or she did not order;

11 (~~19~~)(i) (~~18~~)(i) Installs, offers to install, or makes available for
12 installation or download a covered file-sharing program on a computer not
13 owned by such person without providing clear and conspicuous notice to
14 the owner or authorized user of the computer that files on that computer
15 will be made available to the public and without requiring intentional
16 and affirmative activation of the file-sharing function of such covered
17 file-sharing program by the owner or authorized user of the computer; or

18 (ii) Prevents reasonable efforts to block the installation,
19 execution, or disabling of a covered file-sharing program; ~~or~~

20 (~~20~~ 19) Violates any provision of the Nebraska Foreclosure
21 Protection Act; or -

22 (~~21~~) In connection with the solicitation of funds or other assets
23 for any charitable purpose, or in connection with any solicitation which
24 represents that funds or assets will be used for any charitable purpose,
25 uses or employs any deception, fraud, false pretense, false promise,
26 misrepresentation, unfair practice, or concealment, suppression, or
27 omission of any material fact.

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

31 (c) This section does not affect unfair trade practices otherwise

1 actionable at common law or under other statutes of this state.

2 Sec. 6. Section 87-303, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 87-303 (a) A person likely to be damaged by a deceptive trade
5 practice of another may bring an action for, and the court may grant, an
6 injunction under the principles of equity against the person committing
7 the deceptive trade practice. The court may order such additional
8 equitable relief as it deems necessary to protect the public from further
9 violations, including temporary and permanent injunctive relief. Proof of
10 monetary damage, loss of profits, or intent to deceive is not required.
11 Relief granted for the copying of an article shall be limited to the
12 prevention of confusion or misunderstanding as to source.

13 (b) Costs shall be allowed to the prevailing party unless the court
14 otherwise directs. The court in its discretion may award attorneys' fees
15 to the prevailing party if (1) the party complaining of a deceptive trade
16 practice has brought an action which he knew to be groundless or (2) the
17 party charged with a deceptive trade practice has willfully engaged in
18 the trade practice knowing it to be deceptive.

19 (c) A claim filed for a violation of the Uniform Deceptive Trade
20 Practices Act shall be proved by a preponderance of the evidence.

21 (d) The relief provided in this section is in addition to remedies
22 otherwise available against the same conduct under the common law or
23 other statutes of this state.

24 (e) Subdivision (a)(13) ~~(a)(12)~~ of section 87-302 shall not be
25 construed to authorize a civil action against an interactive computer
26 service, provider of telecommunications service, or cable operator for
27 the actions of an information content provider.

28 Sec. 7. Section 87-802, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 87-802 For purposes of the Financial Data Protection and Consumer
31 Notification of Data Security Breach Act of 2006:

1 (1) Breach of the security of the system means the unauthorized
2 acquisition of unencrypted computerized data or data in any medium,
3 including paper, that compromises the security, confidentiality, or
4 integrity of personal information maintained by an individual or a
5 commercial entity. Good faith acquisition of personal information by an
6 employee or agent of an individual or a commercial entity for the
7 purposes of the individual or the commercial entity is not a breach of
8 the security of the system if the personal information is not used or
9 subject to further unauthorized disclosure. Acquisition of personal
10 information pursuant to a search warrant, subpoena, or other court order
11 or pursuant to a subpoena or order of a state agency is not a breach of
12 the security of the system;

13 (2) Commercial entity includes a corporation, business trust,
14 estate, trust, partnership, limited partnership, limited liability
15 partnership, limited liability company, association, organization, joint
16 venture, government, governmental subdivision, agency, or
17 instrumentality, or any other legal entity, whether for profit or not for
18 profit;

19 (3) Encrypted means converted by use of an algorithmic process to
20 transform data into a form in which the data is rendered unreadable or
21 unusable without use of a confidential process or key. Data shall not be
22 considered encrypted if the confidential process or key was or is
23 reasonably believed to have been acquired as a result of the breach of
24 the security of the system;

25 (4) Notice means:

26 (a) Written notice;

27 (b) Telephonic notice;

28 (c) Electronic notice, if the notice provided is consistent with the
29 provisions regarding electronic records and signatures set forth in 15
30 U.S.C. 7001, as such section existed on January 1, 2006;

31 (d) Substitute notice, if the individual or commercial entity

1 required to provide notice demonstrates that the cost of providing notice
2 will exceed seventy-five thousand dollars, that the affected class of
3 Nebraska residents to be notified exceeds one hundred thousand residents,
4 or that the individual or commercial entity does not have sufficient
5 contact information to provide notice. Substitute notice under this
6 subdivision requires all of the following:

7 (i) Electronic mail notice if the individual or commercial entity
8 has electronic mail addresses for the members of the affected class of
9 Nebraska residents;

10 (ii) Conspicuous posting of the notice on the web site of the
11 individual or commercial entity if the individual or commercial entity
12 maintains a web site; and

13 (iii) Notice to major statewide media outlets; or

14 (e) Substitute notice, if the individual or commercial entity
15 required to provide notice has ten employees or fewer and demonstrates
16 that the cost of providing notice will exceed ten thousand dollars.
17 Substitute notice under this subdivision requires all of the following:

18 (i) Electronic mail notice if the individual or commercial entity
19 has electronic mail addresses for the members of the affected class of
20 Nebraska residents;

21 (ii) Notification by a paid advertisement in a local newspaper that
22 is distributed in the geographic area in which the individual or
23 commercial entity is located, which advertisement shall be of sufficient
24 size that it covers at least one-quarter of a page in the newspaper and
25 shall be published in the newspaper at least once a week for three
26 consecutive weeks;

27 (iii) Conspicuous posting of the notice on the web site of the
28 individual or commercial entity if the individual or commercial entity
29 maintains a web site; and

30 (iv) Notification to major media outlets in the geographic area in
31 which the individual or commercial entity is located;

1 (5) Personal information means either of the following:

2 (a) A Nebraska resident's first name or first initial and last
3 name in combination with any one or more of the following data elements
4 that relate to the resident if either the name or the data elements are
5 not encrypted, redacted, or otherwise altered by any method or technology
6 in such a manner that the name or data elements are unreadable:

7 (i a) Social security number;

8 (ii b) Motor vehicle operator's license number or state
9 identification card number;

10 (iii c) Account number or credit or debit card number, in
11 combination with any required security code, access code, or password
12 that would permit access to a resident's financial account;

13 (iv d) Unique electronic identification number or routing code, in
14 combination with any required security code, access code, or password; or

15 (v e) Unique biometric data, such as a fingerprint, voice print, or
16 retina or iris image, or other unique physical representation; or -

17 (b) A user name or email address, in combination with a password or
18 security question and answer, that would permit access to an online
19 account.

20 Personal information does not include publicly available information
21 that is lawfully made available to the general public from federal,
22 state, or local government records; and

23 (6) Redact means to alter or truncate data such that no more than
24 the last four digits of a social security number, motor vehicle
25 operator's license number, state identification card number, or account
26 number is accessible as part of the personal information.

27 Sec. 8. Section 87-803, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 87-803 (1) An individual or a commercial entity that conducts
30 business in Nebraska and that owns or licenses ~~computerized~~ data in any
31 medium, including paper, that includes personal information about a

1 resident of Nebraska shall, when it becomes aware of a breach of the
2 security of the system, conduct in good faith a reasonable and prompt
3 investigation to determine the likelihood that personal information has
4 been or will be used for an unauthorized purpose and ~~— If the~~
5 ~~investigation determines that the use of information about a Nebraska~~
6 ~~resident for an unauthorized purpose has occurred or is reasonably likely~~
7 ~~to occur, the individual or commercial entity shall give notice to the~~
8 ~~affected Nebraska~~ residents whose personal information was or is
9 reasonably believed to have been acquired by an unauthorized person
10 ~~resident~~. Notice shall be made as soon as possible and without
11 unreasonable delay, consistent with the legitimate needs of law
12 enforcement and consistent with any measures necessary to determine the
13 scope of the breach and to restore the reasonable integrity of the
14 ~~computerized~~ data system.

15 (2) If notice of a breach of security of the system is required by
16 subsection (1) of this section, the individual or commercial entity shall
17 also, not later than the time when notice is provided to the Nebraska
18 resident, provide notice of the breach of security of the system to the
19 Attorney General.

20 (3 2) An individual or a commercial entity that maintains
21 ~~computerized~~ data in any medium, including paper, that includes personal
22 information that the individual or commercial entity does not own or
23 license shall give notice to and cooperate with the owner or licensee of
24 the information of any breach of the security of the system when it
25 becomes aware of a breach ~~if use of personal information about a Nebraska~~
26 ~~resident for an unauthorized purpose occurred or is reasonably likely to~~
27 ~~occur~~. Cooperation includes, but is not limited to, sharing with the
28 owner or licensee information relevant to the breach, not including
29 information proprietary to the individual or commercial entity.

30 (4 3) Notice required by this section may be delayed if a law
31 enforcement agency determines that the notice will impede a criminal

1 investigation. Notice shall be made in good faith, without unreasonable
2 delay, and as soon as possible after the law enforcement agency
3 determines that notification will no longer impede the investigation.

4 Sec. 9. Section 87-804, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 87-804 (1) An individual or a commercial entity that maintains its
7 own notice procedures which are part of an information security policy
8 for the treatment of personal information and which are otherwise
9 consistent with the timing requirements of section 87-803, is deemed to
10 be in compliance with the notice requirements of section 87-803 if the
11 individual or the commercial entity notifies affected Nebraska residents
12 and the Attorney General in accordance with its notice procedures in the
13 event of a breach of the security of the system.

14 (2) An individual or a commercial entity that is regulated by state
15 or federal law and that maintains procedures for a breach of the security
16 of the system pursuant to the laws, rules, regulations, guidances, or
17 guidelines established by its primary or functional state or federal
18 regulator is deemed to be in compliance with section 87-803 if the
19 individual or commercial entity notifies affected Nebraska residents and
20 the Attorney General in accordance with the maintained procedures in the
21 event of a breach of the security of the system.

22 Sec. 10. Original sections 8-2603, 59-1611, 59-1614, 87-301,
23 87-302, 87-303, 87-802, 87-803, and 87-804, Reissue Revised Statutes of
24 Nebraska, are repealed.