LEGISLATURE OF NEBRASKA

ONE HUNDRED NINTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 602

Introduced by Juarez, 5.

Read first time January 22, 2025

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to data privacy; to amend section 87-302,

2   Reissue Revised Statutes of Nebraska; to adopt the Data Elimination

3   and Limiting Extensive Tracking and Exchange Act; to provide a

4   deceptive trade practice; and to repeal the original section.

5 Be it enacted by the people of the State of Nebraska,

1   **Section 1.** Sections 1 to 12 of this act shall be known and may be

2 cited as the Data Elimination and Limiting Extensive Tracking and

3 Exchange Act or the Delete Act.

4   **Sec. 2.** For the purposes of the Delete Act, unless otherwise

5 specified, the definitions found in section 87-1102 apply and:

6   (1) Authorized agent means:

7   (a) A person designated by a consumer to act on the consumer's

8 behalf;

9   (b) A parent or legal guardian who acts on behalf of the parent's

10 child or on behalf of a child for whom the guardian has legal

11 responsibility; or

12   (c) A guardian or conservator who acts on behalf of a consumer who

13 is subject to a guardianship, conservatorship, or other protective

14 arrangement;

15   (2) Data broker means a controller, or a unit or units of a

16 controller, separately or together, that knowingly:

17   (a) Processes and sells the personal data of a consumer with whom

18 the controller does not have a direct relationship; or

19   (b) Licenses to third parties the personal data of a consumer with

20 whom the controller does not have a direct relationship;

21   (3) Direct relationship with a controller means a consumer is a:

22   (a) Customer, client, subscriber, user, or registered user of the

23 controller's goods or services within the last five calendar years;

24   (b) Employee, contractor, or agent of the controller; or

25   (c) Investor in the controller; and

26   (4) Opt-out means a controller can no longer process the consumer's

27 personal data for the purposes described in subdivision (2)(e) of section

28 87-1107.

29   **Sec. 3.** (1) The Delete Act only applies to any person specified in

30 subsection (1) of section 87-1103.

31   (2) The Delete Act does not apply to any entity specified in

1 subsection (2) of section 87-1103.

2   **Sec. 4.** The Delete Act does not apply to the information and

3 records specified in section 87-1104.

4   **Sec. 5.** A data broker that maintains an Internet website or mobile

5 application shall post a conspicuous notice on the website or application

6 that:

7   (1) States that the entity maintaining the website or application is

8 a data broker;

9   (2) Is clear, not misleading, and readily accessible by the general

10 public, including individuals with a disability; and

11   (3) Contains language required for inclusion in the notice by the

12 Secretary of State.

13   **Sec. 6.** (1) A data broker conducting business in this state shall

14 develop, implement, and maintain a comprehensive information security

15 program that is written in one or more readily accessible parts and

16 contains administrative, technical, and physical safeguards that are

17 appropriate for the:

18   (a) Data broker's size, scope, and type of business;

19   (b) Amount of resources available to the data broker;

20   (c) Amount of data stored by the data broker; and

21   (d) Need for security and confidentiality of personal data stored by

22 the data broker.

23   (2) The comprehensive information security program required by this

24 section shall:

25   (a) Incorporate safeguards that are consistent with the safeguards

26 for the protection of personal data and information of a similar

27 character under state or federal laws and regulations applicable to the

28 data broker;

29   (b) Designate one or more employees of the data broker to maintain

30 the program;

31   (c) Require the identification and assessment of reasonably

1 foreseeable internal and external risks to the security, confidentiality,

2 and integrity of any electronic, paper, or other record containing

3 personal data, and the establishment of a process for evaluating and

4 improving, as necessary, the effectiveness of the current safeguards for

5 limiting those risks, including by:

6 (i) Requiring ongoing employee and contractor education and

7 training, including education and training for temporary employees and

8 contractors of the data broker, on the proper use of security procedures

9 and protocols and the importance of personal data security;

10 (ii) Mandating employee compliance with policies and procedures

11 established under the program; and

12 (iii) Providing a means for detecting and preventing security system

13 failures;

14 (d) Include security policies for the data broker's employees

15 relating to the storage, access, and transportation of records containing

16 personal data outside of the broker's physical business premises;

17 (e) Provide disciplinary measures for violations of a policy or

18 procedure established under the program;

19 (f) Include measures for preventing a terminated employee from

20 accessing records containing personal data;

21 (g) Provide policies for the supervision of third-party service

22 providers that include:

23 (i) Taking reasonable steps to select and retain third-party service

24 providers that are capable of maintaining appropriate security measures

25 to protect personal data consistent with applicable law; and

26 (ii) Requiring third-party service providers by contract to

27 implement and maintain appropriate security measures for personal data;

28 (h) Provide reasonable restrictions on physical access to records

29 containing personal data, including by requiring the records containing

30 the data to be stored in a locked facility, storage area, or container;

31 (i) Include regular monitoring to ensure that the program is

1 operating in a manner reasonably calculated to prevent unauthorized

2 access to or unauthorized use of personal data and, as necessary,

3 upgrading information safeguards to limit the risk of unauthorized access

4 to or unauthorized use of personal data;

5 (j) Require the regular review of the scope of the program's

6 security measures that shall occur:

7 (i) At least annually; and

8 (ii) Whenever there is a material change in the data broker's

9 business practices that may reasonably affect the security or integrity

10 of records containing personal data;

11 (k) Require the documentation of responsive actions taken in

12 connection with any incident involving a breach of security, including a

13 mandatory post-incident review of each event and the actions taken, if

14 any, to make changes in business practices relating to protection of

15 personal data in response to that event; and

16 (l) To the extent technically feasible, include the following

17 procedures and protocols with respect to computer system security

18 requirements or procedures and protocols providing a higher degree of

19 security, for the protection of personal data:

20 (i) The use of secure user authentication protocols that include

21 each of the following features:

22 (A) Controlling user log-in credentials and other identifiers;

23 (B) Using a reasonably secure method of assigning and selecting

24 passwords or using unique identifier technologies, which may include

25 biometrics or token devices;

26 (C) Controlling data security passwords to ensure that the passwords

27 are kept in a location and format that do not compromise the security of

28 the data the passwords protect;

29 (D) Restricting access to only active users and active user

30 accounts; and

31 (E) Blocking access to user credentials or identification after

1 multiple unsuccessful attempts to gain access;

2 (ii) The use of secure access control measures that include:

3 (A) Restricting access to records and files containing personal data

4 to only employees or contractors who need access to that personal data to

5 perform the job duties of the employees or contractors; and

6 (B) Assigning to each employee or contractor with access to a

7 computer containing personal data unique identification and a password,

8 which shall not be a vendor-supplied default password, or using another

9 protocol reasonably designed to maintain the integrity of the security of

10 the access controls to personal data;

11 (iii) Encryption of:

12 (A) Transmitted records and files containing personal data that will

13 travel across public networks; and

14 (B) Data containing personal data that is transmitted wirelessly;

15 (iv) Reasonable monitoring of systems for unauthorized use of or

16 access to personal data;

17 (v) Encryption of all personal data stored on laptop computers or

18 other portable devices;

19 (vi) For files containing personal data on a system that is

20 connected to the Internet, the use of reasonably current firewall

21 protection and operating system security patches that are reasonably

22 designed to maintain the integrity of the personal data; and

23 (vii) The use of any:

24 (A) Reasonably current version of system security agent software

25 that shall include malware protection and reasonably current patches and

26 virus definitions; or

27 (B) Version of system security agent software that is supportable

28 with current patches and virus definitions and is set to receive the most

29 current security updates on a regular basis.

30 (3) A violation of this section by a data broker constitutes a

31 deceptive trade practice.

1   **Sec. 7.**   (1) A data broker shall maintain reasonable procedures

2   designed to ensure that the personal data it discloses is used for a

3   legitimate and legal purpose.

4   (2) Such procedures shall require that prospective users of the

5   personal data identify themselves, certify the purposes for which the

6   information is sought, and certify that the information shall be used for

7   no other purpose.

8   (3) A data broker shall make a reasonable effort to verify the

9   identity of a new prospective user and the uses certified by the

10 prospective user prior to furnishing the user's personal data.

11   (4) A data broker shall not furnish personal data to any person if

12 it has reasonable grounds for believing that the personal data will not

13 be used for a legitimate and legal purpose.

14   (5) A violation of this section by a data broker constitutes a

15 deceptive trade practice.

16   **Sec. 8.**   The registration information provided in section 9 of this

17 act and the accessible deletion mechanism described in section 10 of this

18 act shall be publicly accessible on the website of the Secretary of

19 State.

20   **Sec. 9.**   (1) On or before January 31 of each year, a data broker

21 shall:

22   (a) Register with the Secretary of State;

23   (b) Pay a registration fee in an amount determined by the Secretary

24 of State, but not to exceed three hundred dollars; and

25   (c) Provide the following information with the registration:

26   (i) The legal name of the data broker;

27   (ii) The contact person and the primary physical address, email

28 address, telephone number, and Internet website address for the data

29 broker;

30   (iii) A description of the categories of data the data broker

31 processes and transfers;

1   (iv) A statement of whether or not the data broker implements a

2 purchaser credentialing process pursuant to section 7 of this act;

3   (v) If the data broker has actual knowledge that the data broker

4 possesses personal data of a known child:

5   (A) A statement detailing the data collection practices, databases,

6 sales activities, and opt-out policies that are applicable to the

7 personal data of a known child; and

8   (B) A statement on how the data broker complies with applicable

9 federal and state law regarding the collection, use, or disclosure of

10 personal data from and about a child on the Internet;

11   (vi) The number of security breaches the data broker has experienced

12 during the year immediately preceding the year in which the registration

13 is filed, and, if known, the total number of consumers affected by each

14 breach;

15   (vii) Whether the data broker collects precise geolocation of

16 consumers;

17   (viii) Beginning January 1, 2031, whether the data broker has

18 undergone an audit pursuant to subsection (4) of section 10 of this act

19 and, if so, the most recent year in which the data broker has submitted a

20 report resulting from the audit to the Secretary of State;

21   (ix) Beginning January 1, 2029, the following annual metrics

22 pursuant to section 10 of this act:

23   (A) The number of deletion requests received;

24   (B) The number of deletion requests processed;

25   (C) The number of deletion requests denied because the consumer

26 request cannot be verified; and

27   (D) The number of deletion requests denied because retention of the

28 consumer's personal data is required by law; and

29   (x) Any additional information or explanation the data broker

30 chooses to provide concerning its data collection practices.

31   (2)(a) A data broker that fails to register as required by this

1 section shall pay to the Secretary of State:

2 (i) A civil penalty of two hundred dollars for each day that the

3 data broker fails to register. All such civil penalties shall be remitted

4 to the State Treasurer for distribution in accordance with Article VII,

5 section 5, of the Constitution of Nebraska;

6 (ii) An amount equal to the fees that were due during the period the

7 data broker failed to register; and

8 (iii) Any reasonable costs incurred by the Attorney General in the

9 investigation and administration of the action as the court deems

10 appropriate.

11 (b) A data broker that fails to provide all registration information

12 required in this section shall file an amendment that includes any

13 omitted information no later than thirty days after receiving

14 notification of the omission from the Secretary of State and shall pay a

15 civil penalty of one thousand dollars to the Secretary of State for each

16 day that the data broker does not file an amendment providing the omitted

17 information. All such civil penalties shall be remitted to the State

18 Treasurer for distribution in accordance with Article VII, section 5, of

19 the Constitution of Nebraska.

20 (c) A data broker that files materially incorrect information in its

21 registration shall:

22 (i) Pay to the Secretary of State a civil penalty of twenty-five

23 thousand dollars. All such civil penalties shall be remitted to the State

24 Treasurer for distribution in accordance with Article VII, section 5, of

25 the Constitution of Nebraska; and

26 (ii) Correct the incorrect information no later than thirty days

27 after discovery or notification of the incorrect information and, if it

28 fails to correct the information, the data broker shall pay to the

29 Secretary of State an additional civil penalty of one thousand dollars

30 per day for each day the data broker fails to correct the information.

31 All such civil penalties shall be remitted to the State Treasurer for

1 distribution in accordance with Article VII, section 5, of the

2 Constitution of Nebraska.

3   **Sec. 10.** (1) On or before January 1, 2028, the Secretary of State

4 shall establish an accessible deletion mechanism that:

5   (a) Implements and maintains reasonable security procedures and

6 practices, including administrative, physical, and technical safeguards

7 appropriate to the nature of the information and the purposes for which

8 the personal data will be used and to protect a consumer's personal data

9 from unauthorized use, disclosure, access, destruction, or modification;

10   (b) Allows a consumer, through a single verifiable consumer request,

11 to request that every data broker that maintains any personal data about

12 the consumer delete the personal data;

13   (c) Allows a consumer to selectively exclude specific data brokers

14 from a request made;

15   (d) Allows a consumer to alter a previous request made after at

16 least forty-five days have passed since the consumer last made a request;

17   (e) Allows a consumer to request the deletion of all personal data

18 related to that consumer through a single deletion request;

19   (f) Permits a consumer to securely submit information in one or more

20 privacy-protecting ways, as determined by the Secretary of State, to aid

21 in the deletion request;

22   (g) Allows a consumer to make a request using a website operated by

23 the Secretary of State;

24   (h) Does not charge a consumer to make a request;

25   (i) Is readily accessible and usable by consumers with disabilities;

26   (j) Supports the ability of a consumer's authorized agents to aid in

27 the deletion request;

28   (k) Allows the consumer or their authorized agent to verify the

29 status of the consumer's deletion request; and

30   (l) Provides a description of the following:

31   (i) The deletion permitted by this section;

1   (ii) The process for submitting a deletion request pursuant to this

2 section; and

3   (iii) Examples of the types of information that may be deleted.

4   (2)(a) Beginning August 1, 2028, a data broker shall access the

5 accessible deletion mechanism established in this section at least once

6 every forty-five days and shall:

7   (i) Process all verifiable deletion requests the data broker has

8 received from consumers in the previous forty-five days and delete such

9 personal data;

10   (ii) Process a request as an opt-out of the consumer's personal

11 data;

12   (iii) Direct all service providers and contractors associated with

13 the data broker to:

14   (A) Delete all personal data related to a consumer who has made a

15 verifiable deletion request; and

16   (B) Process a request as an opt-out of the consumer's personal data;

17 and

18   (iv) Not use or disclose any information submitted by a consumer

19 through the accessible deletion mechanism for any other purpose besides

20 the authority provided in this section, including for marketing purposes.

21   (b) A data broker may deny a consumer's request to delete a

22 consumer's personal data made pursuant to this section if retention of

23 the consumer's personal data is required by law.

24   (c) The Secretary of State may charge an access fee to a data broker

25 to use the accessible deletion mechanism that does not exceed the

26 reasonable costs of the Secretary of State for providing access to such

27 mechanism.

28   (3) Beginning August 1, 2028, once a data broker has processed a

29 verifiable consumer request to delete a consumer's personal data, the

30 data broker shall:

31   (a) Delete all personal data of the consumer at least once every

1   forty-five days unless:

2   (i) The consumer alters the consumer's decision; or

3   (ii) Retention of the consumer's personal data is required by law;

4   and

5   (b) Not sell new personal data of the consumer unless the consumer

6   requests otherwise;

7   (4)(a) A data broker shall undergo an audit by an independent third

8   party selected by the Secretary of State to determine compliance with

9   this section at least once every three years, with the first audit taking

10 place on or before December 31, 2030.

11   (b) For an audit completed pursuant to this section, the data broker

12 shall submit the report resulting from the audit and any related

13 materials to the Secretary of State within five business days after a

14 written request from the Secretary of State.

15   (c) A data broker shall maintain all reports and materials resulting

16 from audits conducted pursuant to this section for at least six years.

17   (5) A data broker that fails to comply with subsections (1) through

18 (4) of this section shall pay a civil penalty of two hundred dollars per

19 day to the Secretary of State for each deletion request the data broker

20 fails to complete as required by this section.

21   **Sec. 11.** (1) The Attorney General may:

22   (a) Bring an action to collect any civil penalty imposed under this

23 section; and

24   (b) Seek appropriate injunctive relief for any violation of the

25 Delete Act.

26   (2) The Attorney General may recover reasonable attorney's fees and

27 costs incurred in bringing an action under the Delete Act.

28   **Sec. 12.** The Secretary of State may adopt and promulgate rules and

29 regulations to carry out the Delete Act.

30   **Sec. 13.** Section 87-302, Reissue Revised Statutes of Nebraska, is

31 amended to read:

1	87-302 (a) A person engages in a deceptive trade practice when, in
2	the course of his or her business, vocation, or occupation, he or she:

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

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

6	(3) Causes likelihood of confusion or of misunderstanding as to
7	affiliation, connection, or association with, or certification by,
8	another;

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

11	(5) Represents that goods or services have sponsorship, approval,
12	characteristics, ingredients, uses, benefits, or quantities that they do
13	not have or that a person has a sponsorship, approval, status,
14	affiliation, or connection that he or she does not have;

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

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

24	(8) Represents that goods or services are of a particular standard,
25	quality, or grade, or that goods are of a particular style or model, if
26	they are of another;

27	(9) Disparages the goods, services, or business of another by false
28	or misleading representation of fact;

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

1   (11) Advertises goods or services with intent not to supply

2   reasonably expectable public demand, unless the advertisement discloses a

3   limitation of quantity;

4   (12) Makes false or misleading statements of fact concerning the

5   reasons for, existence of, or amounts of price reductions;

6   (13) Uses or promotes the use of or establishes, operates, or

7   participates in a pyramid promotional scheme in connection with the

8   solicitation of such scheme to members of the public. This subdivision

9   shall not be construed to prohibit a plan or operation, or to define a

10 plan or operation as a pyramid promotional scheme, based on the fact that

11 participants in the plan or operation give consideration in return for

12 the right to receive compensation based upon purchases of goods,

13 services, or intangible property by participants for personal use,

14 consumption, or resale so long as the plan or operation does not promote

15 or induce inventory loading and the plan or operation implements an

16 appropriate inventory repurchase program;

17   (14) With respect to a sale or lease to a natural person of goods or

18 services purchased or leased primarily for personal, family, household,

19 or agricultural purposes, uses or employs any referral or chain referral

20 sales technique, plan, arrangement, or agreement;

21   (15) Knowingly makes a false or misleading statement in a privacy

22 policy, published on the Internet or otherwise distributed or published,

23 regarding the use of personal information submitted by members of the

24 public;

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

26   (i) Obtaining money or property by knowingly false or fraudulent

27 pretenses, representations, or promises; or

28   (ii) Selling, distributing, supplying, furnishing, or procuring any

29 property for the purpose of furthering such scheme;

30   (17) Offers an unsolicited check, through the mail or by other

31 means, to promote goods or services if the cashing or depositing of the

1 check obligates the endorser or payee identified on the check to pay for

2 goods or services. This subdivision does not apply to an extension of

3 credit or an offer to lend money;

4   (18) Mails or causes to be sent an unsolicited billing statement,

5 invoice, or other document that appears to obligate the consumer to make

6 a payment for services or merchandise he or she did not order;

7   (19)(i) Installs, offers to install, or makes available for

8 installation or download a covered file-sharing program on a computer not

9 owned by such person without providing clear and conspicuous notice to

10 the owner or authorized user of the computer that files on that computer

11 will be made available to the public and without requiring intentional

12 and affirmative activation of the file-sharing function of such covered

13 file-sharing program by the owner or authorized user of the computer; or

14   (ii) Prevents reasonable efforts to block the installation,

15 execution, or disabling of a covered file-sharing program;

16   (20) Violates any provision of the Nebraska Foreclosure Protection

17 Act;

18   (21) In connection with the solicitation of funds or other assets

19 for any charitable purpose, or in connection with any solicitation which

20 represents that funds or assets will be used for any charitable purpose,

21 uses or employs any deception, fraud, false pretense, false promise,

22 misrepresentation, unfair practice, or concealment, suppression, or

23 omission of any material fact;

24   (22)(i) In the manufacture, production, importation, distribution,

25 promotion, display for sale, offer for sale, attempt to sell, or sale of

26 a substance:

27   (A) Makes a deceptive or misleading representation or designation,

28 or omits material information, about a substance or fails to identify the

29 contents of the package or the nature of the substance contained inside

30 the package; or

31   (B) Causes confusion or misunderstanding as to the effects a

1 substance causes when ingested, injected, inhaled, or otherwise

2 introduced into the human body.

3   (ii) A person shall be deemed to have committed a violation of the

4 Uniform Deceptive Trade Practices Act for each individually packaged

5 product that is either manufactured, produced, imported, distributed,

6 promoted, displayed for sale, offered for sale, attempted to sell, or

7 sold in violation of this section. A violation under this subdivision (a)

8 (22) shall be treated as a separate and distinct violation from any other

9 offense arising out of acts alleged to have been committed while the

10 person was in violation of this section;

11   (23)(i) Manufactures, produces, publishes, distributes, monetizes,

12 promotes, or otherwise makes publicly available any visual depiction of

13 sexually explicit conduct, any obscene material, or any material that is

14 harmful to minors in which any person depicted as a participant or

15 observer:

16   (A) Is under eighteen years of age;

17   (B) Is a trafficking victim;

18   (C) Has not expressly and voluntarily consented to such person's

19 depiction; or

20   (D) Participated in any act depicted without consent.

21   (ii) This subdivision (a)(23) does not apply to any

22 telecommunications service.

23   (iii) For purposes of this subdivision (a)(23):

24   (A) Harmful to minors has the same meaning as in 47 U.S.C. 254, as

25 such section existed on January 1, 2024;

26   (B) Obscene material has the same meaning as in section 28-807;

27   (C) Promote means to use any mechanism or publication, or take any

28 action, that suggests, highlights, advertises, markets, curates,

29 backlinks, hashtags, or otherwise directs, attempts to direct, or

30 encourages traffic toward specific materials, including acts carried out

31 affirmatively, through automation, algorithmically, and via other

1 technical means both known and unknown at this time;

2 (D) Publish means to communicate or make information available to

3 another person via an Internet website, regardless of whether the person

4 consuming, viewing, or receiving the material gives any consideration for

5 the published material;

6 (E) Trafficking victim has the same meaning as in section 28-830;

7 (F) Visual depiction of sexually explicit conduct has the same

8 meaning as in section 28-1463.02; and

9 (G) Without consent has the same meaning as in section 28-318; ~~or~~

10 (24) Offers or enters into a right-to-list home sale agreement as

11 defined in section 81-885.01; or ~~.~~

12 (25) Violates section 6 or 7 of this act.

13 (b) In order to prevail in an action under the Uniform Deceptive

14 Trade Practices Act, a complainant need not prove competition between the

15 parties.

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

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

18 **Sec. 14.** Original section 87-302, Reissue Revised Statutes of

19 Nebraska, is repealed.