

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 934

Introduced by Bosn, 25.

Read first time January 04, 2024

Committee:

- 1 A BILL FOR AN ACT relating to consumer protection; to amend sections
- 2 59-1608.01, 59-1611, 59-1623, 87-303.02, and 87-306, Reissue Revised
- 3 Statutes of Nebraska; to change provisions relating to venue for
- 4 actions under the Consumer Protection Act; to change enforcement and
- 5 investigation powers of the Attorney General for violations of such
- 6 act and the Uniform Deceptive Trade Practices Act; to provide for
- 7 jury trials; to harmonize provisions; to provide severability; and
- 8 to repeal the original sections.
- 9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 59-1608.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 59-1608.01 (1) In the enforcement of the Consumer Protection Act,
4 the Attorney General may bring an action in the name of the state in the
5 district court of:

6 (a) The the county in which the alleged violator resides or has his
7 or her principal place of business;

8 (b) A county in which the Attorney General brings a related claim
9 arising under the Uniform Deceptive Trade Practices Act; or

10 (c) in Lancaster County.

11 (2) The Attorney General may elect to bring any claim under the
12 Consumer Protection Act for trial by jury.

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

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

27 (2) Each such demand shall:

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

31 (b) Describe the class or classes of documentary material to be

1 produced thereunder with reasonable specificity so as fairly to indicate
2 the material demanded;

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

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

8 (3) No such demand shall:

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

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

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

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

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

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

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

30 (6) No documentary material produced pursuant to a demand, or copies
31 thereof, shall, unless otherwise ordered by a district court for good

1 cause shown, be produced for inspection or copying by, nor shall the
2 contents thereof be disclosed to, other than an authorized employee of
3 the Attorney General, without the consent of the person who produced such
4 material, except that:

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

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

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

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

1 on whom the demand is served, stating good cause, to require the Attorney
2 General or any person to perform any duty imposed by the provisions of
3 this section, and all other petitions in connection with a demand, may be
4 filed in the district court for Lancaster County or in the county where
5 the parties reside.

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

23 (9) When the Attorney General has cause to believe that any person
24 has engaged in or is engaging in any violation of sections 59-1602 to
25 59-1606, the Attorney General may:

26 (a) Require such person to file a statement or report in writing
27 under oath or otherwise, on such forms as shall be prescribed by the
28 Attorney General, as to all facts and circumstances concerning the sale,
29 offer, or advertisement of property or services by such person, and such
30 other data and information as the Attorney General deems necessary;

31 (b) Examine under oath any person in connection with the sale or

1 advertisement of any property or services;

2 (c) Examine any property or sample thereof, record, book, document,
3 account, or paper as the Attorney General deems necessary;

4 (d) Pursuant to an order of any district court, impound any record,
5 book, document, account, paper, or sample of property which is material
6 to such violation and retain the same in his or her possession until the
7 completion of all proceedings undertaken under the Consumer Protection
8 Act; or

9 (e) Pursuant to an order of any district court, temporarily freeze
10 any bank account or other financial account or impound money or any
11 property connected with any such violation for any period deemed
12 necessary by the Attorney General until the completion of all proceedings
13 undertaken under the Consumer Protection Act.

14 Sec. 3. Section 59-1623, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 59-1623 Sections 59-1601 to 59-1623 ~~59-1622~~ shall be known and may
17 be cited as the Consumer Protection Act.

18 Sec. 4. Section 87-303.02, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 87-303.02 When the Attorney General has cause to believe that any
21 person has engaged in or is engaging in any deceptive trade practice or
22 unconscionable act listed in section 87-302 or 87-303.01, the Attorney
23 General may:

24 (a) Require any such ~~any such~~ person to file a statement or report in writing
25 under oath or otherwise, on such forms as shall be prescribed by the
26 Attorney General, as to all facts and circumstances concerning any
27 deceptive trade practice or unconscionable act listed in section 87-302
28 or 87-303.01 known ~~the sale, offer, or advertisement of property~~ by such
29 person, and such other data and information as the Attorney General deems
30 necessary;

31 (b) Examine under oath any person in connection with any deceptive

1 trade practice or unconscionable act listed in section 87-302 or
2 87-303.01 the sale or advertisement of any property;

3 (c) Examine any property or sample thereof, record, book, document,
4 account, or paper as the Attorney General deems necessary; ~~or~~

5 (d) Pursuant to an order of any district court, impound any record,
6 book, document, account, paper, or sample of property which is material
7 to such practice and retain the same in his or her possession until the
8 completion of all proceedings undertaken under the Uniform Deceptive
9 Trade Practices Act; or -

10 (e) Pursuant to an order of any district court, temporarily freeze
11 any bank account or other financial account or impound money or any
12 property connected with any deceptive trade practice or unconscionable
13 act listed in section 87-302 or 87-303.01 for any period deemed necessary
14 by the Attorney General until the completion of all proceedings
15 undertaken under the Uniform Deceptive Trade Practices Act.

16 Sec. 5. The Attorney General may elect to bring any claim under the
17 Uniform Deceptive Trade Practices Act for trial by jury.

18 Sec. 6. Section 87-306, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 87-306 Sections 87-301 to 87-306 and section 5 of this act shall be
21 known and may be cited as the Uniform Deceptive Trade Practices Act.

22 Sec. 7. If any section in this act or any part of any section is
23 declared invalid or unconstitutional, the declaration shall not affect
24 the validity or constitutionality of the remaining portions.

25 Sec. 8. Original sections 59-1608.01, 59-1611, 59-1623, 87-303.02,
26 and 87-306, Reissue Revised Statutes of Nebraska, are repealed.