

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1096

Introduced by Armendariz, 18; Albrecht, 17; Ballard, 21; Bosn, 25;
Brewer, 43; Clements, 2; Conrad, 46; DeKay, 40; Dorn, 30;
Erdman, 47; Halloran, 33; Hansen, 16; Holdcroft, 36;
Hughes, 24; Ibach, 44; Jacobson, 42; Kauth, 31; Lippincott,
34; McDonnell, 5; Meyer, 41; Murman, 38; Sanders, 45; von
Gillern, 4; Walz, 15.

Read first time January 09, 2024

Committee:

- 1 A BILL FOR AN ACT relating to the Uniform Deceptive Trade Practices Act;
- 2 to amend section 87-302, Revised Statutes Cumulative Supplement,
- 3 2022; to provide that certain conduct relating to depictions of
- 4 sexually explicit or obscene material or material harmful to minors
- 5 is a deceptive trade practice; to define terms; to harmonize
- 6 provisions; to provide severability; and to repeal the original
- 7 section.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 87-302, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 87-302 (a) A person engages in a deceptive trade practice when, in
4 the course of his or her business, vocation, or occupation, he or she:

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

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

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

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

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

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

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

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

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

31 (10) Advertises goods or services with intent not to sell them as

1 advertised or advertises the price in any manner calculated or tending to
2 mislead or in any way deceive a person;

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

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

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

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

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

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

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

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

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

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

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

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

18 (20) Violates any provision of the Nebraska Foreclosure Protection
19 Act;

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

26 ~~(22)(i)~~ ~~(22)~~ In the manufacture, production, importation,
27 distribution, promotion, display for sale, offer for sale, attempt to
28 sell, or sale of a substance:

29 ~~(A)~~ ~~(i)~~ Makes a deceptive or misleading representation or
30 designation, or omits material information, about a substance or fails to
31 identify the contents of the package or the nature of the substance

1 contained inside the package; or

2 (B) (ii) Causes confusion or misunderstanding as to the effects a
3 substance causes when ingested, injected, inhaled, or otherwise
4 introduced into the human body.

5 (ii) A person shall be deemed to have committed a violation of the
6 Uniform Deceptive Trade Practices Act for each individually packaged
7 product that is either manufactured, produced, imported, distributed,
8 promoted, displayed for sale, offered for sale, attempted to sell, or
9 sold in violation of this section. A violation under this subdivision (a)
10 (22) shall be treated as a separate and distinct violation from any other
11 offense arising out of acts alleged to have been committed while the
12 person was in violation of this section; or -

13 (23)(i) Manufactures, produces, publishes, distributes, or otherwise
14 makes publicly available any visual depiction of sexually explicit
15 conduct, any obscene material, or any material that is harmful to minors
16 in which any person depicted as a participant or observer:

17 (A) Is under eighteen years of age;

18 (B) Is a trafficking victim;

19 (C) Has not expressly and voluntarily consented to such person's
20 depiction; or

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

22 (ii) This subdivision (a)(23) does not apply to any
23 telecommunications service.

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

25 (A) Harmful to minors has the same meaning as in 47 U.S.C. 254, as
26 such section existed on January 1, 2024;

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

28 (C) Publish means to communicate or make information available to
29 another person via an Internet website, regardless of whether the person
30 consuming, viewing, or receiving the material gives any consideration for
31 the published material;

1 (D) Trafficking victim has the same meaning as in section 28-830;

2 (E) Visual depiction of sexually explicit conduct has the same
3 meaning as in section 28-1463.02; and

4 (F) Without consent has the same meaning as in section 28-318.

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

8 (c) This section does not affect unfair trade practices otherwise
9 actionable at common law or under other statutes of this state.

10 Sec. 2. If any section in this act or any part of any section is
11 declared invalid or unconstitutional, the declaration shall not affect
12 the validity or constitutionality of the remaining portions.

13 Sec. 3. Original section 87-302, Revised Statutes Cumulative
14 Supplement, 2022, is repealed.