

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 594

Introduced by Blood, 3.

Read first time January 23, 2019

Committee:

- 1 A BILL FOR AN ACT relating to the Uniform Deceptive Trade Practices Act;
- 2 to amend sections 87-301 and 87-302, Revised Statutes Cumulative
- 3 Supplement, 2018; to define a term; to provide for a deceptive trade
- 4 practice relating to meat as prescribed; to harmonize provisions;
- 5 and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 87-301, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 87-301 For purposes of the Uniform Deceptive Trade Practices Act,
4 unless the context otherwise requires:

5 (1) Access software provider means a provider of software, including
6 client or server software, or enabling tools that do any one or more of
7 the following: (a) Filter, screen, allow, or disallow content; (b) pick,
8 choose, analyze, or digest content; or (c) transmit, receive, display,
9 forward, cache, search, subset, organize, reorganize, or translate
10 content;

11 (2) Appropriate inventory repurchase program means a program by
12 which a plan or operation repurchases, upon request and upon commercially
13 reasonable terms, when the salesperson's business relationship with the
14 company ends, current and marketable inventory in the possession of the
15 salesperson that was purchased by the salesperson for resale. Any such
16 plan or operation shall clearly describe the program in its recruiting
17 literature, sales manual, or contract with independent salespersons,
18 including the disclosure of any inventory that is not eligible for
19 repurchase under the program;

20 (3) Article means a product as distinguished from its trademark,
21 label, or distinctive dress in packaging;

22 (4) Attorney General means the Attorney General of the State of
23 Nebraska or the county attorney of any county with the consent and advice
24 of the Attorney General;

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

30 (6) Certification mark means a mark used in connection with the
31 goods or services of a person other than the certifier to indicate

1 geographic origin, material, mode of manufacture, quality, accuracy, or
2 other characteristics of the goods or services or to indicate that the
3 work or labor on the goods or services was performed by members of a
4 union or other organization;

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

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

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

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

20 (11) Covered file-sharing program means a computer program,
21 application, or software that enables the computer on which such program,
22 application, or software is installed to designate files as available for
23 searching by and copying to one or more other computers, to transmit such
24 designated files directly to one or more other computers, and to request
25 the transmission of such designated files directly from one or more other
26 computers. Covered file-sharing program does not mean a program,
27 application, or software designed primarily to operate as a server that
28 is accessible over the Internet using the Internet Domain Name System, to
29 transmit or receive email messages, instant messaging, real-time audio or
30 video communications, or real-time voice communications, or to provide
31 network or computer security, network management, hosting and backup

1 services, maintenance, diagnostics, technical support or repair, or to
2 detect or prevent fraudulent activities;

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

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

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

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

21 (16) Inventory loading means that the plan or operation requires or
22 encourages its independent salespersons to purchase inventory in an
23 amount which exceeds that which the salesperson can expect to resell for
24 ultimate consumption or to a consumer in a reasonable time period, or
25 both;

26 (17) Investment means any acquisition, for a consideration other
27 than personal services, of personal property, tangible or intangible, for
28 profit or business purposes, and includes, without limitation,
29 franchises, business opportunities, and services. It does not include
30 real estate, securities registered under the Securities Act of Nebraska,
31 or sales demonstration equipment and materials furnished at cost for use

1 in making sales and not for resale;

2 (18) Mark means a word, a name, a symbol, a device, or any
3 combination of a word, name, symbol, or device in any form or
4 arrangement;

5 (19) Meat means any edible portion of any livestock or poultry
6 carcass or part thereof and does not include insect-based, plant-based,
7 or lab-grown food products. For purposes of this subdivision, (a)
8 livestock includes cattle, calves, sheep, swine, ratite birds, including,
9 but not limited to, ostrich and emu, llamas, alpaca, bison, elk, goats,
10 horses, and rabbits raised in confinement for human consumption and (b)
11 poultry includes any domesticated bird, including, but not limited to,
12 chickens, turkeys, ducks, and geese raised in confinement for human
13 consumption;

14 (20) (19) Person means a natural person, a corporation, a
15 government, a governmental subdivision or agency, a business trust, an
16 estate, a trust, a partnership, a joint venture, a limited liability
17 company, an unincorporated association, a sole proprietorship, or two or
18 more of any of such persons having a joint or common interest or any
19 other legal or commercial entity;

20 (21) (20) Pyramid promotional scheme means any plan or operation in
21 which a participant gives consideration for the right to receive
22 compensation that is derived primarily from the recruitment of other
23 persons as participants in the plan or operation rather than from the
24 sales of goods, services, or intangible property to participants or by
25 participants to others. A limitation as to the number of persons who may
26 participate, or the presence of additional conditions affecting
27 eligibility, or upon payment of anything of value by a person whereby the
28 person obtains any other property in addition to the right to receive
29 consideration, does not change the identity of the scheme as a pyramid
30 promotional scheme;

31 (22) (21) Referral or chain referral sales or leases means any sales

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

10 (23) ~~(22)~~ Service mark means a mark used in the sale or advertising
11 of services to identify the services of one person and distinguish them
12 from the services of others;

13 (24) ~~(23)~~ Substance means any lookalike substance as defined in
14 section 28-401;

15 (25) ~~(24)~~ 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 (26) ~~(25)~~ Trademark means a word, a name, a symbol, a device, or any
20 combination of a word, name, symbol, or device adopted and used by a
21 person to identify goods made or sold by such person and to distinguish
22 such goods from goods made or sold by others;

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

28 (28) ~~(27)~~ Use or promote the use of, for purposes of subdivision (a)
29 (13) 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. 2. Section 87-302, Revised Statutes Cumulative Supplement,
4 2018, is 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) 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) Represents that goods or services are of a particular standard,
29 quality, or grade, or that goods are of a particular style or model, if
30 they are of another;

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

1 or misleading representation of fact;

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

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

25 (15) 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) 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) 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) 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) 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;

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

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;~~or~~

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

31 (i) Makes a deceptive or misleading representation or designation,

1 or omits material information, about a substance or fails to identify the
2 contents of the package or the nature of the substance contained inside
3 the package; or

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

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

15 (23) Advertises, promotes, labels, represents, illustrates, displays
16 for sale, offers for sale, attempts to sell, or sells an insect-based, a
17 plant-based, or a lab-grown food product as meat.

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

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

23 Sec. 3. Original sections 87-301 and 87-302, Revised Statutes
24 Cumulative Supplement, 2018, are repealed.