

# STATE OF NEBRASKA

## SELECT INFORMATION TECHNOLOGY RELATED STATUTES

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*Workplace Privacy Act*

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**48-3501. Act, how cited.**

Sections 48-3501 to 48-3511 shall be known and may be cited as the Workplace Privacy Act.

**Source:** Laws 2016, LB821, § 1.

**48-3502. Terms, defined.**

For purposes of the Workplace Privacy Act:

(1) Adverse action means the discharge of an employee, a threat against an employee, or any other act against an employee that negatively affects the employee's employment;

(2) Applicant means a prospective employee applying for employment;

(3) Electronic communication device means a cellular telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, two-way messaging device, electronic game, or portable computing device;

(4) Employee means an individual employed by an employer;

(5) Employer means a public or nonpublic entity or an individual engaged in a business, an industry, a profession, a trade, or other enterprise in the state, including any agent, representative, or designee acting directly or indirectly in the interest of such an employer; and

(6)(a) Personal Internet account means an individual's online account that requires login information in order to access or control the account.

(b) Personal Internet account does not include:

(i) An online account that an employer or educational institution supplies or pays for, except when the employer or educational institution pays only for additional features or enhancements to the online account; or

(ii) An online account that is used exclusively for a business purpose of the employer.

**Source:** Laws 2016, LB821, § 2.

**48-3503. Employer; prohibited acts.**

No employer shall:

(1) Require or request that an employee or applicant provide or disclose any user name or password or any other related account information in order to gain access to the employee's or applicant's personal Internet account by way of an electronic communication device;

(2) Require or request that an employee or applicant log into a personal Internet account by way of an electronic communication device in the presence of the employer in a manner that enables the employer to observe the contents of the employee's or applicant's personal Internet account or provides the employer access to the employee's or applicant's personal Internet account;

(3) Require an employee or applicant to add anyone, including the employer, to the list of contacts associated with the employee's or applicant's personal Internet account or require or otherwise coerce an employee or applicant to change the settings on the employee's or applicant's personal Internet account which affects the ability of others to view the content of such account;  
or

(4) Take adverse action against, fail to hire, or otherwise penalize an employee or applicant for failure to provide or disclose any of the information or to take any of the actions specified in subdivisions (1) through (3) of this section.

**Source:** Laws 2016, LB821, § 3.

#### **48-3504. Waiver of right or protection under act prohibited.**

An employer shall not require an employee or applicant to waive or limit any protection granted under the Workplace Privacy Act as a condition of continued employment or of applying for or receiving an offer of employment. Any agreement to waive any right or protection under the act is against the public policy of this state and is void and unenforceable.

**Source:** Laws 2016, LB821, § 4.

#### **48-3505. Retaliation or discrimination.**

An employer shall not retaliate or discriminate against an employee or applicant because the employee or applicant:

(1) Files a complaint under the Workplace Privacy Act; or

(2) Testifies, assists, or participates in an investigation, proceeding, or action concerning a violation of the act.

**Source:** Laws 2016, LB821, § 5.

#### **48-3506. Employee acts prohibited.**

An employee shall not download or transfer an employer's private proprietary information or private financial data to a personal Internet account without authorization from the employer. This section shall not apply if the proprietary information or the financial data is otherwise disclosed by the employer to the public pursuant to other provisions of law or practice.

**Source:** Laws 2016, LB821, § 6.

**48-3507. Employer's rights not limited by act.**

Nothing in the Workplace Privacy Act limits an employer's right to:

(1) Promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use and personal Internet account use;

(2) Request or require an employee or applicant to disclose access information to the employer to gain access to or operate:

(a) An electronic communication device supplied by or paid for in whole or in part by the employer; or

(b) An account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes;

(3) Restrict or prohibit an employee's access to certain web sites while using an electronic communication device supplied by or paid for in whole or in part by the employer or while using an employer's network or resources, to the extent permissible under applicable laws;

(4) Monitor, review, access, or block electronic data stored on an electronic communication device supplied by or paid for in whole or in part by the employer or stored on an employer's network, to the extent permissible under applicable laws;

(5) Access information about an employee or applicant that is in the public domain or is otherwise obtained in compliance with the Workplace Privacy Act;

(6) Conduct an investigation or require an employee to cooperate in an investigation under any of the following circumstances:

(a) If the employer has specific information about potentially wrongful activity taking place on the employee's personal Internet account, for the purpose of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct; or

(b) If the employer has specific information about an unauthorized download or transfer of the employer's private proprietary information, private financial data, or other confidential information to an employee's personal Internet account;

(7) Take adverse action against an employee for downloading or transferring an employer's private proprietary information or private financial data to a personal Internet account without the employer's authorization;

(8) Comply with requirements to screen employees or applicants before hiring or to monitor or retain employee communications that are established by state or federal law or by a self-regulatory organization as defined in 15 U.S.C. 78c(a)(26), as such section existed on January 1, 2016; or

(9) Comply with a law enforcement investigation conducted by a law enforcement agency.

**Source:** Laws 2016, LB821, § 7.

#### **48-3508. Law enforcement agency rights.**

Nothing in the Workplace Privacy Act limits a law enforcement agency's right to screen employees or applicants in connection with a law enforcement employment application or a law enforcement officer conduct investigation.

**Source:** Laws 2016, LB821, § 8.

#### **48-3509. Personal Internet account; employer; duty; liability.**

(1) The Workplace Privacy Act does not create a duty for an employer to search or monitor the activity of a personal Internet account.

(2) An employer is not liable under the act for failure to request or require that an employee or applicant grant access to, allow observation of, or disclose information that allows access to or observation of the employee's or applicant's personal Internet account.

**Source:** Laws 2016, LB821, § 9.

#### **48-3510. Employer; limit on liability and use of certain information.**

If an employer inadvertently learns the user name, password, or other means of access to an employee's or applicant's personal Internet account through the use of otherwise lawful technology that monitors the employer's computer network or employer-provided electronic communication devices for service quality or security purposes, the employer is not liable for obtaining the information, but the employer shall not use the information to access the employee's or applicant's personal Internet account or share the information with anyone. The employer shall delete such information as soon as practicable.

**Source:** Laws 2016, LB821, § 10.

#### **48-3511. Civil action authorized.**

Upon violation of the Workplace Privacy Act, an aggrieved employee or applicant may, in addition to any other available remedy, institute a civil action within one year after the date of the alleged violation or the discovery of the alleged violation, whichever is later. The employee or applicant shall file an action directly in the district court of the county where such alleged violation occurred. The district court shall file and try such case as any other civil action, and any successful complainant shall be entitled to appropriate relief, including temporary or permanent injunctive relief, general and special damages, reasonable attorney's fees, and costs.

Source: Laws 2016, LB821, § 11; Laws 2018, LB193, § 85.

**86-574. Dark fiber, defined.**

For purposes of sections 86-574 to 86-578, dark fiber means any unused fiber optic cable through which no light is transmitted or any installed fiber optic cable not carrying a signal.

**Source:** Laws 2001, LB 827, § 1; R.S.Suppl.,2001, § 86-2301; Laws 2002, LB 1105, § 344.

**86-575. Agency or political subdivision; dark fiber; disposition; powers.**

(1) Any agency or political subdivision of the state may:

- (a) Own dark fiber;
- (b) Sell dark fiber pursuant to section 86-576; and
- (c) Lease dark fiber pursuant to section 86-577.

(2) Any agency or political subdivision which sells or leases its dark fiber pursuant to sections 86-574 to 86-578 shall not be deemed to be providing telecommunications services as defined in section 86-593.

**Source:** Laws 2001, LB 827, § 2; R.S.Suppl.,2001, § 86-2302; Laws 2002, LB 1105, § 345; Laws 2005, LB 645, § 9.

**Annotations**

- Under former law, subsection (2) of this section is preempted by federal law and is unconstitutional. In re Application of Lincoln Electric System, 265 Neb. 70, 655 N.W.2d 363 (2003).

**86-576. Agency or political subdivision; dark fiber; sale.**

Any agency or political subdivision of the state may sell its dark fiber by any method, including auction, sealed bid, or public sale, which it deems to be most advantageous to the public. The sales agreement may require that the agency or political subdivision be solely responsible for the maintenance of the dark fiber and that the buyer is responsible, on a pro rata basis, for any such maintenance costs.

**Source:** Laws 2001, LB 827, § 3; R.S.Suppl.,2001, § 86-2303; Laws 2002, LB 1105, § 346.

**86-577. Agency or political subdivision; dark fiber; lease.**

(1) For purposes of this section:

(a) Served location means a location receiving, or at the time the lease is filed with the Public Service Commission able to receive, communications service at a minimum download speed of twenty-five megabits per second and a minimum upload speed of three megabits per second or higher speeds, as determined by the Public Service Commission; and

(b) Unserved location means a location not receiving, and at the time the lease is filed with the Public Service Commission not able to receive, communications service at a minimum download speed of twenty-five megabits per second and a minimum upload speed of three megabits per second or higher speeds, as determined by the Public Service Commission.

(2) Any agency or political subdivision of the state may lease its dark fiber if:

(a) The lessee is a certificated telecommunications common carrier or a permitted telecommunications contract carrier pursuant to section 86-128 or an Internet service provider;

(b) The lease terms are fair, reasonable, and nondiscriminatory; and

(c) The lease complies with this section.

(3)(a) Before a lease of dark fiber under this section becomes effective, it shall be filed with the commission which shall expeditiously cause notice of the lease, including lease rates, to be published.

(b)(i) The lease shall become effective fourteen business days after the date of the published notice unless a protest is filed with the commission, in which event the commission shall consider the lease as a contested matter and consider the contested lease according to the commission's rules of procedure.

(ii) If the allocation of served location and unserved location in the lease is contested, the commission shall determine such allocation under the lease as a contested matter and consider the contested lease according to the commission's rules of procedure.

(4) For the lease of dark fiber:

(a) The commission shall establish a safe harbor range of market rates for all dark fiber leases using a competitive price determination comparison. When conducting a competitive price determination comparison, the commission, in its discretion, shall use rate schedules, interconnection agreements, or other documents within its regulatory oversight and shall gather other market rate information as deemed necessary. If a lease utilizes rates within the safe harbor range, such rates shall be deemed approved. Any other term of the lease may be contested pursuant to subdivision (3)(b) of this section; and



(b) Fifty percent of the profit earned by the agency or political subdivision under a lease of dark fiber leased to serve a served location shall be remitted to the State Treasurer for credit to the Nebraska Telecommunications Universal Service Fund. For purposes of this subdivision, profit earned by the agency or political subdivision means the lease price less the cost of infrastructure deployment. This subdivision does not apply to a lease or portion of a lease of dark fiber leased to exclusively serve unserved locations.

(5) The lessee shall make every reasonable effort to activate the maximum amount of the leased fiber as is possible, within one year after entering into the lease, unless good cause is shown.

**Source:** Laws 2001, LB 827, § 4; R.S.Supp.,2001, § 86-2304; Laws 2002, LB 1105, § 347; Laws 2020, LB992, § 12.

**86-578. Dark fiber; violation; procedure; appeal.**

In an original action concerning a violation of any provision of sections 86-574 to 86-578 by an agency or political subdivision of the state, the Public Service Commission shall have the jurisdiction set forth in section 75-132.01. After all administrative remedies before the Public Service Commission have been exhausted, an appeal may be brought by an interested party. Such appeal shall be in accordance with section 75-136.

**Source:** Laws 2001, LB 827, § 5; R.S.Supp.,2001, § 86-2305; Laws 2002, LB 1105, § 348; Laws 2003, LB 187, § 32; Laws 2013, LB545, § 15.

**86-579. Nebraska Internet Enhancement Fund; created; use; investment.**

The Nebraska Internet Enhancement Fund is created. The fund shall be used to provide financial assistance to install and deliver broadband or other advanced telecommunications infrastructure and service throughout the state. It is the intent of the Legislature that two hundred fifty thousand dollars shall be appropriated to the fund to be used for startup costs and seed money for FY2001-02. The Public Service Commission may receive gifts, contributions, property, and equipment from public and private sources for purposes of the fund. The fund shall consist of money appropriated by the Legislature, any money transferred pursuant to section 86-127, and gifts, grants, or bequests from any source including any other federal, state, public, and private sources. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Nebraska Internet Enhancement Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The fund terminates on June 30, 2021, and the State Treasurer shall transfer any unencumbered money in the fund on such date to the Nebraska Telecommunications Universal Service Fund.

The State Treasurer shall transfer one hundred thousand dollars from the Nebraska Internet Enhancement Fund to the General Fund on or before July 15, 2003.

The State Treasurer shall transfer fifty thousand dollars from the Nebraska Internet Enhancement Fund to the Rural Broadband Task Force Fund on or before July 15, 2018.

**Source:** Laws 2001, LB 827, § 6; R.S.Supp.,2001, § 86-2306; Laws 2002, LB 1105, § 349; Laws 2002, LB 1211, § 26; Laws 2003, LB 408, § 8; Laws 2018, LB994, § 7; Laws 2020, LB992, § 13.

**Cross References**

- **Nebraska Capital Expansion Act**, see section 72-1269.
- **Nebraska State Funds Investment Act**, see section 72-1260.

**86-580. Repealed. Laws 2020, LB992, § 17.**

**86-593. Terms, defined.**

For purposes of sections 86-593 to 86-598:

(1) Broadband services means the offering of a capability for high-speed broadband telecommunications capability at a speed or bandwidth in excess of two hundred kilobits per second that enables users to originate and receive high-quality voice, data, and video telecommunications using any technology;

(2) Internet services means the offering of Internet service provider services, providing voice over Internet protocol services, or providing Internet protocol-based video services;

(3) Public power supplier means a public power district, a public power and irrigation district, a municipal electric system, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental entity providing electric service;

(4) Telecommunications has the same meaning as telecommunications defined in section 86-117;

(5) Telecommunications services has the same meaning as telecommunications service defined in section 86-121; and

(6) Video services means the delivery of any subscription video service except those described in section 70-625.

**Source:** Laws 2005, LB 645, § 1; Laws 2009, LB154, § 22.

**Cross References**

- **Interlocal Cooperation Act**, see section 13-801.
- **Joint Public Agency Act**, see section 13-2501.
- **Municipal Cooperative Financing Act**, see section 18-2401.

**86-594. Agency or political subdivision of state; limitation on power.**

(1) Except as provided in the Educational Service Units Act and sections 79-1319, 81-1120.01 to 81-1120.28, 85-401 to 85-411, 85-1501 to 85-1542, and 86-575, an agency or political subdivision of the state that is not a public power supplier shall not provide on a retail or wholesale basis any broadband services, Internet services, telecommunications services, or video services.

(2) The provisions of subsection (1) of this section shall not apply to services which an agency or political subdivision of the state was authorized to provide and was providing prior to January 1, 2005.

**Source:** Laws 2005, LB 645, § 2; Laws 2021, LB384, § 25.

**Cross References**

- **Educational Service Units Act**, see section 79-1201.

**86-595. Public power supplier; limitation on retail services.**

(1) A public power supplier shall not provide on a retail basis any broadband services, Internet services, telecommunications services, or video services.

(2) The provisions of subsection (1) of this section shall not apply to services which a public power supplier was authorized to provide and was providing prior to January 1, 2005.

**Source:** Laws 2005, LB 645, § 3.

**86-596. Repealed. Laws 2014, LB 658, § 4.**

**86-597. Retail or wholesale service; how construed.**

(1) For purposes of sections 86-594 and 86-595, providing a service on a retail or wholesale basis shall not include an agency or political subdivision of the state, whether or not a public power supplier, deploying or utilizing broadband services, Internet services, telecommunications services, or video services, for its own use either individually or jointly through the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act for the internal use and purpose of the agency, political subdivision, or public power supplier or to carry out the public purposes of the agency, political subdivision, or public power supplier.

(2) Nothing in sections 86-593 to 86-598 prohibits or restricts the ability of an agency, political subdivision, or public power supplier from deploying or utilizing broadband services, Internet services, telecommunications services, or video services for the internal use and purpose of the agency, political subdivision, or public power supplier, or to carry out the public purposes of the agency, political subdivision, or public power supplier.

**Source:** Laws 2005, LB 645, § 5; Laws 2009, LB154, § 23; Laws 2014, LB658, § 1.

**Cross References**

- **Interlocal Cooperation Act**, see section 13-801.
- **Joint Public Agency Act**, see section 13-2501.
- **Municipal Cooperative Financing Act**, see section 18-2401.

**86-598. Sections; how construed.**

Except as otherwise provided in section 86-595, nothing in sections 86-593 to 86-598 shall be construed to restrict or expand any authority of a public power supplier as that authority existed prior to September 4, 2005.

**Source:** Laws 2005, LB 645, § 6; Laws 2009, LB154, § 24; Laws 2014, LB658, § 2.

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*Broadband Internet Service Infrastructure Act*

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**86-5,102. Act, how cited.**

Sections 86-5,102 to 86-5,108 shall be known and may be cited as the Broadband Internet Service Infrastructure Act.

**Source:** Laws 2020, LB992, § 1.

**86-5,103. Legislative findings.**

The Legislature finds and declares that (1) it is in the public interest for commercial broadband suppliers and electric utilities to enter into broadband facility agreements and (2) the use of electric utility easements and electric utility infrastructure for commercial broadband facilities pursuant to a broadband facility agreement does not diminish the value of underlying real estate.

**Source:** Laws 2020, LB992, § 2.

**86-5,104. Terms, defined.**

For purposes of the Broadband Internet Service Infrastructure Act:

(1) Attached facility means a broadband facility or a broadband network, or any portion of a broadband network, located substantially:

- (a) Aboveground and attached to an electric utility's electric utility infrastructure; or
- (b) Underground in an electric utility easement;

(2) Broadband facility agreement means an agreement between an electric utility and a commercial broadband supplier for the use of electric utility infrastructure and electric utility easements for attached facilities;

(3) Commercial broadband service means broadband service as such term is defined in 7 U.S.C. 950bb(b)(1), as such section existed on January 1, 2020, or broadband Internet service;

(4)(a) Commercial broadband supplier means:

- (i) A provider of commercial broadband service; or

(ii) A person that directly or indirectly sells, leases, or otherwise transfers an attached facility or a right to install, operate, maintain, or use an attached facility for another person's provision of commercial broadband service or a person that intends to sell, lease, or otherwise transfer an attached facility or a right to install, operate, maintain, or use an attached facility; and

(b) Commercial broadband supplier does not include an electric utility;

(5) Electric utility means any entity referred to in subdivision (8) of section 70-601;

(6) Electric utility easement means a recorded or unrecorded easement, right-of-way, or similar right in or to real property, including prescriptive rights, no matter how acquired, held by an electric utility for the siting of electric utility infrastructure or for the purpose of delivering electric service;

(7) Electric utility infrastructure means electric utility poles, structures, or other facilities used for the distribution of electric service and street lighting, but does not include poles, structures, or other facilities used for electric transmission service;

(8) Notice means a written letter substantially complying with the requirements set forth in subdivision (2)(b) of section 86-5,105, which notice shall be deemed delivered on the date postmarked or otherwise time stamped;

(9) Person means an individual, a firm, a partnership, a company, a corporation, a trust, a limited liability company, an association, a joint venture, or any other legal entity; and

(10) Property owner means a person with a recorded interest in real property upon which an electric utility easement is located.

**Source:** Laws 2020, LB992, § 3.

**86-5,105. Broadband facility agreement; purpose; contents; notice; electric utility easement; effect; claim for compensation; responsibility for payment; conditions on agreement.**

(1) An electric utility and a commercial broadband supplier may enter into a broadband facility agreement for the use of an electric utility easement or electric utility infrastructure, or both, to:

(a) Install, maintain, or own, or permit any commercial broadband supplier to install, maintain, or own, an attached facility for operation by a commercial broadband supplier in providing commercial broadband service; and

(b) Lease or otherwise provide to a commercial broadband supplier any excess capacity of attached facilities for purposes of providing commercial broadband service.

(2)(a) A broadband facility agreement shall contain one of the following with respect to the use of any electric utility easement:

(i) A statement that the electric utility has the legal right to authorize the use of the electric utility easement for commercial broadband facilities;

(ii) A statement that the commercial broadband supplier has compensated property owners for the use of the electric utility easement for commercial broadband facilities pursuant to subsection (5) of this section; or

(iii) A statement that the electric utility has given notice to property owners pursuant to subdivision (2)(b) of this section and the time for making a claim has expired.

(b) Notice pursuant to this subsection shall:

(i) Be sent by certified mail from or on behalf of the electric utility to the property owner at each of the following, as applicable:

(A) The last-known address for the property owner based on the electric utility's records; and

(B) The address listed for the property owner in the records of the office of the county assessor;

(ii) Include the name, address, telephone number, and named point of contact for the electric utility and, if delivered by a commercial broadband supplier designated by the electric utility, the name, address, telephone number, and named point of contact for the designated commercial broadband supplier;

(iii) Include the recording number, if any, of the electric utility easement or recorded memorandum of the electric utility easement;

(iv) Include:

(A) A reference to the Broadband Internet Service Infrastructure Act; and

(B) A statement that the electric utility intends to enter into a broadband facility agreement, within ninety days after the notice is delivered, for the use of the electric utility easement with the commercial broadband supplier named in the notice;



(v) Give an estimated time for the start of installation or construction with regard to any new installation or construction that is to occur in connection with the broadband facility agreement; and

(vi) Include a statement regarding the statute of limitations for the property owner to file a claim with respect to the electric utility's exercise of action.

(3) The terms and conditions of a written electric utility easement apply to the use of the electric utility easement for commercial broadband facilities pursuant to a broadband facility agreement. A prohibition on aboveground electric utility infrastructure contained within a written electric utility easement constitutes a prohibition on aboveground attached facilities. An electric utility or its designated commercial broadband supplier shall comply with any notice requirements contained in a written electric utility easement held by the electric utility relating to entering the real property subject to the electric utility easement or commencing any construction or installation on the real property.

(4) Nothing in this section requires an electric utility to comply with subdivision (2)(b) of this section in order to take any action or exercise any rights under an electric utility easement that is already permitted within the scope of the electric utility easement. An electric utility easement shall be liberally construed in favor of its use for commercial broadband facilities pursuant to a broadband facility agreement.

(5) If, within ninety days after a notice pursuant to this section is sent by an electric utility or a designated commercial broadband supplier acting on the electric utility's behalf, a property owner submits a written claim for compensation relating to the use of an electric utility easement in connection with a broadband facility agreement, then the commercial broadband supplier, through communications handled by the electric utility, shall be responsible for the payment of compensation to the property owner for such claim, and the electric utility shall cooperate with the commercial broadband supplier in connection with the resolution of the claim.

(6) The electric utility shall not be required to enter into a broadband facility agreement until one of the following events occurs:

(a) The time period set forth in subsection (5) of this section has expired without a written claim from property owners of record;

(b) Any written claim for compensation by a property owner pursuant to this subsection has been resolved by a written instrument that shall be recorded with the register of deeds of the county where the electric utility easement is located; or

(c) The statute of limitations set forth in section 86-5,106 has expired.

(7) This section shall not apply to railroad right-of-way or electric utility easements in or to railroad right-of-way property. Crossings of railroad rights-of-way by telecommunications carriers are governed by section 86-164.

**Source:** Laws 2020, LB992, § 4.

**86-5,106. Electric utility easement; use for commercial broadband facilities; claim or cause of action; limitations; exceptions; acceptance of damage award; effect.**

(1)(a) No cause of action against an electric utility or a commercial broadband supplier concerning the use of an electric utility easement for commercial broadband facilities pursuant to a broadband facility agreement may be brought by or on behalf of a property owner more than two years after the later of:

(i) November 14, 2020; or

(ii) The date of mailing of notice by an electric utility or a designated commercial broadband supplier acting on the electric utility's behalf pursuant to subsection (5) of section 86-5,105.

(b) Subdivision (1)(a) of this section does not apply to a cause of action based on:

(i) Physical damage to property;

(ii) Injury to natural persons; or

(iii) Breach of the terms and conditions of a written electric easement as the terms and conditions apply in accordance with subsection (3) of section 86-5,105.

(c) Nothing in this section extends the statute of limitations applicable to a claim or revives an expired claim.

(2) A cause of action to which subdivision (1)(a) of this section applies shall not be brought against a commercial broadband supplier for notice provided by the commercial broadband supplier on behalf of an electric utility under subdivision (2)(b) of section 86-5,105. Nothing in this subsection prohibits an electric utility and a commercial broadband supplier from contracting to allocate liability for notice required under subdivision (2)(b) of section 86-5,105.

(3) If a property owner brings a trespass claim, inverse condemnation claim, or any other claim or cause of action to which subdivision (1)(a) of this section applies for an electric utility's or commercial broadband supplier's performance of actions described in subdivision (1)(a) or (1)(b) of section 86-5,105, the following applies to the claim or cause of action:

(a) The measure of damages for all claims or causes of action to which subdivision (1)(a) of this section applies, taken together, is the fair market value of the reduction in value of the property owner's interest in the real property. In determining or providing the fair market value under this subdivision (a):

(i) The following shall not be used and are not admissible as evidence in any proceeding:

(A) Profits, fees, or revenue derived from the attached facilities; or

(B) The rental value of the real property interest or the electric utility easement, including the rental value of any attached facilities or an assembled broadband corridor; and

(ii) Consideration shall be given to any increase in value to the real property interest resulting from the availability of commercial broadband service to the real property underlying the real property interest that arises from the installation of attached facilities;

(b) The property owner shall make reasonable accommodations for the electric utility or commercial broadband supplier to perform an appraisal or inspection of the real property within ninety days following any written request for an appraisal or inspection. If a property owner fails to make such accommodations, the electric utility or commercial broadband supplier has no further liability to the property owner with respect to such claim or cause of action. The electric utility or commercial broadband supplier shall promptly provide to the property owner a copy of any appraisal performed pursuant to this subdivision (b);

(c) Any damages for any claims or causes of action to which subdivision (1)(a) of this section applies:

(i) Are limited to those damages that existed at the time the electric utility or commercial broadband supplier first performed the actions; and

(ii) Shall not be deemed to continue, accrue, or accumulate; and

(d) With regard to a claim or cause of action to which subdivision (1)(a) of this section applies:

(i) A property owner is not entitled to reimbursement from an electric utility or commercial broadband supplier for the cost of any appraisal, attorney's fees, or award for special, consequential, indirect, or punitive damages; and

(ii) For purposes of this subdivision (d), any action or failure to act by an electric utility or a commercial broadband supplier in furtherance of the electric utility's or commercial broadband

supplier's exercise of action set forth in subsection (1) of section 86-5,105 shall not be deemed negligence or willful misconduct.

(4) By accepting a damage award for any claim or cause of action to which subdivision (1)(a) of this section applies, a property owner shall be deemed to have granted an increase in the scope of the electric utility easement, equal in duration to the term of the electric utility easement and subject to this section, to the extent of the property owner's rights in the real property, for all of the uses of the real property and actions set forth in subsection (1) of section 86-5,105.

**Source:** Laws 2020, LB992, § 5.

**86-5,107. Electric utility; broadband facility agreement; requirements; electric service; avoid material interference; effect of act.**

(1) In entering into a broadband facility agreement, an electric utility shall:

(a) Not discriminate among commercial broadband suppliers in offering or granting rights to install or attach any attached facilities; or

(b) Charge fees that are nondiscriminatory among commercial broadband suppliers for a substantially similar lease or use of the capacity of attached facilities owned or controlled by the electric utility, but only to the extent an electric utility chooses, in its sole discretion, to offer the lease or use to a particular commercial broadband supplier.

(2) Nothing in this section requires an electric utility to offer or grant a right to access or use an electric utility easement or to use attached facilities or electric utility infrastructure owned or controlled by the electric utility in a manner that would, in the electric utility's sole discretion, materially interfere with the electric utility's construction, maintenance, or use of any electric utility infrastructure for the provision of electric service.

(3) Nothing in the Broadband Internet Service Infrastructure Act:

(a) Is intended to subject an electric utility to regulation by the Federal Communications Commission;

(b) Constitutes an exercise of, or an obligation or intention to exercise, the right of the state under 47 U.S.C. 224(c), as such section existed on January 1, 2020, to regulate the rates, terms, and conditions for pole attachments as defined in 47 U.S.C. 224(a)(4), as such section existed on January 1, 2020;

(c) Constitutes a certification, or an obligation or intention to certify, to the Federal Communications Commission under 47 U.S.C. 224, as such section existed on January 1, 2020;

(d) Prevents the parties involved from filing a claim or cause of action in any court of competent jurisdiction for any dispute arising under the Broadband Internet Service Infrastructure Act; or

(e) In any way affects the authority of electric utilities to enter into agreements with any party, outside the requirements of the Broadband Internet Service Infrastructure Act, relating to the use of its easements or electric system facilities.

**Source:** Laws 2020, LB992, § 6.

**86-5,108. Act; applicability.**

The Broadband Internet Service Infrastructure Act does not apply to railroad right-of-way or electric utility easements in or to railroad right-of-way property. Crossings of railroad rights-of-way by telecommunications carriers are governed by section 86-164.

**Source:** Laws 2020, LB992, § 7.

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*Financial Data Protection and Consumer Notification of Data Security Breach  
Act of 2006*

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**87-801. Act, how cited.**

Sections 87-801 to 87-808 shall be known and may be cited as the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006.

**Source:** Laws 2006, LB 876, § 1; Laws 2018, LB757, § 6.

**87-802. Terms, defined.**

For purposes of the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006:

(1) Breach of the security of the system means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of personal information maintained by an individual or a commercial entity. Good faith acquisition of personal information by an employee or agent of an individual or a commercial entity for the purposes of the individual or the commercial entity is not a breach of the security of the system if the personal information is not used or subject to further unauthorized disclosure. Acquisition of personal information pursuant to a search warrant, subpoena, or other court order or pursuant to a subpoena or order of a state agency is not a breach of the security of the system;

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

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

(4) Notice means:

(a) Written notice;

(b) Telephonic notice;

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

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

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

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

(iii) Notice to major statewide media outlets; or

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

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

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

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

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

(5) Personal information means either of the following:

(a) A Nebraska resident's first name or first initial and last name in combination with any one or more of the following data elements that relate to the resident if either the name or the data

elements are not encrypted, redacted, or otherwise altered by any method or technology in such a manner that the name or data elements are unreadable:

(i) Social security number;

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

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

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

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

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

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

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

**Source:** Laws 2006, LB 876, § 2; Laws 2016, LB835, § 27.

**87-803. Breach of security; investigation; notice to resident; notice to Attorney General.**

(1) An individual or a commercial entity that conducts business in Nebraska and that owns or licenses computerized data that includes personal information about a resident of Nebraska shall, when it becomes aware of a breach of the security of the system, conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be used for an unauthorized purpose. If the investigation determines that the use of information about a Nebraska resident for an unauthorized purpose has occurred or is reasonably likely to occur, the individual or commercial entity shall give notice to the affected Nebraska resident. Notice shall be made as soon as possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.



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

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

(4) Notice required by this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation. Notice shall be made in good faith, without unreasonable delay, and as soon as possible after the law enforcement agency determines that notification will no longer impede the investigation.

**Source:** Laws 2006, LB 876, § 3; Laws 2016, LB835, § 28.

#### **87-804. Compliance with notice requirements; manner.**

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

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

**Source:** Laws 2006, LB 876, § 4; Laws 2016, LB835, § 29.

#### **87-805. Waiver; void and unenforceable.**

Any waiver of the provisions of the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006 is contrary to public policy and is void and unenforceable.

**Source:** Laws 2006, LB 876, § 5.

**87-806. Attorney General; powers; violation; how treated.**

(1) For purposes of the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006, the Attorney General may issue subpoenas and seek and recover direct economic damages for each affected Nebraska resident injured by a violation of section 87-803.

(2) A violation of section 87-808 shall be considered a violation of section 59-1602 and be subject to the Consumer Protection Act and any other law which provides for the implementation and enforcement of section 59-1602. A violation of section 87-808 does not give rise to a private cause of action.

**Source:** Laws 2006, LB 876, § 6; Laws 2018, LB757, § 8.

**87-807. Act; applicability.**

The Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006 applies to the discovery of or notification pertaining to a breach of the security of the system that occurs on or after July 14, 2006.

**Source:** Laws 2006, LB 876, § 7.

**87-808. Security procedures and practices; disclosure of computerized data; contract provisions; compliance.**

(1) To protect personal information from unauthorized access, acquisition, destruction, use, modification, or disclosure, an individual or a commercial entity that conducts business in Nebraska and owns, licenses, or maintains computerized data that includes personal information about a resident of Nebraska shall implement and maintain reasonable security procedures and practices that are appropriate to the nature and sensitivity of the personal information owned, licensed, or maintained and the nature and size of, and the resources available to, the business and its operations, including safeguards that protect the personal information when the individual or commercial entity disposes of the personal information.

(2)(a) An individual or commercial entity that discloses computerized data that includes personal information about a Nebraska resident to a nonaffiliated, third-party service provider

shall require by contract that the service provider implement and maintain reasonable security procedures and practices that:

(i) Are appropriate to the nature of the personal information disclosed to the service provider; and

(ii) Are reasonably designed to help protect the personal information from unauthorized access, acquisition, destruction, use, modification, or disclosure.

(b) This subsection does not apply to any contract entered into before July 19, 2018. Any such contract renewed on or after July 19, 2018, shall comply with the requirements of this subsection.

(3) An individual or a commercial entity complies with subsections (1) and (2) of this section if the individual or commercial entity:

(a) Complies with a state or federal law that provides greater protection to personal information than the protections that this section provides; or

(b) Complies with the regulations promulgated under Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., or the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d to 1320d-9, as such acts and sections existed on January 1, 2018, if the individual or commercial entity is subject to either or both of such acts or sections.

**Source:** Laws 2018, LB757, § 7.

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Sources:

- Workplace Privacy Act: [http://nebraskalegislature.gov/laws/display\\_html.php?begin\\_section=48-3501&end\\_section=48-3511](http://nebraskalegislature.gov/laws/display_html.php?begin_section=48-3501&end_section=48-3511)
- Public Technology Infrastructure; Publicly Owned Dark Fiber: [https://nebraskalegislature.gov/laws/display\\_html.php?begin\\_section=86-574&end\\_section=86-578](https://nebraskalegislature.gov/laws/display_html.php?begin_section=86-574&end_section=86-578)
- Public Technology Infrastructure; Internet Enhancement: [https://nebraskalegislature.gov/laws/display\\_html.php?begin\\_section=86-579&end\\_section=86-580](https://nebraskalegislature.gov/laws/display_html.php?begin_section=86-579&end_section=86-580)
- Public Technology Infrastructure; Retail or Wholesale Services: [https://nebraskalegislature.gov/laws/display\\_html.php?begin\\_section=86-593&end\\_section=86-598](https://nebraskalegislature.gov/laws/display_html.php?begin_section=86-593&end_section=86-598)
- Broadband Internet Service Infrastructure Act: [https://nebraskalegislature.gov/laws/display\\_html.php?begin\\_section=86-5.102&end\\_section=86-5.108](https://nebraskalegislature.gov/laws/display_html.php?begin_section=86-5.102&end_section=86-5.108)
- Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006: [http://nebraskalegislature.gov/laws/display\\_html.php?begin\\_section=87-801&end\\_section=87-808](http://nebraskalegislature.gov/laws/display_html.php?begin_section=87-801&end_section=87-808)

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